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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Legislative acts)

REGULATIONS

**REGULATION (EU) 2019/941 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 June 2019**

on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) The electricity sector in the Union is undergoing a profound transformation, characterised by more decentralised markets with more players, a higher proportion of energy from renewable sources and better interconnected systems. In response, Regulation (EU) 2019/943 of the European Parliament and of the Council ⁽⁴⁾ and Directive (EU) 2019/944 of the European Parliament and of the Council ⁽⁵⁾ aim to upgrade the legal framework governing the Union's internal electricity market, in order to ensure that markets and networks function in an optimal manner, to the benefit of businesses and Union citizens. This Regulation is intended to contribute to the implementation of the objectives of the Energy Union, of which energy security, solidarity, trust and an ambitious climate policy are an integral part.
- (2) Well-functioning markets and systems, with adequate electricity interconnections, are the best guarantee of security of electricity supply. However, even where markets and systems function well and are interconnected, the risk of an electricity crisis, as a result of natural disasters, such as extreme weather conditions, malicious attacks or fuel shortages, can never be excluded. The consequences of electricity crises often extend beyond national borders. Even where such crises start locally, their effects can rapidly spread across borders. Some extreme circumstances, such as cold spells, heat waves or cyberattacks, may affect entire regions at the same time.

⁽¹⁾ OJ C 288, 31.8.2017, p. 91.

⁽²⁾ OJ C 342, 12.10.2017, p. 79.

⁽³⁾ Position of the European Parliament of 26 March 2019 (not yet published in the Official Journal) and decision of the Council of 22 May 2019.

⁽⁴⁾ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (see page 54 of this Official Journal).

⁽⁵⁾ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (see page 125 of this Official Journal).

- (3) In a context of interlinked electricity markets and systems, electricity crisis prevention and management cannot be considered to be a purely national task. The potential of more efficient and less costly measures through regional cooperation should be better exploited. A common framework of rules and better coordinated procedures are needed in order to ensure that Member States and other actors are able to cooperate effectively across borders, in a spirit of increased transparency, trust and solidarity between Member States.
- (4) Directive 2005/89/EC of the European Parliament and of the Council ⁽⁶⁾ established the necessary measures that the Member States are to take in order to ensure security of electricity supply in general. The provisions of that Directive have largely been superseded by subsequent legislative acts, in particular as regards how electricity markets are to be organised in order to ensure the availability of sufficient capacity, how transmission system operators are to cooperate to guarantee system stability, and as regards ensuring that appropriate infrastructure is in place. This Regulation addresses the specific issue of electricity crisis prevention and management.
- (5) Commission Regulations (EU) 2017/1485 ⁽⁷⁾ and (EU) 2017/2196 ⁽⁸⁾ constitute a detailed rulebook governing how transmission system operators and other relevant stakeholders should act and cooperate to ensure system security. Those technical rules should ensure that most electricity incidents are dealt with effectively at operational level. This Regulation focuses on electricity crises that have a larger scale and impact. It sets out what Member States should do to prevent such crises and what measures they can take should system operation rules alone no longer suffice. Even in electricity crises system operation rules should continue to be fully respected and this Regulation should be consistent with Regulation (EU) 2017/2196.
- (6) This Regulation sets out a common framework of rules on how to prevent, prepare for and manage electricity crises, bringing more transparency in the preparation phase and during an electricity crisis and ensuring that measures are taken in a coordinated and effective manner. It requires Member States to cooperate, at regional level and, where applicable, bilaterally, in a spirit of solidarity. It also sets out a framework for the effective monitoring of security of electricity supply in the Union via the Electricity Coordination Group (ECG), which was set up by a Commission Decision of 15 November 2012 ⁽⁹⁾ as a forum in which to exchange information and foster cooperation among Member States, in particular in the area of security of electricity supply. Member State cooperation and the monitoring framework are intended to achieve better risk-preparedness at a lower cost. This Regulation should also strengthen the internal electricity market by enhancing trust and confidence across Member States and ruling out inappropriate state interventions in electricity crises, in particular avoiding undue curtailment of cross-border flows and cross zonal transmission capacities, thus reducing the risk of negative spillover effects on neighbouring Member States.
- (7) Directive (EU) 2016/1148 of the European Parliament and of the Council ⁽¹⁰⁾ lays down general rules on security of network and information systems, while specific rules on cybersecurity will be developed through a network code as laid down in Regulation (EU) 2019/943. This Regulation complements Directive (EU) 2016/1148 by ensuring that cyber-incidents are properly identified as a risk, and that the measures taken to address them are properly reflected in the risk-preparedness plans.
- (8) Council Directive 2008/114/EC ⁽¹¹⁾ lays down a process with a view to enhancing the security of designated European critical infrastructure, including certain electricity infrastructure. Directive 2008/114/EC, together with this Regulation, contributes to creating a comprehensive approach to the energy security of the Union.

⁽⁶⁾ Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment (OJ L 33, 4.2.2006, p. 22).

⁽⁷⁾ Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ L 220, 25.8.2017, p. 1).

⁽⁸⁾ Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration (OJ L 312, 28.11.2017, p. 54).

⁽⁹⁾ Commission Decision of 15 November 2012 setting up the Electricity Coordination Group (OJ C 353, 17.11.2012, p. 2).

⁽¹⁰⁾ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

⁽¹¹⁾ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75).

- (9) Decision No 1313/2013/EU of the European Parliament and of the Council ⁽¹²⁾ sets out requirements for Member States to develop risk assessments at national level or at the appropriate sub-national level every three years, and to develop and refine their disaster risk management planning at national level or at the appropriate sub-national level. The specific risk prevention, preparedness and planning actions set out in this Regulation should be consistent with the wider, multi-hazard national risk assessments required under Decision No 1313/2013/EU.
- (10) Member States are responsible for ensuring the security of electricity supply within their territories, while security of electricity supply is also a responsibility shared among the Commission and other Union actors, within their respective areas of activity and competence. Security of electricity supply entails effective cooperation among Member States, Union institutions, bodies, offices and agencies, and relevant stakeholders. Distribution system operators and transmission system operators play a key role in ensuring a secure, reliable and efficient electricity system in accordance with Articles 31 and 40 of Directive (EU) 2019/944. The regulatory authorities and other relevant national authorities also play an important role in ensuring and monitoring the security of electricity supply, as part of their tasks attributed by Article 59 of Directive (EU) 2019/944. Member States should designate an existing or new entity as their single competent national governmental or regulatory authority with the aim of ensuring the transparent and inclusive participation of all actors involved, the efficient preparation and proper implementation of the risk-preparedness plans, as well as facilitating the prevention and *ex post* evaluation of electricity crises and information exchanges in relation thereto.
- (11) A common approach to electricity crisis prevention and management requires a common understanding among Member States as to what constitutes an electricity crisis. In particular this Regulation should facilitate coordination among Member States for the purpose of identifying a situation in which the potential risk of a significant electricity shortage or an impossibility to supply electricity to customers is present or imminent. The European Network of Transmission System Operators for Electricity ('ENTSO for Electricity') and the Member States should, respectively, determine concrete regional and national electricity crisis scenarios. That approach should ensure that all relevant electricity crises are covered, taking into account regional and national specificities such as the topology of the grid, the electricity mix, the size of production and consumption, and the degree of population density.
- (12) A common approach to electricity crisis prevention and management also requires that Member States use the same methods and definitions to identify risks relating to the security of electricity supply and are in a position to compare effectively how well they and their neighbours perform in that area. This Regulation identifies two indicators for monitoring the security of electricity supply in the Union: 'expected energy non-served', expressed in GWh/year, and 'loss of load expectation', expressed in hours per year. Those indicators are part of the European resource adequacy assessment carried out by the ENTSO for Electricity, pursuant to Article 23 of Regulation (EU) 2019/943. The ECG should carry out regular monitoring of the security of electricity supply based on the results of those indicators. The Agency for the Cooperation of Energy Regulators (ACER) should also use those indicators when reporting on Member States' performance in the area of security of electricity supply in its annual electricity market monitoring reports, pursuant to Article 15 of Regulation (EU) 2019/942 of the European Parliament and of the Council ⁽¹³⁾.
- (13) To ensure the coherence of risk assessments in a manner that builds trust between Member States in an electricity crisis, a common approach to identifying risk scenarios is needed. The ENTSO for Electricity should therefore, after consulting the relevant stakeholders, develop and update a common methodology for risk identification in cooperation with ACER, and with the ECG in its formation composed only of representatives of the Member States. The ENTSO for Electricity should propose the methodology and ACER should approve it. When consulting the ECG, ACER is to take the utmost account of the views expressed by the ECG. The ENTSO for Electricity should update the common methodology for risk identification where significant new information becomes available.
- (14) On the basis of the common methodology for risk identification, the ENTSO for Electricity should regularly draw up and update regional electricity crisis scenarios and identify the most relevant risks for each region such as

⁽¹²⁾ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

⁽¹³⁾ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (see page 22 of this Official Journal).

extreme weather conditions, natural disasters, fuel shortages or malicious attacks. When considering the crisis scenario of a gas fuel shortage, the risk of disruption of the gas supply should be assessed based on the gas supply and infrastructure disruption scenarios developed by the European Network of Transmission System Operators for Gas (ENTSO-G) pursuant to Article 7 of Regulation (EU) 2017/1938 of the European Parliament and of the Council ⁽¹⁴⁾. The ENTSO for Electricity should be able to delegate tasks relating to the identification of regional electricity crisis scenarios to regional coordination centres established pursuant to Article 35 of Regulation (EU) 2019/943. Those delegated tasks should be performed under the supervision of the ENTSO for Electricity. Member States should establish and update their national electricity crisis scenarios on the basis of regional electricity crisis scenarios, in principle every four years. Those scenarios should provide the basis for the risk-preparedness plans. When identifying risks at national level, the Member States should describe any risks that they identify in relation to the ownership of the infrastructure relevant for security of electricity supply and any measures taken to address those risks such as general or sector-specific investment screening laws, special rights for certain shareholders, with an indication why they consider such measures to be necessary and proportionate.

- (15) A regional approach to identifying risk scenarios and to developing preventive, preparatory and mitigating measures should bring significant benefits in terms of the effectiveness of those measures and the optimal use of resources. Moreover, in a simultaneous electricity crisis, a coordinated and pre-agreed approach would ensure a consistent response and reduce the risk of negative spillover effects that purely national measures could have in neighbouring Member States. This Regulation therefore requires Member States to cooperate in a regional context.
- (16) The regional coordination centres should perform the tasks of regional relevance assigned to them in accordance with Regulation (EU) 2019/943. To ensure that they can carry out their tasks effectively and act in close cooperation with relevant national authorities with a view to preventing and mitigating larger-scale electricity incidents, the regional cooperation required under this Regulation should build on the regional cooperation structures used at technical level, namely the groups of Member States sharing the same regional coordination centre. The geographical regions of the regional coordination centres are therefore relevant for the identification of the regional electricity crisis scenarios and risk assessments. However, Member States should have the possibility to form subgroups within the regions for the purpose of cooperation with regard to concrete regional measures, or to cooperate in existing regional cooperation forums for that purpose, as the technical ability to provide mutual assistance to each other in an electricity crisis is essential. This is because not all Member States in a larger region will necessarily be able to provide electricity to another Member State in an electricity crisis. Thus, it is not necessary for all Member States in a region to conclude regional agreements on concrete regional measures. Instead, Member States that have the technical ability to provide assistance to each other should conclude such agreements.
- (17) Regulation (EU) 2019/943 provides for the use of a common methodology for the medium to long-term European resource adequacy assessment (from 10-year-ahead to year-ahead), with a view to ensuring that Member States' decisions as to possible investment needs are made on a transparent and commonly agreed basis. The European resource adequacy assessment has a different purpose from the short-term adequacy assessments which are used to detect possible adequacy related problems in short time-frames, namely seasonal adequacy assessments (six months ahead) and week-ahead to at least day-ahead adequacy assessments. Regarding short-term assessments, there is a need for a common approach to the way possible adequacy-related problems are detected. The ENTSO for Electricity should carry out winter and summer adequacy assessments to alert Member States and transmission system operators to risks related to the security of electricity supply that might occur in the following six months. To improve those adequacy assessments, the ENTSO for Electricity should develop a common probabilistic methodology for them, after consulting the relevant stakeholders, and in cooperation with ACER, and with the ECG, in its formation composed only of representatives of the Member States. The ENTSO for Electricity should propose that methodology and updates thereto to ACER, and ACER should approve the proposal and the updates. When consulting the ECG, ACER is to take the utmost account of the views expressed by the ECG. The ENTSO for Electricity should update the methodology where significant new information becomes available. The ENTSO for Electricity should be able to delegate tasks relating to seasonal adequacy assessments to regional coordination centres, while delegated tasks should be performed under the ENTSO for Electricity's supervision.

⁽¹⁴⁾ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

- (18) Transmission system operators should apply the methodology used to prepare seasonal adequacy assessments when carrying out any other type of short-term risk assessment, namely the week-ahead to at least day-ahead generation adequacy forecasts provided for in Regulation (EU) 2017/1485.
- (19) To ensure a common approach to electricity crisis prevention and management, the competent authority of each Member State should draw up a risk-preparedness plan on the basis of the regional and national electricity crisis scenarios. The competent authorities should consult stakeholders or representatives of stakeholder groups, such as representatives of producers or their trade bodies or of distribution system operators, where they are relevant for the prevention and handling of an electricity crisis. To that end, the competent authorities should decide on the appropriate arrangements for carrying out the consultation. The risk-preparedness plans should describe effective, proportionate and non-discriminatory measures addressing all identified electricity crisis scenarios. The environmental impact of demand-side and supply-side measures proposed should be taken into account. The plans should provide transparency especially as regards the conditions in which non-market-based measures can be taken to mitigate electricity crises. All envisaged non-market-based measures should comply with the rules laid down in this Regulation. The risk-preparedness plans should be made public, while ensuring confidentiality of sensitive information.
- (20) The risk-preparedness plans should set out national, regional and, where applicable, bilateral measures. Regional and, where applicable, bilateral measures are necessary, in particular in the event of a simultaneous electricity crisis, when a coordinated and pre-agreed approach is needed to ensure a consistent response and reduce the risk of negative spillover effects. To that end, before adopting the risk-preparedness plans, competent authorities should consult the competent authorities of the relevant Member States. The relevant Member States are those where there could be negative spillover effects or other impacts on each other's electricity system, whether those Member States are in the same region or directly connected. The plans should take account of the relevant national circumstances, including the situation of outermost regions within the meaning of Article 349 of the Treaty on the Functioning of the European Union, and of some micro-isolated systems that are not connected to the national transmission systems. In that respect, Member States should draw the appropriate conclusions as regards, inter alia, the provisions of this Regulation on identification of regional electricity crisis scenarios and the regional and bilateral measures set out in risk-preparedness plans as well as provisions on assistance. The plans should clearly set out the roles and responsibilities of the competent authorities. National measures should take full account of the regional and bilateral measures that have been agreed and should take full advantage of the opportunities provided by regional cooperation. The plans should be technical and operational in nature, their function being to help prevent the occurrence or escalation of an electricity crisis and to mitigate its effects.
- (21) The risk-preparedness plans should be updated regularly. To ensure that the plans are up-to-date and effective, the competent authorities of the Member States of each region should organise biennial simulations of electricity crises in cooperation with transmission system operators and other relevant stakeholders in order to test their suitability.
- (22) The template provided for in this Regulation is intended to facilitate the preparation of the plans, allowing for the inclusion of additional, Member State specific information. The template is also intended to facilitate consultation of other Member States in the region concerned and the ECG. Consultation within the region and within the ECG should ensure that measures taken in one Member State or region do not put at risk the security of electricity supply of other Member States or regions.
- (23) It is important to facilitate communication and transparency between Member States, where they have concrete, serious and reliable information that an electricity crisis may occur. In such circumstances the Member States concerned should inform the Commission, the neighbouring Member States and the ECG without undue delay, providing, in particular, information on the causes of the deterioration of the electricity supply situation, the planned measures to prevent the electricity crisis and the possible need for assistance from other Member States.

- (24) Information exchange in the event of an electricity crisis is essential in order to ensure coordinated action and targeted assistance. Therefore, this Regulation obliges the competent authority to inform the Member States in the region, the neighbouring Member States and the Commission without undue delay when confronted with an electricity crisis. The competent authority should also provide information on the causes of the crisis, the measures planned or taken to mitigate the crisis and the possible need for assistance from other Member States. Where that assistance goes beyond security of electricity supply, the Union Civil Protection Mechanism should remain the applicable legal framework.
- (25) In the event of an electricity crisis Member States should cooperate in a spirit of solidarity. In addition to that general rule, appropriate provision should be made for Member States to offer each other assistance in an electricity crisis. Such assistance should be based on agreed, coordinated measures set out in the risk-preparedness plans. This Regulation gives Member States a wide discretion when agreeing on the content of such coordinated measures and thus on the content of the assistance that they offer. It is for Member States to decide and agree on such coordinated measures, taking into account demand and supply. At the same time, this Regulation ensures that, for the purpose of the agreed assistance, electricity is delivered in a coordinated manner. Member States should agree on the necessary technical, legal and financial arrangements for the implementation of the regional and bilateral measures that have been agreed. Under those technical arrangements the Member States should indicate the maximum quantities of electricity to be delivered, which should be re-assessed on the basis of the technical feasibility of delivering electricity once the assistance is required during an electricity crisis. Subsequently, Member States should take all necessary measures for the implementation of the regional and bilateral measures that have been agreed and technical, legal and financial arrangements.
- (26) When agreeing on coordinated measures and technical, legal and financial arrangements and otherwise implementing provisions on assistance, Member States should take account of social and economic factors, including the security of Union citizens, and proportionality. They are encouraged to exchange best practices and to use the ECG as a discussion platform through which to identify the available options for assistance, in particular concerning coordinated measures and the necessary technical, legal and financial arrangements, including fair compensation. The Commission may facilitate the preparation of the regional and bilateral measures.
- (27) Assistance between Member States under this Regulation should be subject to fair compensation agreed between the Member States. This Regulation does not harmonise all aspects of such fair compensation between Member States. The Member States should therefore agree on provisions on fair compensation before assistance is provided. The Member State requesting assistance should promptly pay, or ensure the prompt payment of, such compensation to the Member State providing the assistance. The Commission should provide for non-binding guidance on the key elements of fair compensation and other elements of the technical, legal and financial arrangements.
- (28) In providing assistance under this Regulation, Member States implement Union law and are therefore bound to respect fundamental rights guaranteed by Union law. Such assistance may therefore, depending on the measures agreed between Member States, give rise to an obligation on a Member State to pay compensation to those affected by its measures. Member States should therefore, where necessary, ensure that national compensation rules which comply with Union law, in particular with fundamental rights, are in place. Moreover, the Member State that receives assistance should ultimately bear all the reasonable costs that another Member State incurs as a result of providing assistance pursuant to such national compensation rules.
- (29) In the event of an electricity crisis, assistance should be provided even if Member States have not yet agreed on coordinated measures and technical, legal and financial arrangements as required by the provisions of this Regulation on assistance. In order to be able to provide assistance in such a situation in accordance with this Regulation, Member States should agree on ad hoc measures and arrangements in place of the absent coordinated measures and technical, legal and financial arrangements.
- (30) This Regulation introduces such an assistance mechanism between Member States as an instrument to prevent or mitigate an electricity crisis within the Union. The Commission should therefore review the assistance mechanism in light of future experience with its functioning, and propose, where appropriate, modifications thereto.

- (31) This Regulation should enable electricity undertakings and customers to rely on the market mechanisms laid down in Regulation (EU) 2019/943 and Directive (EU) 2019/944 for as long as possible when coping with electricity crises. Rules governing the internal market and system operation rules should be complied with even in electricity crises. Such rules include point (i) of Article 22(1) of Regulation (EU) 2017/1485 and Article 35 of Regulation (EU) 2017/2196, which govern transaction curtailment, limitation of provision of cross zonal capacity for capacity allocation or limitation of provision of schedules. This means that non-market-based measures, such as forced demand disconnection, or the provision of extra supplies outside normal market functioning should be taken only as a last resort, when all possibilities provided by the market have been exhausted. Therefore, forced demand disconnection should be introduced only after all possibilities for voluntary demand disconnection have been exhausted. In addition, any non-market-based measures should be necessary, proportionate, non-discriminatory and temporary.
- (32) In order to ensure transparency after an electricity crisis, the competent authority that declared the electricity crisis should carry out an *ex post* evaluation of the crisis and its impact. That evaluation should take into account, *inter alia*, the effectiveness and proportionality of the measures taken as well as their economic cost. That evaluation should also cover cross-border considerations, such as the impact of the measures on other Member States and the level of the assistance that the Member State that declared the electricity crisis received from them.
- (33) The transparency obligations should ensure that all measures that are taken to prevent or manage electricity crises comply with internal market rules and are in line with the principles of cooperation and solidarity which underpin the Energy Union.
- (34) This Regulation reinforces the role of the ECG. It should carry out specific tasks, in particular in connection with the development of a methodology for identifying regional electricity crisis scenarios and a methodology for short-term and seasonal adequacy assessments and in connection with the preparation of the risk-preparedness plans, and should have a prominent role in monitoring Member States' performance in the area of the security of electricity supply, and developing best practices on that basis.
- (35) It is possible that an electricity crisis extends beyond Union borders to the territory of the Energy Community Contracting Parties. As a party to the Treaty establishing the Energy Community, the Union should promote amendments to that Treaty with the aim of creating an integrated market and a single regulatory space by providing an appropriate and stable regulatory framework. In order to ensure efficient crisis management, the Union should closely cooperate with the Energy Community Contracting Parties when preventing, preparing for and managing an electricity crisis.
- (36) Where the Commission, ACER, the ECG, the ENTSO for Electricity, Member States and their competent and regulatory authorities, or any other bodies, entities or persons, receive confidential information pursuant to this Regulation, they should ensure the confidentiality of that information. To that end, confidential information should be subject to Union and national rules in place on the handling of confidential information and processes.
- (37) Since the objective of this Regulation, namely to ensure the most effective and efficient risk-preparedness within the Union, cannot be sufficiently achieved by Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (38) Cyprus is currently the only Member State which is not directly connected to another Member State. It should be clarified with respect to certain provisions of this Regulation that, for as long as this situation persists, those provisions, namely provisions on the identification of regional electricity crisis scenarios, on including regional and bilateral measures set out in risk-preparedness plans, and on assistance, do not apply with respect to Cyprus. Cyprus and relevant other Member States are encouraged to develop, with the support of the Commission, alternative measures and procedures in the fields covered by those provisions, provided that such alternative measures and procedures do not affect the effective application of this Regulation between the other Member States.

(39) Directive 2005/89/EC should be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General Provisions

Article 1

Subject matter

This Regulation lays down rules for cooperation between Member States with a view to preventing, preparing for and managing electricity crises in a spirit of solidarity and transparency and in full regard for the requirements of a competitive internal market for electricity.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'security of electricity supply' means the ability of an electricity system to guarantee the supply of electricity to customers with a clearly established level of performance, as determined by the Member States concerned;
- (2) 'transmission system operator' means transmission system operator as defined in point (35) of Article 2 of Directive (EU) 2019/944;
- (3) 'distribution' means distribution as defined in point (28) of Article 2 of Directive (EU) 2019/944;
- (4) 'cross-border flow' means cross-border flow as defined in point (3) of Article 2 of Regulation (EU) 2019/943;
- (5) 'cross zonal capacity' means the capability of the interconnected system to accommodate energy transfer between bidding zones;
- (6) 'customer' means customer as defined in point (1) of Article 2 of Directive (EU) 2019/944;
- (7) 'distribution system operator' means distribution system operator as defined in point (29) of Article 2 of Directive (EU) 2019/944;
- (8) 'generation' means generation as defined in point (37) of Article 2 of Directive (EU) 2019/944;
- (9) 'electricity crisis' means a present or imminent situation in which there is a significant electricity shortage, as determined by the Member States and described in their risk-preparedness plans, or in which it is impossible to supply electricity to customers;
- (10) 'simultaneous electricity crisis' means an electricity crisis affecting more than one Member State at the same time;
- (11) 'competent authority' means a national governmental authority or a regulatory authority designated by a Member State in accordance with Article 3;
- (12) 'regulatory authorities' means regulatory authorities referred to in Article 57(1) of Directive (EU) 2019/944;
- (13) 'crisis coordinator' means a person, a group of persons, a team composed of the relevant national electricity crisis managers or an institution tasked with acting as a contact point and coordinating the information flow during an electricity crisis;
- (14) 'non-market-based measure' means any supply- or demand-side measure that deviates from market rules or commercial agreements, the purpose of which is to mitigate an electricity crisis;

- (15) 'producer' means producer as defined in point (38) of Article 2 of Directive (EU) 2019/944;
- (16) 'region' means a group of Member States whose transmission system operators share the same regional coordination centre as referred to in Article 36 of Regulation (EU) 2019/943;
- (17) 'subgroup' means a group of Member States, within a region, which have the technical ability to provide each other assistance in accordance with Article 15;
- (18) 'early warning' means a provision of concrete, serious, reliable information indicating that an event may occur which is likely to result in a significant deterioration of the electricity supply situation and is likely to lead to electricity crisis;
- (19) 'transmission' means transmission as defined in point (34) of Article 2 of Directive (EU) 2019/944;
- (20) 'electricity undertaking' means electricity undertaking as defined in point (57) of Article 2 of Directive (EU) 2019/944;
- (21) 'capacity allocation' means the attribution of cross zonal capacity;
- (22) 'energy from renewable sources' means energy from renewable sources or renewable energy as defined in point (31) of Article 2 of Directive (EU) 2019/944.

Article 3

Competent authority

1. As soon as possible and in any event by 5 January 2020, each Member State shall designate a national governmental or regulatory authority as its competent authority. The competent authorities shall be responsible for, and shall cooperate with each other for the purposes of, carrying out the tasks provided for in this Regulation. Where appropriate, until the competent authority has been designated, the national entities responsible for the security of electricity supply shall carry out the tasks of the competent authority in accordance with this Regulation.
2. Member States shall, without delay, notify the Commission and the ECG and make public the name and the contact details of their competent authorities designated pursuant to paragraph 1 and any changes to their name or contact details.
3. Member States may allow the competent authority to delegate the operational tasks regarding risk-preparedness planning and risk management set out in this Regulation to other bodies. Delegated tasks shall be performed under the supervision of the competent authority and shall be specified in the risk-preparedness plan in accordance with point (b) of Article 11(1).

CHAPTER II

Risk assessment

Article 4

Assessment of risks to security of electricity supply

Each competent authority shall ensure that all relevant risks relating to security of electricity supply are assessed in accordance with the rules laid down in this Regulation and in Chapter IV of Regulation (EU) 2019/943. To that end, it shall cooperate with transmission system operators, distribution system operators, regulatory authorities, the ENTSO for Electricity, regional coordination centres and other relevant stakeholders, as required.

Article 5

Methodology for identifying regional electricity crisis scenarios

1. By 5 January 2020, the ENTSO for Electricity shall submit to ACER a proposal for a methodology for identifying the most relevant regional electricity crisis scenarios.

2. The proposed methodology shall identify electricity crisis scenarios in relation to system adequacy, system security and fuel security on the basis of at least the following risks:

- (a) rare and extreme natural hazards;
- (b) accidental hazards going beyond the N-1 security criterion and exceptional contingencies;
- (c) consequential hazards including the consequences of malicious attacks and of fuel shortages.

3. The proposed methodology shall include at least the following elements:

- (a) a consideration of all relevant national and regional circumstances, including any subgroups;
- (b) interaction and correlation of risks across borders;
- (c) simulations of simultaneous electricity crisis scenarios;
- (d) ranking of risks according to their impact and probability;
- (e) principles on how to handle sensitive information in a manner that ensures transparency towards the public.

4. When considering the risks of disruption of gas supply in the context of identifying the risks pursuant to point (c) of paragraph 2 of this Article, the ENTSO for Electricity shall use the natural gas supply and infrastructure disruption scenarios developed by ENTSOG pursuant to Article 7 of Regulation (EU) 2017/1938.

5. Before submitting the proposed methodology to ACER, the ENTSO for Electricity shall conduct a consultation involving at least the regional coordination centres, industry and consumer organisations, producers or their trade bodies, transmission system operators and relevant distribution system operators, competent authorities, regulatory authorities and other relevant national authorities. The ENTSO for Electricity shall duly take into account the results of the consultation and present them, together with the proposed methodology, at a meeting of the ECG.

6. Within two months of receipt of the proposed methodology, ACER shall, after consulting the ECG, in its formation composed only of representatives of the Member States, approve or amend the proposal. The ENTSO for Electricity and ACER shall publish the final version of the methodology on their websites.

7. The ENTSO for Electricity shall update and improve the methodology in accordance with paragraphs 1 to 6 where significant new information becomes available. The ECG in its formation composed only of representatives of the Member States may recommend, and ACER or the Commission may request, such updates and improvements with due justification. Within six months of receipt of the request, the ENTSO for Electricity shall submit to ACER a draft of the proposed changes. Within two months of receipt of such a draft, ACER shall, after consulting the ECG, in its formation composed only of representatives of the Member States, approve or amend the proposed changes. The ENTSO for Electricity and ACER shall publish the final version of the updated methodology on their websites.

Article 6

Identification of regional electricity crisis scenarios

1. Within six months of the approval of a methodology pursuant to Article 5(6), the ENTSO for Electricity shall, on the basis of that methodology and in close cooperation with the ECG, regional coordination centres, competent authorities and regulatory authorities, identify the most relevant electricity crisis scenarios for each region. It may delegate tasks relating to the identification of regional electricity crisis scenarios to the regional coordination centres.

2. The ENTSO for Electricity shall submit the regional electricity crisis scenarios to the relevant transmission system operators, regional coordination centres, competent authorities and regulatory authorities as well as to the ECG. The ECG may recommend amendments.

3. The ENTSO for Electricity shall update the regional electricity crisis scenarios every four years, unless circumstances warrant more frequent updates.

*Article 7***Identification of national electricity crisis scenarios**

1. Within four months of the identification of the regional electricity crisis scenarios in accordance with Article 6(1), the competent authority shall identify the most relevant national electricity crisis scenarios.
2. In identifying the national electricity crisis scenarios, the competent authority shall consult the transmission system operators, the distribution system operators that the competent authority considers to be relevant, the relevant producers or their trade bodies, and the regulatory authority where it is not the competent authority.
3. The national electricity crisis scenarios shall be identified on the basis of at least the risks referred to in Article 5(2) and shall be consistent with the regional electricity crisis scenarios identified in accordance with Article 6(1). Member States shall update the national electricity crisis scenarios every four years, unless circumstances warrant more frequent updates.
4. Within four months of identification of regional electricity crisis scenarios in accordance with Article 6(1), Member States shall inform the ECG and the Commission of their assessment of the risks in relation to the ownership of infrastructure relevant for security of electricity supply, and any measures taken to prevent or mitigate such risks, with an indication of why such measures are considered necessary and proportionate.

*Article 8***Methodology for short-term and seasonal adequacy assessments**

1. By 5 January 2020, the ENTSO for Electricity shall submit to ACER a proposal for a methodology for assessing seasonal and short-term adequacy, namely monthly, week-ahead to at least day-ahead adequacy, which shall cover at least the following:
 - (a) the uncertainty of inputs such as the probability of a transmission capacity outage, the probability of an unplanned outage of power plants, severe weather conditions, variable demand, in particular peaks depending on weather conditions, and variability of production of energy from renewable sources;
 - (b) the probability of the occurrence of an electricity crisis;
 - (c) the probability of the occurrence of a simultaneous electricity crisis.
2. The methodology referred to in paragraph 1 shall provide for a probabilistic approach, including multiple scenarios, and shall take into account the national, regional and Union context, including the level of interconnection between Member States and, to the extent possible, third countries within synchronous areas of the Union. The methodology shall take into account the specificities of each Member State's energy sector, including specific weather conditions and external circumstances.
3. Before submitting the proposed methodology, the ENTSO for Electricity shall conduct a consultation involving at least the regional coordination centres, industry and consumer organisations, producers or their trade bodies, transmission system operators, relevant distribution system operators, competent authorities, regulatory authorities and other relevant national authorities. The ENTSO for Electricity shall duly take into account the results of the consultation and present them, together with the proposed methodology, at a meeting of the ECG.
4. Within two months of receipt of the proposed methodology, ACER shall, after consulting the ECG in its formation composed only of representatives of the Member States, approve or amend the proposal. The ENTSO for Electricity and ACER shall publish the final version of the methodology on their websites.

5. The ENTSO for Electricity shall update and improve the methodology in accordance with paragraphs 1 to 4 where significant new information becomes available. The ECG in its formation composed only of representatives of the Member States may recommend, and ACER or the Commission may request, such updates and improvements with due justification. Within six months of receipt of the request, the ENTSO for Electricity shall submit to ACER a draft of the proposed changes. Within two months of receipt of such a draft, ACER shall, after consulting the ECG, in its formation composed only of representatives of the Member States, approve or amend the proposed changes. The ENTSO for Electricity and ACER shall publish the final version of the updated methodology on their websites.

Article 9

Short-term and seasonal adequacy assessments

1. All short-term adequacy assessments, whether carried out at national, regional or Union level, shall be carried out in accordance with the methodology developed pursuant to Article 8.
2. The ENTSO for Electricity shall carry out seasonal adequacy assessments in accordance with the methodology developed pursuant to Article 8. It shall publish the results for the winter adequacy assessment by 1 December each year and for the summer adequacy assessment by 1 June each year. It may delegate tasks relating to the adequacy assessments to regional coordination centres. It shall present the adequacy assessment at a meeting of the ECG, which may make recommendations where appropriate.
3. The regional coordination centres shall carry out week-ahead to at least day ahead adequacy assessments in accordance with Regulation (EU) 2017/1485 on the basis of the methodology adopted pursuant to Article 8 of this Regulation.

CHAPTER III

Risk-preparedness plans

Article 10

Establishment of risk-preparedness plans

1. On the basis of the regional and national electricity crisis scenarios identified pursuant to Articles 6 and 7, the competent authority of each Member State shall establish a risk-preparedness plan, after consulting distribution system operators considered relevant by the competent authority, the transmission system operators, the relevant producers or their trade bodies, the electricity and natural gas undertakings, the relevant organisations that represent the interests of industrial and non-industrial electricity customers, and the regulatory authority where it is not the competent authority.
2. The risk-preparedness plan shall consist of national measures, regional and, where applicable, bilateral measures as provided for in Articles 11 and 12. In accordance with Article 16, all measures that are planned or taken to prevent, prepare for and mitigate electricity crises shall fully comply with the rules governing the internal electricity market and system operation. Those measures shall be clearly defined, transparent, proportionate and non-discriminatory.
3. The risk-preparedness plan shall be developed in accordance with Articles 11 and 12 and with the template set out in the Annex. If necessary, Member States may include additional information in the risk-preparedness plan.
4. In order to ensure consistency of risk-preparedness plans, competent authorities shall, before adopting their risk-preparedness plans, submit the draft plans, for consultation, to the competent authorities of the relevant Member States in the region and, where they are not in the same region, to the competent authorities of directly connected Member States, as well as to the ECG.
5. Within six months of receipt of the draft risk-preparedness plans, the competent authorities referred to in paragraph 4 and the ECG may issue recommendations relating to the draft plans submitted pursuant to paragraph 4.

6. Within nine months of submitting their draft plans, the competent authorities concerned shall adopt their risk-preparedness plans, taking into account the results of the consultation pursuant to paragraph 4 and any recommendations issued pursuant to paragraph 5. They shall notify their risk-preparedness plans to the Commission without delay.

7. The competent authorities and the Commission shall publish the risk-preparedness plans on their websites, while ensuring confidentiality of sensitive information, in particular information on measures relating to the prevention or mitigation of consequences of malicious attacks. The protection of the confidentiality of sensitive information shall be based on the principles determined pursuant to Article 19.

8. The competent authorities shall adopt and publish their first risk-preparedness plans by 5 January 2022. They shall update them every four years thereafter, unless circumstances warrant more frequent updates.

Article 11

Content of risk-preparedness plans as regards national measures

1. The risk-preparedness plan of each Member State shall set out all national measures that are planned or taken to prevent, prepare for and mitigate electricity crises as identified pursuant to Articles 6 and 7. It shall at least:

- (a) contain a summary of the electricity crisis scenarios defined for the relevant Member State and region, in accordance with the procedures laid down in Articles 6 and 7;
- (b) establish the role and responsibilities of the competent authority and describe which tasks, if any, have been delegated to other bodies;
- (c) describe the national measures designed to prevent or prepare for the risks identified pursuant to Articles 6 and 7;
- (d) designate a national crisis coordinator and establish its tasks;
- (e) establish detailed procedures to be followed in electricity crises, including the corresponding schemes on information flows;
- (f) identify the contribution of market-based measures in coping with electricity crises, in particular demand-side and supply-side measures;
- (g) identify possible non-market-based measures to be implemented in electricity crises, specifying the triggers, conditions and procedures for their implementation, and indicating how they comply with the requirements laid down in Article 16 and with regional and bilateral measures;
- (h) provide a framework for manual load shedding, stipulating the circumstances in which loads are to be shed and, with regard to public safety and personal security, specifying which categories of electricity users are, in accordance with national law, entitled to receive special protection against disconnection, justifying the need for such protection, and specifying how the transmission system operators and distribution system operators of the Member States concerned are to decrease consumption;
- (i) describe the mechanisms used to inform the public about electricity crises;
- (j) describe the national measures necessary to implement and enforce the regional and, where applicable, bilateral measures agreed pursuant to Article 12;
- (k) include information on related and necessary plans for developing the future grid that will help to cope with the consequences of identified electricity crisis scenarios.

2. National measures shall take full account of the regional and, where applicable, bilateral measures agreed pursuant to Article 12 and shall endanger neither the operational security or safety of the transmission system, nor the security of electricity supply of other Member States.

*Article 12***Content of risk-preparedness plans as regards regional and bilateral measures**

1. In addition to the national measures referred to in Article 11, the risk-preparedness plan of each Member State shall include regional and, where applicable, bilateral measures to ensure that electricity crises with a cross-border impact are properly prevented or managed. Regional measures shall be agreed within the region concerned between Member States that have the technical ability to provide each other assistance in accordance with Article 15. For that purpose, Member States may also form subgroups within a region. Bilateral measures shall be agreed between Member States which are directly connected but are not within the same region. Member States shall ensure consistency between regional and bilateral measures. Regional and bilateral measures shall include at least:

- (a) the designation of a crisis coordinator;
- (b) mechanisms to share information and cooperate;
- (c) coordinated measures to mitigate the impact of an electricity crisis, including a simultaneous electricity crisis, for the purpose of assistance in accordance with Article 15;
- (d) procedures for carrying out annual or biennial tests of the risk-preparedness plans;
- (e) the trigger mechanisms of non-market-based measures that are to be activated in accordance with Article 16(2).

2. The Member States concerned shall agree the regional and bilateral measures to be included in the risk-preparedness plan after consulting the relevant regional coordination centres. The Commission may have a facilitating role in the preparation of the agreement on regional and bilateral measures. The Commission may request ACER and the ENTSO for Electricity to provide technical assistance to Member States with a view to facilitating such an agreement. At least eight months before the deadline for the adoption or the updating of the risk-preparedness plan, the competent authorities shall report on the agreements reached to the ECG. If the Member States are not able to reach an agreement, the competent authorities concerned shall inform the Commission of the reasons for such disagreement. In such a case the Commission shall propose measures including a cooperation mechanism for the conclusion of an agreement on regional and bilateral measures.

3. With the involvement of relevant stakeholders, the competent authorities of the Member States of each region shall periodically test the effectiveness of the procedures developed in risk-preparedness plans for preventing electricity crises, including the mechanisms referred to in point (b) of paragraph 1, and carry out biennial simulations of electricity crises, in particular testing those mechanisms.

*Article 13***Commission assessment of the risk-preparedness plans**

1. Within four months of the notification of the adopted risk-preparedness plan by the competent authority, the Commission shall assess the plan taking duly into account the views expressed by the ECG.

2. The Commission shall, after consulting the ECG, issue a non-binding opinion, setting out detailed reasons, and submit it to the competent authority, with a recommendation to review its risk-preparedness plan where that plan:

- (a) is not effective to mitigate the risks identified in the electricity crisis scenarios;
- (b) is inconsistent with the electricity crisis scenarios identified or with the risk-preparedness plan of another Member State;
- (c) does not comply with the requirements laid down in Article 10(2);
- (d) sets out measures that are likely to jeopardise the security of electricity supply of other Member States;
- (e) unduly distorts competition or the effective functioning of the internal market; or
- (f) does not comply with the provisions of this Regulation or other provisions of Union law.

3. Within three months of receipt of the Commission's opinion referred to in paragraph 2, the competent authority concerned shall take full account of the Commission's recommendation and shall either notify the amended risk-preparedness plan to the Commission or notify the Commission of the reasons why it objects to the recommendation.

4. In the event that the competent authority objects to the Commission's recommendation, the Commission may, within four months of receipt of the notification of the competent authority's reasons for objection, withdraw its recommendation or convene a meeting with the competent authority and, where the Commission considers it to be necessary, the ECG, in order to assess the issue. The Commission shall set out detailed reasons for requesting any modifications to the risk-preparedness plan. Where the final position of the competent authority concerned diverges from the Commission's detailed reasons, that competent authority shall provide the Commission with the reasons for its position within two months of receipt of the Commission's detailed reasons.

CHAPTER IV

Managing electricity crises

Article 14

Early warning and declaration of an electricity crisis

1. Where a seasonal adequacy assessment or other qualified source provides concrete, serious and reliable information that an electricity crisis may occur in a Member State, the competent authority of that Member State shall, without undue delay, issue an early warning to the Commission, the competent authorities of the Member States within the same region and, where they are not in the same region, the competent authorities of the directly connected Member States. The competent authority concerned shall also provide information on the causes of the possible electricity crisis, on measures planned or taken to prevent an electricity crisis and on the possible need for assistance from other Member States. The information shall include the possible impacts of the measures on the internal electricity market. The Commission shall provide that information to the ECG.

2. When confronted with an electricity crisis, the competent authority shall, after consulting the transmission system operator concerned, declare an electricity crisis and inform the competent authorities of the Member States within the same region and, where they are not in the same region, the competent authorities of directly connected Member States, as well as the Commission, without undue delay. That information shall include the causes of the deterioration of the electricity supply situation, the reasons for declaring an electricity crisis, the measures planned or taken to mitigate it and the need for any assistance from other Member States.

3. Where they consider the information provided pursuant to paragraph 1 or 2 to be insufficient, the Commission, the ECG or the competent authorities of the Member States within the same region and, where they are not in the same region, the competent authorities of directly connected Member States may request the Member State concerned to provide additional information.

4. Where a competent authority issues an early warning or declares an electricity crisis, the measures set out in the risk-preparedness plan shall be followed to the fullest extent possible.

Article 15

Cooperation and assistance

1. Member States shall act and cooperate in a spirit of solidarity in order to prevent or manage electricity crises.

2. Where they have the necessary technical ability, Member States shall offer each other assistance by means of regional or bilateral measures that have been agreed pursuant to this Article and to Article 12 before that assistance is provided. To that end, and with the purpose of protecting public safety and personal security, Member States shall agree on regional or bilateral measures of their choice in order to deliver electricity in a coordinated manner.

3. Member States shall agree on the necessary technical, legal and financial arrangements for the implementation of the regional or bilateral measures before assistance is offered. Such arrangements shall specify, inter alia, the maximum quantity of electricity to be delivered at regional or bilateral level, the trigger for any assistance and for suspension of assistance, how the electricity will be delivered, and provisions on fair compensation between Member States in accordance with paragraphs 4, 5 and 6.
4. Assistance shall be subject to a prior agreement between the Member States concerned with regard to fair compensation, which shall cover at least:
 - (a) the cost of the electricity delivered into the territory of the Member State requesting assistance as well as the associated transmission costs; and
 - (b) any other reasonable costs incurred by the Member State providing assistance, including as regards reimbursement for assistance prepared without effective activation, as well as any costs resulting from judicial proceedings, arbitration proceedings or similar proceedings and settlements.
5. Fair compensation pursuant to paragraph 4 shall include, inter alia, all reasonable costs that the Member State providing assistance incurs from an obligation to pay compensation by virtue of fundamental rights guaranteed by Union law and by virtue of the applicable international obligations when implementing the provisions of this Regulation on assistance and further reasonable costs incurred from the payment of compensation pursuant to national compensation rules.
6. The Member State requesting assistance shall promptly pay, or ensure the prompt payment of fair compensation to the Member State providing assistance.
7. The Commission shall, by 5 January 2020, after consulting the ECG and ACER, provide for non-binding guidance on the key elements of the fair compensation referred to in paragraphs 3 to 6 and other key elements of the technical, legal and financial arrangements referred to in paragraph 3 as well as on general principles of mutual assistance referred to in paragraph 2.
8. In the event of an electricity crisis in which Member States have not yet agreed on regional or bilateral measures and technical, legal and financial arrangements pursuant to this Article, Member States shall agree on ad hoc measures and arrangements in order to apply this Article, including as regards fair compensation pursuant to paragraphs 4, 5 and 6. Where a Member State requests assistance before such ad hoc measures and arrangements have been agreed, it shall undertake, prior to receiving assistance, to pay fair compensation in accordance with paragraphs 4, 5 and 6.
9. Member States shall ensure that the provisions of this Regulation on assistance are implemented in accordance with the Treaties, the Charter of Fundamental Rights of the European Union and other applicable international obligations. They shall take the necessary measures to that end.

Article 16

Compliance with market rules

1. Measures taken to prevent or mitigate electricity crises shall comply with the rules governing the internal electricity market and system operation.
2. Non-market-based measures shall be activated in an electricity crisis only as a last resort if all options provided by the market have been exhausted or where it is evident that market-based measures alone are not sufficient to prevent a further deterioration of the electricity supply situation. Non-market-based measures shall not unduly distort competition and the effective functioning of the internal electricity market. They shall be necessary, proportionate, non-discriminatory and temporary. The competent authority shall inform relevant stakeholders in its Member State of the application of any non-market-based measures.
3. Transaction curtailment including curtailment of already allocated cross zonal capacity, limitation of provision of cross zonal capacity for capacity allocation or limitation of provision of schedules shall be initiated only in accordance with Article 16(2) of Regulation (EU) 2019/943, and the rules adopted to implement that provision.

CHAPTER V

Evaluation and monitoring

Article 17

Ex post evaluation

1. As soon as possible and in any event three months after the end of an electricity crisis, the competent authority of the Member State that declared the electricity crisis shall provide the ECG and the Commission with an *ex post* evaluation report, after having consulted the regulatory authority, where the regulatory authority is not the competent authority.
2. The *ex post* evaluation report shall include at least:
 - (a) a description of the event that triggered the electricity crisis;
 - (b) a description of any preventive, preparatory and mitigating measures taken and an assessment of their proportionality and effectiveness;
 - (c) an assessment of the cross-border impact of the measures taken;
 - (d) an account of the assistance prepared, with or without effective activation, provided to or received from neighbouring Member States and third countries;
 - (e) the economic impact of the electricity crisis and the impact of the measures taken on the electricity sector to an extent allowed by data available at the time of the assessment, in particular the volumes of energy non-served and the level of manual demand disconnection (including a comparison between the level of voluntary and forced demand disconnection);
 - (f) reasons justifying the application of any non-market-based measures;
 - (g) any possible improvements or proposed improvements to the risk-preparedness plan;
 - (h) an overview of possible improvements to grid development in cases where insufficient network development caused or contributed to the electricity crisis.
3. Where they consider the information provided in the *ex post* evaluation report to be insufficient, the ECG and the Commission may request the competent authority concerned to provide additional information.
4. The competent authority concerned shall present the results of the *ex post* evaluation at a meeting of the ECG. Those results shall be reflected in the updated risk-preparedness plan.

Article 18

Monitoring

1. In addition to carrying out other tasks set out in this Regulation, the ECG shall discuss:
 - (a) the results of the 10-year network development plan in electricity prepared by the ENTSO for Electricity;
 - (b) the coherence of the risk-preparedness plans, adopted by the competent authorities following the procedure referred to in Article 10;
 - (c) the results of the European resource adequacy assessments carried out by the ENTSO for Electricity as referred to in Article 23(4) of Regulation (EU) 2019/943;
 - (d) the performance of Member States in the area of security of electricity supply taking into account at least the indicators calculated in the European resource adequacy assessment, namely the expected energy non-served and loss of load expectation;
 - (e) the results of the seasonal adequacy assessments referred to in Article 9(2);
 - (f) the information received from the Member States pursuant to Article 7(4);

- (g) the results of the *ex post* evaluation referred to in Article 17(4);
 - (h) the methodology for short-term adequacy assessment referred to in Article 8;
 - (i) the methodology for identifying regional electricity crisis scenarios referred to in Article 5.
2. The ECG may issue recommendations to the Member States as well as to the ENTSO for Electricity related to the matters referred to in paragraph 1.
 3. ACER shall, on an ongoing basis, monitor the security of electricity supply measures and shall report regularly to the ECG.
 4. By 1 September 2025, the Commission shall, on the basis of the experience gained in the application of this Regulation, evaluate the possible means by which to enhance security of electricity supply at Union level and submit a report to the European Parliament and to the Council on the application of this Regulation, including, where necessary, legislative proposals to amend this Regulation.

Article 19

Treatment of confidential information

1. Member States and competent authorities shall implement the procedures referred to in this Regulation in accordance with the applicable rules, including national rules relating to the handling of confidential information and processes. If the implementation of those rules results in information not being disclosed, *inter alia* as part of risk-preparedness plans, the Member State or authority may provide a non-confidential summary thereof, and shall do so upon request.
2. The Commission, ACER, the ECG, the ENTSO for Electricity, Member States, competent authorities, regulatory authorities and other relevant bodies, entities or persons, which receive confidential information pursuant to this Regulation, shall ensure the confidentiality of sensitive information.

CHAPTER VI

Final provisions

Article 20

Cooperation with the Energy Community Contracting Parties

Where the Member States and the Energy Community Contracting Parties cooperate in the area of security of electricity supply, such cooperation may include defining an electricity crisis, the process of the identification of electricity crisis scenarios and the establishment of risk-preparedness plans so that no measures are taken that endanger the security of electricity supply of the Member States, Energy Community Contracting Parties or the Union. In that respect, the Energy Community Contracting Parties may, at the invitation of the Commission, participate in the ECG with regard to all matters with which they are concerned.

Article 21

Derogation

Until Cyprus is directly connected with another Member State, Articles 6 and 12 and Article 15(2) to (9) shall not apply either between Cyprus and other Member States, or to the ENTSO for Electricity as regards Cyprus. Cyprus and relevant other Member States may develop, with the support of the Commission, measures and procedures alternative to those provided for in Articles 6 and 12 and Article 15(2) to (9), provided that such alternative measures and procedures do not affect the effective application of this Regulation between the other Member States.

*Article 22***Transitional provision pending the establishment of regional coordination centres**

Until the date on which regional coordination centres are established pursuant to Article 35 of Regulation (EU) 2019/943, regions shall refer either to a Member State or to a group of Member States located in the same synchronous area.

*Article 23***Repeal**

Directive 2005/89/EC is repealed.

*Article 24***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 June 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

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ANNEX

TEMPLATE FOR RISK-PREPAREDNESS PLAN

The following template shall be completed in English.

General information

- Name of the competent authority responsible for the preparation of this plan
- Member States in the region

1. SUMMARY OF THE ELECTRICITY CRISIS SCENARIOS

Describe briefly the electricity crisis scenarios identified at regional and national level in accordance with the procedure laid down in Articles 6 and 7, including the description of the assumptions applied.

2. ROLES AND RESPONSIBILITIES OF THE COMPETENT AUTHORITY

Define the role and responsibilities of the competent authority and the bodies to which tasks have been delegated.

Describe which tasks, if any, have been delegated to other bodies.

3. PROCEDURES AND MEASURES IN THE ELECTRICITY CRISIS

3.1. National procedures and measures

- (a) Describe procedures to be followed in the cases of an electricity crisis, including the corresponding schemes on information flows;
- (b) Describe preventive and preparatory measures;
- (c) Describe measures to mitigate electricity crises, in particular demand-side and supply-side measures, whilst indicating in which circumstances such measures can be used especially the trigger of each measure. Where non-market-based measures are considered, they must be duly justified in light of the requirements laid down in Article 16 and must comply with regional and, where applicable, bilateral measures;
- (d) Provide a framework for manual load shedding, stipulating under which circumstances loads are to be shed. Specify with regard to public safety and personal security which categories of electricity users are entitled to receive special protection against disconnection, and justify the need for such protection. Specify how the transmission system operators and the distribution system operators should act in order to decrease the consumption;
- (e) Describe the mechanisms used to inform the public about the electricity crisis.

3.2. Regional and bilateral procedures and measures

- (a) Describe the agreed mechanisms for cooperation within the region and for ensuring appropriate coordination before and during the electricity crisis, including the decision-making procedures for appropriate reaction at regional level;
- (b) Describe any regional and bilateral measures that have been agreed, including any necessary technical, legal and financial arrangements for the implementation of those measures. When describing such arrangements, provide information on, inter alia, the maximum quantities of electricity to be delivered at regional or bilateral level, the trigger for the assistance and possibility to request its suspension, how the electricity will be delivered, and the provisions on fair compensation between Member States. Describe the national measures necessary to implement and enforce the regional and bilateral measures agreed;
- (c) Describe the mechanisms in place for cooperation and for coordinating actions, before and during the electricity crisis, with other Member States outside of the region as well as with third countries within the relevant synchronous area.

4. CRISIS COORDINATOR

Indicate and define the role of the crisis coordinator. Specify the contact details.

5. STAKEHOLDER CONSULTATIONS

In accordance with Article 10(1), describe the mechanism used for and the results of the consultations carried out, for the development of this plan, with:

- (a) relevant electricity and natural gas undertakings, including relevant producers or their trade bodies;
- (b) relevant organisations representing the interests of non-industrial electricity customers;
- (c) relevant organisations representing the interests of industrial electricity customers;
- (d) regulatory authorities;
- (e) the transmission system operators;
- (f) relevant distribution system operators.

6. EMERGENCY TESTS

- (a) Indicate the calendar for the biennial regional (and, if applicable also national) real time response simulations of electricity crises;
- (b) In accordance with point (d) of Article 12(1), indicate procedures agreed and the actors involved.

For the updates of the plan: briefly describe the tests carried out since the last plan was adopted and the main results. Indicate which measures have been adopted as a result of those tests.

REGULATION (EU) 2019/942 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 June 2019
establishing a European Union Agency for the Cooperation of Energy Regulators
(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Regulation (EC) No 713/2009 of the European Parliament and of the Council ⁽⁴⁾, which established the Agency for the Cooperation of Energy Regulators (ACER), has been substantially amended ⁽⁵⁾. Since further amendments are to be made, that Regulation should be recast in the interest of clarity.
- (2) The creation of ACER has manifestly improved coordination between regulatory authorities on cross-border issues. Since its creation, ACER has received new important tasks concerning the monitoring of wholesale markets under Regulation (EU) No 1227/2011 of the European Parliament and of the Council ⁽⁶⁾ and concerning the fields of cross-border energy infrastructure under Regulation (EU) No 347/2013 of the European Parliament and of the Council ⁽⁷⁾ and security of gas supply under Regulation (EU) 2017/1938 of the European Parliament and of the Council ⁽⁸⁾.
- (3) It is anticipated that the need for coordination of national regulatory actions will increase further in the coming years. The Union's energy system is in the middle of its most profound change in decades. More market integration and the change towards more variable electricity production require increased efforts to coordinate national energy policies with neighbours and increased efforts to use the opportunities of cross-border electricity trade.
- (4) Experience with the implementation of the internal market has shown that uncoordinated national action can lead to severe problems for the market, in particular in closely interconnected areas where the decisions of Member States often have a tangible impact on their neighbours. To achieve the positive effects of the internal electricity market for consumer welfare, the security of supply and decarbonisation, Member States, in particular their independent regulatory authorities, are required to cooperate on regulatory measures which have cross-border effects.

⁽¹⁾ OJ C 288, 31.8.2017, p. 91.

⁽²⁾ OJ C 342, 12.10.2017, p. 79.

⁽³⁾ Position of the European Parliament of 26 March 2019 (not yet published in the Official Journal) and decision of the Council of 22 May 2019.

⁽⁴⁾ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

⁽⁵⁾ See Annex I.

⁽⁶⁾ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

⁽⁷⁾ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

⁽⁸⁾ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

- (5) Fragmented national state interventions in energy markets constitute an increasing risk to the proper functioning of cross-border electricity markets. ACER should therefore be given a role in the development of a coordinated European resource adequacy assessment, in close cooperation with the European Network of Transmission System Operators for Electricity (ENTSO for Electricity), in order to avoid the problems of fragmented national assessments which follow different uncoordinated methods and do not sufficiently take into account the situation in neighbouring countries. ACER should also supervise the technical parameters developed by the ENTSO for Electricity for the efficient participation of cross-border capacities and other technical features of capacity mechanisms.
- (6) Despite significant progress in integrating and interconnecting the internal electricity market, some Member States or regions remain isolated or not sufficiently interconnected, in particular insular Member States and Member States located on the periphery of the Union. In its work, ACER should take account of the specific situation of those Member States or regions as appropriate.
- (7) The security of the electricity supply requires a coordinated approach to preparing for unexpected supply crises. ACER should therefore coordinate national actions related to risk preparedness, in accordance with Regulation (EU) 2019/941 of the European Parliament and of the Council ⁽⁹⁾.
- (8) Because of the close interconnection of the Union electricity grid and the increasing need to cooperate with neighbouring countries to maintain grid stability and integrate large volumes of renewable energy, regional coordination centres will play an important role for the coordination of transmission system operators. ACER should guarantee regulatory oversight of the regional coordination centres where necessary.
- (9) As large parts of new electricity generation capacity will be connected at local level, distribution system operators are to play an important role when it comes to operating the Union electricity system in a flexible and efficient manner.
- (10) Member States should cooperate closely, eliminating obstacles to cross-border exchanges of electricity and natural gas with a view to achieving the objectives of the Union energy policy. ACER was established to fill the regulatory gap at Union level and to contribute towards the effective functioning of the internal markets for electricity and natural gas. ACER enables regulatory authorities to enhance their cooperation at Union level and participate, on a mutual basis, in the exercise of Union-related functions.
- (11) ACER should ensure that regulatory functions performed by the regulatory authorities in accordance with Directive (EU) 2019/944 of the European Parliament and of the Council ⁽¹⁰⁾ and Directive 2009/73/EC of the European Parliament and of the Council ⁽¹¹⁾ are properly coordinated and, where necessary, completed at Union level. To that end, it is necessary to guarantee the independence of ACER from electricity and gas producers, transmission system operators and distribution system operators, whether public or private, and consumers and to ensure the conformity of its actions with Union law, its technical and regulatory capacities and its transparency, amenability to democratic control, including accountability to the European Parliament, and efficiency.
- (12) ACER should monitor regional cooperation between transmission system operators in the electricity and gas sectors as well as the execution of the tasks of the ENTSO for Electricity, and the European Network of Transmission System Operators for Gas (ENTSO for Gas). ACER should also monitor the implementation of the tasks of other entities with regulated functions of Union-wide dimension, such as energy exchanges. ACER's involvement is essential in order to ensure that the cooperation between transmission system operators and the operation of other entities with Union-wide functions proceed in an efficient and transparent way for the benefit of the internal markets for electricity and natural gas.

⁽⁹⁾ Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (see page 1 of this Official Journal).

⁽¹⁰⁾ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (see page 125 of this Official Journal).

⁽¹¹⁾ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

- (13) The regulatory authorities should coordinate among themselves when carrying out their tasks to ensure that the ENTSO for Electricity, the European Entity for Distribution System Operators (the 'EU DSO entity'), and the regional coordination centres comply with their obligations under the regulatory framework of the internal energy market and with ACER's decisions. With the expansion of the operational responsibilities of the ENTSO for Electricity, the EU DSO entity and the regional coordination centres, it is necessary to enhance the oversight of such entities operating at regional or Union-wide level. The procedure established in this Regulation ensures that ACER supports the regulatory authorities when performing those functions as referred to in Directive (EU) 2019/944.
- (14) In order to ensure that ACER has the information it needs to carry out its tasks, ACER should be able to request and to receive that information from the regulatory authorities, the ENTSO for Electricity, the ENTSO for Gas, the regional coordination centres, the EU DSO entity, the transmission system operators and the nominated electricity market operators.
- (15) ACER should monitor, in cooperation with the Commission, the Member States and relevant national authorities, the internal markets for electricity and natural gas and inform the European Parliament, the Commission and the national authorities of its findings where appropriate. ACER's monitoring tasks should not duplicate or hamper monitoring by the Commission or by national authorities, in particular national competition authorities.
- (16) ACER provides an integrated framework which enables the regulatory authorities to participate and cooperate. That framework facilitates the uniform application of the legislation on the internal markets for electricity and natural gas throughout the Union. As regards situations concerning more than one Member State, ACER has been granted the power to adopt individual decisions. That power should, under clearly specified conditions, cover technical and regulatory issues which require regional coordination, in particular those concerning the implementation of network codes and guidelines, cooperation within regional coordination centres, the regulatory decisions necessary to effectively monitor wholesale energy market integrity and transparency, decisions concerning electricity and natural gas infrastructure that connects or that might connect at least two Member States and, as a last resort, exemptions from the internal market rules for new electricity interconnectors and new gas infrastructure located in more than one Member State.
- (17) Revision of the network codes and guidelines covers amendments which are necessary to take into account the evolution of the market without substantially changing those network codes and guidelines or creating new competences of ACER.
- (18) ACER has an important role in developing framework guidelines which are non-binding by nature. Network codes should be in line with those framework guidelines. It is also considered to be appropriate for ACER, and consistent with its purpose, to have a role in reviewing and amending draft network codes to ensure that they are in line with the framework guidelines and provide for the necessary degree of harmonisation, before it submits them to the Commission for adoption.
- (19) With the adoption of a set of network codes and guidelines which provide for the stepwise implementation and further refinement of common regional and Union-wide rules, ACER's role with regard to monitoring and contributing to the implementation of the network codes and guidelines has increased. The effective monitoring of network codes and guidelines is a key function of ACER and is crucial to the implementation of internal market rules.
- (20) During the implementation of network codes and guidelines, it has emerged that it would be useful to streamline the procedures for the regulatory approval of regional or Union-wide terms and conditions or methodologies that are developed under the network codes and guidelines by submitting them directly to ACER to allow regulatory authorities represented in the Board of Regulators to decide on such terms and conditions or methodologies.
- (21) Since the stepwise harmonisation of the Union energy markets regularly involves finding regional solutions as an interim step, and many terms and conditions and methodologies need to be approved by a limited number of regulatory authorities for a specific region, it is appropriate to reflect the regional dimension of the internal market in this Regulation and to provide for appropriate governance mechanisms. Decisions on proposals for joint regional terms and conditions or methodologies should therefore be taken by the competent regulatory authorities of the region concerned, unless those decisions have a tangible impact on the internal energy market.

- (22) Since ACER has an overview of the regulatory authorities, it should have an advisory role with respect to the Commission, other Union institutions and regulatory authorities as regards the issues relating to the purpose for which it was established. It should also be required to inform the Commission where it finds that the cooperation between transmission system operators does not produce the necessary results or that a regulatory authority whose decision infringes the network codes and guidelines has not implemented an opinion, recommendation or decision of ACER appropriately.
- (23) ACER should also be able to make recommendations to assist regulatory authorities and market participants in sharing good practices.
- (24) The ENTSO for Electricity, the ENTSO for Gas, the EU DSO entity, transmission system operators, the regional coordination centres and the nominated electricity market operators should give the utmost consideration to the opinions and recommendations of ACER that are addressed to them pursuant to this Regulation.
- (25) ACER should consult interested parties, where appropriate, and provide them with a reasonable opportunity to comment on proposed measures, such as network codes and rules.
- (26) ACER should contribute to the implementation of the guidelines on trans-European energy networks as laid down in Regulation (EU) No 347/2013, in particular when providing its opinion on the non-binding Union-wide 10-year network development plans (Union-wide network development plans).
- (27) ACER should contribute to the efforts of enhancing energy security.
- (28) ACER's activities should be consistent with the objectives and targets of the Energy Union which has five closely related and mutually reinforcing dimensions, including decarbonisation, as outlined in Article 1 of Regulation (EU) 2018/1999 of the European Parliament and of the Council ⁽¹²⁾.
- (29) In accordance with the principle of subsidiarity, ACER should adopt individual decisions only in clearly defined circumstances, on issues that are strictly related to the purposes for which ACER was established.
- (30) In order to ensure that ACER's framework is efficient and coherent with other decentralised agencies, the rules governing ACER should be aligned with the Common Approach agreed between the European Parliament, the Council of the EU and the European Commission on decentralised agencies ⁽¹³⁾ (Common Approach). However, to the extent necessary, ACER's structure should be adapted to meet the specific needs of energy regulation. In particular, the specific role of the regulatory authorities needs to be taken fully into account and their independence guaranteed.
- (31) Additional changes to this Regulation may be envisaged in the future in order to bring the Regulation fully in line with the Common Approach. Based on the current needs of energy regulation, deviations from the Common Approach are necessary. The Commission should carry out an evaluation to assess ACER's performance in relation to ACER's objectives, mandate and tasks and, following that evaluation, the Commission should be able to propose amendments to this Regulation.
- (32) The Administrative Board should have the necessary powers to establish the budget, check its implementation, draw up internal rules, adopt financial regulations and appoint a Director. A rotation system should be used for the renewal of the members of the Administrative Board who are appointed by the Council so as to ensure a balanced participation of Member States over time. The Administrative Board should act independently and objectively in the public interest and should not seek or follow political instructions.

⁽¹²⁾ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

⁽¹³⁾ Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19.7.2012.

- (33) ACER should have the necessary powers to perform its regulatory functions in an efficient, transparent, reasoned and, above all, independent manner. ACER's independence from electricity and gas producers and from transmission system operators and distribution system operators as well as other private and corporate interests is not only a key principle of good governance but also a fundamental condition to ensure market confidence. Without prejudice to its members' acting on behalf of their respective national authorities, the Board of Regulators should therefore act independently from any market interest, should avoid conflicts of interests and should not seek or follow instructions or accept recommendations from a government of a Member State, from Union institutions or another public or private entity or person. The decisions of the Board of Regulators should, at the same time, comply with Union law concerning energy, such as the internal energy market, the environment and competition. The Board of Regulators should report its opinions, recommendations and decisions to the Union institutions.
- (34) Where ACER has decision-making powers, interested parties should, for reasons of procedural economy, be granted a right of appeal to a Board of Appeal, which should be part of ACER, but independent from its administrative and regulatory structure. In order to guarantee its functioning and full independence, the Board of Appeal should have a separate budget line in the budget of ACER. In the interest of continuity, the appointment or renewal of the members of the Board of Appeal should allow for the partial replacement of the members of the Board of Appeal. The decisions of the Board of Appeal are subject to appeal before the Court of Justice of the European Union (the Court of Justice).
- (35) ACER should exercise its decision-making powers in line with the principles of fair, transparent and reasonable decision-making. ACER's procedural rules should be laid down in its rules of procedures.
- (36) The Director should be responsible for drafting and adopting documents containing opinions, recommendations and decisions. Certain opinions, recommendations and decisions referred to in point (a) of Article 22(5) and Article 24(2) should require the favourable opinion of the Board of Regulators before they are adopted. The Board of Regulators should be able to provide opinions on, and, where appropriate, comments on and amendments to the Director's text proposals, which the Director should take into account. Where the Director deviates from or rejects the comments and amendments submitted by the Board of Regulators, the Director should provide a duly justified written reasoning to facilitate a constructive dialogue. If the Board of Regulators does not give a favourable opinion on a re-submitted text, the Director should have the possibility of revising the text further in line with the amendments and comments proposed by the Board of Regulators, in order to obtain their favourable opinion. The Director should have the possibility of withdrawing submitted draft opinions, recommendations and decisions where the Director disagrees with the amendments submitted by the Board of Regulators and issuing a new text following certain procedures referred to in point (a) of Article 22(5) and Article 24(2). The Director should have the possibility of seeking the favourable opinion of the Board of Regulators on a new or revised draft text at any stage of the procedure.
- (37) ACER should be properly resourced to carry out its tasks. ACER should be mainly financed from the general budget of the Union. Fees improve ACER's funding and should cover its costs with regard to services provided to market participants or entities acting on their behalf enabling them to report data pursuant to Article 8 of Regulation (EU) No 1227/2011 in an efficient, effective and safe manner. The resources currently pooled by regulatory authorities for their cooperation at Union level should continue to be available to ACER. The Union budgetary procedure should remain applicable as far as any subsidies chargeable to the general budget of the Union are concerned. Moreover, the auditing of accounts should be undertaken by an independent external auditor in accordance with Article 107 of Commission Delegated Regulation (EU) No 1271/2013 ⁽¹⁴⁾.
- (38) ACER's budget should be assessed by the budgetary authority on an ongoing basis, with reference to ACER's workload, to ACER's performance and to ACER's objectives of working towards an internal energy market and contributing to energy security for the benefit of consumers in the Union. The budgetary authority should ensure that the best standards of efficiency are met.

⁽¹⁴⁾ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

- (39) The Translation Centre for the Bodies of the European Union (the ‘Translation Centre’) should provide translation for the Union Agencies. If ACER experiences particular difficulties with the services of the Translation Centre, ACER should have the possibility of invoking the recourse mechanism established in Council Regulation (EC) No 2965/94 ⁽¹⁵⁾, which could, ultimately, result in recourse to other service providers under the auspices of the Translation Centre.
- (40) ACER should have highly professional staff. In particular, it should benefit from the competence and experience of staff seconded by the regulatory authorities, the Commission and the Member States. The Staff Regulations of Officials of the European Communities (‘the Staff Regulations’) and the Conditions of employment of other servants of the European Communities (‘the Conditions of Employment’), laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁶⁾ and the rules adopted jointly by the Union institutions for the purpose of applying those regulations should apply to ACER’s staff. The Administrative Board, in agreement with the Commission, should adopt appropriate implementing rules.
- (41) It should be possible for the regulatory work of the Director and the Board of Regulators pursuant to this Regulation to be supported by working groups.
- (42) ACER should apply the general rules regarding public access to documents held by Union bodies. The Administrative Board should establish the practical measures to protect commercially sensitive data and personal data.
- (43) Through the cooperation of regulatory authorities within ACER, it is evident that majority decisions are a key pre-requisite to achieving progress on matters concerning the internal energy market which have significant economic effects in various Member States. Regulatory authorities should therefore continue to vote on the basis of a two-thirds majority within the Board of Regulators. ACER should be accountable to the European Parliament, to the Council and to the Commission, where appropriate.
- (44) Countries which are not members of the Union should be able to participate in ACER’s work in accordance with appropriate agreements to be concluded by the Union.
- (45) Since the objectives of this Regulation, namely the cooperation of regulatory authorities at Union level and their participation in the exercise of Union-related functions, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (46) ACER’s seat is situated in Ljubljana, as provided by Decision 2009/913/EU ⁽¹⁷⁾. ACER’s seat is the centre of its activities and its statutory functions.
- (47) ACER’s host Member State should provide the best possible conditions to ensure the smooth and efficient functioning of ACER, including multilingual, European-oriented schooling and appropriate transport connections. The Seat Agreement between the Government of the Republic of Slovenia and ACER covering those requirements together with its implementing arrangements, was concluded on 26 November 2010 and entered into force on 10 January 2011,

HAVE ADOPTED THIS REGULATION:

Chapter I

Objectives and tasks

Article 1

Establishment and objectives

1. This Regulation establishes a European Union Agency for the Cooperation of Energy Regulators (ACER).

⁽¹⁵⁾ Council Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union (OJ L 314, 7.12.1994, p. 1).

⁽¹⁶⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

⁽¹⁷⁾ Decision taken by common agreement between the Representatives of the Governments of Member States of 7 December 2009 on the location of the seat of the Agency for the Cooperation of Energy Regulators (OJ L 322, 9.12.2009, p. 39).

2. The purpose of ACER shall be to assist the regulatory authorities referred to in Article 57 of Directive (EU) 2019/944 and Article 39 of Directive 2009/73/EC in exercising, at Union level, the regulatory tasks performed in the Member States and, where necessary, to coordinate their action and to mediate and settle disagreements between them in accordance with Article 6(10) of this Regulation. ACER shall also contribute to the establishment of high-quality common regulatory and supervisory practices, thus contributing to the consistent, efficient and effective application of Union law in order to achieve the Union's climate and energy goals.

3. When carrying out its tasks, ACER shall act independently, objectively, and in the interest of the Union. ACER shall take autonomous decisions, independently of private and corporate interests.

Article 2

Type of acts of ACER

ACER shall:

- (a) issue opinions and recommendations addressed to transmission system operators, the ENTSO for Electricity, the ENTSO for Gas, the EU DSO Entity, regional coordination centres and nominated electricity market operators;
- (b) issue opinions and recommendations addressed to regulatory authorities;
- (c) issue opinions and recommendations addressed to the European Parliament, the Council, or the Commission;
- (d) issue individual decisions on the provision of information in accordance with Article 3(2), point (b) of Article 7(2) and point (c) of Article 8; on approving the methodologies, terms and conditions in accordance with Article 4(4), Article 5(2), (3) and (4); on bidding zones reviews as referred to in Article 5(7); on technical issues as referred to in Article 6(1); on arbitration between regulators in accordance with Article 6(10); related to regional coordination centres as referred to in point (a) of Article 7(2); on approving and amending methodologies and calculations and technical specifications as referred to in Article 9(1); on approving and amending methodologies as referred to in Article 9(3); on exemptions as referred to in Article 10; on infrastructure as referred to in point (d) of Article 11; and on matters related to wholesale market integrity and transparency pursuant to Article 12.
- (e) submit non-binding framework guidelines to the Commission in accordance with Article 59 of Regulation (EU) 2019/943 of the European Parliament and of the Council ⁽¹⁸⁾ and Article 6 of Regulation (EC) No 715/2009 of the European Parliament and of the Council ⁽¹⁹⁾.

Article 3

General tasks

1. ACER may, upon a request of the European Parliament, the Council or the Commission, or on its own initiative, provide an opinion or a recommendation to the European Parliament, the Council and the Commission on any of the issues relating to the purpose for which it has been established.

2. At ACER's request, the regulatory authorities, the ENTSO for Electricity, the ENTSO for Gas, the regional coordination centres, the EU DSO entity, the transmission system operators and the nominated electricity market operators shall provide to ACER the information necessary for the purpose of carrying out ACER's tasks under this Regulation, unless ACER has already requested and received such information.

For the purpose of information requests as referred to in the first subparagraph, ACER shall have the power to issue decisions. In its decisions, ACER shall specify the purpose of its request, shall make a reference to the legal basis under which the information is requested, and shall state a time limit within which the information is to be provided. That time limit shall be proportionate to the request.

ACER shall use confidential information received pursuant to this Regulation only for the purpose of carrying out the tasks assigned to it in this Regulation. ACER shall ensure the appropriate data protection of the information pursuant to Article 41.

⁽¹⁸⁾ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (see page 54 of this Official Journal).

⁽¹⁹⁾ Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

Article 4

Tasks of ACER as regards the cooperation of transmission system operators and distribution system operators

1. ACER shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure of the ENTSO for Electricity in accordance with Article 29(2) of Regulation (EU) 2019/943 and on those of the ENTSO for Gas in accordance with Article 5(2) of Regulation (EC) No 715/2009 and on those of the EU DSO entity in accordance with Article 53(3) of Regulation (EU) 2019/943.
2. ACER shall monitor the execution of the tasks of the ENTSO for Electricity in accordance with Article 32 of Regulation (EU) 2019/943, of the ENTSO for Gas in accordance with Article 9 of Regulation (EC) No 715/2009 and of the EU DSO entity as set out in Article 55 of Regulation (EU) 2019/943.
3. ACER may provide an opinion:
 - (a) to the ENTSO for Electricity in accordance with point (a) of Article 30(1) of Regulation (EU) 2019/943 and to the ENTSO for Gas in accordance with Article 8(2) of Regulation (EC) No 715/2009 on the network codes;
 - (b) to the ENTSO for Electricity in accordance with the first subparagraph of Article 32(2) of Regulation (EU) 2019/943, and to the ENTSO for Gas in accordance with the first subparagraph of Article 9(2) of Regulation (EC) No 715/2009 on the draft annual work programme, on the draft Union-wide network development plan and other relevant documents referred to in Article 30(1) of Regulation (EU) 2019/943 and Article 8(3) of Regulation (EC) No 715/2009, taking into account the objectives of non-discrimination, effective competition and the efficient and secure functioning of the internal markets for electricity and natural gas;
 - (c) to the EU DSO entity on the draft annual work programme and other relevant documents referred to in Article 55(2) of Regulation (EU) 2019/943, taking into account the objectives of non-discrimination, effective competition and the efficient and secure functioning of the internal market for electricity.
4. ACER, where appropriate, after requesting updates to the drafts submitted by transmission system operators, shall approve the methodology regarding the use of revenues from congestion income pursuant to Article 19(4) of Regulation (EU) 2019/943.
5. ACER shall, based on matters of fact, provide a duly reasoned opinion as well as recommendations to the ENTSO for Electricity, the ENTSO for Gas, the European Parliament, the Council and the Commission, where it considers that the draft annual work programme or the draft Union-wide network development plan submitted to it in accordance with the second subparagraph of Article 32(2) of Regulation (EU) 2019/943 and the second subparagraph of Article 9(2) of Regulation (EC) No 715/2009 do not contribute to non-discrimination, effective competition and the efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access, or do not comply with the relevant provisions of Regulation (EU) 2019/943 and Directive (EU) 2019/944 or Regulation (EC) No 715/2009 and Directive 2009/73/EC.
6. The relevant regulatory authorities shall coordinate in order to jointly identify whether there is non-compliance of the EU-DSO entity, the ENTSO for Electricity or regional coordination centres with their obligations under Union law, and shall take appropriate action in accordance with point (c) of Article 59(1) and point (f) of Article 62(1) of Directive (EU) 2019/944.

At the request of one or more regulatory authorities or at its own initiative, ACER shall issue a reasoned opinion as well as a recommendation to the ENTSO for Electricity, the EU DSO entity or the regional coordination centres with regard to compliance with their obligations.

7. Where a reasoned opinion of ACER identifies a case of potential non-compliance of the ENTSO for Electricity, the EU DSO entity or a regional coordination centre with their respective obligations, the regulatory authorities concerned shall unanimously take coordinated decisions establishing whether there is non-compliance with the relevant obligations and, where applicable, determining the measures to be taken by the ENTSO for Electricity, the EU DSO entity or the regional coordination centre to remedy that non-compliance. Where the regulatory authorities fail to take such coordinated decisions unanimously within four months of the date of receipt of ACER's reasoned opinion, the matter shall be referred to ACER for a decision pursuant to Article 6(10).

8. Where the non-compliance by the ENTSO for Electricity, the EU DSO entity or a regional coordination centre that was identified pursuant to paragraph 6 or 7 of this Article has not been remedied within three months, or where the regulatory authority in the Member State in which the entity has its seat has not taken action to ensure compliance, ACER shall issue a recommendation to the regulatory authority to take action in accordance with point (c) of Article 59(1) and point (f) of Article 62(1) of Directive (EU) 2019/944, in order to ensure that the ENTSO for Electricity, the EU DSO entity or the regional coordination centre comply with their obligations, and shall inform the Commission.

Article 5

Tasks of ACER as regards the development and implementation of network codes and guidelines

1. ACER shall participate in the development of network codes in accordance with Article 59 of Regulation (EU) 2019/943 and Article 6 of Regulation (EC) No 715/2009 and of guidelines in accordance with Article 61(6) of Regulation (EU) 2019/943 It shall in particular:

- (a) submit non-binding framework guidelines to the Commission where it is requested to do so under Article 59(4) of Regulation (EU) 2019/943 or Article 6(2) of Regulation (EC) No 715/2009. ACER shall review the framework guidelines and re-submit them to the Commission where requested to do so under Article 59(7) of Regulation (EU) 2019/943 or Article 6(4) of Regulation (EC) No 715/2009;
- (b) provide a reasoned opinion to the ENTSO for Gas on the network code in accordance with Article 6(7) of Regulation (EC) No 715/2009;
- (c) revise the network code in accordance with Article 59(11) of Regulation (EU) 2019/943 and Article 6(9) of Regulation (EC) No 715/2009. In its revision, ACER shall take account of the views provided by the parties involved during the drafting of that revised network code led by the ENTSO for Electricity, the ENTSO for Gas or the EU DSO entity, and shall consult the relevant stakeholders on the version to be submitted to the Commission. For this purpose, ACER may use the committee established under the network codes where appropriate. ACER shall report to the Commission on the outcome of the consultations. Subsequently, ACER shall submit the revised network code to the Commission in accordance with Article 59(11) of Regulation (EU) 2019/943 and Article 6(9) of Regulation (EC) No 715/2009. Where the ENTSO for Electricity, the ENTSO for Gas or the EU DSO entity have failed to develop a network code, ACER shall prepare and submit a draft network code to the Commission where it is requested to do so under Article 59(12) of Regulation (EU) 2019/943 or Article 6(10) of Regulation (EC) No 715/2009;
- (d) provide a duly reasoned opinion to the Commission, in accordance with Article 32(1) of Regulation (EU) 2019/943 or Article 9(1) of Regulation (EC) No 715/2009, where the ENTSO for Electricity, the ENTSO for Gas or the EU DSO entity has failed to implement a network code elaborated under point (a) of Article 30(1) of Regulation (EU) 2019/943 or Article 8(2) of Regulation (EC) No 715/2009 or a network code which has been established in accordance with Article 59(3) to (12) of Regulation (EU) 2019/943 and Article 6(1) to (10) of Regulation (EC) No 715/2009 but which has not been adopted by the Commission under Article 59(13) of Regulation (EU) 2019/943 and under Article 6(11) of Regulation (EC) No 715/2009.
- (e) monitor and analyse the implementation of the network codes adopted by the Commission in accordance with Article 59 of Regulation (EU) 2019/943 and Article 6 of Regulation (EC) No 715/2009 and the guidelines adopted in accordance with Article 61 of Regulation (EU) 2019/943, and their effect on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market, and report to the Commission.

2. Where one of the following legal acts provides for the development of proposals for common terms and conditions or methodologies for the implementation of network codes and guidelines which require the approval of all regulatory authorities, those proposals for common terms and conditions or methodologies shall be submitted to ACER for revision and approval:

- (a) a legislative act of the Union adopted under the ordinary legislative procedure;
- (b) network codes and guidelines adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines; or
- (c) network codes and guidelines adopted as implementing acts pursuant to Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽²⁰⁾.

⁽²⁰⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

3. Where one of the following legal acts provides for the development of proposals for terms and conditions or methodologies for the implementation of network codes and guidelines which require the approval of all the regulatory authorities of the region concerned, those regulatory authorities shall agree unanimously on the common terms and conditions or methodologies to be approved by each of those regulatory authorities:

- (a) a legislative act of the Union adopted under the ordinary legislative procedure;
- (b) network codes and guidelines that were adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines; or
- (c) network codes and guidelines adopted as implementing acts pursuant to Article 5 of Regulation (EU) No 182/2011.

The proposals referred to in the first subparagraph shall be notified to ACER within one week of their submission to those regulatory authorities. The regulatory authorities may refer the proposals to ACER for approval pursuant to point (b) of the second subparagraph of Article 6(10) and shall do so pursuant to point (a) of the second subparagraph of Article 6(10) where there is no unanimous agreement as referred to in the first subparagraph.

The Director or the Board of Regulators, acting on its own initiative or on a proposal from one or more of its members, may require the regulatory authorities of the region concerned to refer the proposal to ACER for approval. Such a request shall be limited to cases in which the regionally agreed proposal would have a tangible impact on the internal energy market or on security of supply beyond the region.

4. Without prejudice to paragraphs 2 and 3, ACER shall be competent to take a decision pursuant to Article 6(10) where the competent regulatory authorities fail to agree on terms and conditions or methodologies for the implementation of new network codes and guidelines adopted after 4 July 2019 as delegated acts, where those terms and conditions or methodologies require the approval of all the regulatory authorities or of all the regulatory authorities of the region concerned.

5. By 31 October 2023, and every three years thereafter, the Commission shall submit a report to the European Parliament and to the Council on ACER's involvement in the development and adoption of terms and conditions or methodologies for the implementation of network codes and guidelines adopted as delegated acts after 4 July 2019. Where appropriate, the report shall be accompanied by a legislative proposal to transfer or modify the necessary powers to ACER.

6. Before approving the terms and conditions or methodologies referred to in paragraphs 2 and 3, the regulatory authorities, or, where competent, ACER, shall revise them where necessary, after consulting the ENTSO for Electricity, the ENTSO for Gas or the EU DSO entity, in order to ensure that they are in line with the purpose of the network code or guideline and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market. ACER shall take a decision on the approval within the period specified in the relevant network codes and guidelines. That period shall begin on the day following that on which the proposal was referred to ACER.

7. ACER shall carry out its tasks as regards the bidding zone review pursuant to Article 14(5) of Regulation (EU) 2019/943.

8. ACER shall monitor the regional cooperation of transmission system operators referred to in Article 34 of Regulation (EU) 2019/943 and Article 12 of Regulation (EC) No 715/2009, and shall take into account the outcome of that cooperation when formulating its opinions, recommendations and decisions.

Article 6

Tasks of ACER as regards the regulatory authorities

1. ACER shall adopt individual decisions on technical issues where those decisions are provided for in Regulation (EU) 2019/943, Regulation (EC) No 715/2009, Directive (EU) 2019/944 or Directive 2009/73/EC.
2. ACER may, in accordance with its work programme, at the request of the Commission or on its own initiative, make recommendations to assist regulatory authorities and market participants in sharing good practices.
3. By 5 July 2022, and every four years thereafter the Commission shall submit a report to the European Parliament and the Council on the independence of regulatory authorities pursuant to Article 57(7) of Directive (EU) 2019/944.

4. ACER shall provide a framework within which the regulatory authorities can cooperate in order to ensure efficient decision-making on issues with cross-border relevance. It shall promote cooperation between the regulatory authorities and between regulatory authorities at regional and Union level and shall take into account the outcome of such cooperation when formulating its opinions, recommendations and decisions. Where ACER considers that binding rules on such cooperation are required, it shall make the appropriate recommendations to the Commission.

5. ACER shall provide a factual opinion at the request of one or more regulatory authorities or of the Commission, on whether a decision taken by a regulatory authority complies with the network codes and guidelines referred to in Regulation (EU) 2019/943, Regulation (EC) No 715/2009, Directive (EU) 2019/944 or Directive 2009/73/EC or with other relevant provisions of those directives or regulations.

6. Where a regulatory authority does not comply with the opinion of ACER referred to in paragraph 5 within four months of the date of receipt, ACER shall inform the Commission and the Member State concerned accordingly.

7. Where, in a specific case, a regulatory authority encounters difficulties with the application of the network codes and guidelines referred to in Regulation (EU) 2019/943, Regulation (EC) No 715/2009, Directive (EU) 2019/944 or Directive 2009/73/EC it may request ACER to provide an opinion. ACER shall deliver its opinion, after consulting the Commission, within three months of the date of receipt of such a request.

8. Upon the request of a regulatory authority, ACER may provide operational assistance to that regulatory authority regarding investigations pursuant to Regulation (EU) No 1227/2011.

9. ACER shall submit opinions to the relevant regulatory authority and to the Commission pursuant to Article 16(3) of Regulation (EU) 2019/943.

10. ACER shall be competent to adopt individual decisions on regulatory issues having effects on cross-border trade or cross-border system security which require a joint decision by at least two regulatory authorities, where such competences have been conferred on the regulatory authorities under one of the following legal acts:

- (a) a legislative act of the Union adopted under the ordinary legislative procedure;
- (b) network codes and guidelines adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines; or
- (c) network codes and guidelines adopted as implementing acts pursuant to Article 5 of Regulation (EU) No 182/2011.

ACER shall be competent to adopt individual decisions as specified in the first subparagraph in the following situations:

- (a) where the competent regulatory authorities have not been able to reach an agreement within six months of referral of the case to the last of those regulatory authorities, or within four months in cases under Article 4(7) of this Regulation or under point (c) of Article (59)(1) or point (f) of Article 62(1) of Directive (EU) 2019/944; or
- (b) on the basis of a joint request from the competent regulatory authorities.

The competent regulatory authorities may jointly request that the period referred to in point (a) of the second subparagraph of this paragraph be extended by a period of up to six months, except in cases under Article 4(7) of this Regulation or under point (c) of Article 59(1) or point (f) of Article 62(1) of Directive (EU) 2019/944.

Where the competences to decide on cross-border issues referred to in the first subparagraph have been conferred on the regulatory authorities in new network codes or guidelines adopted as delegated acts after 4 July 2019, ACER shall only be competent on a voluntary basis pursuant to point (b) of the second subparagraph of this paragraph, upon a request from at least 60 % of the competent regulatory authorities. Where only two regulatory authorities are involved, either one may refer the case to ACER.

By 31 October 2023, and every three years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the possible need to further enhance ACER's involvement in solving cases of disagreement between regulatory authorities concerning joint decisions on matters for which the competences were conferred on those regulatory authorities by a delegated act after 4 July 2019. Where appropriate, the report shall be accompanied by a legislative proposal to modify such powers or to transfer the necessary powers to ACER.

11. When preparing its decision pursuant to paragraph 10, ACER shall consult the regulatory authorities and transmission system operators concerned and shall be informed of the proposals and observations of all the transmission system operators concerned.

12. Where a case has been referred to ACER under paragraph 10, ACER:
- (a) shall issue a decision within six months of the date of referral, or within four months thereof in cases pursuant to Article 4(7) of this Regulation or point (c) of Article (59)(1) or point (f) of Article 62(1) of Directive (EU) 2019/944; and
 - (b) may, if necessary, provide an interim decision to ensure that security of supply or operational security is protected.
13. Where the regulatory issues referred to in paragraph 10 include exemptions within the meaning of Article 63 of Regulation (EU) 2019/943, or Article 36 of Directive 2009/73/EC, the deadlines provided for in this Regulation shall not be cumulative with the deadlines provided for in those provisions.

Article 7

Tasks of ACER as regards regional coordination centres

1. ACER, in close cooperation with the regulatory authorities and the ENTSO for Electricity, shall monitor and analyse the performance of regional coordination centres, taking into account the reports provided for in Article 46(3) of Regulation (EU) 2019/943.
2. To carry out the tasks referred to in paragraph 1 in an efficient and expeditious manner, ACER shall in particular:
 - (a) decide on the configuration of system operation regions pursuant to Article 36(3) and (4) and issue approvals pursuant to Article 37(2) of Regulation (EU) 2019/943;
 - (b) request information from regional coordination centres where appropriate pursuant to Article 46 of Regulation (EU) 2019/943;
 - (c) issue opinions and recommendations to the European Parliament, the Council and the Commission;
 - (d) issue opinions and recommendations to regional coordination centres.

Article 8

Tasks of ACER as regards nominated electricity market operators

In order to ensure that nominated electricity market operators carry out their functions under the Regulation (EU) 2019/943 and Commission Regulation (EU) 2015/1222 ⁽²¹⁾, ACER shall:

- (a) monitor the nominated electricity market operators' progress in establishing the functions under Regulation (EU) 2015/1222;
- (b) issue recommendations to the Commission in accordance with Article 7(5) of Regulation (EU) 2015/1222;
- (c) request information from nominated electricity market operators where appropriate.

Article 9

Tasks of ACER as regards generation adequacy and risk preparedness

1. ACER shall approve and amend where necessary:
 - (a) the proposals for methodologies and calculations related to the European resource adequacy assessment pursuant to Article 23(3), (4), (6) and (7) of Regulation (EU) 2019/943;
 - (b) the proposals for technical specifications for cross-border participation in capacity mechanisms pursuant to Article 26(11) of Regulation (EU) 2019/943.
2. ACER shall provide an opinion pursuant to Article 24(3) of Regulation (EU) 2019/941 on whether the differences between the national resource adequacy assessment and the European resource adequacy assessment are justified.

⁽²¹⁾ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24).

3. ACER shall approve and amend where necessary the methodologies for:
 - (a) identifying electricity crisis scenarios at a regional level pursuant to Article 5 of Regulation (EU) 2019/941;
 - (b) short-term and seasonal adequacy assessments pursuant to Article 8 of Regulation (EU) 2019/941.
4. With respect to the security of gas supply, ACER shall be represented in the Gas Coordination Group in accordance with Article 4 of Regulation (EU) 2017/1938, and shall carry out its obligations regarding permanent bi-directional capacity of interconnections for gas under Annex III to Regulation (EU) 2017/1938.

Article 10

Tasks of ACER as regards exemptions

ACER shall decide on exemptions, as provided for in Article 63(5) of Regulation (EU) 2019/943 ACER shall also decide on exemptions as provided for in Article 36(4) of Directive 2009/73/EC where the infrastructure concerned is located in the territory of more than one Member State.

Article 11

Tasks of ACER as regards infrastructure

With respect to trans-European energy infrastructure, ACER, in close cooperation with the regulatory authorities and the ENTSO for Electricity and the ENTSO for Gas, shall:

- (a) monitor progress as regards the implementation of projects to create new interconnector capacity;
- (b) monitor the implementation of the Union-wide network-development plans. If ACER identifies inconsistencies between those plans and their implementation, it shall investigate the reasons for those inconsistencies and make recommendations to the transmission system operators, regulatory authorities or other competent bodies concerned with a view to implementing the investments in accordance with the Union-wide network-development plans;
- (c) carry out the obligations laid out in Articles 5, 11 and 13 of Regulation (EU) No 347/2013;
- (d) take decisions on investment requests pursuant to Article 12(6) of Regulation (EU) No 347/2013.

Article 12

Tasks of ACER as regards wholesale market integrity and transparency

In order to effectively monitor wholesale market integrity and transparency, ACER, in close cooperation with the regulatory authorities and other national authorities, shall:

- (a) monitor wholesale markets, collect and share data and establish a European register of market participants in accordance with Articles 7 to 12 of Regulation (EU) No 1227/2011;
- (b) issue recommendations to the Commission in accordance with Article 7 of Regulation (EU) No 1227/2011;
- (c) coordinate investigations pursuant to Article 16(4) of Regulation (EU) No 1227/2011.

Article 13

Commissioning of new tasks to ACER

ACER may, in circumstances clearly defined by the Commission in network codes adopted pursuant to Article 59 of Regulation (EU) 2019/943 and guidelines adopted pursuant to Article 61 of that Regulation or Article 23 of Regulation (EC) No 715/2009 and on issues related to the purpose for which it has been established, be commissioned with additional tasks which do not involve decision-making powers.

*Article 14***Consultations, transparency and procedural safeguards**

1. In carrying out its tasks, in particular in the process of developing framework guidelines in accordance with Article 59 of Regulation (EU) 2019/943 or Article 6 of Regulation (EC) No 715/2009, and in the process of proposing amendments of network codes under Article 60 of Regulation (EU) 2019/943 or Article 7 of Regulation (EC) No 715/2009 ACER shall, extensively consult at an early stage market participants, transmission system operators, consumers, end-users and, where relevant, competition authorities, without prejudice to their respective competence, in an open and transparent manner, in particular when its tasks concern transmission system operators.

2. ACER shall ensure that the public and any interested parties are, where appropriate, given objective, reliable and easily accessible information, in particular with regard to the results of its work.

All documents and minutes of consultation meetings conducted during the development of framework guidelines in accordance with Article 59 of Regulation (EU) 2019/943 or Article 6 of Regulation (EC) No 715/2009, or during the amendment of network codes referred to in paragraph 1 shall be made public.

3. Before adopting framework guidelines, or proposing amendments to network codes as referred to in paragraph 1, ACER shall indicate how the observations received during the consultation have been taken into account and shall provide reasons where those observations have not been followed.

4. ACER shall make public, on its own website, at least the agenda, the background documents and, where appropriate, the minutes of the meetings of the Administrative Board, of the Board of Regulators and of the Board of Appeal.

5. ACER shall adopt and publish adequate and proportionate rules of procedure in accordance with the procedure set out in point (t) of Article 19(1). Those rules shall include provisions which ensure a transparent and reasonable decision-making process guaranteeing fundamental procedural rights based on the rule of law, including the right to be heard, rules on access to files and the standards specified in paragraphs 6, 7 and 8.

6. Before taking any individual decision as provided for in this Regulation, ACER shall inform any party concerned of its intention to adopt that decision, and shall set a time limit within which the party concerned may express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.

7. Individual decisions of ACER shall state the reasons on which they are based for the purpose of allowing an appeal on the merits.

8. The parties concerned by individual decisions shall be informed of the legal remedies available under this Regulation.

*Article 15***Monitoring and reporting on the electricity and natural gas sectors**

1. ACER, in close cooperation with the Commission, the Member States and the relevant national authorities, including the regulatory authorities, and without prejudice to the competences of competition authorities, shall monitor the wholesale and retail markets in electricity and natural gas, in particular the retail prices of electricity and natural gas, compliance with the consumer rights laid down in Directive (EU) 2019/944 and Directive 2009/73/EC, the impact of market developments on household customers, access to the networks including access of electricity produced from renewable energy sources, the progress made with regard to interconnectors, potential barriers to cross-border trade, regulatory barriers for new market entrants and smaller actors, including citizen energy communities, state interventions preventing prices from reflecting actual scarcity, such as those set out in Article 10(4) of Regulation (EU) 2019/943, the performance of the Member States in the area of security of supply of electricity based on the results of the European resource adequacy assessment as referred to in Article 23 of that Regulation, taking into account, in particular, the ex-post evaluation referred to in Article 17 of Regulation (EU) 2019/941.

2. ACER shall publish annually a report on the results of the monitoring referred to in paragraph 1. In that report, it shall identify any barriers to the completion of the internal markets for electricity and natural gas.

3. When publishing its annual report, ACER may submit to the European Parliament and to the Commission an opinion on the possible measures to remove the barriers referred to in paragraph 2.
4. ACER shall issue a best practices report on transmission and distribution tariffs methodologies pursuant to Article 18(9) of Regulation (EU) 2019/943.

Chapter II

Organisation of ACER

Article 16

Legal status

1. ACER shall be a Union body with legal personality.
2. In each Member State, ACER shall enjoy the most extensive legal capacity accorded to legal persons under national law. It shall, in particular, be able to acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. ACER shall be represented by its Director.
4. The seat of ACER shall be Ljubljana, Slovenia.

Article 17

Administrative and Management Structure

ACER shall be composed of:

- (a) an Administrative Board, which shall exercise the tasks set out in Article 19;
- (b) a Board of Regulators, which shall exercise the tasks set out in Article 22;
- (c) a Director, who shall exercise the tasks set out in Article 24; and
- (d) a Board of Appeal, which shall exercise the tasks set out in Article 28.

Article 18

Composition of the Administrative Board

1. The Administrative Board shall be composed of nine members. Each member shall have an alternate. Two members and their alternates shall be appointed by the Commission, two members and their alternates shall be appointed by the European Parliament and five members and their alternates shall be appointed by the Council. No Member of the European Parliament shall be a member of the Administrative Board. A member of the Administrative Board shall not be a member of the Board of Regulators.
2. The term of office of the members of the Administrative Board and their alternates shall be four years, renewable once. For the first mandate, the term of office of half of the members of the Administrative Board and their alternates shall be six years.
3. The Administrative Board shall elect its Chair and its Vice-Chair from among its members by a two-thirds majority. The Vice-Chair shall automatically replace the Chair if the latter is not in a position to perform his or her duties. The term of office of the Chair and of the Vice-Chair shall be two years, renewable once. The term of office of the Chair and that of the Vice-Chair shall expire when they cease to be members of the Administrative Board.

4. The meetings of the Administrative Board shall be convened by its Chair. The Chair of the Board of Regulators or the nominee of the Board of Regulators, and the Director shall participate, without the right to vote, in the deliberations unless the Administrative Board decides otherwise as regards the Director. The Administrative Board shall meet at least twice a year in ordinary session. It shall also meet at the initiative of its Chair, at the request of the Commission or at the request of at least a third of its members. The Administrative Board may invite any person who may have a relevant opinion to attend its meetings in the capacity of an observer. The members of the Administrative Board may, subject to its rules of procedure, be assisted by advisers or experts. The Administrative Board's secretarial services shall be provided by ACER.
5. Decisions of the Administrative Board shall be adopted on the basis of a two-thirds majority of the members present, unless provided otherwise in this Regulation. Each member of the Administrative Board or alternate shall have one vote.
6. The rules of procedure shall set out in greater detail:
 - (a) the arrangements governing voting, in particular the conditions on the basis of which one member may act on behalf of another and also, where appropriate, the rules governing quorums; and
 - (b) the arrangements governing the rotation applicable to the renewal of the members of the Administrative Board who are appointed by the Council so as to ensure a balanced participation of Member States over time.
7. Without prejudice to the role of the members appointed by the Commission, the members of the Administrative Board shall undertake to act independently and objectively in the interest of the Union as a whole, and shall neither seek nor follow instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other public or private body. For that purpose, each member shall make a written declaration of commitments and a written declaration of interests, indicating either the absence of any interest which might be considered to be prejudicial to his or her independence or any direct or indirect interest which might be considered prejudicial to his or her independence. ACER shall make those declarations public on an annual basis.

Article 19

Functions of the Administrative Board

1. The Administrative Board shall:
 - (a) after consulting the Board of Regulators and obtaining its favourable opinion in accordance with point (c) of Article 22(5), appoint the Director in accordance with Article 23(2) and where relevant extend his or her term of office or remove him or her from office;
 - (b) formally appoint the members of the Board of Regulators nominated in accordance with Article 21(1);
 - (c) formally appoint the members of the Board of Appeal in accordance with Article 25(2);
 - (d) ensure that ACER carries out its mission and performs the tasks assigned to it in accordance with this Regulation;
 - (e) adopt the programming document referred to in Article 20(1) by a two-thirds majority of its members and, if applicable, amend it in accordance with Article 20(3);
 - (f) adopt the annual budget of ACER and exercise its other budgetary functions in accordance with Articles 31 to 35;
 - (g) decide, after obtaining the agreement of the Commission, whether to accept any legacies, donations or grants from other Union sources or any voluntary contribution from the Member States or from the regulatory authorities. The opinion of the Administrative Board delivered pursuant to Article 35(4) shall address the sources of funding set out in this paragraph;
 - (h) after consulting the Board of Regulators, exercise disciplinary authority over the Director. In addition, in accordance with paragraph 2, it shall exercise, with respect to the staff of ACER, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment on the Authority Empowered to conclude a Contract of Employment;
 - (i) draw up ACER's implementing rules for giving effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations pursuant to Article 39(2);
 - (j) adopt practical measures regarding the right of access to ACER's documents, in accordance with Article 41;

- (k) adopt and publish the annual report on ACER's activities, on the basis of the draft annual report referred to in point (i) of Article 24(1), and shall submit that report to the European Parliament, the Council, the Commission, and the Court of Auditors by 1 July of each year. The annual report on ACER's activities shall contain an independent section, approved by the Board of Regulators, concerning ACER's regulatory activities during that year;
- (l) adopt and publish its own rules of procedure;
- (m) adopt the financial rules applicable to ACER in accordance with Article 36;
- (n) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
- (o) adopt rules for the prevention and management of conflicts of interest in respect of its members as well as members of the Board of Appeal;
- (p) adopt and regularly update the communication and dissemination plans referred to in Article 41;
- (q) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment, who shall be totally independent in the performance of his or her duties;
- (r) ensure appropriate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-Fraud Office (OLAF);
- (s) authorise the conclusion of working arrangements in accordance with Article 43;
- (t) on the basis of a proposal from the Director in accordance with point (b) of Article 24(1), and after consulting the Board of Regulators and obtaining its favourable opinion in accordance with point (f) of Article 22(5), adopt and publish the rules of procedure referred to in Article 14(5).

2. The Administrative Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment, delegating relevant appointing authority powers to the Director and defining the conditions under which that delegation of powers can be suspended. The Director shall be authorised to sub-delegate those powers.

3. Where exceptional circumstances so require, the Administrative Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Director and those sub-delegated by the latter and in favour of itself or delegate them to one of its members or to a staff member other than the Director. The exceptional circumstances shall be strictly limited to administrative, budgetary or managerial matters, without prejudice to the Director's full independence concerning his or her tasks pursuant to point (c) of Article 24(1).

Article 20

Annual and multi-annual programming

1. Each year, the Director shall prepare a draft programming document containing annual and multi-annual programming, and shall submit the draft programming document to the Administrative Board and to the Board of Regulators.

The Administrative Board shall adopt the draft programming document after receipt of a favourable opinion of the Board of Regulators, and shall submit the draft programming document to the European Parliament, to the Council and to the Commission no later than 31 January.

The draft programming document shall be in accordance with the provisional draft estimate established in accordance with Article 33(1), (2) and (3).

The Administrative Board shall adopt the programming document, taking into account the opinion of the Commission, after receipt of a favourable opinion from the Board of Regulators, and after the Director has presented it to the European Parliament. The Administrative Board shall submit the programming document to the European Parliament, the Council and the Commission by 31 December.

The programming document shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

The programming document shall become definitive after the final adoption of the general budget and, if necessary, shall be adjusted accordingly.

2. The annual programming in the programming document shall comprise detailed objectives and expected results, including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, including a reference to ACER's working groups tasked with contributing to the drafting of the respective documents, in accordance with the principles of activity-based budgeting and management. The annual programming shall be coherent with the multi-annual programming referred to in paragraph 4. It shall clearly indicate the tasks that have been added, changed or deleted in comparison with the previous financial year.

3. The Administrative Board shall amend the adopted programming document where a new task is assigned to ACER.

Any substantial amendment to the programming document shall be adopted by the same procedure set out for the initial programming document. The Administrative Board may delegate the power to make non-substantial amendments to the programming document to the Director.

4. The multi-annual programming in the programming document shall set out the overall strategic programming, including objectives, expected results and performance indicators. It shall also set out resource programming, including the multi-annual budget and staff.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, in particular to address the outcome of the evaluation referred to in Article 45.

Article 21

Composition of the Board of Regulators

1. The Board of Regulators shall be composed of:

- (a) senior representatives of the regulatory authorities, in accordance with Article 57(1) of Directive (EU) 2019/944 and Article 39(1) of Directive 2009/73/EC, and one alternate per Member State from the current senior staff of those authorities, both nominated by the regulatory authority;
- (b) one non-voting representative of the Commission.

Only one representative per Member State from the regulatory authority may be admitted to the Board of Regulators.

2. The Board of Regulators shall elect a Chair and a Vice-Chair from among its members. The Vice-Chair shall replace the Chair if the latter is not in a position to perform his or her duties. The term of office of the Chair and of the Vice-Chair shall be two-and-a-half years and shall be renewable. In any event, however, the term of office of the Chair and that of the Vice-Chair shall expire when they cease to be members of the Board of Regulators.

Article 22

Functions of the Board of Regulators

1. The Board of Regulators shall act by a two-thirds majority of the members present, with one vote for each member.

2. The Board of Regulators shall adopt and publish its rules of procedure, which shall set out in greater detail the arrangements governing voting, in particular the conditions on the basis of which one member may act on behalf of another and also, where appropriate, the rules governing quorums. The rules of procedure may provide for specific working methods for the consideration of issues arising in the context of regional cooperation initiatives.

3. When carrying out the tasks conferred upon it by this Regulation and without prejudice to its members acting on behalf of their respective regulatory authority, the Board of Regulators shall act independently and shall not seek or follow instructions from any government of a Member State, from the Commission, or from another public or private entity.

4. The secretarial services of the Board of Regulators shall be provided by ACER.

5. The Board of Regulators shall:

- (a) provide opinions and, where appropriate, comments on and amendments to the text of the Director's proposals for draft opinions, recommendations and decisions referred to in Article 3(1), Articles 4 to 8, Article 9(1) and (3), Article 10, point (c) of Article 11, Article 13, Article 15(4), and Articles 30 and 43 which are considered for adoption;

- (b) within its field of competence, provide guidance to the Director in the execution of his or her tasks, with the exception of ACER's tasks under Regulation (EU) No 1227/2011 and provide guidance to ACER's working groups established pursuant to Article 30;
 - (c) provide an opinion to the Administrative Board on the candidate to be appointed as Director in accordance with point (a) of Article 19(1) and Article 23(2);
 - (d) approve the programming document in accordance with Article 20(1);
 - (e) approve the independent section on regulatory activities of the annual report, in accordance with point (k) of Article 19(1) and point (i) of Article 24(1);
 - (f) provide an opinion to the Administrative Board on the rules of procedure under Article 14(5) and Article 30(3);
 - (g) provide an opinion to the Administrative Board on the communication and dissemination plans referred to in Article 41;
 - (h) provide an opinion to the Administrative Board on the rules of procedure for relations with third countries or international organisations referred to in Article 43.
6. The European Parliament shall be informed of the draft agenda of upcoming meetings of the Board of Regulators at least two weeks in advance. Within two weeks of those meetings, the draft minutes shall be sent to the European Parliament. The European Parliament may invite, while fully respecting his or her independence, the Chair of the Board of Regulators or the Vice-Chair to make a statement before its competent committee and answer questions put by the members of that committee.

Article 23

Director

1. ACER shall be managed by its Director, who shall act in accordance with the guidance referred to in point (b) of Article 22(5) and, where provided for in this Regulation, the opinions of the Board of Regulators. Without prejudice to the respective roles of the Administrative Board and the Board of Regulators in relation to the tasks of the Director, the Director shall neither seek nor follow any instruction from any government, from the Union institutions, or from any other public or private entity or person. The Director shall be accountable to the Administrative Board with respect to administrative, budgetary and managerial matters, but remain fully independent concerning his or her tasks under point (c) of Article 24(1). The Director may attend the meetings of the Board of Regulators as an observer.
2. The Director shall be appointed by the Administrative Board following a favourable opinion of the Board of Regulators, on the basis of merit as well as skills and experience relevant to the energy sector, from a list of at least three candidates proposed by the Commission, following an open and transparent selection procedure. Before appointment, the candidate selected by the Administrative Board shall make a statement before the competent committee of the European Parliament and answer questions put by its members. For the purpose of concluding the contract with the Director, ACER shall be represented by the Chair of the Administrative Board.
3. The Director's term of office shall be five years. In the course of the nine months preceding the end of that period, the Commission shall undertake an assessment. In the assessment, the Commission shall examine in particular:
 - (a) the performance of the Director;
 - (b) ACER's duties and requirements in the following years.
4. The Administrative Board, acting on a proposal from the Commission, after consulting the Board of Regulators and giving the utmost consideration to the assessment and opinion of the Board of Regulators, and only where justified on the basis of the duties and requirements of ACER, may extend the term of office of the Director once by no more than five years. A Director whose term of office has been extended shall not participate in another selection procedure for the same post at the end of the extended period.
5. The Administrative Board shall inform the European Parliament of its intention to extend the Director's term of office. Within one month before the extension of his or her term of office, the Director may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by the members of that committee.

6. If his or her term of office is not extended, the Director shall remain in office until the appointment of his or her successor.
7. The Director may be removed from office only upon a decision of the Administrative Board, after having obtained a favourable opinion of the Board of Regulators. The Administrative Board shall reach that decision on the basis of a two-thirds majority of its members.
8. The European Parliament and the Council may call upon the Director to submit a report on the performance of his or her duties. The European Parliament may also invite the Director to make a statement before its competent committee and answer questions put by the members of that committee.

Article 24

Tasks of the Director

1. The Director shall:
 - (a) be the legal representative of ACER and shall be in charge of its day-to-day management;
 - (b) prepare the work of the Administrative Board, participate, without having the right to vote, in the work of the Administrative Board and have responsibility for implementing the decisions adopted by the Administrative Board;
 - (c) draft, consult upon, adopt and publish opinions, recommendations and decisions;
 - (d) be responsible for implementing ACER's annual work programme under the guidance of the Board of Regulators and under the administrative control of the Administrative Board;
 - (e) take the necessary measures, in particular as regards adopting internal administrative instructions and publishing notices, to ensure the functioning of ACER in accordance with this Regulation;
 - (f) each year, prepare ACER's draft work programme for the following year, and shall, after the adoption of the draft by the Administrative Board submit it to the Board of Regulators, to the European Parliament and to the Commission by 31 January every year;
 - (g) be responsible for implementing the programming document and reporting to the Administrative Board on its implementation;
 - (h) draw up a provisional draft estimate of ACER pursuant to Article 33(1) and implement ACER's budget in accordance with Articles 34 and 35;
 - (i) each year, prepare and submit to the Administrative Board a draft annual report including an independent section on ACER's regulatory activities and a section on financial and administrative matters;
 - (j) prepare an action plan following up on the conclusions of internal or external audit reports and evaluations, as well as on investigations by OLAF, and report on progress twice a year to the Commission and report regularly on progress to the Administrative Board;
 - (k) be responsible for deciding whether, for the purpose of carrying out ACER's tasks in an efficient and effective manner, it is necessary to locate one or more members of staff in one or more Member States.

For the purpose of point (k) of the first subparagraph, before deciding to establish a local office the Director shall seek the opinion of the Member States concerned, including the Member State in which ACER's seat is located, and shall obtain the prior consent of the Commission and the Administrative Board. The decision shall be based on an appropriate cost-benefit analysis and shall specify the scope of the activities to be carried out at that local office in a manner that avoids unnecessary costs and duplication of ACER's administrative functions.

2. For the purposes of point (c) of paragraph 1 of this Article, opinions, recommendations and decisions referred to in Article 3(1), Articles 4 to 8, Article 9(1) and (3), Article 10, point (c) of Article 11, Article 13, Article 15(4), and Articles 30 and 43 shall be adopted only after having obtained the favourable opinion of the Board of Regulators.

Before submitting draft opinions, recommendations or decisions to a vote by the Board of Regulators, the Director shall submit proposals for the draft opinions, recommendations or decisions to the relevant working group for consultation sufficiently in advance.

The Director:

- (a) shall take the comments and amendments of the Board of Regulators into account and shall resubmit the revised draft opinion, recommendation or decision to the Board of Regulators for a favourable opinion;
- (b) may withdraw submitted draft opinions, recommendations or decisions provided that the Director submits a duly justified written explanation where the Director disagrees with the amendments submitted by the Board of Regulators;

In the case of a withdrawal of a draft opinion, recommendation or decision, the Director may issue a new draft opinion, recommendation or decision following the procedure set out in point (a) of Article 22(5) and in the second subparagraph of this paragraph. For the purposes of point (a) of the third subparagraph of this paragraph, where the Director deviates from or rejects the comments and amendments received from the Board of Regulators, the Director shall also provide a duly justified written explanation.

If the Board of Regulators does not give a favourable opinion on the resubmitted text of the draft opinion, recommendation or decision because its comments and amendments were not adequately reflected in the resubmitted text, the Director may revise the text of the draft opinion, recommendation or decision further in accordance with the amendments and comments proposed by the Board of Regulators in order to obtain its favourable opinion, without having to consult the relevant working group again or having to provide additional written reasons.

Article 25

Creation and composition of the Board of Appeal

1. ACER shall establish a Board of Appeal.
2. The Board of Appeal shall be composed of six members and six alternates selected from among current or former senior staff of the regulatory authorities, competition authorities or other Union or national institutions with relevant experience in the energy sector. The Board of Appeal shall designate its Chair.

The members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after consulting the Board of Regulators.

3. The Board of Appeal shall adopt and publish its rules of procedure. Those rules shall set out in detail the arrangements governing the organisation and functioning of the Board of Appeal and the rules applicable to appeals before the Board, pursuant to Article 28. The Board of Appeal shall notify the Commission of its draft rules of procedure as well as any significant change to those rules. The Commission may provide an opinion on those rules within three months of the date of receipt of the notification.

ACER's budget shall comprise a separate budget line for the financing of the registry of the Board of Appeal.

4. The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members. The Board of Appeal shall be convened when necessary.

Article 26

Members of the Board of Appeal

1. The term of office of the members of the Board of Appeal shall be five years. That term shall be renewable once.
2. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in ACER, in its Administrative Board, in its Board of Regulators or in any of its working groups. A member of the Board of Appeal shall not be removed during his or her term of office, unless he or she has been found guilty of serious misconduct, and the Administrative Board, after consulting the Board of Regulators, takes a decision to that effect.

*Article 27***Exclusion and objection in the Board of Appeal**

1. Members of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest therein, if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.
2. A member of the Board of Appeal shall inform the Board in the event that, for one of the reasons referred to in paragraph 1 or for any other reason, he or she considers that a fellow member should not take part in any appeal proceedings. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraph 1, or in the case of suspected bias. Such an objection shall be inadmissible if it is based on the nationality of a member or if, while being aware of a reason for objecting, the objecting party to the appeal proceedings has taken a procedural step in the appeal proceedings other than objecting to the composition of the Board of Appeal.
3. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned. For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his or her alternate. If the alternate finds him or herself in a similar situation to that of the member, the Chair shall designate a replacement from among the available alternates.
4. The members of the Board of Appeal shall undertake to act independently and in the public interest. For that purpose, they shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which might be considered prejudicial to their independence or indicating any direct or indirect interest which might be considered prejudicial to their independence. Those declarations shall be made public annually.

*Article 28***Decisions subject to appeal**

1. Any natural or legal person, including the regulatory authorities, may appeal against a decision referred to in point (d) of Article 2 which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.
2. The appeal shall include a statement of the grounds for appeal and shall be filed in writing at ACER within two months of the notification of the decision to the person concerned, or, in the absence thereof, within two months of the date on which ACER published its decision. The Board of Appeal shall decide upon the appeal within four months of the lodging of the appeal.
3. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Board of Appeal may, however, if it considers that circumstances so require, suspend the application of the contested decision.
4. If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties to the appeal proceedings as often as necessary to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make an oral presentation.
5. The Board of Appeal may confirm the decision, or it may remit the case to the competent body of ACER. The latter shall be bound by the decision of the Board of Appeal.
6. ACER shall publish the decisions taken by the Board of Appeal.

*Article 29***Actions before the Court of Justice**

Actions for the annulment of a decision issued by ACER pursuant to this Regulation and actions for failure to act within the applicable time limits may be brought before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28. ACER shall take the necessary measures to comply with the judgments of the Court of Justice.

*Article 30***Working groups**

1. Where justified, and in particular to support the work of the Director and of the Board of Regulators on regulatory issues and for the purpose of preparing the opinions, recommendations and decisions referred to in Article 3(1), Articles 4 to 8, Article 9(1) and (3), Article 10, point (c) of Article 11, Article 13, Article 15(4), and Articles 30 and 43, the Administrative Board shall establish or remove working groups on the basis of a joint proposal from the Director and the Board of Regulators.

The establishment and the removal of a working group shall require a favourable opinion of the Board of Regulators.

2. The working groups shall be composed of experts from among ACER's and the regulatory authorities' staff. Experts from the Commission may participate in working groups. ACER shall not be responsible for the costs of the participation of experts from the staff of regulatory authorities in ACER's working groups. Working groups shall take into consideration the views of experts from other relevant national authorities where those authorities are competent.

3. The Administrative Board shall adopt and publish internal rules of procedure for the functioning of the working groups on the basis of a proposal from the Director, after consulting the Board of Regulators and obtaining its favourable opinion.

4. ACER's working groups shall carry out the activities assigned to them in the programming document adopted pursuant to Article 20 and any activities under this Regulation assigned to them by the Board of Regulators and the Director.

Chapter III**Establishment and structure of the budget***Article 31***Structure of the budget**

1. Without prejudice to other resources the revenues of ACER shall be made up of:

(a) a contribution from the Union;

(b) fees paid to ACER pursuant to Article 32;

(c) any voluntary contributions from the Member States or from the regulatory authorities, under point (g) of Article 19(1);

(d) legacies, donations or grants under point (g) of Article 19(1).

2. ACER's expenditure shall include staff, administrative, infrastructure, and operational expenses.

3. ACER's revenue and expenditure shall be in balance.

4. All ACER's revenue and expenditure shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.

5. The revenue received by ACER shall not compromise its neutrality, independence or objectivity.

*Article 32***Fees**

1. Fees shall be due to ACER for the following:

(a) requesting an exemption decision pursuant to Article 10 of this Regulation and for decisions on cross-border cost allocation provided by ACER pursuant to Article 12 of Regulation (EU) No 347/2013;

(b) collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of Regulation (EU) No 1227/2011.

2. The fees referred to in paragraph 1, and the way in which they are to be paid, shall be set by the Commission after carrying out a public consultation and after consulting the Administrative Board and the Board of Regulators. The fees shall be proportionate to the costs of the relevant services as provided in a cost-effective way and shall be sufficient to cover those costs. Those fees shall be set at such a level as to ensure that they are non-discriminatory and that they avoid placing an undue financial or administrative burden on market participants or entities acting on their behalf.

The Commission shall regularly examine the level of those fees on the basis of an evaluation and, if necessary, shall adapt the level of those fees and the way in which they are to be paid.

Article 33

Establishment of the budget

1. Each year, the Director shall draw up a provisional draft estimate covering the operational expenditure and the programme of work anticipated for the following financial year, and shall submit that provisional draft estimate to the Administrative Board, together with a list of provisional posts.

2. The provisional draft estimate shall be based on the objectives and expected results of the programming document referred to in Article 20(1), and shall take into account the financial resources that are necessary to achieve those objectives and expected results.

3. Each year, the Administrative Board shall, on the basis of the provisional draft estimate prepared by the Director, adopt a provisional draft estimate of revenue and expenditure of ACER for the following financial year.

4. The provisional draft estimate, including a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by 31 January each year. Prior to adoption of the estimate, the draft prepared by the Director shall be transmitted to the Board of Regulators, which may deliver a reasoned opinion on the draft.

5. The estimate referred to in paragraph 3 shall be transmitted by the Commission to the European Parliament and to the Council, together with the draft general budget of the Union.

6. On the basis of the draft estimate, the Commission shall enter into the draft general budget of the Union the estimates it considers necessary in respect of the establishment plan and the amount of the grant to be charged to the general budget of the Union in accordance with Articles 313 to 316 of the Treaty on the Functioning of the European Union (TFEU).

7. The Council in its role as budgetary authority shall adopt the establishment plan for ACER.

8. ACER's budget shall be adopted by the Administrative Board. It shall become final after the final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.

9. Any modification to the budget, including the establishment plan, shall follow the same procedure.

10. By 5 July 2020, the Commission shall assess whether the financial and human resources available to ACER allow it to fulfil its role under this Regulation of working towards an internal energy market and of contributing to energy security to the benefit of consumers in the Union.

11. The Administrative Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of ACER's budget, in particular any project relating to property. The Administrative Board shall also inform the Commission of its intention. If either branch of the budgetary authority intends to issue an opinion, it shall, within two weeks of receipt of the information on the project, notify ACER of its intention thereof. In the absence of a reply, ACER may proceed with the planned project.

Article 34

Implementation and control of the budget

1. The Director shall act as authorising officer and shall implement ACER's budget.
2. By 1 March following the completion of each financial year, ACER's accounting officer shall submit the provisional accounts, accompanied by the report on budgetary and financial management over the financial year to the Commission's accounting officer and to the Court of Auditors. ACER's accounting officer shall also submit the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year. The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 245 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²²⁾ ('the Financial Regulation').

Article 35

Presentation of accounts and discharge

1. ACER's accounting officer shall submit the provisional accounts for the financial year (year N) to the Commission's Accounting Officer and to the Court of Auditors by 1 March of the following financial year (year N + 1).
2. ACER shall submit a report on the budgetary and financial management for year N to the European Parliament, the Council, the Commission and the Court of Auditors by 31 March of year N + 1.

By 31 March of year N + 1, the Commission's accounting officer shall submit the provisional accounts of ACER to the Court of Auditors. The Commission shall also submit the report on budgetary and financial management over the financial year to the European Parliament and to the Council.

3. After receipt of the observations of the Court of Auditors on ACER's provisional accounts for year N in accordance with the provisions of Article 246 of the Financial Regulation, the accounting officer, acting on his or her own responsibility, shall draw up ACER's final accounts for that year. The Director shall submit them to the Administrative Board for an opinion.
4. The Administrative Board shall deliver an opinion on ACER's final accounts for year N.
5. ACER's accounting officer shall submit the final accounts for year N, accompanied by the opinion of the Administrative Board, by 1 July of year N + 1, to the European Parliament, the Council, the Commission and the Court of Auditors.
6. The final accounts shall be published in the *Official Journal of the European Union* by 15 November of year N + 1.
7. The Director shall submit a reply to the Court of Auditors' observations by 30 September of year N + 1. The Director shall also submit a copy of that reply to the Administrative Board and the Commission.
8. The Director shall submit to the European Parliament, at the latter's request, any information necessary for the smooth application of the discharge procedure for year N in accordance with Article 109(3) of Delegated Regulation (EU) No 1271/2013.
9. The European Parliament, following a recommendation by the Council, acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Director for the implementation of the budget for the financial year N.

⁽²²⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

*Article 36***Financial rules**

The financial rules applicable to ACER shall be adopted by the Administrative Board after consulting the Commission. Those rules may deviate from Delegated Regulation (EU) No 1271/2013 if the specific operational needs for the functioning of ACER so require and only with the prior agreement of the Commission.

*Article 37***Combating fraud**

1. In order to facilitate the combating of fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽²³⁾, ACER shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF ⁽²⁴⁾ and shall adopt appropriate provisions applicable to the employees of ACER, using the template set out in the Annex to that Agreement.

2. The Court of Auditors shall have the power to carry out on-the-spot audits, as well as auditing on the basis of documents, with respect to the grant beneficiaries, contractors and subcontractors that have received Union funds from ACER.

3. OLAF may carry out investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by ACER, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96 ⁽²⁵⁾.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of ACER shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct the audits and investigations referred to in this Article, in accordance with their respective competences.

Chapter IV**General and final provisions***Article 38***Privileges and immunities and Headquarters Agreement**

1. Protocol No 7 on Privileges and Immunities of the European Union annexed to the TEU and to the TFEU shall apply to ACER and to its staff.

2. The necessary arrangements concerning the accommodation to be provided for ACER in the host Member State and the facilities to be made available by that Member State, together with the specific rules applicable in the host Member State to the Director, members of the Administrative Board, ACER's staff and members of their families, shall be laid down in a Headquarters Agreement between ACER and the Member State where the seat is located. That agreement shall be concluded after obtaining the approval of the Administrative Board.

*Article 39***Staff**

1. The Staff Regulations and the Conditions of Employment and the rules adopted jointly by the Union institutions for the purpose of applying the Staff Regulations and the Conditions of Employment shall apply to ACER's staff, including its Director.

⁽²³⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁽²⁴⁾ OJ L 136, 31.5.1999, p. 15.

⁽²⁵⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

2. The Administrative Board, in agreement with the Commission, shall adopt appropriate implementing rules, in accordance with Article 110 of the Staff Regulations.
3. In respect of its staff, ACER shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment.
4. The Administrative Board may adopt provisions to allow national experts from Member States to be employed on secondment at ACER.

Article 40

Liability of ACER

1. The contractual liability of ACER shall be governed by the law applicable to the contract in question.

Any arbitration clause contained in a contract concluded by ACER shall be subject to the jurisdiction of the Court of Justice.

2. In the case of non-contractual liability, ACER shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties.
3. The Court of Justice shall have jurisdiction in disputes over compensation for damages referred to in paragraph 2.
4. The personal financial liability and disciplinary liability of ACER's staff towards it shall be governed by the relevant provisions applying to ACER's staff.

Article 41

Transparency and communication

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽²⁶⁾ shall apply to documents held by ACER.
2. The Administrative Board shall adopt practical measures for applying Regulation (EC) No 1049/2001.
3. Decisions taken by ACER pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice, in accordance with the conditions laid down in Articles 228 and 263 TFEU.
4. The processing of personal data by ACER shall be subject to the Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽²⁷⁾. The Administrative Board shall establish measures for the application of Regulation (EU) 2018/1725 by ACER, including measures concerning the appointment of ACER's Data Protection Officer. Those measures shall be established after consulting the European Data Protection Supervisor.
5. ACER may engage in communication activities on its own initiative within its field of competence. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the tasks referred to in Article 3 to 13. Communication activities shall be carried out in accordance with relevant communication and dissemination plans adopted by the Administrative Board.

⁽²⁶⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁽²⁷⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

*Article 42***Protection of classified and sensitive non-classified information**

1. ACER shall adopt its own security rules, which shall be equivalent to the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, including provisions for the exchange, processing and storage of such information, as set out in the Commission Decisions (EU, Euratom) 2015/443 ⁽²⁸⁾ and (EU, Euratom) 2015/444 ⁽²⁹⁾.
2. ACER may also decide to apply the Commission's Decisions referred to in paragraph 1, *mutatis mutandis*. ACER's security rules shall cover, inter alia, provisions for the exchange, processing and storage of EUCI and sensitive non-classified information.

*Article 43***Cooperation agreements**

1. ACER shall be open to the participation of third countries which have concluded agreements with the Union and which have adopted and are applying the relevant rules of Union law in the field of energy including, in particular, the rules on independent regulatory authorities, third-party access to infrastructure and unbundling, energy trading and system operation and consumer participation and protection, as well as the relevant rules in the fields of environment and competition.
2. Subject to the conclusion of an agreement to that effect between the Union and third countries as referred to in paragraph 1, ACER may also exercise its tasks under Articles 3 to 13 with regard to third countries, provided that those third countries have adopted and apply the relevant rules in accordance with paragraph 1 and have mandated ACER to coordinate the activities of their regulatory authorities with those of the regulatory authorities of Member States. Only in such cases the references to issues of cross-border character shall relate to borders between the Union and third countries, and not to borders between two Member States.
3. The agreements referred to in paragraph 1 shall provide for arrangements specifying, in particular, the nature, scope and procedural aspects of the involvement of those countries in ACER's work, including provisions relating to financial contributions and to staff.
4. The Administrative Board shall adopt rules of procedures for relations with third countries referred to in paragraph 1 after receipt of a positive opinion by the Board of Regulators. The Commission shall ensure that ACER operates within its mandate and the existing institutional framework by concluding an appropriate working arrangement with ACER's Director.

*Article 44***Language arrangements**

1. The provisions of Council Regulation No 1 ⁽³⁰⁾ shall apply to ACER.
2. The Administrative Board shall decide on ACER's internal language arrangements.
3. The translation services required for ACER's functioning shall be provided by the Translation Centre for the Bodies of the European Union.

*Article 45***Evaluation**

1. By 5 July 2024, and every five years thereafter, the Commission, with the assistance of an independent external expert, shall carry out an evaluation to assess ACER's performance in relation to its objectives, mandate and tasks. The evaluation shall in particular address the possible need to modify ACER's mandate, and the financial implications of any such modification.

⁽²⁸⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁽²⁹⁾ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

⁽³⁰⁾ Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

2. Where the Commission considers that the continued existence of ACER is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed after carrying out an appropriate consultation of stakeholders and of the Board of Regulators.
3. The Commission shall submit the evaluation findings referred to in paragraph 1 together with its conclusions to the European Parliament, to the Council and to ACER's Board of Regulators. The findings of the evaluation should be made public.
4. By 31 October 2025, and at least every five years thereafter, the Commission shall submit to the European Parliament and the Council a report evaluating this Regulation and, in particular, ACER's tasks involving individual decisions. That reports shall, as appropriate, take into account the results of the assessment pursuant to Article 69(1) of Regulation (EU) 2019/943.

The Commission, where appropriate, shall submit a legislative proposal together with its report.

Article 46

Repeal

Regulation (EC) No 713/2009 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 47

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 June 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

ANNEX I

Repealed Regulation with the amendment thereto

Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1)	
Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009	Only the reference made by Article 20 of Regulation (EU) No 347/2013 to Article 22(1) of Regulation (EC) No 713/2009.

ANNEX II

Correlation table

Regulation (EC) No 713/2009	This Regulation
Article 1	Article 1
Article 4	Article 2
Article 5	Article 3
Article 6 (1) to (3) and (4) first subparagraph	Article 4
Article 6 (4) second to fifth sub-paragraph and paragraphs (5), (6) and (9)	Article 5
Article 7 and 8	Article 6
—	Article 7
—	Article 8
—	Article 9
Article 9 (1) to (2) first sub-paragraph	Article 10
Article 6 (7) and (8)	Article 11
—	Article 12
Article 9 (2) second sub-paragraph	Article 13
Article 10	Article 14
Article 11	Article 15
Article 2	Article 16
Article 3	Article 17
Article 12	Article 18
Article 13	Article 19
—	Article 20
Article 14 (1) and (2)	Article 21
Article 14 (3) to (6)	Article 22 (1) to (4)
Article 15	Article 22 (5) and (6)
Article 16	Article 23
Article 17	Article 24
Article 18 (1) and (2)	Article 25 (1), (2) and (4)
Article 19 (6)	Article 25 (3)
Article 18 (3)	Article 26
Article 18 (4) to (7)	Article 27
Article 19 (1) to (5) and (7)	Article 28
—	—
—	Article 29
—	Article 30
Article 21	Article 31
Article 22	Article 32
Article 23	Article 33
Article 24 (1) and (2)	Article 34

Regulation (EC) No 713/2009	This Regulation
Article 24 (3 and following)	Article 35
Article 25	Article 36
—	Article 37
Article 27	Article 38
Article 28	Article 39
Article 29	Article 40
Article 30	Article 41(1) to (3)
—	Article 42
Article 31	Article 43
Article 33	Article 44
Article 34	Article 45
—	Article 46
Article 35	Article 47

REGULATION (EU) 2019/943 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 June 2019
on the internal market for electricity
(recast)
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Regulation (EC) No 714/2009 of the European Parliament and of the Council ⁽⁴⁾ has been substantially amended several times. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.
- (2) The Energy Union aims to provide final customers – household and business – with safe, secure, sustainable, competitive and affordable energy. Historically, the electricity system was dominated by vertically integrated, often publicly owned, monopolies with large centralised nuclear or fossil fuel power plants. The internal market for electricity, which has been progressively implemented since 1999, aims to deliver a real choice for all consumers in the Union new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices and higher standards of service, and to contribute to security of supply and sustainability. The internal market for electricity has increased competition, in particular at the wholesale level, and cross-zonal trade. It remains the foundation of an efficient energy market.
- (3) The Union's energy system is in the middle of its most profound change in decades and the electricity market is at the heart of that change. The common goal of decarbonising the energy system creates new opportunities and challenges for market participants. At the same time, technological developments allow for new forms of consumer participation and cross-border cooperation.
- (4) This Regulation establishes rules to ensure the functioning of the internal market for electricity and includes requirements related to the development of renewable forms of energy and environmental policy, in particular specific rules for certain types of renewable power-generating facilities, concerning balancing responsibility, dispatch and redispatching, as well as a threshold for CO₂ emissions of new generation capacity where such capacity is subject to temporary measures to ensure the necessary level of resource adequacy, namely, capacity mechanisms.
- (5) Electricity from renewable sources from small power-generating facilities should be granted priority dispatch either via a specific priority order in the dispatching methodology or via legal or regulatory requirements for

⁽¹⁾ OJ C 288, 31.8.2017, p. 91.

⁽²⁾ OJ C 342, 12.10.2017, p. 79.

⁽³⁾ Position of the European Parliament of 26 March 2019 (not yet published in the Official Journal) and Decision of the Council of 22 May 2019.

⁽⁴⁾ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L 211, 14.8.2009, p. 15).

market operators to provide this electricity on the market. Priority dispatch which has been granted in the system operation services under the same economic conditions should be considered to comply with this Regulation. In any case, priority dispatch should be deemed to be compatible with the participation in the electricity market of power-generating facilities using renewable energy sources.

- (6) State interventions, often designed in an uncoordinated manner, have led to increasing distortions of the wholesale electricity market, with negative consequences for investments and cross-border trade.
- (7) In the past, electricity customers were purely passive, often buying electricity at regulated prices which had no direct relation to the market. In the future, customers need to be enabled to fully participate in the market on equal footing with other market participants and need to be empowered to manage their energy consumption. To integrate the growing share of renewable energy, the future electricity system should make use of all available sources of flexibility, particularly demand side solutions and energy storage, and should make use of digitalisation through the integration of innovative technologies with the electricity system. To achieve effective decarbonisation at the lowest cost, the future electricity system also needs to encourage energy efficiency. The completion of the internal energy market through the effective integration of renewable energy can drive investments in the long term and can contribute to delivering the objectives of the Energy Union and the 2030 climate and energy framework, as set out in the Commission communication of 22 January 2014 entitled 'A policy framework for climate and energy in the period from 2020 to 2030', and endorsed in the conclusions adopted by the European Council at its meeting on 23 and 24 October 2014.
- (8) More market integration and the change towards a more volatile electricity production requires increased efforts to coordinate national energy policies with neighbours and to use the opportunities of cross-border electricity trade.
- (9) Regulatory frameworks have developed, allowing electricity to be traded across the Union. That development has been supported by the adoption of several network codes and guidelines for the integration of the electricity markets. Those network codes and guidelines contain provisions on market rules, system operation and network connection. To ensure full transparency and increase legal certainty, the main principles of market functioning and capacity allocation in the balancing, intraday, day-ahead and forward market timeframes should also be adopted pursuant to the ordinary legislative procedure and incorporated in a Union legislative single act.
- (10) Article 13 of Commission Regulation (EU) 2017/2195 ⁽⁵⁾ establishes a process whereby transmission system operators are able to delegate all or part of their tasks to a third party. The delegating transmission system operators should remain responsible for ensuring compliance with this Regulation. Moreover, Member States should be able to assign tasks and obligations to a third party. Such assignment should be limited to tasks and obligations carried out at national level, such as imbalance settlement. The limitations on such assignment should not lead to unnecessary changes to existing national arrangements. However, transmission system operators should remain responsible for the tasks entrusted to them under Article 40 of Directive (EU) 2019/944 of the European Parliament and of the Council ⁽⁶⁾.
- (11) With regard to balancing markets, efficient and non-distortive price formation in the procurement of balancing capacity and balancing energy requires that balancing capacity contracts do not set the price for balancing energy. This is without prejudice for the dispatching systems using an integrated scheduling process in accordance with Regulation (EU) 2017/2195.
- (12) Articles 18, 30 and 32 of Regulation (EU) 2017/2195 establish that the pricing method for both standard and specific products for balancing energy should create positive incentives for market participants in keeping their own balance or helping to restore the system balance in their imbalance price area, thereby reducing system imbalances and costs to society. Such pricing approaches should strive for the economically efficient use of demand response and other balancing resources, subject to operational security limits.

⁽⁵⁾ Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ L 312, 28.11.2017, p. 6).

⁽⁶⁾ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (see page 125 of this Official Journal).

- (13) The integration of balancing energy markets should facilitate the efficient functioning of the intraday market in order to provide the possibility for market participants to balance themselves as closely as possible to real time, enabled by the balancing energy gate closure times provided for in Article 24 of Regulation (EU) 2017/2195. Only the imbalances remaining after the end of the intraday market should be balanced by transmission system operators in the balancing market. Article 53 of Regulation (EU) 2017/2195 also provides for the harmonisation of the imbalance settlement period at 15 minutes in the Union. That harmonisation is intended to support intraday trading and foster the development of a number of trading products with the same delivery windows.
- (14) In order to enable transmission system operators to procure and use balancing capacity in an efficient, economic and market-based manner, there is a need to foster market integration. In that regard, Title IV of Regulation (EU) 2017/2195 establishes three methodologies through which transmission system operators are entitled to allocate cross-zonal capacity for the exchange of balancing capacity and the sharing of reserves, when supported on the basis of a cost-benefit analysis: the co-optimisation process, the market-based allocation process and the allocation based on an economic efficiency analysis. The co-optimisation allocation process is to be performed on a day-ahead basis. By contrast, it is possible to perform the market-based allocation process where the contracting is carried out not more than one week in advance of the provision of the balancing capacity and to perform the allocation based on an economic efficiency analysis where the contracting is done more than one week in advance of the provision of the balancing capacity, provided that the volumes allocated are limited and that an assessment is carried out annually. Once a methodology for the process of allocating cross-zonal capacity is approved by the relevant regulatory authorities, early application of that methodology by two or more transmission system operators could take place to allow them to gain experience and to allow for the smooth application of that methodology by more transmission system operators in the future. The application of such methodologies should nevertheless be harmonised by all transmission system operators in order to foster market integration.
- (15) Title V of Regulation (EU) 2017/2195 established that the general objective of imbalance settlement is to ensure that balance responsible parties keep their own balance or help restore the system balance in an efficient way and to provide incentives to market participants for keeping or helping to restore the system balance. To make balancing markets and the overall energy system fit for the integration of the increasing share of variable renewable energy, imbalance prices should reflect the real-time value of energy. All market participants should be financially responsible for the imbalances they cause in the system, representing the difference between the allocated volume and the final position in the market. For demand response aggregators, the allocated volume consists of the volume of energy physically activated by the participating customers' load, based on a defined measurement and baseline methodology.
- (16) Commission Regulation (EU) 2015/1222 ⁽⁷⁾ sets out detailed guidelines on cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets, including the requirements for the establishment of common methodologies for determining the volumes of capacity simultaneously available between bidding zones, criteria to assess efficiency and a review process for defining bidding zones. Articles 32 and 34 of Regulation (EU) 2015/1222 set out rules on review of bidding zone configuration, Articles 41 and 54 thereof set out harmonised limits on maximum and minimum clearing prices for day-ahead and intraday timeframes, Article 59 thereof sets out rules on intraday cross-zonal gate closure times, whereas Article 74 thereof sets out rules on redispatching and countertrading cost sharing methodologies.
- (17) Commission Regulation (EU) 2016/1719 ⁽⁸⁾ sets out detailed rules on cross-zonal capacity allocation in the forward markets, on the establishment of a common methodology to determine long-term cross-zonal capacity, on the establishment of a single allocation platform at European level offering long-term transmission rights, and on the possibility to return long-term transmission rights for subsequent forward capacity allocation or to transfer long-term transmission rights between market participants. Article 30 of Regulation (EU) 2016/1719 sets out rules on forward hedging products.

⁽⁷⁾ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24).

⁽⁸⁾ Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (OJ L 259, 27.9.2016, p. 42).

- (18) Commission Regulation (EU) 2016/631 ⁽⁹⁾ sets out the requirements for grid connection of power-generating facilities to the interconnected system, in particular with respect to synchronous power-generating modules, power park modules and offshore power park modules. Those requirements help to ensure fair conditions of competition in the internal electricity market, to ensure system security and the integration of electricity from renewable sources, and to facilitate Union-wide trade in electricity. Articles 66 and 67 of Regulation (EU) 2016/631 set out rules for emerging technologies in electricity generation.
- (19) Bidding zones reflecting supply and demand distribution are a cornerstone of market-based electricity trading and are a prerequisite for reaching the full potential of capacity allocation methods including the flow-based approach. Bidding zones therefore should be defined in a manner to ensure market liquidity, efficient congestion management and overall market efficiency. When a review of an existing bidding zone configuration is launched by a single regulatory authority or transmission system operator with the approval of its competent regulatory authority, for the bidding zones inside the transmission system operator's control area, if the bidding zone configuration has negligible impact on neighbouring transmission system operators' control areas, including interconnectors, and the review of bidding zone configuration is necessary to improve efficiency, to maximise cross-border trading opportunities or to maintain operational security, the transmission system operator in the relevant control area and the competent regulatory authority should be, respectively, the only transmission system operator and the only regulatory authority participating in the review. The relevant transmission system operator and the competent regulatory authority should give the neighbouring transmission system operators prior notice of the review and the results of the review should be published. It should be possible to launch a regional bidding zone review following the technical report on congestion in line with Article 14 of this Regulation or in accordance with existing procedures laid down in Regulation (EU) 2015/1222.
- (20) When regional coordination centres carry out a capacity calculation, they should maximise capacity considering non-costly remedial actions and respecting the operational security limits of transmission system operators in the Capacity Calculation Region. Where the calculation does not result in capacity equal to or above the minimum capacities set out in this Regulation, regional coordination centres should consider all available costly remedial actions to further increase capacity up to the minimum capacities, including redispatching potential within and between the capacity calculation regions, while respecting the operational security limits of transmission system operators of the Capacity Calculation Regions. Transmission system operators should report accurately and transparently on all aspects of capacity calculation in accordance with this Regulation and should ensure that all information sent to regional coordination centres is accurate and fit for purpose.
- (21) When performing capacity calculation, regional coordination centres should calculate cross-zonal capacities using data from transmission system operators which respects the operational security limits of the transmission system operators' respective control areas. Transmission system operators should be able to deviate from coordinated capacity calculation where its implementation would result in a violation of the operational security limits of network elements in their control area. Those deviations should be carefully monitored and transparently reported to prevent abuse and ensure that the volume of interconnection capacity to be made available to market participants is not limited in order to solve congestion inside a bidding zone. Where an action plan is in place, the action plan should take account of deviations and address their cause.
- (22) Core market principles should set out that electricity prices are to be determined through demand and supply. Those prices should indicate when electricity is needed, thereby providing market-based incentives for investments into flexibility sources such as flexible generation, interconnection, demand response or energy storage.

⁽⁹⁾ Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators (OJ L 112, 27.4.2016, p. 1).

- (23) While decarbonisation of the electricity sector, with energy from renewable sources becoming a major part of the market, is one of the goals of the Energy Union, it is crucial that the market removes existing barriers to cross-border trade and encourages investments into supporting infrastructure, for example, more flexible generation, interconnection, demand response and energy storage. To support this shift to variable and distributed generation, and to ensure that energy market principles are the basis for the Union's electricity markets of the future, a renewed focus on short-term markets and scarcity pricing is essential.
- (24) Short-term markets improve liquidity and competition by enabling more resources to participate fully in the market, especially those resources that are more flexible. Effective scarcity pricing will encourage market participants to react to market signals and to be available when the market most needs them and ensures that they can recover their costs in the wholesale market. It is therefore critical to ensure that administrative and implicit price caps are removed in order to allow for scarcity pricing. When fully embedded in the market structure, short-term markets and scarcity pricing contribute to the removal of other market distortive measures, such as capacity mechanisms, in order to ensure security of supply. At the same time, scarcity pricing without price caps on the wholesale market should not jeopardize the possibility of offering reliable and stable prices to final customers, in particular household customers, small and medium-sized enterprises (SMEs) and industrial customers.
- (25) Without prejudice to Articles 107, 108 and 109 of the Treaty on the Functioning of the European Union (TFEU), derogations from fundamental market principles such as balancing responsibility, market-based dispatch, or redispatch reduce flexibility signals and act as barriers to the development of solutions such as energy storage, demand response or aggregation. While derogations are still necessary to avoid an unnecessary administrative burden to certain market participants, in particular household customers and SMEs, broad derogations covering entire technologies are not consistent with the aim of achieving efficient market-based decarbonisation processes and should thus be replaced by more targeted measures.
- (26) A precondition for effective competition in the internal market for electricity is non-discriminatory, transparent and adequate charges for network use including interconnecting lines in the transmission system.
- (27) Uncoordinated curtailments of interconnector capacities increasingly limit the exchange of electricity between Member States and have become a serious obstacle to the development of a functioning internal market for electricity. The maximum level of capacity of interconnectors and the critical network elements should therefore be made available, complying with the safety standards of secure network operation including respecting the security standard for contingencies (N-1). However, there are some limitations to setting the capacity level in a meshed grid. Clear minimum levels of available capacity for cross-zonal trade need to be put in place in order to reduce the effects of loop flows and internal congestions on cross-zonal trade and to give a predictable capacity value for market participants. Where the flow-based approach is used, that minimum capacity should determine the minimum share of the capacity of a cross-zonal or an internal critical network element respecting operational security limits to be used as an input for coordinated capacity calculation under Regulation (EU) 2015/1222, taking into account contingencies. The total remaining share of capacity may be used for reliability margins, loop flows and internal flows. Furthermore, in the case of foreseeable problems for ensuring grid security, derogations should be possible for a limited transitional phase. Such derogations should be accompanied by a methodology and projects providing for a long-term solution.
- (28) The transmission capacity to which the 70 % minimum capacity criterion shall apply in the net transmission capacity (NTC) approach is the maximum transmission of active power which respects operational security limits and takes into account contingencies. The coordinated calculation of this capacity also takes into account that electricity flows are distributed unevenly between individual components and is not just adding capacities of interconnecting lines. This capacity does not take into account the reliability margin, loop flows or internal flows which are taken into account within the remaining 30 %.

- (29) It is important to avoid distortion of competition resulting from the differing safety, operational and planning standards used by transmission system operators in Member States. Moreover, there should be transparency for market participants concerning available transfer capacities and the security, planning and operational standards that affect the available transfer capacities.
- (30) To efficiently steer necessary investments, prices also need to provide signals where electricity is most needed. In a zonal electricity system, correct locational signals require a coherent, objective and reliable determination of bidding zones via a transparent process. In order to ensure efficient operation and planning of the Union electricity network and to provide effective price signals for new generation capacity, demand response and transmission infrastructure, bidding zones should reflect structural congestion. In particular, cross-zonal capacity should not be reduced in order to resolve internal congestion.
- (31) To reflect the divergent principles of optimising bidding zones without jeopardising liquid markets and grid investments two options should be provided for in order to address congestion. Member States should be able to choose between a reconfiguration of their bidding zone or measures such as grid reinforcement and grid optimisation. The starting point for such a decision should be the identification of long-term structural congestions by the transmission system operator or operators of a Member State, by a report by the European Network of Transmission System Operators for Electricity (the 'ENTSO for Electricity') on congestion or by a bidding zone review. Member States should first try to find a common solution on how to best address congestion. In the course of doing so Member States might adopt multinational or national action plans to address congestion. For Member States which adopt an action plan to address congestion, a phase-in period in the form of a linear trajectory for the opening of interconnectors should apply. At the end of the implementation of such an action plan, Member States should have a possibility to choose whether to opt for a reconfiguration of the bidding zone(s) or whether to opt for addressing remaining congestion through remedial actions for which they bear the costs. In the latter case their bidding zone should not be reconfigured against the will of that Member State, provided that the minimum capacity is reached. The minimum level of capacity that should be used in coordinated capacity calculation should be a percentage of the capacity of a critical network element, as defined following the selection process under Regulation (EU) 2015/1222, after, or, in the case of a flow-based approach, while, respecting the operational security limits in contingency situations. A Commission decision on the configuration of a bidding zone should be possible as a measure of last resort and should only amend the configuration of a bidding zone in those Member States which have opted to split the bidding zone or which have not reached the minimum level of the capacity.
- (32) Efficient decarbonisation of the electricity system via market integration requires systematically abolishing barriers to cross-border trade to overcome market fragmentation and to allow Union energy customers to fully benefit from the advantages of integrated electricity markets and competition.
- (33) This Regulation should lay down basic principles with regard to tariffication and capacity allocation, while providing for the adoption of guidelines detailing further relevant principles and methodologies, in order to allow rapid adaptation to changed circumstances.
- (34) The management of congestion problems should provide correct economic signals to transmission system operators and market participants and should be based on market mechanisms.
- (35) In an open, competitive market, transmission system operators should be compensated for costs incurred as a result of hosting cross-border flows of electricity on their networks by the operators of the transmission systems from which cross-border flows originate and the systems where those flows end.
- (36) Payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs.
- (37) The actual amount payable for cross-border access to the system can vary considerably, depending on the transmission system operator involved and as a result of differences in the structure of the tariffication systems applied in Member States. A certain degree of harmonisation is therefore necessary in order to avoid distortions of trade.

- (38) There should be rules on the use of revenues from congestion-management procedures, unless the specific nature of the interconnector concerned justifies an exemption from those rules.
- (39) To provide for a level playing field between all market participants, network tariffs should be applied in a way which does not positively or negatively discriminate between production connected at the distribution level and production connected at the transmission level. Network tariffs should not discriminate against energy storage, and should not create disincentives for participation in demand response or represent an obstacle to improving energy efficiency.
- (40) In order to increase transparency and comparability in tariff-setting where binding harmonisation is not seen as adequate, a best practices report on tariff methodologies should be issued by the European Agency for the Cooperation of Energy Regulators ('ACER') established by Regulation (EU) 2019/942 of the European Parliament and of the Council ⁽¹⁰⁾.
- (41) To better ensure optimal investment in the trans-European grid and to better address the challenge where viable interconnection projects cannot be built for lack of prioritisation at national level, the use of congestion rents should be reconsidered and contribute to guarantee availability and maintain or increase interconnection capacities.
- (42) In order to ensure optimal management of the electricity transmission network and to allow trading and supplying electricity across borders in the Union, the ENTSO for Electricity, should be established. The tasks of the ENTSO for Electricity should be carried out in accordance with Union's competition rules which remain applicable to the decisions of the ENTSO for Electricity. The tasks of the ENTSO for Electricity should be well-defined and its working method should ensure efficiency and transparency. The network codes prepared by the ENTSO for Electricity are not intended to replace the necessary national network codes for non-cross-border issues. Given that more effective progress may be achieved through an approach at regional level, transmission system operators should set up regional structures within the overall cooperation structure, whilst ensuring that results at regional level are compatible with network codes and non-binding ten-year network development plans at Union level. Member States should promote cooperation and monitor the effectiveness of the network at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market for electricity.
- (43) The ENTSO for Electricity should carry out a robust medium to long-term European resource adequacy assessment to provide an objective basis for the assessment of adequacy concerns. The resource adequacy concern that capacity mechanisms address should be based on the European resource adequacy assessment. That assessment may be complemented by national assessments.
- (44) The methodology for the long-term resource adequacy assessment (from ten-year-ahead to year-ahead) set out in this Regulation has a different purpose than the seasonal adequacy assessments (six months ahead) as set out in Article 9 of Regulation (EU) 2019/941 of the European Parliament and of the Council ⁽¹¹⁾. Medium to long-term assessments are mainly used to identify adequacy concerns and to assess the need for capacity mechanisms whereas seasonal adequacy assessments are used to alert to short-term risks that might occur in the following six months that are likely to result in a significant deterioration of the electricity supply situation. In addition, regional coordination centres also carry out regional adequacy assessments on electricity transmission system operation. Those are very short-term adequacy assessments (from week-ahead to day-ahead) used in the context of system operation.
- (45) Before introducing capacity mechanisms, Member States should assess the regulatory distortions contributing to the related resource adequacy concern. Member States should be required to adopt measures to eliminate the identified distortions, and should adopt a timeline for their implementation. Capacity mechanisms should only be introduced to address the adequacy problems that cannot be solved through the removal of such distortions.

⁽¹⁰⁾ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (see page 22 of this Official Journal).

⁽¹¹⁾ Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (see page 1 of this Official Journal).

- (46) Member States intending to introduce capacity mechanisms should derive resource adequacy targets on the basis of a transparent and verifiable process. Member States should have the freedom to set their own desired level of security of supply.
- (47) Pursuant to Article 108 TFEU, the Commission has exclusive competence to assess the compatibility with the internal market of State aid measures which the Member States may put in place. That assessment is to be carried out on the basis of Article 107(3) TFEU and in accordance with the relevant provisions and guidelines which the Commission may adopt to that effect. This Regulation is without prejudice to the Commission's exclusive competence conferred by TFEU.
- (48) Capacity mechanisms that are in place should be reviewed in light of this Regulation.
- (49) Detailed rules for facilitating effective cross-border participation in capacity mechanisms should be laid down in this Regulation. Transmission system operators should facilitate the cross-border participation of interested producers in capacity mechanisms in other Member States. Therefore, they should calculate capacities up to which cross-border participation would be possible, should enable participation and should check availabilities. Regulatory authorities should enforce the cross-border rules in the Member States.
- (50) Capacity mechanisms should not result in overcompensation, while at the same time they should ensure security of supply. In that regard, capacity mechanisms other than strategic reserves should be constructed to ensure that the price paid for availability automatically tends to zero when the level of capacity which would be profitable on the energy market in the absence of a capacity mechanism is expected to be adequate to meet the level of capacity demanded.
- (51) To support Member States and regions facing social, industrial and economic challenges due to the energy transition, the Commission has set up a coal and carbon-intensive regions initiative. In that context, the Commission should assist Member States, including with targeted financial support to enable a 'just transition' in those regions, where available.
- (52) In view of the differences between national energy systems and the technical limitations of existing electricity networks, the best approach to achieving progress in market integration is often at a regional level. Regional cooperation between transmission system operators should thus be strengthened. In order to ensure efficient cooperation, a new regulatory framework should provide for stronger regional governance and regulatory oversight, including by strengthening ACER's decision-making power with respect to cross-border issues. It is possible that closer cooperation of Member States is also needed in crisis situations, to increase security of supply and to limit market distortions.
- (53) Coordination between transmission system operators at regional level has been formalised with the mandatory participation of transmission system operators in regional security coordinators. The regional coordination of transmission system operators should be further developed with an enhanced institutional framework via the establishment of regional coordination centres. The establishment of regional coordination centres should take into account existing or planned regional coordination initiatives and should support the increasingly integrated operation of electricity systems across the Union, thereby ensuring their efficient and secure performance. For that reason, it is necessary to ensure that the coordination of transmission system operators through regional coordination centres takes place across the Union. Where transmission system operators of a given region are not yet coordinated by an existing or a planned regional coordination centre, the transmission system operators in that region should establish or designate a regional coordination centre.
- (54) The geographical scope of regional coordination centres should allow them to contribute effectively to the coordination of the operations of transmission system operators across regions and should lead to enhanced system security and market efficiency. Regional coordination centres should have the flexibility to carry out their tasks in the region in the way which is best adapted to the nature of the individual tasks entrusted to them.

- (55) Regional coordination centres should carry out tasks where their regionalisation brings added value compared to tasks performed at national level. The tasks of regional coordination centres should cover the tasks carried out by regional security coordinators pursuant to the Commission Regulation (EU) 2017/1485 ⁽¹²⁾ as well as additional system operation, market operation and risk preparedness tasks. The tasks carried out by regional coordination centres should not include real-time operation of the electricity system.
- (56) In performing their tasks, regional coordination centres should contribute to the achievement of the 2030 and 2050 objectives set out in the climate and energy policy framework.
- (57) Regional coordination centres should primarily act in the interest of system and market operation of the region. Hence, regional coordination centres should be entrusted with the powers necessary to coordinate the actions to be taken by transmission system operators of the system operation region for certain functions and with an enhanced advisory role for the remaining functions.
- (58) The human, technical, physical and financial resources of regional coordination centres should not exceed what is strictly necessary for the fulfilment of their tasks.
- (59) The ENTSO for Electricity should ensure that the activities of regional coordination centres are coordinated across regional boundaries.
- (60) In order to increase efficiencies in the electricity distribution networks in the Union and to ensure close cooperation with transmission system operators and the ENTSO for Electricity, an entity of distribution system operators in the Union (EU DSO entity) should be established. The tasks of the EU DSO entity should be well-defined and its working method should ensure efficiency, transparency and representativeness among Union distribution system operators. The EU DSO entity should closely cooperate with the ENTSO for Electricity on the preparation and implementation of the network codes where applicable and should work on providing guidance on the integration inter alia of distributed generation and energy storage in distribution networks or other areas which relate to the management of distribution networks. The EU DSO entity should also take due account of the specificities inherent to distribution systems connected downstream with electricity systems on islands which are not connected with other electricity systems by means of interconnectors.
- (61) Increased cooperation and coordination among transmission system operators is required to create network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward-looking planning and sound technical evolution of the transmission system in the Union, including the creation of interconnection capacities, with due regard to the environment. Those network codes should be in line with non-binding framework guidelines, which are developed by ACER. ACER should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with those framework guidelines, and it should be enabled to recommend them for adoption by the Commission. ACER should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Transmission system operators should operate their networks in accordance with those network codes.
- (62) Experience with the development and adoption of network codes has shown that it is useful to streamline the development procedure by clarifying that ACER has the right to revise draft electricity network codes before submitting them to the Commission.
- (63) To ensure the smooth functioning of the internal market for electricity, provision should be made for procedures which allow the adoption of decisions and guidelines with regard, inter alia, to tariffication and capacity allocation by the Commission whilst ensuring the involvement of regulatory authorities in that process, where appropriate through their association at Union level. Regulatory authorities, together with other relevant authorities in the Member States, have an important role to play in contributing to the proper functioning of the internal market for electricity.

⁽¹²⁾ Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ L 220, 25.8.2017, p. 1).

- (64) All market participants have an interest in the work expected of the ENTSO for Electricity. An effective consultation process is therefore essential and existing structures that are set up to facilitate and streamline the consultation process, such as via regulatory authorities or ACER, should play an important role.
- (65) In order to ensure greater transparency regarding the entire electricity transmission network in the Union, the ENTSO for Electricity should draw up, publish and regularly update a non-binding Union-wide ten-year network development plan. Viable electricity transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan.
- (66) Investments in major new infrastructure should be promoted strongly while ensuring the proper functioning of the internal market for electricity. In order to enhance the positive effect of exempted direct current interconnectors on competition and security of supply, market interest during the project-planning phase should be tested and congestion-management rules should be adopted. Where direct current interconnectors are located in the territory of more than one Member State, ACER should handle as a last resort the exemption request in order to take better account of its cross-border implications and to facilitate its administrative handling. Moreover, given the exceptional risk profile of constructing those exempt major infrastructure projects, undertakings with supply and production interests should be able to benefit from a temporary derogation from the full unbundling rules for the projects concerned. Exemptions granted under Regulation (EC) No 1228/2003 of the European Parliament and of the Council ⁽¹³⁾ continue to apply until the scheduled expiry date as decided in the granted exemption decision. Offshore electricity infrastructure with dual functionality (so-called 'offshore hybrid assets') combining transport of offshore wind energy to shore and interconnectors, should also be eligible for exemption such as under the rules applicable to new direct current interconnectors. Where necessary, the regulatory framework should duly consider the specific situation of those assets to overcome barriers to the realisation of societally cost-efficient offshore hybrid assets.
- (67) To enhance trust in the market, its participants need to be sure that those engaging in abusive behaviour can be subject to effective, proportionate and dissuasive penalties. The competent authorities should be given the competence to investigate effectively allegations of market abuse. To that end, it is necessary that competent authorities have access to data that provides information on operational decisions made by suppliers. In the electricity market, many relevant decisions are made by the producers, which should keep information in relation to those decisions available to and easily accessible by the competent authorities for a set period. The competent authorities should, furthermore, regularly monitor whether the transmission system operators comply with the rules. Small producers with no real ability to distort the market should be exempt from that obligation.
- (68) The Member States and the competent authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission. Where necessary, the Commission should have an opportunity to request relevant information directly from undertakings concerned, provided that the competent authorities are informed.
- (69) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (70) Member States, the Energy Community Contracting Parties and other third countries which apply this Regulation or are part of the synchronous area of Continental Europe should closely cooperate on all matters concerning the development of an integrated electricity trading region and should take no measures that endanger the further integration of electricity markets or security of supply of Member States and Contracting Parties.
- (71) At the time of the adoption of Regulation (EC) No 714/2009, only few rules for the internal market for electricity existed at Union level. Since then, the Union internal market has become more complex due to the fundamental change the markets are undergoing in particular regarding deployment of variable renewable electricity production. The network codes and guidelines have therefore become extensive and comprehensive and encompass both technical and general issues.

⁽¹³⁾ Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (OJ L 176, 15.7.2003, p. 1).

- (72) In order to ensure the minimum degree of harmonisation required for effective market functioning, the power to adopt acts in accordance with Article 290 of TFEU should be delegated to the Commission in respect of non-essential elements of certain specific areas which are fundamental for market integration. Those acts should include the adoption and amendment of certain network codes and guidelines where they supplement this Regulation, the regional cooperation of transmission system operators and regulatory authorities, financial compensations between transmission system operators, as well as the application of exemption provisions for new interconnectors. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 ⁽¹⁴⁾ on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (73) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers in accordance with Article 291 of TFEU should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁵⁾. The examination procedure should be used for the adoption of those implementing acts.
- (74) Since the objective of this Regulation, namely the provision of a harmonised framework for cross-border exchanges of electricity, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (75) For reasons of coherence and legal certainty, no provision in this Regulation should prevent the application of the derogations emerging from Article 66 of Directive (EU) 2019/944,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation aims to:

- (a) set the basis for an efficient achievement of the objectives of the Energy Union and in particular the climate and energy framework for 2030 by enabling market signals to be delivered for increased efficiency, higher share of renewable energy sources, security of supply, flexibility, sustainability, decarbonisation and innovation;
- (b) set fundamental principles for well-functioning, integrated electricity markets, which allow all resource providers and electricity customers non-discriminatory market access, empower consumers, ensure competitiveness on the global market as well as demand response, energy storage and energy efficiency, and facilitate aggregation of distributed demand and supply, and enable market and sectoral integration and market-based remuneration of electricity generated from renewable sources;

⁽¹⁴⁾ OJL 123, 12.5.2016, p. 1.

⁽¹⁵⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (c) set fair rules for cross-border exchanges in electricity, thus enhancing competition within the internal market for electricity, taking into account the particular characteristics of national and regional markets, including the establishment of a compensation mechanism for cross-border flows of electricity, the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems;
- (d) facilitate the emergence of a well-functioning and transparent wholesale market, contributing to a high level of security of electricity supply, and provide for mechanisms to harmonise the rules for cross-border exchanges in electricity.

Article 2

Definitions

The following definitions apply:

- (1) 'interconnector' means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States;
- (2) 'regulatory authority' means a regulatory authority designated by each Member State pursuant to Article 57(1) of Directive (EU) 2019/944;
- (3) 'cross-border flow' means a physical flow of electricity on a transmission network of a Member State that results from the impact of the activity of producers, customers, or both, outside that Member State on its transmission network;
- (4) 'congestion' means a situation in which all requests from market participants to trade between network areas cannot be accommodated because they would significantly affect the physical flows on network elements which cannot accommodate those flows;
- (5) 'new interconnector' means an interconnector not completed by 4 August 2003;
- (6) 'structural congestion' means congestion in the transmission system that is capable of being unambiguously defined, is predictable, is geographically stable over time, and frequently reoccurs under normal electricity system conditions;
- (7) 'market operator' means an entity that provides a service whereby the offers to sell electricity are matched with bids to buy electricity;
- (8) 'nominated electricity market operator' or 'NEMO' means a market operator designated by the competent authority to carry out tasks related to single day-ahead or single intraday coupling;
- (9) 'value of lost load' means an estimation in euro/MWh, of the maximum electricity price that customers are willing to pay to avoid an outage;
- (10) 'balancing' means all actions and processes, in all timelines, through which transmission system operators ensure, in an ongoing manner, maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality;
- (11) 'balancing energy' means energy used by transmission system operators to carry out balancing;
- (12) 'balancing service provider' means a market participant providing either or both balancing energy and balancing capacity to transmission system operators;
- (13) 'balancing capacity' means a volume of capacity that a balancing service provider has agreed to hold and in respect to which the balancing service provider has agreed to submit bids for a corresponding volume of balancing energy to the transmission system operator for the duration of the contract;
- (14) 'balance responsible party' means a market participant or its chosen representative responsible for its imbalances in the electricity market;
- (15) 'imbalance settlement period' means the time unit for which the imbalance of the balance responsible parties is calculated;

- (16) 'imbalance price' means the price, be it positive, zero or negative, in each imbalance settlement period for an imbalance in each direction;
- (17) 'imbalance price area' means the area in which an imbalance price is calculated;
- (18) 'prequalification process' means the process to verify the compliance of a provider of balancing capacity with the requirements set by the transmission system operators;
- (19) 'reserve capacity' means the amount of frequency containment reserves, frequency restoration reserves or replacement reserves that needs to be available to the transmission system operator;
- (20) 'priority dispatch' means, with regard to the self-dispatch model, the dispatch of power plants on the basis of criteria which are different from the economic order of bids and, with regard to the central dispatch model, the dispatch of power plants on the basis of criteria which are different from the economic order of bids and from network constraints, giving priority to the dispatch of particular generation technologies;
- (21) 'capacity calculation region' means the geographic area in which the coordinated capacity calculation is applied;
- (22) 'capacity mechanism' means a temporary measure to ensure the achievement of the necessary level of resource adequacy by remunerating resources for their availability, excluding measures relating to ancillary services or congestion management;
- (23) 'high-efficiency cogeneration' means cogeneration which meets the criteria laid down in Annex II to Directive 2012/27/EU of the European Parliament and of the Council ⁽¹⁶⁾;
- (24) 'demonstration project' means a project which demonstrates a technology as a first of its kind in the Union and represents a significant innovation that goes well beyond the state of the art;
- (25) 'market participant' means a natural or legal person who buys, sells or generates electricity, who is engaged in aggregation or who is an operator of demand response or energy storage services, including through the placing of orders to trade, in one or more electricity markets, including in balancing energy markets;
- (26) 'redispatching' means a measure, including curtailment, that is activated by one or more transmission system operators or distribution system operators by altering the generation, load pattern, or both, in order to change physical flows in the electricity system and relieve a physical congestion or otherwise ensure system security;
- (27) 'countertrading' means a cross-zonal exchange initiated by system operators between two bidding zones to relieve physical congestion;
- (28) 'power-generating facility' means a facility that converts primary energy into electrical energy and which consists of one or more power-generating modules connected to a network;
- (29) 'central dispatching model' means a scheduling and dispatching model where the generation schedules and consumption schedules as well as dispatching of power-generating facilities and demand facilities, in reference to dispatchable facilities, are determined by a transmission system operator within an integrated scheduling process;
- (30) 'self-dispatch model' means a scheduling and dispatching model where the generation schedules and consumption schedules as well as dispatching of power-generating facilities and demand facilities are determined by the scheduling agents of those facilities;
- (31) 'standard balancing product' means a harmonised balancing product defined by all transmission system operators for the exchange of balancing services;
- (32) 'specific balancing product' means a balancing product different from a standard balancing product;
- (33) 'delegated operator' means an entity to whom specific tasks or obligations entrusted to a transmission system operator or nominated electricity market operator under this Regulation or other Union legal acts have been delegated by that transmission system operator or NEMO or have been assigned by a Member State or regulatory authority;

⁽¹⁶⁾ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

- (34) 'customer' means a customer as defined in point (1) of Article 2 of Directive (EU) 2019/944;
- (35) 'final customer' means final customer as defined in point (3) of Article 2 of Directive (EU) 2019/944;
- (36) 'wholesale customer' means a wholesale customer as defined in point (2) of Article 2 of Directive (EU) 2019/944;
- (37) 'household customer' means household customer as defined in point (4) of Article 2 of Directive (EU) 2019/944;
- (38) 'small enterprise' means small enterprise as defined in point (7) of Article 2 of Directive (EU) 2019/944;
- (39) 'active customer' means active customer as defined in point (8) of Article 2 of Directive (EU) 2019/944;
- (40) 'electricity markets' means electricity markets as defined in point (9) of Article 2 of Directive (EU) 2019/944;
- (41) 'supply' means supply as defined in point (12) of Article 2 of Directive (EU) 2019/944;
- (42) 'electricity supply contract' means electricity supply contract as defined in point (13) of Article 2 of Directive (EU) 2019/944;
- (43) 'aggregation' means aggregation as defined in point (18) of Article 2 of Directive (EU) 2019/944;
- (44) 'demand response' means demand response as defined in point (20) of Article 2 of Directive (EU) 2019/944;
- (45) 'smart metering system' means smart metering system as defined in point (23) of Article 2 of Directive (EU) 2019/944;
- (46) 'interoperability' means interoperability as defined in point (24) of Article 2 of Directive (EU) 2019/944;
- (47) 'distribution' means distribution as defined in point (28) of Article 2 of Directive (EU) 2019/944;
- (48) 'distribution system operator' means distribution system operator as defined in point (29) of Article 2 of Directive (EU) 2019/944;
- (49) 'energy efficiency' means energy efficiency as defined in point (30) of Article 2 of Directive (EU) 2019/944;
- (50) 'energy from renewable sources' or 'renewable energy' means energy from renewable sources as defined in point (31) of Article 2 of Directive (EU) 2019/944;
- (51) 'distributed generation' means distributed generation as defined in point (32) of Article 2 of Directive (EU) 2019/944;
- (52) 'transmission' means transmission as defined in point (34) of Article 2 of Directive (EU) 2019/944;
- (53) 'transmission system operator' means transmission system operator as defined in point (35) of Article 2 of Directive (EU) 2019/944;
- (54) 'system user' means system user as defined in point (36) of Article 2 of Directive (EU) 2019/944;
- (55) 'generation' means generation as defined in point (37) of Article 2 of Directive (EU) 2019/944;
- (56) 'producer' means producer as defined in point (38) of Article 2 of Directive (EU) 2019/944;
- (57) 'interconnected system' means interconnected system as defined in point (40) of Article 2 of Directive (EU) 2019/944;
- (58) 'small isolated system' means small isolated system as defined in point (42) of Article 2 of Directive (EU) 2019/944;
- (59) 'small connected system' means small connected system as defined in point (43) of Article 2 of Directive (EU) 2019/944;
- (60) 'ancillary service' means ancillary service as defined in point (48) of Article 2 of Directive (EU) 2019/944;
- (61) 'non-frequency ancillary service' means non-frequency ancillary service as defined in point (49) of Article 2 of Directive (EU) 2019/944;

- (62) 'energy storage' means energy storage as defined in point (59) of Article 2 of Directive (EU) 2019/944;
- (63) 'regional coordination centre' means regional coordination centre established pursuant to Article 35 of this Regulation;
- (64) 'wholesale energy market' means wholesale energy market as defined in point (6) of Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council ⁽¹⁷⁾;
- (65) 'bidding zone' means the largest geographical area within which market participants are able to exchange energy without capacity allocation;
- (66) 'capacity allocation' means the attribution of cross-zonal capacity;
- (67) 'control area' means a coherent part of the interconnected system, operated by a single system operator and shall include connected physical loads and/or generation units if any;
- (68) 'coordinated net transmission capacity' means a capacity calculation method based on the principle of assessing and defining *ex ante* a maximum energy exchange between adjacent bidding zones;
- (69) 'critical network element' means a network element either within a bidding zone or between bidding zones taken into account in the capacity calculation process, limiting the amount of power that can be exchanged;
- (70) 'cross-zonal capacity' means the capability of the interconnected system to accommodate energy transfer between bidding zones;
- (71) 'generation unit' means a single electricity generator belonging to a production unit.

CHAPTER II

GENERAL RULES FOR THE ELECTRICITY MARKET

Article 3

Principles regarding the operation of electricity markets

Member States, regulatory authorities, transmission system operators, distribution system operators, market operators and delegated operators shall ensure that electricity markets are operated in accordance with the following principles:

- (a) prices shall be formed on the basis of demand and supply;
- (b) market rules shall encourage free price formation and shall avoid actions which prevent price formation on the basis of demand and supply;
- (c) market rules shall facilitate the development of more flexible generation, sustainable low carbon generation, and more flexible demand;
- (d) customers shall be enabled to benefit from market opportunities and increased competition on retail markets and shall be empowered to act as market participants in the energy market and the energy transition;
- (e) market participation of final customers and small enterprises shall be enabled by aggregation of generation from multiple power-generating facilities or load from multiple demand response facilities to provide joint offers on the electricity market and be jointly operated in the electricity system, in accordance with Union competition law;
- (f) market rules shall enable the decarbonisation of the electricity system and thus the economy, including by enabling the integration of electricity from renewable energy sources and by providing incentives for energy efficiency;
- (g) market rules shall deliver appropriate investment incentives for generation, in particular for long-term investments in a decarbonised and sustainable electricity system, energy storage, energy efficiency and demand response to meet market needs, and shall facilitate fair competition thus ensuring security of supply;

⁽¹⁷⁾ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

- (h) barriers to cross-border electricity flows between bidding zones or Member States and cross-border transactions on electricity markets and related services markets shall be progressively removed;
- (i) market rules shall provide for regional cooperation where effective;
- (j) safe and sustainable generation, energy storage and demand response shall participate on equal footing in the market, under the requirements provided for in the Union law;
- (k) all producers shall be directly or indirectly responsible for selling the electricity they generate;
- (l) market rules shall allow for the development of demonstration projects into sustainable, secure and low-carbon energy sources, technologies or systems which are to be realised and used to the benefit of society;
- (m) market rules shall enable the efficient dispatch of generation assets, energy storage and demand response;
- (n) market rules shall allow for entry and exit of electricity generation, energy storage and electricity supply undertakings based on those undertakings' assessment of the economic and financial viability of their operations;
- (o) in order to allow market participants to be protected against price volatility risks on a market basis, and mitigate uncertainty on future returns on investment, long-term hedging products shall be tradable on exchanges in a transparent manner and long-term electricity supply contracts shall be negotiable over the counter, subject to compliance with Union competition law;
- (p) market rules shall facilitate trade of products across the Union and regulatory changes shall take into account effects on both short-term and long-term forward and futures markets and products;
- (q) market participants shall have a right to obtain access to the transmission networks and distribution networks on objective, transparent and non-discriminatory terms.

Article 4

Just transition

The Commission shall support Member States that put in place a national strategy for the progressive reduction of existing coal and other solid fossil fuel generation and mining capacity through all available means to enable a just transition in regions affected by structural change. The Commission shall assist Member States in addressing the social and economic impacts of the clean energy transition.

The Commission shall work in close partnership with the stakeholders in coal and carbon-intensive regions, shall facilitate the access to and use of available funds and programmes, and shall encourage the exchange of good practices, including discussions on industrial roadmaps and reskilling needs.

Article 5

Balance responsibility

1. All market participants shall be responsible for the imbalances they cause in the system ('balance responsibility'). To that end, market participants shall either be balance responsible parties or shall contractually delegate their responsibility to a balance responsible party of their choice. Each balance responsible party shall be financially responsible for its imbalances and shall strive to be balanced or shall help the electricity system to be balanced.
2. Member States may provide derogations from balance responsibility only for:
 - (a) demonstration projects for innovative technologies, subject to approval by the regulatory authority, provided that those derogations are limited to the time and extent necessary for achieving the demonstration purposes;

- (b) power-generating facilities using renewable energy sources with an installed electricity capacity of less than 400 kW;
- (c) installations benefitting from support approved by the Commission under Union State aid rules pursuant to Articles 107, 108 and 109 TFEU, and commissioned before 4 July 2019.

Member States may, without prejudice to Articles 107 and 108 TFEU, provide incentives to market participants which are fully or partly exempted from balancing responsibility to accept full balancing responsibility.

3. When a Member State provides a derogation in accordance with paragraph 2, it shall ensure that the financial responsibility for imbalances is fulfilled by another market participant.
4. For power-generating facilities commissioned from 1 January 2026, point (b) of paragraph 2 shall apply only to generating installations using renewable energy sources with an installed electricity capacity of less than 200 kW.

Article 6

Balancing market

1. Balancing markets, including prequalification processes, shall be organised in such a way as to:
 - (a) ensure effective non-discrimination between market participants taking account of the different technical needs of the electricity system and the different technical capabilities of generation sources, energy storage and demand response;
 - (b) ensure that services are defined in a transparent and technologically neutral manner and are procured in a transparent, market-based manner;
 - (c) ensure non-discriminatory access to all market participants, individually or through aggregation, including for electricity generated from variable renewable energy sources, demand response and energy storage;
 - (d) respect the need to accommodate the increasing share of variable generation, increased demand responsiveness and the advent of new technologies.
2. The price of balancing energy shall not be pre-determined in contracts for balancing capacity. Procurement processes shall be transparent in accordance with Article 40(4) of Directive (EU) 2019/944, while protecting the confidentiality of commercially sensitive information.
3. Balancing markets shall ensure operational security whilst allowing for maximum use and efficient allocation of cross-zonal capacity across timeframes in accordance with Article 17.
4. The settlement of balancing energy for standard balancing products and specific balancing products shall be based on marginal pricing (pay-as-cleared) unless all regulatory authorities approve an alternative pricing method on the basis of a joint proposal by all transmission system operators following an analysis demonstrating that that alternative pricing method is more efficient.

Market participants shall be allowed to bid as close to real time as possible, and balancing energy gate closure times shall not be before the intraday cross-zonal gate closure time.

Transmission system operators applying a central dispatching model may establish additional rules in accordance with the guideline on electricity balancing adopted on the basis of Article 6(11) of Regulation (EC) No 714/2009.

5. The imbalances shall be settled at a price that reflects the real-time value of energy.
6. Each imbalance price area shall be equal to a bidding zone, except in the case of a central dispatching model where an imbalance price area may constitute a part of a bidding zone.
7. The dimensioning of reserve capacity shall be performed by the transmission system operators and shall be facilitated at regional level.

8. The procurement of balancing capacity shall be performed by the transmission system operator and may be facilitated at a regional level. Reservation of cross-border capacity to that end may be limited. The procurement of balancing capacity shall be market-based and organised in such a way as to be non-discriminatory between market participants in the prequalification process in accordance with Article 40(4) of Directive (EU) 2019/944 whether market participants participate individually or through aggregation.

Procurement of balancing capacity shall be based on a primary market unless and to the extent that the regulatory authority has provided for a derogation to allow the use of other forms of market-based procurement on the grounds of a lack of competition in the market for balancing services. Derogations from the obligation to base the procurement of balancing capacity on use of primary markets shall be reviewed every three years.

9. The procurement of upward balancing capacity and downward balancing capacity shall be carried out separately, unless the regulatory authority approves a derogation from this principle on the basis that this would result in higher economic efficiency as demonstrated by an evaluation performed by the transmission system operator. Contracts for balancing capacity shall not be concluded more than one day before the provision of the balancing capacity and the contracting period shall be no longer than one day, unless and to the extent that the regulatory authority has approved the earlier contracting or longer contracting periods to ensure the security of supply or to improve economic efficiency.

Where a derogation is granted, for at least 40 % of the standard balancing products and a minimum of 30 % of all products used for balancing capacity, contracts for the balancing capacity shall be concluded for no more than one day before the provision of the balancing capacity and the contracting period shall be no longer than one day. The contracting of the remaining part of the balancing capacity shall be performed for a maximum of one month in advance of the provision of balancing capacity and shall have a maximum contractual period of one month.

10. At the request of the transmission system operator, the regulatory authority may decide to extend the contractual period of the remaining part of balancing capacity referred to in paragraph 9 to a maximum period of twelve months provided that such a decision is limited in time, and the positive effects in terms of lowering of costs for final customers exceed the negative impacts on the market. The request shall include:

- (a) the specific period during which the exemption would apply;
- (b) the specific volume of balancing capacity to which the exemption would apply;
- (c) an analysis of the impact of the exemption on the participation of balancing resources; and
- (d) a justification for the exemption demonstrating that such an exemption would lead to lower costs to final customers.

11. Notwithstanding paragraph 10, from 1 January 2026 contract periods shall not be longer than six months.

12. By 1 January 2028, regulatory authorities shall report to the Commission and ACER on the share of the total capacity covered by contracts with a duration or a procurement period of longer than one day.

13. Transmission system operators or their delegated operators shall publish, as close to real time as possible but with a delay after delivery of no more than 30 minutes, the current system balance of their scheduling areas, the estimated imbalance prices and the estimated balancing energy prices.

14. Transmission system operators may, where standard balancing products are not sufficient to ensure operational security or where some balancing resources cannot participate in the balancing market through standard balancing products, propose, and the regulatory authorities may approve, derogations from paragraphs 2 and 4 for specific balancing products which are activated locally without exchanging them with other transmission system operators.

Proposals for derogations shall include a description of measures proposed to minimise the use of specific products, subject to economic efficiency, a demonstration that the specific products do not create significant inefficiencies and distortions in the balancing market either inside or outside the scheduling area, as well as, where applicable, the rules and information for the process for converting the balancing energy bids from specific balancing products into balancing energy bids from standard balancing products.

*Article 7***Day-ahead and intraday markets**

1. Transmission system operators and NEMOs shall jointly organise the management of the integrated day-ahead and intraday markets in accordance with Regulation (EU) 2015/1222. Transmission system operators and NEMOs shall cooperate at Union level or, where more appropriate, at a regional level in order to maximise the efficiency and effectiveness of Union electricity day-ahead and intraday trading. The obligation to cooperate shall be without prejudice to the application of Union competition law. In their functions relating to electricity trading, transmission system operators and NEMOs shall be subject to regulatory oversight by the regulatory authorities pursuant to Article 59 of Directive (EU) 2019/944 and ACER pursuant to Articles 4 and 8 of Regulation (EU) 2019/942.

2. Day-ahead and intraday markets shall:

- (a) be organised in such a way as to be non-discriminatory;
- (b) maximise the ability of all market participants to manage imbalances;
- (c) maximise the opportunities for all market participants to participate in cross-zonal trade in as close as possible to real time across all bidding zones;
- (d) provide prices that reflect market fundamentals, including the real time value of energy, on which market participants are able to rely when agreeing on longer-term hedging products;
- (e) ensure operational security while allowing for maximum use of transmission capacity;
- (f) be transparent while at the same time protecting the confidentiality of commercially sensitive information and ensuring trading occurs in an anonymous manner;
- (g) make no distinction between trades made within a bidding zone and across bidding zones; and
- (h) be organised in such a way as to ensure that all markets participants are able to access the market individually or through aggregation.

*Article 8***Trade on day-ahead and intraday markets**

1. NEMOs shall allow market participants to trade energy as close to real time as possible and at least up to the intraday cross-zonal gate closure time.

2. NEMOs shall provide market participants with the opportunity to trade in energy in time intervals which are at least as short as the imbalance settlement period for both day-ahead and intraday markets.

3. NEMOs shall provide products for trading in day-ahead and intraday markets which are sufficiently small in size, with minimum bid sizes of 500 kW or less, to allow for the effective participation of demand-side response, energy storage and small-scale renewables including direct participation by customers.

4. By 1 January 2021, the imbalance settlement period shall be 15 minutes in all scheduling areas, unless regulatory authorities have granted a derogation or an exemption. Derogations may be granted only until 31 December 2024.

From 1 January 2025, the imbalance settlement period shall not exceed 30 minutes where an exemption has been granted by all the regulatory authorities within a synchronous area.

*Article 9***Forward markets**

1. In accordance with Regulation (EU) 2016/1719, transmission system operators shall issue long-term transmission rights or have equivalent measures in place to allow for market participants, including owners of power-generating facilities using renewable energy sources, to hedge price risks across bidding zone borders, unless an assessment of the forward market on the bidding zone borders performed by the competent regulatory authorities shows that there are sufficient hedging opportunities in the concerned bidding zones.
2. Long-term transmission rights shall be allocated in a transparent, market based and non-discriminatory manner through a single allocation platform.
3. Subject to compliance with Union competition law, market operators shall be free to develop forward hedging products, including long-term forward hedging products, to provide market participants, including owners of power-generating facilities using renewable energy sources, with appropriate possibilities for hedging financial risks against price fluctuations. Member States shall not require that such hedging activity be limited to trades within a Member State or bidding zone.

*Article 10***Technical bidding limits**

1. There shall be neither a maximum nor a minimum limit to the wholesale electricity price. This provision shall apply, inter alia, to bidding and clearing in all timeframes and shall include balancing energy and imbalance prices, without prejudice to the technical price limits which may be applied in the balancing timeframe and in the day-ahead and intraday timeframes in accordance with paragraph 2.
2. NEMOs may apply harmonised limits on maximum and minimum clearing prices for day-ahead and intraday timeframes. Those limits shall be sufficiently high so as not to unnecessarily restrict trade, shall be harmonised for the internal market and shall take into account the maximum value of lost load. NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached. The adjusted higher limits shall remain applicable until further increases under that mechanism are required.
3. Transmission system operators shall not take any measures for the purpose of changing wholesale prices.
4. Regulatory authorities or, where a Member State has designated another competent authority for that purpose, such designated competent authorities, shall identify policies and measures applied within their territory that could contribute to indirectly restricting wholesale price formation, including limiting bids relating to the activation of balancing energy, capacity mechanisms, measures by the transmission system operators, measures intended to challenge market outcomes, or to prevent the abuse of dominant positions or inefficiently defined bidding zones.
5. Where a regulatory authority or designated competent authority has identified a policy or measure which could serve to restrict wholesale price formation it shall take all appropriate actions to eliminate or, if not possible, to mitigate the impact of that policy or measure on bidding behaviour. Member States shall provide a report to the Commission by 5 January 2020 detailing the measures and actions they have taken or intend to take.

*Article 11***Value of lost load**

1. By 5 July 2020 where required for the purpose of setting a reliability standard in accordance with Article 25 regulatory authorities or, where a Member State has designated another competent authority for that purpose, such designated competent authorities shall determine a single estimate of the value of lost load for their territory. That estimate shall be made publically available. Regulatory authorities or other designated competent authorities may

determine different estimates per bidding zone if they have more than one bidding zone in their territory. Where a bidding zone consists of territories of more than one Member State, the concerned regulatory authorities or other designated competent authorities shall determine a single estimate of the value of lost load for that bidding zone. In determining the single estimate of the value of lost load, regulatory authorities or other designated competent authorities shall apply the methodology referred to in Article 23(6).

2. Regulatory authorities and designated competent authorities shall update their estimate of the value of lost load at least every five years, or earlier where they observe a significant change.

Article 12

Dispatching of generation and demand response

1. The dispatching of power-generating facilities and demand response shall be non-discriminatory, transparent and, unless otherwise provided under paragraphs 2 to 6, market based.

2. Without prejudice to Articles 107, 108 and 109 TFEU, Member States shall ensure that when dispatching electricity generating installations, system operators shall give priority to generating installations using renewable energy sources to the extent permitted by the secure operation of the national electricity system, based on transparent and non-discriminatory criteria and where such power-generating facilities are either:

- (a) power-generating facilities that use renewable energy sources and have an installed electricity capacity of less than 400 kW; or
- (b) demonstration projects for innovative technologies, subject to approval by the regulatory authority, provided that such priority is limited to the time and extent necessary for achieving the demonstration purposes.

3. A Member State may decide not to apply priority dispatch to power-generating facilities as referred to in point (a) of paragraph 2 with a start of operation at least six months after that decision, or to apply a lower minimum capacity than that set out under point (a) of paragraph 2, provided that:

- (a) it has well-functioning intraday and other wholesale and balancing markets and that those markets are fully accessible to all market participants in accordance with this Regulation;
- (b) redispatching rules and congestion management are transparent to all market participants;
- (c) the national contribution of the Member State towards the Union's binding overall target for share of energy from renewable sources under Article 3(2) of Directive (EU) 2018/2001 of the European Parliament and of the Council⁽¹⁸⁾ and point (a)(2) of Article 4 of Regulation (EU) 2018/1999 of the European Parliament and of the Council⁽¹⁹⁾ is at least equal to the corresponding result of the formula set out in Annex II to Regulation (EU) 2018/1999 and the Member State's share of energy from renewable sources is not below its reference points under point (a)(2) of Article 4 of Regulation (EU) 2018/1999, or alternatively, the Member State's share of energy from renewable sources in gross final electricity consumption is at least 50 %;
- (d) the Member State has notified the planned derogation to the Commission setting out in detail how the conditions set out under points (a), (b) and (c) are fulfilled; and
- (e) the Member State has published the planned derogation, including the detailed reasoning for the granting of that derogation, taking due account of the protection of commercially sensitive information where required.

Any derogation shall avoid retroactive changes that affect generating installations already benefiting from priority dispatch, notwithstanding any agreement between a Member State and the operator of a generating installation on a voluntary basis.

⁽¹⁸⁾ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

⁽¹⁹⁾ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

Without prejudice to Articles 107, 108 and 109 TFEU, Member States may provide incentives to installations eligible for priority dispatch to voluntarily give up priority dispatch.

4. Without prejudice to Articles 107, 108 and 109 TFEU, Member States may provide for priority dispatch for electricity generated in power-generating facilities using high-efficiency cogeneration with an installed electricity capacity of less than 400 kW.

5. For power-generating facilities commissioned as from 1 January 2026, point (a) of paragraph 2 shall apply only to power-generating facilities that use renewable energy sources and have an installed electricity capacity of less than 200 kW.

6. Without prejudice to contracts concluded before 4 July 2019, power-generating facilities that use renewable energy sources or high-efficiency cogeneration and were commissioned before 4 July 2019 and, when commissioned, were subject to priority dispatch under Article 15(5) of Directive 2012/27/EU or Article 16(2) of Directive 2009/28/EC of the European Parliament and of the Council ⁽²⁰⁾ shall continue to benefit from priority dispatch. Priority dispatch shall no longer apply to such power-generating facilities from the date on which the power-generating facility becomes subject to significant modifications, which shall be deemed to be the case at least where a new connection agreement is required or where the generation capacity of the power-generating facility is increased.

7. Priority dispatch shall not endanger the secure operation of the electricity system, shall not be used as a justification for curtailment of cross-zonal capacities beyond what is provided for in Article 16 and shall be based on transparent and non-discriminatory criteria.

Article 13

Redispatching

1. The redispatching of generation and redispatching of demand response shall be based on objective, transparent and non-discriminatory criteria. It shall be open to all generation technologies, all energy storage and all demand response, including those located in other Member States unless technically not feasible.

2. The resources that are redispatched shall be selected from among generating facilities, energy storage or demand response using market-based mechanisms and shall be financially compensated. Balancing energy bids used for redispatching shall not set the balancing energy price.

3. Non-market-based redispatching of generation, energy storage and demand response may only be used where:

(a) no market-based alternative is available;

(b) all available market-based resources have been used;

(c) the number of available power generating, energy storage or demand response facilities is too low to ensure effective competition in the area where suitable facilities for the provision of the service are located; or

(d) the current grid situation leads to congestion in such a regular and predictable way that market-based redispatching would lead to regular strategic bidding which would increase the level of internal congestion and the Member State concerned either has adopted an action plan to address this congestion or ensures that minimum available capacity for cross-zonal trade is in accordance with Article 16(8).

4. The transmission system operators and distribution system operators shall report at least annually to the competent regulatory authority, on:

(a) the level of development and effectiveness of market-based redispatching mechanisms for power generating, energy storage and demand response facilities;

⁽²⁰⁾ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

- (b) the reasons, volumes in MWh and type of generation source subject to redispatching;
- (c) the measures taken to reduce the need for the downward redispatching of generating installations using renewable energy sources or high-efficiency cogeneration in the future including investments in digitalisation of the grid infrastructure and in services that increase flexibility.

The regulatory authority shall submit the report to ACER and shall publish a summary of the data referred to in points (a), (b) and (c) of the first subparagraph together with recommendations for improvement where necessary.

5. Subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria established by the regulatory authorities, transmission system operators and distribution system operators shall:

- (a) guarantee the capability of transmission networks and distribution networks to transmit electricity produced from renewable energy sources or high-efficiency cogeneration with minimum possible redispatching, which shall not prevent network planning from taking into account limited redispatching where the transmission system operator or distribution system operator is able to demonstrate in a transparent way that doing so is more economically efficient and does not exceed 5 % of the annual generated electricity in installations which use renewable energy sources and which are directly connected to their respective grid, unless otherwise provided by a Member State in which electricity from power-generating facilities using renewable energy sources or high-efficiency cogeneration represents more than 50 % of the annual gross final consumption of electricity;
- (b) take appropriate grid-related and market-related operational measures in order to minimise the downward redispatching of electricity produced from renewable energy sources or from high-efficiency cogeneration;
- (c) ensure that their networks are sufficiently flexible so that they are able to manage them.

6. Where non-market-based downward redispatching is used, the following principles shall apply:

- (a) power-generating facilities using renewable energy sources shall only be subject to downward redispatching if no other alternative exists or if other solutions would result in significantly disproportionate costs or severe risks to network security;
- (b) electricity generated in a high-efficiency cogeneration process shall only be subject to downward redispatching if, other than downward redispatching of power-generating facilities using renewable energy sources, no other alternative exists or if other solutions would result in disproportionate costs or severe risks to network security;
- (c) self-generated electricity from generating installations using renewable energy sources or high-efficiency cogeneration which is not fed into the transmission or distribution network shall not be subject to downward redispatching unless no other solution would resolve network security issues;
- (d) downward redispatching under points (a), (b) and (c) shall be duly and transparently justified. The justification shall be included in the report under paragraph 3.

7. Where non-market based redispatching is used, it shall be subject to financial compensation by the system operator requesting the redispatching to the operator of the redispatched generation, energy storage or demand response facility except in the case of producers that have accepted a connection agreement under which there is no guarantee of firm delivery of energy. Such financial compensation shall be at least equal to the higher of the following elements or a combination of both if applying only the higher would lead to an unjustifiably low or an unjustifiably high compensation:

- (a) additional operating cost caused by the redispatching, such as additional fuel costs in the case of upward redispatching, or backup heat provision in the case of downward redispatching of power-generating facilities using high-efficiency cogeneration;
- (b) net revenues from the sale of electricity on the day-ahead market that the power-generating, energy storage or demand response facility would have generated without the redispatching request; where financial support is granted to power-generating, energy storage or demand response facilities based on the electricity volume generated or consumed, financial support that would have been received without the redispatching request shall be deemed to be part of the net revenues.

CHAPTER III

NETWORK ACCESS AND CONGESTION MANAGEMENT

SECTION 1

Capacity Allocation

Article 14

Bidding zone review

1. Member States shall take all appropriate measures to address congestions. Bidding zone borders shall be based on long-term, structural congestions in the transmission network. Bidding zones shall not contain such structural congestions unless they have no impact on neighbouring bidding zones, or, as a temporary exemption, their impact on neighbouring bidding zones is mitigated through the use of remedial actions and those structural congestions do not lead to reductions of cross-zonal trading capacity in accordance with the requirements of Article 16. The configuration of bidding zones in the Union shall be designed in such a way as to maximise economic efficiency and to maximise cross-zonal trading opportunities in accordance with Article 16, while maintaining security of supply.
2. Every three years, the ENTSO for Electricity shall report on structural congestions and other major physical congestions between and within bidding zones, including the location and frequency of such congestions, in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009. That report shall contain an assessment of whether the cross-zonal trade capacity reached the linear trajectory pursuant to Article 15 or the minimum capacity pursuant to Article 16 of this Regulation.
3. In order to ensure an optimal configuration of bidding zones, a bidding zone review shall be carried out. That review shall identify all structural congestions and shall include an analysis of different configurations of bidding zones in a coordinated manner with the involvement of affected stakeholders from all relevant Member States, in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009. Current bidding zones shall be assessed on the basis of their ability to create a reliable market environment, including for flexible generation and load capacity, which is crucial to avoiding grid bottlenecks, balancing electricity demand and supply, securing the long-term security of investments in network infrastructure.
4. For the purposes of this Article and of Article 15 of this Regulation, relevant Member States, transmission system operators or regulatory authorities are those Member States, transmission system operators or regulatory authorities participating in the review of the bidding zone configuration and also to those in the same capacity calculation region pursuant to the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009.
5. By 5 October 2019 all relevant transmission system operators shall submit a proposal for the methodology and assumptions that are to be used in the bidding zone review process and for the alternative bidding zone configurations to be considered to the relevant regulatory authorities for approval. The relevant regulatory authorities shall take a unanimous decision on the proposal within 3 months of submission of the proposal. Where the regulatory authorities are unable to reach a unanimous decision on the proposal within that time frame, ACER shall, within an additional three months, decide on the methodology and assumptions and the alternative bidding zone configurations to be considered. The methodology shall be based on structural congestions which are not expected to be overcome within the following three years, taking due account of tangible progress on infrastructure development projects that are expected to be realised within the following three years.
6. On the basis of the methodology and assumptions approved pursuant to paragraph 5, the transmission system operators participating in the bidding zone review shall submit a joint proposal to the relevant Member States or their designated competent authorities to amend or maintain the bidding zone configuration no later than 12 months after approval of the methodology and assumptions pursuant to paragraph 5. Other Member States, Energy Community Contracting Parties or other third countries sharing the same synchronous area with any relevant Member State may submit comments.
7. Where structural congestion has been identified in the report pursuant to paragraph 2 of this Article or in the bidding zone review pursuant to this Article or by one or more transmission system operators in their control areas in

a report approved by the competent regulatory authority, the Member State with identified structural congestion shall, in cooperation with its transmission system operators, decide, within six months of receipt of the report, either to establish national or multinational action plans pursuant to Article 15, or to review and amend its bidding zone configuration. Those decisions shall be immediately notified to the Commission and to ACER.

8. For those Member States that have opted to amend the bidding zone configuration pursuant to paragraph 7, the relevant Member States shall reach a unanimous decision within six months of the notification referred to in paragraph 7. Other Member States may submit comments to the relevant Member States, who should take account of those comments when reaching their decision. The decision shall be reasoned and shall be notified to the Commission and ACER. In the event that the relevant Member States fail to reach a unanimous decision within those six months, they shall immediately notify the Commission thereof. As a measure of last resort, the Commission after consulting ACER shall adopt a decision whether to amend or maintain the bidding zone configuration in and between those Member States by six months after receipt of such a notification.

9. Member States and the Commission shall consult relevant stakeholders before adopting a decision under this Article.

10. Any decision adopted under this Article shall specify the date of implementation of any changes. That implementation date shall balance the need for expeditiousness with practical considerations, including forward trade of electricity. The decision may establish appropriate transitional arrangements.

11. Where further bidding zone reviews are launched under the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009, this Article shall apply.

Article 15

Action plans

1. Following the adoption of a decision pursuant to Article 14(7), the Member State with identified structural congestion shall develop an action plan in cooperation with its regulatory authority. That action plan shall contain a concrete timetable for adopting measures to reduce the structural congestions identified within four years of the adoption of the decision pursuant to Article 14(7).

2. Irrespective of the concrete progress of the action plan, Member States shall ensure that without prejudice to derogations granted under Article 16(9) or deviations under Article 16(3), the cross-zonal trade capacity is increased on an annual basis until the minimum capacity provided for in Article 16(8) is reached. That minimum capacity shall be reached by 31 December 2025.

Those annual increases shall be achieved by means of a linear trajectory. The starting point of that trajectory shall be either the capacity allocated at the border or on a critical network element in the year before adoption of the action plan or the average during the three years before adoption of the action plan, whichever is higher. Member States shall ensure that, during the implementation of their action plans the capacity made available for cross-zonal trade to be compliant with Article 16(8) is at least equal to the values of the linear trajectory, including by use of remedial actions in the capacity calculation region.

3. The cost of the remedial actions necessary to achieve the linear trajectory referred to in paragraph 2 or make available cross-zonal capacity at the borders or on critical network elements concerned by the action plan shall be borne by the Member State or Member States implementing the action plan.

4. On an annual basis, during the implementation of the action plan and within six months of its expiry, the relevant transmission system operators shall assess for the previous 12 months whether the available cross-border capacity has reached the linear trajectory or, from 1 January 2026, the minimum capacities provided for in Article 16(8) have been achieved. They shall submit their assessments to ACER and to the relevant regulatory authorities. Before drafting the report, each transmission system operator shall submit its contribution to the report, including all the relevant data, to its regulatory authority for approval.

5. For those Member States for which the assessments referred to in paragraph 4 demonstrate that a transmission system operator has not complied with the linear trajectory, the relevant Member States shall, within six months of receipt of the assessment report referred to in paragraph 4, decide unanimously whether to amend or maintain the bidding zone configuration within and between those Member States. In their decision, the relevant Member States should take account of any comments submitted by other Member States. The relevant Member States' decision shall be substantiated and shall be notified to the Commission and to ACER.

The relevant Member States shall notify the Commission immediately if they fail to reach a unanimous decision within the timeframe laid down. Within six months of receipt of such notification, the Commission, as a last resort and after consulting ACER and the relevant stakeholders shall adopt a decision whether to amend or maintain the bidding zone configuration in and between those Member States.

6. Six months before the expiry of the action plan, the Member State with identified structural congestion shall decide whether to address remaining congestion by amending its bidding zone or whether to address remaining internal congestion with remedial actions for which it shall cover the costs.

7. Where no action plan is established within six months of identification of structural congestion pursuant to Article 14(7), the relevant transmission system operators shall, within 12 months of identification of such structural congestion, assess whether the available cross-border capacity has reached the minimum capacities provided for in Article 16(8) during the previous 12 months and shall submit an assessment report to the relevant regulatory authorities and to ACER.

Before drafting the report, each transmission system operator shall send its contribution to the report, including all relevant data, to its national regulatory authority for approval. Where the assessment demonstrates that a transmission system operator has not complied with the minimum capacity, the decision-making process laid down in paragraph 5 of this Article shall apply.

Article 16

General principles of capacity allocation and congestion management

1. Network congestion problems shall be addressed with non-discriminatory market-based solutions which give efficient economic signals to the market participants and transmission system operators involved. Network congestion problems shall be solved by means of non-transaction-based methods, namely methods that do not involve a selection between the contracts of individual market participants. When taking operational measures to ensure that its transmission system remains in the normal state, the transmission system operator shall take into account the effect of those measures on neighbouring control areas and coordinate such measures with other affected transmission system operators as provided for in Regulation (EU) 2015/1222.

2. Transaction curtailment procedures shall be used only in emergency situations, namely where the transmission system operator must act in an expeditious manner and redispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner. Except in cases of force majeure, market participants that have been allocated capacity shall be compensated for any such curtailment.

3. Regional coordination centres shall carry out coordinated capacity calculation in accordance with paragraphs 4 and 8 of this Article, as provided for in point (a) of Article 37(1) and in Article 42(1).

Regional coordination centres shall calculate cross-zonal capacities respecting operational security limits using data from transmission system operators including data on the technical availability of remedial actions, not including load shedding. Where regional coordination centres conclude that those available remedial actions in the capacity calculation region or between capacity calculation regions are not sufficient to reach the linear trajectory pursuant to Article 15(2) or the minimum capacities provided for in paragraph 8 of this Article while respecting operational security limits, they may, as a measure of last resort, set out coordinated actions reducing the cross-zonal capacities accordingly. Transmission system operators may deviate from coordinated actions in respect of coordinated capacity calculation and coordinated security analysis only in accordance with Article 42(2).

By 3 months after the entry into operation of the regional coordination centres pursuant to Article 35(2) of this Regulation and every three months thereafter, the regional coordination centres shall submit a report to the relevant regulatory authorities and to ACER on any reduction of capacity or deviation from coordinated actions pursuant to the second subparagraph and shall assess the incidences and make recommendations, if necessary, on how to avoid such deviations in the future. If ACER concludes that the prerequisites for a deviation pursuant to this paragraph are not fulfilled or are of a structural nature, ACER shall submit an opinion to the relevant regulatory authorities and to the Commission. The competent regulatory authorities shall take appropriate action against transmission system operators or regional coordination centres pursuant to Article 59 or 62 of Directive (EU) 2019/944 if the prerequisites for a deviation pursuant to this paragraph were not fulfilled.

Deviations of a structural nature shall be addressed in an action plan referred to in Article 14(7) or in an update of an existing action plan.

4. The maximum level of capacity of the interconnections and the transmission networks affected by cross-border capacity shall be made available to market participants complying with the safety standards of secure network operation. Counter-trading and redispatch, including cross-border redispatch, shall be used to maximise available capacities to reach the minimum capacity provided for in paragraph 8. A coordinated and non-discriminatory process for cross-border remedial actions shall be applied to enable such maximisation, following the implementation of a redispatching and counter-trading cost-sharing methodology.

5. Capacity shall be allocated by means of explicit capacity auctions or implicit auctions including both capacity and energy. Both methods may coexist on the same interconnection. For intraday trade, continuous trading, which may be complemented by auctions, shall be used.

6. In the case of congestion, the valid highest value bids for network capacity, whether implicit or explicit, offering the highest value for the scarce transmission capacity in a given timeframe, shall be successful. Other than in the case of new interconnectors which benefit from an exemption under Article 7 of Regulation (EC) No 1228/2003, Article 17 of Regulation (EC) No 714/2009 or Article 63 of this Regulation, establishing reserve prices in capacity-allocation methods shall be prohibited.

7. Capacity shall be freely tradable on a secondary basis, provided that the transmission system operator is informed sufficiently in advance. Where a transmission system operator refuses any secondary trade (transaction), this shall be clearly and transparently communicated and explained to all the market participants by that transmission system operator and notified to the regulatory authority.

8. Transmission system operators shall not limit the volume of interconnection capacity to be made available to market participants as a means of solving congestion inside their own bidding zone or as a means of managing flows resulting from transactions internal to bidding zones. Without prejudice to the application of the derogations under paragraphs 3 and 9 of this Article and to the application of Article 15(2), this paragraph shall be considered to be complied with where the following minimum levels of available capacity for cross-zonal trade are reached:

- (a) for borders using a coordinated net transmission capacity approach, the minimum capacity shall be 70 % of the transmission capacity respecting operational security limits after deduction of contingencies, as determined in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;
- (b) for borders using a flow-based approach, the minimum capacity shall be a margin set in the capacity calculation process as available for flows induced by cross-zonal exchange. The margin shall be 70 % of the capacity respecting operational security limits of internal and cross-zonal critical network elements, taking into account contingencies, as determined in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009.

The total amount of 30 % can be used for the reliability margins, loop flows and internal flows on each critical network element.

9. At the request of the transmission system operators in a capacity calculation region, the relevant regulatory authorities may grant a derogation from paragraph 8 on foreseeable grounds where necessary for maintaining operational security. Such derogations, which shall not relate to the curtailment of capacities already allocated pursuant to paragraph 2, shall be granted for no more than one-year at a time, or, provided that the extent of the derogation decreases significantly after the first year, up to a maximum of two years. The extent of such derogations shall be strictly limited to what is necessary to maintain operational security and they shall avoid discrimination between internal and cross-zonal exchanges.

Before granting a derogation, the relevant regulatory authority shall consult the regulatory authorities of other Member States forming part of the affected capacity calculation regions. Where a regulatory authority disagrees with the proposed derogation, ACER shall decide whether it should be granted pursuant to point (a) of Article 6(10) of Regulation (EU) 2019/942. The justification and reasons for the derogation shall be published.

Where a derogation is granted, the relevant transmission system operators shall develop and publish a methodology and projects that shall provide a long-term solution to the issue that the derogation seeks to address. The derogation shall expire when the time limit for the derogation is reached or when the solution is applied, whichever is earlier.

10. Market participants shall inform the transmission system operators concerned within a reasonable period in advance of the relevant operational period whether they intend to use allocated capacity. Any allocated capacity that is not going to be used shall be made available again to the market, in an open, transparent and non-discriminatory manner.

11. As far as technically possible, transmission system operators shall net the capacity requirements of any power flows in opposite directions over the congested interconnection line in order to use that line to its maximum capacity. Having full regard to network security, transactions that relieve the congestion shall not be refused.

12. The financial consequences of a failure to honour obligations associated with the allocation of capacity shall be attributed to the transmission system operators or NEMOs who are responsible for such a failure. Where market participants fail to use the capacity that they have committed to use, or, in the case of explicitly auctioned capacity, fail to trade capacity on a secondary basis or give the capacity back in due time, those market participants shall lose the rights to such capacity and shall pay a cost-reflective charge. Any cost-reflective charges for the failure to use capacity shall be justified and proportionate. If a transmission system operator does not fulfil its obligation of providing firm transmission capacity, it shall be liable to compensate the market participant for the loss of capacity rights. Consequential losses shall not be taken into account for that purpose. The key concepts and methods for the determination of liabilities that accrue upon failure to honour obligations shall be set out in advance in respect of the financial consequences, and shall be subject to review by the relevant regulatory authority.

13. When allocating costs of remedial actions between transmission system operators, regulatory authorities shall analyse to what extent flows resulting from transactions internal to bidding zones contribute to the congestion between two bidding zones observed, and allocate the costs based on the contribution to the congestion to the transmission system operators of the bidding zones creating such flows except for costs induced by flows resulting from transactions internal to bidding zones that are below the level that could be expected without structural congestion in a bidding zone.

That level shall be jointly analysed and defined by all transmission system operators in a capacity calculation region for each individual bidding zone border, and shall be subject to the approval of all regulatory authorities in the capacity calculation region.

Article 17

Allocation of cross-zonal capacity across timeframes

1. Transmission system operators shall recalculate available cross-zonal capacity at least after day-ahead gate closure times and after intraday cross-zonal gate closure times. Transmission system operators shall allocate the available cross-zonal capacity plus any remaining cross-zonal capacity not previously allocated and any cross-zonal capacity released by physical transmission right holders from previous allocations in the following cross-zonal capacity allocation process.

2. Transmission system operators shall propose an appropriate structure for the allocation of cross-zonal capacity across timeframes, including day-ahead, intraday and balancing. That allocation structure shall be subject to review by the relevant regulatory authorities. In drawing up their proposal, the transmission system operators shall take into account:

(a) the characteristics of the markets;

- (b) the operational conditions of the electricity system, such as the implications of netting firmly declared schedules;
 - (c) the level of harmonisation of the percentages allocated to different timeframes and the timeframes adopted for the different cross-zonal capacity allocation mechanisms that are already in place.
3. Where cross-zonal capacity is available after the intraday cross-zonal gate closure time, transmission system operators shall use the cross-zonal capacity for the exchange of balancing energy or for the operation of the imbalance netting process.
 4. Where cross-zonal capacity is allocated for the exchange of balancing capacity or sharing of reserves pursuant to Article 6(8) of this Regulation, transmission system operators shall use the methodologies developed in the guideline on electricity balancing adopted on the basis of Article 6(11) of Regulation (EC) No 714/2009.
 5. Transmission system operators shall not increase the reliability margin calculated pursuant to Regulation (EU) 2015/1222 due to the exchange of balancing capacity or sharing of reserves.

SECTION 2

Network charges and congestion income

Article 18

Charges for access to networks, use of networks and reinforcement

1. Charges applied by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, shall be cost-reflective, transparent, take into account the need for network security and flexibility and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. Those charges shall not include unrelated costs supporting unrelated policy objectives.

Without prejudice to Article 15(1) and (6) of Directive 2012/27/EU and the criteria in Annex XI to that Directive the method used to determine the network charges shall neutrally support overall system efficiency over the long run through price signals to customers and producers and in particular be applied in a way which does not discriminate positively or negatively between production connected at the distribution level and production connected at the transmission level. The network charges shall not discriminate either positively or negatively against energy storage or aggregation and shall not create disincentives for self-generation, self-consumption or for participation in demand response. Without prejudice to paragraph 3 of this Article, those charges shall not be distance-related.

2. Tariff methodologies shall reflect the fixed costs of transmission system operators and distribution system operators and shall provide appropriate incentives to transmission system operators and distribution system operators over both the short and long run, in order to increase efficiencies, including energy efficiency, to foster market integration and security of supply, to support efficient investments, to support related research activities, and to facilitate innovation in interest of consumers in areas such as digitalisation, flexibility services and interconnection.

3. Where appropriate, the level of the tariffs applied to producers or final customers, or both shall provide locational signals at Union level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure.

4. When setting the charges for network access, the following shall be taken into account:

- (a) payments and receipts resulting from the inter-transmission system operator compensation mechanism;
- (b) actual payments made and received as well as payments expected for future periods, estimated on the basis of previous periods.

5. Setting the charges for network access under this Article shall be without prejudice to charges resulting from congestion management referred to in Article 16.

6. There shall be no specific network charge on individual transactions for cross-zonal trading of electricity.

7. Distribution tariffs shall be cost-reflective taking into account the use of the distribution network by system users including active customers. Distribution tariffs may contain network connection capacity elements and may be differentiated based on system users' consumption or generation profiles. Where Member States have implemented the deployment of smart metering systems, regulatory authorities shall consider time-differentiated network tariffs when fixing or approving transmission tariffs and distribution tariffs or their methodologies in accordance with Article 59 of (EU) 2019/944 and, where appropriate, time-differentiated network tariffs may be introduced to reflect the use of the network, in a transparent, cost efficient and foreseeable way for the final customer.

8. Distribution tariff methodologies shall provide incentives to distribution system operators for the most cost-efficient operation and development of their networks including through the procurement of services. For that purpose regulatory authorities shall recognise relevant costs as eligible, shall include those costs in distribution tariffs, and may introduce performance targets in order to provide incentives to distribution system operators to increase efficiencies in their networks, including through energy efficiency, flexibility and the development of smart grids and intelligent metering systems.

9. By 5 October 2019 in order to mitigate the risk of market fragmentation ACER shall provide a best practice report on transmission and distribution tariff methodologies while taking account of national specificities. That best practice report shall address at least:

- (a) the ratio of tariffs applied to producers and tariffs applied to final customers;
- (b) the costs to be recovered by tariffs;
- (c) time-differentiated network tariffs;
- (d) locational signals;
- (e) the relationship between transmission tariffs and distribution tariffs;
- (f) methods to ensure transparency in the setting and structure of tariffs;
- (g) groups of network users subject to tariffs including, where applicable, the characteristics of those groups, forms of consumption, and any tariff exemptions;
- (h) losses in high, medium and low-voltage grids.

ACER shall update the best practice report at least once every two years.

10. Regulatory authorities shall duly take the best practice report into consideration when fixing or approving transmission tariffs and distribution tariffs or their methodologies in accordance with Article 59 of Directive (EU) 2019/944.

Article 19

Congestion income

1. Congestion-management procedures associated with a pre-specified timeframe may generate revenue only in the event of congestion which arises for that timeframe, except in the case of new interconnectors which benefit from an exemption under Article 63 of this Regulation, Article 17 of Regulation (EC) No 714/2009 or Article 7 of Regulation (EC) No 1228/2003. The procedure for the distribution of those revenues shall be subject to review by the regulatory authorities and shall neither distort the allocation process in favour of any party requesting capacity or energy nor provide a disincentive to reduce congestion.

2. The following objectives shall have priority with the respect to the allocation of any revenues resulting from the allocation of cross-zonal capacity:

- (a) guaranteeing the actual availability of the allocated capacity including firmness compensation; or
- (b) maintaining or increasing cross-zonal capacities through optimisation of the usage of existing interconnectors by means of coordinated remedial actions, where applicable, or covering costs resulting from network investments that are relevant to reduce interconnector congestion.

3. Where the priority objectives set out in paragraph 2 have been adequately fulfilled, the revenues may be used as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs or fixing network tariffs, or both. The residual revenues shall be placed on a separate internal account line until such a time as it can be spent for the purposes set out in paragraph 2.

4. The use of revenues in accordance with point (a) or (b) of paragraph 2 shall be subject to a methodology proposed by the transmission system operators after consulting regulatory authorities and relevant stakeholders and after approval by ACER. The transmission system operators shall submit the proposed methodology to ACER by 5 July 2020 and ACER shall decide on the proposed methodology within six months of receiving it.

ACER may request transmission system operators to amend or update the methodology referred to in the first subparagraph. ACER shall decide on the amended or updated methodology not later than six months after its submission.

The methodology shall set out at least the conditions under which the revenues can be used for the purposes referred to in paragraph 2, the conditions under which those revenues may be placed on a separate internal account line for future use for those purposes, and for how long those revenues may be placed on such an account line.

5. Transmission system operators shall clearly establish, in advance, how any congestion income will be used, and shall report to the regulatory authorities on the actual use of that income. By 1 March each year, the regulatory authorities shall inform ACER and shall publish a report setting out:

- (a) the amount of revenue collected for the 12-month period ending on 31 December of the previous year;
- (b) how that revenue was used pursuant to paragraph 2, including the specific projects the income has been used for, and the amount placed on a separate account line;
- (c) the amount that was used when calculating network tariffs; and
- (d) verification that the amount referred to in point (c) complies with this Regulation and the methodology developed pursuant to paragraphs 3 and 4.

Where some of the congestion revenues are used when calculating network tariffs, the report shall set out how the transmission system operators fulfilled the priority objectives set out in paragraph 2 where applicable.

CHAPTER IV

RESOURCE ADEQUACY

Article 20

Resource adequacy in the internal market for electricity

1. Member States shall monitor resource adequacy within their territory on the basis of the European resource adequacy assessment referred to in Article 23. For the purpose of complementing the European resource adequacy assessment, Member States may also carry out national resource adequacy assessments pursuant to Article 24.

2. Where the European resource adequacy assessment referred to in Article 23 or national resource adequacy assessment referred to in Article 24 identifies a resource adequacy concern, the Member State concerned shall identify any regulatory distortions or market failures that caused or contributed to the emergence of the concern.

3. Member States with identified resource adequacy concerns shall develop and publish an implementation plan with a timeline for adopting measures to eliminate any identified regulatory distortions or market failures as a part of the State aid process. When addressing resource adequacy concerns, the Member States shall in particular take into account the principles set out in Article 3 and shall consider:

- (a) removing regulatory distortions;
- (b) removing price caps in accordance with Article 10;

- (c) introducing a shortage pricing function for balancing energy as referred to in Article 44(3) of Regulation (EU) 2017/2195;
 - (d) increasing interconnection and internal grid capacity with a view to reaching at least their interconnection targets as referred in point (d)(1) of Article 4 of Regulation (EU) 2018/1999;
 - (e) enabling self-generation, energy storage, demand side measures and energy efficiency by adopting measures to eliminate any identified regulatory distortions;
 - (f) ensuring cost-efficient and market-based procurement of balancing and ancillary services;
 - (g) removing regulated prices where required by Article 5 of Directive (EU) 2019/944.
4. The Member States concerned shall submit their implementation plans to the Commission for review.
 5. Within four months of receipt of the implementation plan, the Commission shall issue an opinion on whether the measures are sufficient to eliminate the regulatory distortions or market failures that were identified pursuant to paragraph 2, and may invite the Member States to amend their implementation plans accordingly.
 6. The Member States concerned shall monitor the application of their implementation plans and shall publish the results of the monitoring in an annual report and shall submit that report to the Commission.
 7. The Commission shall issue an opinion on whether the implementation plans have been sufficiently implemented and whether the resource adequacy concern has been resolved.
 8. Member States shall continue to adhere to the implementation plan after the identified resource adequacy concern has been resolved.

Article 21

General principles for capacity mechanisms

1. To eliminate residual resource adequacy concerns, Member States may, as a last resort while implementing the measures referred to in Article 20(3) of this Regulation in accordance with Article 107, 108 and 109 of the TFEU, introduce capacity mechanisms.
2. Before introducing capacity mechanisms, the Member States concerned shall conduct a comprehensive study of the possible effects of such mechanisms on the neighbouring Member States by consulting at least its neighbouring Member States to which they have a direct network connection and the stakeholders of those Member States.
3. Member States shall assess whether a capacity mechanism in the form of strategic reserve is capable of addressing the resource adequacy concerns. Where this is not the case, Member States may implement a different type of capacity mechanism.
4. Member States shall not introduce capacity mechanisms where both the European resource adequacy assessment and the national resource adequacy assessment, or in the absence of a national resource adequacy assessment, the European resource adequacy assessment have not identified a resource adequacy concern.
5. Member States shall not introduce capacity mechanisms before the implementation plan as referred to in Article 20(3) has received an opinion by the Commission as referred to in Article 20(5).
6. Where a Member State applies a capacity mechanism, it shall review that capacity mechanism and shall ensure that no new contracts are concluded under that mechanism where both the European resource adequacy assessment and the national resource adequacy assessment, or in the absence of a national resource adequacy assessment, the European resource adequacy assessment have not identified a resource adequacy concern or the implementation plan as referred to in Article 20(3) has not received an opinion by the Commission as referred to in Article 20(5).
7. When designing capacity mechanisms Member States shall include a provision allowing for an efficient administrative phase-out of the capacity mechanism where no new contracts are concluded under paragraph 6 during three consecutive years.

8. Capacity mechanisms shall be temporary. They shall be approved by the Commission for no longer than 10 years. They shall be phased out or the amount of the committed capacities shall be reduced on the basis of the implementation plans referred to in Article 20. Member States shall continue to apply the implementation plan after the introduction of the capacity mechanism.

Article 22

Design principles for capacity mechanisms

1. Any capacity mechanism shall:
 - (a) be temporary;
 - (b) not create undue market distortions and not limit cross-zonal trade;
 - (c) not go beyond what is necessary to address the adequacy concerns referred to in Article 20;
 - (d) select capacity providers by means of a transparent, non-discriminatory and competitive process;
 - (e) provide incentives for capacity providers to be available in times of expected system stress;
 - (f) ensure that the remuneration is determined through the competitive process;
 - (g) set out the technical conditions for the participation of capacity providers in advance of the selection process;
 - (h) be open to participation of all resources that are capable of providing the required technical performance, including energy storage and demand side management;
 - (i) apply appropriate penalties to capacity providers that are not available in times of system stress.
2. The design of strategic reserves shall meet the following requirements:
 - (a) where a capacity mechanism has been designed as a strategic reserve, the resources thereof are to be dispatched only if the transmission system operators are likely to exhaust their balancing resources to establish an equilibrium between demand and supply;
 - (b) during imbalance settlement periods where resources in the strategic reserve are dispatched, imbalances in the market are to be settled at least at the value of lost load or at a higher value than the intraday technical price limit as referred in Article 10(1), whichever is higher;
 - (c) the output of the strategic reserve following dispatch is to be attributed to balance responsible parties through the imbalance settlement mechanism;
 - (d) the resources taking part in the strategic reserve are not to receive remuneration from the wholesale electricity markets or from the balancing markets;
 - (e) the resources in the strategic reserve are to be held outside the market for at least the duration of the contractual period.

The requirement referred to in point (a) of the first subparagraph shall be without prejudice to the activation of resources before actual dispatch in order to respect the ramping constraints and operating requirements of the resources. The output of the strategic reserve during activation shall not be attributed to balance groups through wholesale markets and shall not change their imbalances.

3. In addition to the requirements laid down in paragraph 1, capacity mechanisms other than strategic reserves shall:
 - (a) be constructed so as to ensure that the price paid for availability automatically tends to zero when the level of capacity supplied is expected to be adequate to meet the level of capacity demanded;
 - (b) remunerate the participating resources only for their availability and ensure that the remuneration does not affect decisions of the capacity provider on whether or not to generate;
 - (c) ensure that capacity obligations are transferable between eligible capacity providers.

4. Capacity mechanisms shall incorporate the following requirements regarding CO₂ emission limits:
 - (a) from 4 July 2019 at the latest, generation capacity that started commercial production on or after that date and that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity shall not be committed or to receive payments or commitments for future payments under a capacity mechanism;
 - (b) from 1 July 2025 at the latest, generation capacity that started commercial production before 4 July 2019 and that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity and more than 350 kg CO₂ of fossil fuel origin on average per year per installed kWe shall not be committed or receive payments or commitments for future payments under a capacity mechanism.

The emission limit of 550 g CO₂ of fossil fuel origin per kWh of electricity and the limit of 350 kg CO₂ of fossil fuel origin on average per year per installed kWe referred to in points (a) and (b) of the first subparagraph shall be calculated on the basis of the design efficiency of the generation unit meaning the net efficiency at nominal capacity under the relevant standards provided for by the International Organization for Standardization.

By 5 January 2020, ACER shall publish an opinion providing technical guidance related to the calculation of the values referred in the first subparagraph.

5. Member States that apply capacity mechanisms on 4 July 2019 shall adapt their mechanisms to comply with Chapter 4 without prejudice to commitments or contracts concluded by 31 December 2019.

Article 23

European resource adequacy assessment

1. The European resource adequacy assessment shall identify resource adequacy concerns by assessing the overall adequacy of the electricity system to supply current and projected demands for electricity at Union level, at the level of the Member States, and at the level of individual bidding zones, where relevant. The European resource adequacy assessment shall cover each year within a period of 10 years from the date of that assessment.
2. The European resource adequacy assessment shall be conducted by the ENTSO for Electricity.
3. By 5 January 2020, the ENTSO for Electricity shall submit to the Electricity Coordination Group set up under Article 1 of Commission Decision of 15 November 2012 ⁽²¹⁾ and ACER a draft methodology for the European resource adequacy assessment based on the principles provided for in paragraph 5 of this Article.
4. Transmission system operators shall provide the ENTSO for Electricity with the data it needs to carry out the European resource adequacy assessment.

The ENTSO for Electricity shall carry out the European resource adequacy assessment on an annual basis. Producers and other market participants shall provide transmission system operators with data regarding expected utilisation of the generation resources, taking into account the availability of primary resources and appropriate scenarios of projected demand and supply.

5. The European resource adequacy assessment shall be based on a transparent methodology which shall ensure that the assessment:
 - (a) is carried out on each bidding zone level covering at least all Member States;
 - (b) is based on appropriate central reference scenarios of projected demand and supply including an economic assessment of the likelihood of retirement, mothballing, new-build of generation assets and measures to reach energy efficiency and electricity interconnection targets and appropriate sensitivities on extreme weather events, hydrological conditions, wholesale prices and carbon price developments;
 - (c) contains separate scenarios reflecting the differing likelihoods of the occurrence of resource adequacy concerns which the different types of capacity mechanisms are designed to address;

⁽²¹⁾ Commission Decision of 15 November 2012 setting up the Electricity Coordination Group (OJ C 353, 17.11.2012, p. 2).

- (d) appropriately takes account of the contribution of all resources including existing and future possibilities for generation, energy storage, sectoral integration, demand response, and import and export and their contribution to flexible system operation;
 - (e) anticipates the likely impact of the measures referred in Article 20(3);
 - (f) includes variants without existing or planned capacity mechanisms and, where applicable, variants with such mechanisms;
 - (g) is based on a market model using the flow-based approach, where applicable;
 - (h) applies probabilistic calculations;
 - (i) applies a single modelling tool;
 - (j) includes at least the following indicators referred to in Article 25:
 - ‘expected energy not served’, and
 - ‘loss of load expectation’;
 - (k) identifies the sources of possible resource adequacy concerns, in particular whether it is a network constraint, a resource constraint, or both;
 - (l) takes into account real network development;
 - (m) ensures that the national characteristics of generation, demand flexibility and energy storage, the availability of primary resources and the level of interconnection are properly taken into consideration.
6. By 5 January 2020, the ENTSO for Electricity shall submit to ACER a draft methodology for calculating:
- (a) the value of lost load;
 - (b) the cost of new entry for generation, or demand response; and
 - (c) the reliability standard referred to in Article 25.

The methodology shall be based on transparent, objective and verifiable criteria.

7. The proposals under paragraphs 3 and 6 for the draft methodology, the scenarios, sensitivities and assumptions on which they are based, and the results of the European resource adequacy assessment under paragraph 4 shall be subject to the prior consultation of Member States, the Electricity Coordination Group and relevant stakeholders and approval by ACER under the procedure set out in Article 27.

Article 24

National resource adequacy assessments

1. National resource adequacy assessments shall have a regional scope and shall be based on the methodology referred in Article 23(3) in particular in points (b) to (m) of Article 23(5).

National resource adequacy assessments shall contain the reference central scenarios as referred to in point (b) of Article 23(5).

National resource adequacy assessments may take into account additional sensitivities to those referred in point (b) of Article 23(5). In such cases, national resource adequacy assessments may:

- (a) make assumptions taking into account the particularities of national electricity demand and supply;
- (b) use tools and consistent recent data that are complementary to those used by the ENTSO for Electricity for the European resource adequacy assessment.

In addition, the national resource adequacy assessments, in assessing the contribution of capacity providers located in another Member State to the security of supply of the bidding zones that they cover, shall use the methodology as provided for in point (a) of Article 26(11).

2. National resource adequacy assessments and, where applicable, the European resource adequacy assessment and the opinion of ACER pursuant to paragraph 3 shall be made publicly available.

3. Where the national resource adequacy assessment identifies an adequacy concern with regard to a bidding zone that was not identified in the European resource adequacy assessment, the national resource adequacy assessment shall include the reasons for the divergence between the two resource adequacy assessments, including details of the sensitivities used and the underlying assumptions. Member States shall publish that assessment and submit it to ACER.

Within two months of the date of the receipt of the report, ACER shall provide an opinion on whether the differences between the national resource adequacy assessment and the European resource adequacy assessment are justified.

The body that is responsible for the national resource adequacy assessment shall take due account of ACER's opinion, and where necessary shall amend its assessment. Where it decides not to take ACER's opinion fully into account, the body that is responsible for the national resource adequacy assessment shall publish a report with detailed reasons.

Article 25

Reliability standard

1. When applying capacity mechanisms Member States shall have a reliability standard in place. A reliability standard shall indicate the necessary level of security of supply of the Member State in a transparent manner. In the case of cross-border bidding zones, such reliability standards shall be established jointly by the relevant authorities.

2. The reliability standard shall be set by the Member State or by a competent authority designated by the Member State, following a proposal by the regulatory authority. The reliability standard shall be based on the methodology set out in Article 23(6).

3. The reliability standard shall be calculated using at least the value of lost load and the cost of new entry over a given timeframe and shall be expressed as 'expected energy not served' and 'loss of load expectation'.

4. When applying capacity mechanisms, the parameters determining the amount of capacity procured in the capacity mechanism shall be approved by the Member State or by a competent authority designated by the Member State, on the basis of a proposal of the regulatory authority.

Article 26

Cross-border participation in capacity mechanisms

1. Capacity mechanisms other than strategic reserves and where technically feasible, strategic reserves shall be open to direct cross-border participation of capacity providers located in another Member State, subject to the conditions laid down in this Article.

2. Member States shall ensure that foreign capacity capable of providing equivalent technical performance to domestic capacities has the opportunity to participate in the same competitive process as domestic capacity. In the case of capacity mechanisms in operation on 4 July 2019, Member States may allow interconnectors to participate directly in the same competitive process as foreign capacity for a maximum of four years from 4 July 2019 or two years after the date of approval of the methodologies referred to in paragraph 11, whichever is earlier.

Member States may require foreign capacity to be located in a Member State that has a direct network connection with the Member State applying the mechanism.

3. Member States shall not prevent capacity which is located in their territory from participating in capacity mechanisms of other Member States.

4. Cross-border participation in capacity mechanisms shall not change, alter or otherwise affect cross-zonal schedules or physical flows between Member States. Those schedules and flows shall be determined solely by the outcome of capacity allocation pursuant to Article 16.

5. Capacity providers shall be able to participate in more than one capacity mechanism.

Where capacity providers participate in more than one capacity mechanism for the same delivery period, they shall participate up to the expected availability of interconnection and the likely concurrence of system stress between the system where the mechanism is applied and the system in which the foreign capacity is located, in accordance with the methodology referred to in point (a) of paragraph 11.

6. Capacity providers shall be required to make non-availability payments where their capacity is not available.

Where capacity providers participate in more than one capacity mechanism for the same delivery period, they shall be required to make multiple non-availability payments where they are unable to fulfil multiple commitments.

7. For the purposes of providing a recommendation to transmission system operators, regional coordination centres established pursuant to Article 35 shall calculate on an annual basis the maximum entry capacity available for the participation of foreign capacity. That calculation shall take into account the expected availability of interconnection and the likely concurrence of system stress in the system where the mechanism is applied and the system in which the foreign capacity is located. Such a calculation shall be required for each bidding zone border.

Transmission system operators shall set the maximum entry capacity available for the participation of foreign capacity based on the recommendation of the regional coordination centre on an annual basis.

8. Member States shall ensure that the entry capacity referred to in paragraph 7 is allocated to eligible capacity providers in a transparent, non-discriminatory and market-based manner.

9. Where capacity mechanisms allow for cross-border participation in two neighbouring Member States, any revenues arising through the allocation referred to in paragraph 8 shall accrue to the transmission system operators concerned and shall be shared between them in accordance with the methodology referred in point (b) of paragraph 11 of this Article or in accordance with a common methodology approved by both relevant regulatory authorities. If the neighbouring Member State does not apply a capacity mechanism or applies a capacity mechanism which is not open to cross-border participation, the share of revenues shall be approved by the competent national authority of the Member State in which the capacity mechanism is implemented after having sought the opinion of the regulatory authorities of the neighbouring Member States. Transmission system operators shall use such revenues for the purposes set out in Article 19(2).

10. The transmission system operator where the foreign capacity is located shall:

- (a) establish whether interested capacity providers can provide the technical performance as required by the capacity mechanism in which the capacity provider intends to participate, and register that capacity provider as an eligible capacity provider in a registry set up for that purpose;
- (b) carry out availability checks;
- (c) notify the transmission system operator in the Member State applying the capacity mechanism of the information it acquires under points (a) and (b) of this subparagraph and the second subparagraph.

The relevant capacity provider shall notify the transmission system operator of its participation in a foreign capacity mechanism without delay.

11. By 5 July 2020 the ENTSO for Electricity shall submit to ACER:

- (a) a methodology for calculating the maximum entry capacity for cross-border participation as referred to in paragraph 7;

- (b) a methodology for sharing the revenues referred to in paragraph 9;
- (c) common rules for the carrying out of availability checks referred to in point (b) of paragraph 10;
- (d) common rules for determining when a non-availability payment is due;
- (e) terms of the operation of the registry as referred to in point (a) of paragraph 10;
- (f) common rules for identifying capacity eligible to participate in the capacity mechanism as referred to in point (a) of paragraph 10.

The proposal shall be subject to prior consultation and approval by ACER in accordance with Article 27.

12. The regulatory authorities concerned shall verify whether the capacities have been calculated in accordance with the methodology referred to in point (a) of paragraph 11.

13. Regulatory authorities shall ensure that cross-border participation in capacity mechanisms is organised in an effective and non-discriminatory manner. They shall in particular provide for adequate administrative arrangements for the enforcement of non-availability payments across borders.

14. The capacities allocated in accordance with paragraph 8 shall be transferable between eligible capacity providers. Eligible capacity providers shall notify the registry as referred to in point (a) of paragraph 10 of any such transfer.

15. By 5 July 2021 the ENTSO for Electricity shall set up and operate the registry referred to in point (a) of paragraph 10. The registry shall be open to all eligible capacity providers, the systems implementing capacity mechanisms and their transmission system operators.

Article 27

Approval procedure

1. Where reference is made to this Article, the procedure set out in paragraphs 2, 3 and 4 shall apply to the approval of proposals submitted by the ENTSO for Electricity.
2. Before submitting a proposal, the ENTSO for Electricity shall carry out a consultation involving all relevant stakeholders, including regulatory authorities and other national authorities. It shall duly take the results of that consultation into consideration in its proposal.
3. Within three months of the date of receipt of the proposal referred to in paragraph 1, ACER shall either approve or amend it. In the latter case, ACER shall consult the ENTSO for Electricity before approving the amended proposal. ACER shall publish the approved proposal on its website within three months of the date of receipt of the proposed documents.
4. ACER may request changes to the approved proposal at any time. Within six months of the date of receipt of such a request, the ENTSO for Electricity shall submit a draft of the proposed changes to ACER. Within three months of the date of receipt of the draft, ACER shall amend or approve the changes and publish those changes on its website.

CHAPTER V

TRANSMISSION SYSTEM OPERATION

Article 28

European network of transmission system operators for electricity

1. Transmission system operators shall cooperate at Union level through the ENTSO for Electricity, in order to promote the completion and functioning of the internal market for electricity and cross-zonal trade and to ensure the optimal management, coordinated operation and sound technical evolution of the European electricity transmission network.

2. In performing its functions under Union law, the ENTSO for Electricity shall act with a view to establishing a well-functioning and integrated internal market for electricity and shall contribute to the efficient and sustainable achievement of the objectives set out in the policy framework for climate and energy covering the period from 2020 to 2030, in particular by contributing to the efficient integration of electricity generated from renewable energy sources and to increases in energy efficiency while maintaining system security. The ENTSO for Electricity shall be equipped with adequate human and financial resources to carry out its duties.

Article 29

The ENTSO for Electricity

1. The transmission system operators for electricity shall submit to the Commission and to ACER any draft amendments to the statutes, list of members or rules of procedure of the ENTSO for Electricity.
2. Within two months of receipt of the draft amendments to the statutes, list of members or rules of procedure, ACER, after consulting the organisations representing all stakeholders, in particular the system users, including customers, shall provide an opinion to the Commission on these draft amendments to the statutes, list of members or rules of procedure.
3. The Commission shall deliver an opinion on the draft amendments to the statutes, list of members or rules of procedures taking into account ACER's opinion as provided for in paragraph 2 and within three months of receipt of ACER's opinion.
4. Within three months of receipt of the Commission's favourable opinion, the transmission system operators shall adopt and publish the amended statutes or rules of procedure.
5. The documents referred to in paragraph 1 shall be submitted to the Commission and to ACER where there are changes thereto or upon the reasoned request of either of them. The Commission and ACER shall deliver an opinion in accordance with paragraphs 2, 3 and 4.

Article 30

Tasks of the ENTSO for Electricity

1. The ENTSO for Electricity shall:
 - (a) develop network codes in the areas set out in Article 59(1) and (2) with a view to achieving the objectives set out in Article 28;
 - (b) adopt and publish a non-binding Union-wide ten-year network development plan, ('Union-wide network development plan'), biennially;
 - (c) prepare and adopt proposals related to the European resource adequacy assessment pursuant to Article 23 and proposals for the technical specifications for cross-border participation in capacity mechanisms pursuant to Article 26(11);
 - (d) adopt recommendations relating to the coordination of technical cooperation between Union and third-country transmission system operators;
 - (e) adopt a framework for the cooperation and coordination between regional coordination centres;
 - (f) adopt a proposal defining the system operation region in accordance with Article 36;
 - (g) cooperate with distribution system operators and the EU DSO entity;
 - (h) promote the digitalisation of transmission networks including deployment of smart grids, efficient real time data acquisition and intelligent metering systems;
 - (i) adopt common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incident classification scale, and research plans, including the deployment of those plans through an efficient research programme. Those tools shall specify inter alia:
 - (i) the information, including appropriate day-ahead, intraday and real-time information, useful for improving operational coordination, as well as the optimal frequency for the collection and sharing of such information;

- (ii) the technological platform for the exchange of information in real time and where appropriate, the technological platforms for the collection, processing and transmission of the other information referred to in point (i), as well as for the implementation of the procedures capable of increasing operational coordination between transmission system operators with a view to such coordination becoming Union-wide;
 - (iii) how transmission system operators make available the operational information to other transmission system operators or any entity duly mandated to support them to achieve operational coordination, and to ACER; and
 - (iv) that transmission system operators designate a contact point in charge of answering inquiries from other transmission system operators or from any entity duly mandated as referred to in point (iii), or from ACER concerning such information;
- (j) adopt an annual work programme;
 - (k) contribute to the establishment of interoperability requirements and non-discriminatory and transparent procedures for accessing data as provided for in Article 24 of Directive (EU) 2019/944;
 - (l) adopt an annual report;
 - (m) carry out and adopt seasonal adequacy assessments pursuant to Article 9(2) of Regulation (EU) 2019/941;
 - (n) promote cyber security and data protection in cooperation with relevant authorities and regulated entities;
 - (o) take into account the development of demand response in fulfilling its tasks.
2. The ENTSO for Electricity shall report to ACER on shortcomings identified regarding the establishment and performance of regional coordination centres.
3. The ENTSO for Electricity shall publish the minutes of its assembly meetings, board meetings and committee meetings and provide the public with regular information on its decision-making and activities.
4. The annual work programme referred to in point (j) of paragraph 1 shall contain a list and description of the network codes to be prepared, a plan on coordination of operation of the network, and research and development activities, to be realised in that year, and an indicative calendar.
5. The ENTSO for Electricity shall provide ACER with the information that ACER requires to fulfil its tasks pursuant to Article 32(1). In order to enable the ENTSO for Electricity to meet that requirement, transmission system operators shall provide the ENTSO for Electricity with the requisite information.
6. Upon request of the Commission, the ENTSO for Electricity shall give its views to the Commission on the adoption of the guidelines as laid down in Article 61.

Article 31

Consultations

1. While preparing the proposals pursuant to the tasks referred to in Article 30(1), the ENTSO for Electricity shall conduct an extensive consultation process. The consultation process shall be structured in a way to enable the accommodation of stakeholder comments before the final adoption of the proposal and in an open and transparent manner, involving all relevant stakeholders, and, in particular, the organisations representing such stakeholders, in accordance with the rules of procedure referred to in Article 29. That consultation shall also involve regulatory authorities and other national authorities, supply and generation undertakings, system users including customers, distribution system operators, including relevant industry associations, technical bodies and stakeholder platforms. It shall aim at identifying the views and proposals of all relevant parties during the decision-making process.
2. All documents and minutes of meetings related to the consultations referred to in paragraph 1 shall be made public.

3. Before adopting the proposals referred to in Article 30(1) the ENTSO for Electricity shall indicate how the observations received during the consultation have been taken into consideration. It shall provide reasons where observations have not been taken into account.

Article 32

Monitoring by ACER

1. ACER shall monitor the execution of the tasks of the ENTSO for Electricity referred to in Article 30(1), (2) and (3) and report its findings to the Commission.

ACER shall monitor the implementation by the ENTSO for Electricity of network codes developed under Article 59. Where the ENTSO for Electricity has failed to implement such network codes, ACER shall request the ENTSO for Electricity to provide a duly reasoned explanation as to why it has failed to do so. ACER shall inform the Commission of that explanation and provide its opinion thereon.

ACER shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission as laid down in Article 58(1), and their effect on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market, and report to the Commission.

2. The ENTSO for Electricity shall submit the draft Union-wide network development plan, the draft annual work programme, including the information regarding the consultation process, and the other documents referred to in Article 30(1) to ACER for its opinion.

Where it considers that the draft annual work programme or the draft Union-wide network development plan submitted by the ENTSO for Electricity does not contribute to non-discrimination, effective competition, the efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access, ACER shall provide a duly reasoned opinion as well as recommendations to the ENTSO for Electricity and to the Commission within two months of the submission.

Article 33

Costs

The costs related to the activities of the ENTSO for Electricity referred to in Articles 28 to 32 and 58 to 61 of this Regulation, and in Article 11 of Regulation (EU) No 347/2013 of the European Parliament and of the Council ⁽²³⁾ shall be borne by the transmission system operators and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve those costs only if they are reasonable and appropriate.

Article 34

Regional cooperation of transmission system operators

1. Transmission system operators shall establish regional cooperation within the ENTSO for Electricity to contribute to the activities referred to in Article 30(1), (2) and (3). In particular, they shall publish a regional investment plan biennially, and may take investment decisions based on that regional investment plan. The ENTSO for Electricity shall promote cooperation between transmission system operators at regional level ensuring interoperability, communication and monitoring of regional performance in those areas which have not yet been harmonised at Union level.

2. Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.

⁽²³⁾ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

3. For the purposes of achieving the goals set in paragraphs 1 and 2, the geographical area covered by each regional cooperation structure may be established by the Commission, taking into account existing regional cooperation structures. Each Member State may promote cooperation in more than one geographical area.

The Commission is empowered to adopt delegated acts in accordance with Article 68, supplementing this Regulation, establishing the geographical area covered by each regional cooperation structure. For that purpose, the Commission shall consult the regulatory authorities, ACER and the ENTSO for Electricity.

The delegated acts referred to in this paragraph shall be without prejudice to Article 36.

Article 35

Establishment and mission of regional coordination centres

1. By 5 July 2020, all transmission system operators of a system operation region shall submit a proposal for the establishment of regional coordination centres to the regulatory authorities concerned in accordance with the criteria set out in this Chapter.

The regulatory authorities of the system operation region shall review and approve the proposal.

The proposal shall at least include the following elements:

- (a) the Member State of the prospective seat of the regional coordination centres and the participating transmission system operators;
- (b) the organisational, financial and operational arrangements necessary to ensure the efficient, secure and reliable operation of the interconnected transmission system;
- (c) an implementation plan for the entry into operation of the regional coordination centres;
- (d) the statutes and rules of procedure of the regional coordination centres;
- (e) a description of cooperative processes in accordance with Article 38;
- (f) a description of the arrangements concerning the liability of the regional coordination centres in accordance with Article 47;
- (g) where two regional coordination centres are maintained on a rotational basis in accordance with Article 36(2), a description of the arrangements to provide clear responsibilities to those regional coordination centres and procedures on the execution of their tasks.

2. Following approval by regulatory authorities of the proposal in paragraph 1, the regional coordination centres shall replace the regional security coordinators established pursuant to the system operation guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009 and shall enter into operation by 1 July 2022.

3. Regional coordination centres shall have a legal form referred to in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council ⁽²³⁾.

4. In performing their tasks under Union law, regional coordination centres shall act independently of individual national interests and independently of the interests of transmission system operators.

5. Regional coordination centres shall complement the role of transmission system operators by performing the tasks of regional relevance assigned to them in accordance with Article 37. Transmission system operators shall be responsible for managing electricity flows and ensuring a secure, reliable and efficient electricity system in accordance with point (d) of Article 40(1) of Directive (EU) 2019/944.

⁽²³⁾ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

*Article 36***Geographical scope of regional coordination centres**

1. By 5 January 2020 the ENTSO for Electricity shall submit to ACER a proposal specifying which transmission system operators, bidding zones, bidding zone borders, capacity calculation regions and outage coordination regions are covered by each of the system operation regions. The proposal shall take into account the grid topology, including the degree of interconnection and of interdependency of the electricity system in terms of flows and the size of the region which shall cover at least one capacity calculation region.
2. The transmission system operators of a system operation region shall participate in the regional coordination centre established in that region. In exceptional circumstances, where the control area of a transmission system operator is part of various synchronous areas, the transmission system operator may participate in two regional coordination centres. For the bidding zone borders adjacent to system operation regions, the proposal in paragraph 1 shall specify how the coordination between regional coordination centres for those borders is to take place. For the Continental Europe synchronous area, where the activities of two regional coordination centres may overlap in a system operation region, the transmission system operators of that system operation region shall decide to either designate a single regional coordination centre in that region or that the two regional coordination centres carry out some or all of the tasks of regional relevance in the entire system operation region on a rotational basis while other tasks are carried out by a single designated regional coordination centre.
3. Within three months of receipt of the proposal in paragraph 1, ACER shall either approve the proposal defining the system operation regions or propose amendments. In the latter case, ACER shall consult the ENTSO for Electricity before adopting the amendments. The adopted proposal shall be published on ACER's website.
4. The relevant transmission system operators may submit a proposal to ACER for the amendment of system operation regions defined pursuant to paragraph 1. The process set out in paragraph 3 shall apply.

*Article 37***Tasks of regional coordination centres**

1. Each regional coordination centre shall carry out at least all the following tasks of regional relevance in the entire system operation region where it is established:
 - (a) carrying out the coordinated capacity calculation in accordance with the methodologies developed pursuant to the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;
 - (b) carrying out the coordinated security analysis in accordance with the methodologies developed pursuant to the system operation guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;
 - (c) creating common grid models in accordance with the methodologies and procedures developed pursuant to the system operation guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;
 - (d) supporting the consistency assessment of transmission system operators' defence plans and restoration plans in accordance with the procedure set out in the emergency and restoration network code adopted on the basis of Article 6(11) of Regulation (EC) No 714/2009;
 - (e) carrying out regional week ahead to at least day-ahead system adequacy forecasts and preparation of risk reducing actions in accordance with the methodology set out in Article 8 of Regulation (EU) 2019/941 and the procedures set out in the system operation guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;
 - (f) carrying out regional outage planning coordination in accordance with the procedures and methodologies set out in the system operation guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;
 - (g) training and certification of staff working for regional coordination centres;
 - (h) supporting the coordination and optimisation of regional restoration as requested by transmission system operators;

- (i) carrying out post-operation and post-disturbances analysis and reporting;
- (j) regional sizing of reserve capacity;
- (k) facilitating the regional procurement of balancing capacity;
- (l) supporting transmission system operators, at their request, in the optimisation of inter-transmission system operators settlements;
- (m) carrying out tasks related to the identification of regional electricity crisis scenarios if and to the extent they are delegated to the regional coordination centres pursuant to Article 6(1) of Regulation (EU) 2019/941;
- (n) carrying out tasks related to the seasonal adequacy assessments if and to the extent that they are delegated to the regional coordination centres pursuant to Article 9(2) of Regulation (EU) 2019/941;
- (o) calculating the value for the maximum entry capacity available for the participation of foreign capacity in capacity mechanisms for the purposes of issuing a recommendation pursuant to Article 26(7);
- (p) carrying out tasks related to supporting transmission system operators in the identification of needs for new transmission capacity, for upgrade of existing transmission capacity or their alternatives, to be submitted to the regional groups established pursuant to Regulation (EU) No 347/2013 and included in the ten-year network development plan referred to in Article 51 of Directive (EU) 2019/944.

The tasks referred to in the first subparagraph are set out in more detail in Annex I.

2. On the basis of a proposal by the Commission or a Member State, the Committee established by Article 68 of Directive (EU) 2019/944 shall issue an opinion on the assignment of new advisory tasks to regional coordination centres. Where that Committee issues a favourable opinion on the assignment of new advisory tasks, the regional coordination centres shall carry out those tasks on the basis of a proposal developed by the ENTSO for Electricity and approved by ACER in accordance with the procedure set out in Article 27.

3. Transmission system operators shall provide their regional coordination centres with the information necessary to carry out its tasks.

4. Regional coordination centres shall provide transmission system operators of the system operation region with all information necessary to implement the coordinated actions and recommendations issued by regional coordination centres.

5. For the tasks set out in this Article and not already covered by the relevant network codes or guidelines, the ENTSO for Electricity shall develop a proposal in accordance with the procedure set out in Article 27. Regional coordination centres shall carry out those tasks on the basis of the proposal following its approval by ACER.

Article 38

Cooperation within and between regional coordination centres

The day-to-day coordination within and between regional coordination centres shall be managed through cooperative processes among the transmission system operators of the region, including arrangements for coordination between regional coordination centres where relevant. The cooperative process shall be based on:

- (a) working arrangements to address planning and operational aspects relevant to the tasks referred to in Article 37;
- (b) a procedure for sharing analysis and consulting on regional coordination centres' proposals with the transmission system operators in the system operation region and relevant stakeholders and with other regional coordination centres, in an efficient and inclusive manner, in the exercise of the operational duties and tasks, in accordance with Article 40;
- (c) a procedure for the adoption of coordinated actions and recommendations in accordance with Article 42.

*Article 39***Working arrangements**

1. Regional coordination centres shall develop working arrangements that are efficient, inclusive, transparent and facilitate consensus, in order to address planning and operational aspects related to the tasks to be carried out, taking into account, in particular, the specificities and requirements of those tasks as specified in Annex I. Regional coordination centres shall also develop a process for the revision of those working arrangements.
2. Regional coordination centres shall ensure that the working arrangements referred to in paragraph 1 contain rules for the notification of parties concerned.

*Article 40***Consultation procedure**

1. Regional coordination centres shall develop a procedure to organise, in the exercise of their daily operational duties and tasks, the appropriate and regular consultation of transmission system operators in the system operation region, other regional coordination centres and of relevant stakeholders. In order to ensure that regulatory issues can be addressed, regulatory authorities shall be involved when required.
2. Regional coordination centres shall consult the Member States in the system operation region and, where there is a regional forum, their regional forums on matters of political relevance excluding the day-to-day activities of regional coordination centres and the implementation of their tasks. Regional coordination centres shall take due account of the recommendations of the Member States and where applicable, of their regional forums.

*Article 41***Transparency**

1. Regional coordination centres shall develop a process for stakeholder involvement and shall organise regular meetings with stakeholders to discuss matters relating to the efficient, secure and reliable operation of the interconnected system and to identify shortcomings and propose improvements.
2. The ENTSO for Electricity and regional coordination centres shall operate in full transparency towards stakeholders and the general public. They shall publish all relevant documentation on their respective websites.

*Article 42***Adoption and review of coordinated actions and recommendations**

1. The transmission system operators in a system operation region shall develop a procedure for the adoption and revision of coordinated actions and recommendations issued by regional coordination centres in accordance with the criteria set out in paragraphs 2, 3, and 4.
2. Regional coordination centres shall issue coordinated actions to the transmission system operators in respect of the tasks referred to in points (a) and (b) of Article 37(1). Transmission system operators shall implement the coordinated actions except where the implementation of the coordinated actions would result in a violation of the operational security limits defined by each transmission system operator in accordance with the system operation guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009.

Where a transmission system operator decides not to implement a coordinated action for the reasons set out in this paragraph, it shall transparently report the detailed reasons to the regional coordination centre and the transmission system operators of the system operation region without undue delay. In such cases, the regional coordination centre shall assess the impact of that decision on the other transmission system operators of the system operation region and may propose a different set of coordinated actions subject to the procedure set out in paragraph 1.

3. Regional coordination centres shall issue recommendations to the transmission system operators in relation to the tasks listed in points (c) to (p) of Article 37(1) or assigned in accordance with Article 37(2).

Where a transmission system operator decides to deviate from a recommendation as referred to in paragraph 1, it shall submit a justification for its decision to regional coordination centres and to the other transmission system operators of the system operation region without undue delay.

4. The review of coordinated actions or a recommendation shall be triggered at the request of one or more of the transmission system operators of the system operation region. Following the review of the coordinated action or recommendation, regional coordination centres shall confirm or modify the measure.

5. Where a coordinated action is subject to review in accordance with paragraph 4 of this Article, the request for review shall not suspend the coordinated action except where the implementation of the coordinated action would result in a violation of the operational security limits defined by each individual transmission system operator in accordance with the system operation guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009.

6. Upon the proposal of a Member State or the Commission and following consultation with the Committee established by Article 68 of Directive (EU) 2019/944, the Member States in a system operation region may jointly decide to grant the competence to issue coordinated actions to their regional coordination centre for one or more of the tasks provided for in points (c) to (p) of Article 37(1) of this Regulation.

Article 43

Management board of regional coordination centres

1. In order to adopt measures related to their governance and to monitor their performance, the regional coordination centres shall establish a management board.

2. The management board shall be composed of members representing all the transmission system operators that participate in the relevant regional coordination centre.

3. The management board shall be responsible for:

- (a) drafting and endorsing the statutes and rules of procedure of regional coordination centres;
- (b) deciding upon and implementing the organisational structure;
- (c) preparing and endorsing the annual budget;
- (d) developing and endorsing the cooperative processes in accordance with Article 38.

4. The competences of the management board shall exclude those that are related to the day-to-day activities of regional coordination centres and the performance of its tasks.

Article 44

Organisational structure

1. The transmission system operators of a system operation region shall establish the organisational structure of regional coordination centres that supports the safety of their tasks.

Their organisational structure shall specify:

- (a) the powers, duties and responsibilities of the personnel;
- (b) the relationship and reporting lines between different parts and processes of the organisation.

2. Regional coordination centres may establish regional desks to address sub-regional specificities or establish back-up regional coordination centres for the efficient and reliable exercise of their tasks where proven to be strictly necessary.

*Article 45***Equipment and staff**

Regional coordination centres shall be equipped with all human, technical, physical and financial resources necessary for fulfilling their obligations under this Regulation and carrying out their tasks independently and impartially.

*Article 46***Monitoring and reporting**

1. Regional coordination centres shall establish a process for the continuous monitoring of at least:
 - (a) their operational performance;
 - (b) the coordinated actions and recommendations issued, the extent to which the coordinated actions and recommendations have been implemented by the transmission system operators and the outcome achieved;
 - (c) the effectiveness and efficiency of each of the tasks for which they are responsible and, where applicable, the rotation of those tasks.
2. Regional coordination centres shall account for their costs in a transparent manner and report them to ACER and to the regulatory authorities in the system operation region.
3. Regional coordination centres shall submit an annual report on the outcome of the monitoring provided for in paragraph 1 and information on their performance to the ENTSO for Electricity, ACER, the regulatory authorities in the system operation region and the Electricity Coordination Group.
4. Regional coordination centres shall report any shortcomings that they identify in the monitoring process under paragraph 1 to the ENTSO for Electricity, the regulatory authorities in the system operation region, ACER and the other competent authorities of Member States responsible for the prevention and management of crisis situations. On the basis of that report, the relevant regulatory authorities of the system operation region may propose measures to address the shortcomings to the regional coordination centres.
5. Without prejudice to the need to protect security and the confidentiality of commercially sensitive information, regional coordination centres shall make public the reports referred to in paragraphs 3 and 4.

*Article 47***Liability**

In proposals for the establishment of regional coordination centres in accordance with Article 35, the transmission system operators in the system operation region shall include the necessary steps to cover liability related to the execution of regional coordination centres' tasks. The method employed to provide the cover shall take into account the legal status of regional coordination centres and the level of commercial insurance cover available.

*Article 48***Ten-year network development plan**

1. The Union-wide network development plan referred to under point (b) of Article 30(1) shall include the modelling of the integrated network, scenario development and an assessment of the resilience of the system.

The Union-wide network development plan shall, in particular:

- (a) build on national investment plans, taking into account regional investment plans as referred to in Article 34(1) of this Regulation, and, if appropriate, Union aspects of network planning as set out in Regulation (EU) No 347/2013; it shall be subject to a cost-benefit analysis using the methodology established as set out in Article 11 of that Regulation;

- (b) regarding cross-border interconnections, also build on the reasonable needs of different system users and integrate long-term commitments from investors referred to in Articles 44 and 51 of Directive (EU) 2019/944; and
- (c) identify investment gaps, in particular with respect to cross-border capacities.

In regard to point (c) of the first subparagraph, a review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices may be annexed to the Union-wide network development plan.

2. ACER shall provide an opinion on the national ten-year network development plans to assess their consistency with the Union-wide network development plan. If ACER identifies inconsistencies between a national ten-year network development plan and the Union-wide network development plan, it shall recommend amending the national ten-year network development plan or the Union-wide network development plan as appropriate. If such a national ten-year network development plan is developed in accordance with Article 51 of Directive (EU) 2019/944, ACER shall recommend that the regulatory authority amend the national ten-year network development plan in accordance with Article 51(7) of that Directive and inform the Commission thereof.

Article 49

Inter-transmission system operator compensation mechanism

1. Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks.
2. The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which cross-border flows originate and the systems where those flows end.
3. Compensation payments shall be made on a regular basis with regard to a given period in the past. Ex-post adjustments of compensation paid shall be made where necessary, to reflect costs actually incurred.

The first period for which compensation payments are to be made shall be determined in the guidelines referred to in Article 61.

4. The Commission shall adopt delegated acts in accordance with Article 68, supplementing this Regulation, establishing the amounts of compensation payments payable.
5. The magnitude of cross-border flows hosted and the magnitude of cross-border flows designated as originating or ending in national transmission systems shall be determined on the basis of the physical flows of electricity actually measured during a given period.
6. The costs incurred as a result of hosting cross-border flows shall be established on the basis of the forward-looking long-run average incremental costs, taking into account losses, investment in new infrastructure, and an appropriate proportion of the cost of existing infrastructure, in so far as such infrastructure is used for the transmission of cross-border flows, in particular taking into account the need to guarantee security of supply. When establishing the costs incurred, recognised standard-costing methodologies shall be used. Benefits that a network incurs as a result of hosting cross-border flows shall be taken into account to reduce the compensation received.

7. For the purpose of the inter-transmission system operator compensation mechanism only, where transmission networks of two or more Member States form part, in whole or in part, of a single control block, the control block as a whole shall be considered as forming part of the transmission network of one of the Member States concerned, in order to avoid flows within control blocks being considered as cross-border flows under point (b) of Article 2(2) and giving rise to compensation payments under paragraph 1 of this Article. The regulatory authorities of the Member States concerned may decide which of the Member States concerned shall be that of which the control block as a whole is to be considered to form part.

Article 50

Provision of information

1. Transmission system operators shall put in place coordination and information exchange mechanisms to ensure the security of the networks in the context of congestion management.

2. The safety, operational and planning standards used by transmission system operators shall be made public. The information published shall include a general scheme for the calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical features of the network. Such schemes shall be subject to approval by the regulatory authorities.
3. Transmission system operators shall publish estimates of available transfer capacity for each day, indicating any available transfer capacity already reserved. Those publications shall be made at specified intervals before the day of transport and shall include, in any event, week-ahead and month-ahead estimates, as well as a quantitative indication of the expected reliability of the available capacity.
4. Transmission system operators shall publish relevant data on aggregated forecast and actual demand, on availability and actual use of generation and load assets, on availability and use of the networks and interconnections, on balancing power and reserve capacity and on the availability of flexibility. For the availability and actual use of small generation and load assets, aggregated estimate data may be used.
5. The market participants concerned shall provide the transmission system operators with the relevant data.
6. Generation undertakings which own or operate generation assets, where at least one generation asset has an installed capacity of at least 250 MW, or which have a portfolio comprising at least 400 MW of generation assets, shall keep at the disposal of the regulatory authority, the national competition authority and the Commission, for five years all hourly data per plant that is necessary to verify all operational dispatching decisions and the bidding behaviour at power exchanges, interconnection auctions, reserve markets and over-the-counter-markets. The per-plant and per hour information to be stored shall include, but shall not be limited to, data on available generation capacity and committed reserves, including allocation of those committed reserves on a per-plant level, at the times the bidding is carried out and when production takes place.
7. Transmission system operators shall exchange regularly a set of sufficiently accurate network and load flow data in order to enable load flow calculations for each transmission system operator in its relevant area. The same set of data shall be made available to the regulatory authorities, and to the Commission and Member States upon request. The regulatory authorities, Member States and the Commission shall treat that set of data confidentially, and shall ensure that confidential treatment is also given by any consultant carrying out analytical work on their request, on the basis of those data.

Article 51

Certification of transmission system operators

1. The Commission shall examine any notification of a decision on the certification of a transmission system operator as laid down in Article 52(6) of Directive (EU) 2019/944 as soon as it is received. Within two months of receipt of such notification, the Commission shall deliver its opinion to the relevant regulatory authority as to its compatibility with Article 43 and either Article 52(2) or Article 53 of Directive (EU) 2019/944.

When preparing the opinion referred to in the first subparagraph, the Commission may request ACER to provide its opinion on the regulatory authority's decision. In such a case, the two-month period referred to in the first subparagraph shall be extended by two further months.

In the absence of an opinion by the Commission within the periods referred to in the first and second subparagraphs, the Commission shall be considered not to raise objections to the regulatory authority's decision.

2. Within two months of receipt of an opinion of the Commission, the regulatory authority shall adopt its final decision regarding the certification of the transmission system operator, taking the utmost account of that opinion. The regulatory authority's decision and the Commission's opinion shall be published together.
3. At any time during the procedure, regulatory authorities or the Commission may request from a transmission system operator or an undertaking performing any of the functions of generation or supply any information relevant to the fulfilment of their tasks under this Article.

4. Regulatory authorities and the Commission shall protect the confidentiality of commercially sensitive information.
5. Where the Commission has received notification of the certification of a transmission system operator under Article 43(9) of Directive (EU) 2019/944, the Commission shall take a decision relating to certification. The regulatory authority shall comply with the Commission decision.

CHAPTER VI

DISTRIBUTION SYSTEM OPERATION

Article 52

European entity for distribution system operators

1. Distribution system operators shall cooperate at Union level through the EU DSO entity, in order to promote the completion and functioning of the internal market for electricity, and to promote optimal management and a coordinated operation of distribution and transmission systems. Distribution system operators who wish to participate in the EU DSO entity shall have the right to become registered members of the entity.

Registered members may participate in the EU DSO entity directly or be represented by a national association designated by the Member State or by a Union-level association.

2. Distribution system operators are entitled to associate themselves through the establishment of the EU DSO entity. The EU DSO entity shall carry out its tasks and procedures in accordance with Article 55. As an expert entity working for the common Union interest, the EU DSO entity shall neither represent particular interests nor seek to influence the decision-making process to promote specific interests.

3. Members of the EU DSO entity shall be subject to registration and to the payment of a fair and proportionate membership fee that reflects the number of customers connected to the distribution system operator concerned.

Article 53

Establishment of the EU DSO entity

1. The EU DSO entity shall consist of, at least, a general assembly, a board of directors, a strategic advisor group, expert groups and a secretary-general.

2. By 5 July 2020, the distribution system operators shall submit to the Commission and to ACER, the draft statutes, in accordance with Article 54, including a code of conduct, a list of registered members, the draft rules of procedure, including the rules of procedures on the consultation with the ENTSO for Electricity and other stakeholders and the financing rules, of the EU DSO entity to be established.

The draft rules of procedure of the EU DSO entity shall ensure balanced representation of all participating distribution system operators.

3. Within two months of receipt of the draft statutes, the list of members and the draft rules of procedure, ACER shall provide the Commission with its opinion, after consulting the organisations representing all stakeholders, in particular distribution system users.

4. Within three months of receipt of ACER's opinion, the Commission shall deliver an opinion on the draft statutes, the list of members and the draft rules of procedure, taking into account ACER's opinion as provided for in paragraph 3.

5. Within three months of receipt of the Commission's positive opinion, the distribution system operators shall establish the EU DSO entity and shall adopt and publish its statutes and rules of procedure.

6. The documents referred to in paragraph 2 shall be submitted to the Commission and to ACER where there are changes thereto or upon the reasoned request of either of them. The Commission and ACER shall deliver an opinion in line with the process set out in paragraphs 2, 3 and 4.

7. The costs related to the activities of the EU DSO entity shall be borne by the distribution system operators that are registered members and shall be taken into account in the calculation of tariffs. Regulatory authorities shall only approve costs that are reasonable and proportionate.

Article 54

Principal rules and procedures for the EU DSO entity

1. The statutes of the EU DSO entity adopted in accordance with Article 53 shall safeguard the following principles:
 - (a) participation in the work of the EU DSO entity is limited to registered members with the possibility of delegation within the membership;
 - (b) strategic decisions regarding the activities of the EU DSO entity as well as policy guidelines for the board of directors are adopted by the general assembly;
 - (c) decisions of the general assembly are adopted according with the following rules:
 - (i) each member disposes of a number of votes proportional to the number of that member's customers;
 - (ii) 65 % of the votes attributed to the members are cast; and
 - (iii) the decision is adopted by a majority of 55 % of the members;
 - (d) decisions of the general assembly are rejected according with the following rules:
 - (i) each member disposes of a number of votes proportional to the number of that member's customers;
 - (ii) 35 % of the votes attributed to the members are cast; and
 - (iii) the decision is rejected by at least 25 % of the members;
 - (e) the board of directors is elected by the general assembly for a mandate of a maximum of four years;
 - (f) the board of directors nominates the President and the three Vice-Presidents from among the members of the board;
 - (g) cooperation between transmission system operators and distribution system operators pursuant to Articles 56 and 57 is led by the board of directors;
 - (h) decisions of the board of directors are adopted by an absolute majority;
 - (i) on the basis of a proposal by the board of directors, the secretary general is appointed by the general assembly from among its members for a mandate of four years, renewable once;
 - (j) on the basis of a proposal by the board of directors, Expert Groups are appointed by the general assembly and do not exceed 30 members, with the possibility of one-third of the members coming from outside the membership of EU DSO; in addition, one 'country' expert group shall be established and shall consist of one representative of distribution system operators from each Member State.
2. Procedures adopted by the EU DSO entity shall safeguard the fair and proportionate treatment of its members and shall reflect the diverse geographical and economic structure of its membership. In particular, the procedures shall provide that:
 - (a) the board of directors is composed of the President of the Board and 27 members' representatives, of which:
 - (i) nine are representatives of members with more than 1 million grid users;
 - (ii) nine are representatives of members with more than 100 000 and less than 1 million grid users; and
 - (iii) nine are representatives of members with less than 100 000 grid users;
 - (b) representatives of existing DSO associations are permitted to participate as observers at the meetings of the board of directors;
 - (c) the board of directors are not permitted to consist of more than three representatives of members who are based in the same Member State or in the same industrial group;

- (d) each Vice-President of the Board is nominated among representatives of members in each category described in point (a);
- (e) representatives of members who are based in one Member State or the same industrial group do not constitute the majority of the participants in the Expert Group;
- (f) the board of directors establishes a Strategic Advisory group that provides its opinion to the board of directors and the Expert Groups and consists of representatives of the European DSO associations and representatives of those Member States which are not represented in the board of directors.

Article 55

Tasks of the EU DSO entity

1. The tasks of the EU DSO entity shall be the following:
 - (a) promoting operation and planning of distribution networks in coordination with the operation and planning of transmission networks;
 - (b) facilitating the integration of renewable energy resources, distributed generation and other resources embedded in the distribution network such as energy storage;
 - (c) facilitating demand side flexibility and response and distribution grid users' access to markets;
 - (d) contributing to the digitalisation of distribution systems including deployment of smart grids and intelligent metering systems;
 - (e) supporting the development of data management, cyber security and data protection in cooperation with relevant authorities and regulated entities;
 - (f) participating in the development of network codes which are relevant to the operation and planning of distribution grids and the coordinated operation of the transmission networks and distribution networks pursuant to Article 59.
2. In addition the EU DSO entity shall:
 - (a) cooperate with the ENTSO for Electricity on the monitoring of implementation of the network codes and guidelines adopted pursuant to this Regulation which are relevant to the operation and planning of distribution grids and the coordinated operation of the transmission networks and distribution networks;
 - (b) cooperate with the ENTSO for Electricity and adopt best practices on the coordinated operation and planning of transmission and distribution systems including issues such as exchange of data between operators and coordination of distributed energy resources;
 - (c) work on identifying best practices on the areas identified in paragraph 1 and for the introduction of energy efficiency improvements in the distribution network;
 - (d) adopt an annual work programme and an annual report;
 - (e) operate in accordance with competition law and ensure neutrality.

Article 56

Consultations in the network code development process

1. While participating in the development of new network codes pursuant to Article 59, the EU DSO entity shall conduct an extensive consultation process, at an early stage and in an open and transparent manner, involving all relevant stakeholders, and, in particular, organisations representing such stakeholders, in accordance with the rules of procedure on consultation referred to in Article 53. That consultation shall also involve regulatory authorities and other national authorities, supply and generation undertakings, system users including customers, technical bodies and stakeholder platforms. It shall aim at identifying the views and proposals of all relevant parties during the decision-making process.

2. All documents and minutes of meetings related to the consultations referred to in paragraph 1 shall be made public.

3. The EU DSO entity shall take into consideration the views provided during the consultations. Before adopting proposals for the network codes referred to in Article 59 the EU DSO entity shall indicate how it has taken the observations received during the consultation into consideration. It shall provide reasons where it has not taken such observations into account.

Article 57

Cooperation between distribution system operators and transmission system operators

1. Distribution system operators and transmission system operators shall cooperate with each other in planning and operating their networks. In particular, distribution system operators and transmission system operators shall exchange all necessary information and data regarding, the performance of generation assets and demand side response, the daily operation of their networks and the long-term planning of network investments, with the view to ensure the cost-efficient, secure and reliable development and operation of their networks.

2. Distribution system operators and transmission system operators shall cooperate with each other in order to achieve coordinated access to resources such as distributed generation, energy storage or demand response that may support particular needs of both the distribution system operators and the transmission system operators.

CHAPTER VII

NETWORK CODES AND GUIDELINES

Article 58

Adoption of network codes and guidelines

1. The Commission may, subject to the empowerments in Articles 59, 60 and 61, adopt implementing or delegated acts. Such acts may either be adopted as network codes on the basis of text proposals developed by the ENTSO for Electricity, or, where so provided for in the priority list pursuant to Article 59(3), by the EU DSO entity, where relevant in cooperation with the ENTSO for Electricity, and ACER pursuant to the procedure in Article 59, or as guidelines pursuant to the procedure in Article 61.

2. The network codes and guidelines shall:

- (a) ensure that they provide the minimum degree of harmonisation required to achieve the aims of this Regulation;
- (b) take into account regional specificities, where appropriate;
- (c) not go beyond what is necessary for the purposes of point (a); and
- (d) be without prejudice to the Member States' right to establish national network codes which do not affect cross-zonal trade.

Article 59

Establishment of network codes

1. The Commission is empowered to adopt implementing acts in order to ensure uniform conditions for the implementation of this Regulation by establishing network codes in the following areas:

- (a) network security and reliability rules including rules for technical transmission reserve capacity for operational network security as well as interoperability rules implementing Articles 34 to 47 and Article 57 of this Regulation and Article 40 of Directive (EU) 2019/944, including rules on system states, remedial actions and operational security limits, voltage control and reactive power management, short-circuit current management, power flow management, contingency analysis and handling, protection equipment and schemes, data exchange, compliance, training, operational planning and security analysis, regional operational security coordination, outage coordination, availability plans of relevant assets, adequacy analysis, ancillary services, scheduling, and operational planning data environments;

- (b) capacity-allocation and congestion-management rules implementing Article 6 of Directive (EU) 2019/944 and Article 7 to 10, Articles 13 to 17 and Articles 35 to 37 of this Regulation, including rules on day-ahead, intraday and forward capacity calculation methodologies and processes, grid models, bidding zone configuration, redispatching and countertrading, trading algorithms, single day-ahead and intraday coupling, the firmness of allocated cross-zonal capacity, congestion income distribution, cross-zonal transmission risk hedging, nomination procedures, and capacity allocation and congestion management cost recovery;
- (c) rules implementing Articles 5, 6 and 17 in relation to trading related to technical and operational provision of network access services and system balancing, including rules on network-related reserve power, including functions and responsibilities, platforms for the exchange of balancing energy, gate closure times, requirements for standard and specific balancing products, procurement of balancing services, allocation of cross-zonal capacity for the exchange of balancing services or sharing of reserves, settlement of balancing energy, settlement of exchanges of energy between system operators, imbalance settlement and settlement of balancing capacity, load frequency control, frequency quality defining and target parameters, frequency containment reserves, frequency restoration reserves, replacement reserves, exchange and sharing of reserves, cross-border activation processes of reserves, time-control processes and transparency of information;
- (d) rules implementing Articles 36, 40 and 54 of Directive (EU) 2019/944 in relation to non-discriminatory, transparent provision of non-frequency ancillary services,, including rules on steady state voltage control, inertia, fast reactive current injection, inertia for grid stability, short circuit current, black-start capability and island operation capability;
- (e) rules implementing Article 57 of this Regulation and Articles 17, 31, 32, 36, 40 and 54 of Directive (EU) 2019/944 in relation to demand response, including rules on aggregation, energy storage, and demand curtailment rules.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

2. The Commission is empowered to adopt delegated acts in accordance with Article 68 supplementing this Regulation with regard to the establishment of network codes in the following areas:

- (a) network connection rules including rules on the connection of transmission-connected demand facilities, transmission-connected distribution facilities and distribution systems, connection of demand units used to provide demand response, requirements for grid connection of generators, requirements for high-voltage direct current grid connection, requirements for direct current-connected power park modules and remote-end high-voltage direct current converter stations, and operational notification procedures for grid connection;
- (b) data exchange, settlement and transparency rules, including in particular rules on transfer capacities for relevant time horizons, estimates and actual values on the allocation and use of transfer capacities, forecast and actual demand of facilities and aggregation thereof including unavailability of facilities, forecast and actual generation of generation units and aggregation thereof including unavailability of units, availability and use of networks, congestion management measures and balancing market data. Rules should include ways in which the information is published, the timing of publication, the entities responsible for handling;
- (c) third-party access rules;
- (d) operational emergency and restoration procedures in an emergency including system defence plans, restoration plans, market interactions, information exchange and communication and tools and facilities;
- (e) sector-specific rules for cyber security aspects of cross-border electricity flows, including rules on common minimum requirements, planning, monitoring, reporting and crisis management.

3. The Commission shall, after consulting ACER, the ENTSO for Electricity, the EU DSO entity and the other relevant stakeholders, establish a priority list every three years, identifying the areas set out in paragraphs 1 and 2 to be included in the development of network codes.

If the subject matter of the network code is directly related to the operation of the distribution system and not primarily relevant to the transmission system, the Commission may require the EU DSO entity, in cooperation with the ENTSO for Electricity, to convene a drafting committee and submit a proposal for a network code to ACER.

4. The Commission shall request ACER to submit to it within a reasonable period not exceeding six months of receipt of the Commission's request non-binding framework guidelines setting out clear and objective principles for the development of network codes relating to the areas identified in the priority list (framework guideline). The request of the Commission may include conditions which the framework guideline shall address. Each framework guideline shall contribute to market integration, non-discrimination, effective competition, and the efficient functioning of the market. Upon a reasoned request from ACER, the Commission may extend the period for submitting the guidelines.
5. ACER shall consult the ENTSO for Electricity, the EU DSO entity, and the other relevant stakeholders in regard to the framework guideline, during a period of no less than two months, in an open and transparent manner.
6. ACER shall submit a non-binding framework guideline to the Commission where requested to do so under paragraph 4.
7. If the Commission considers that the framework guideline does not contribute to market integration, non-discrimination, effective competition and the efficient functioning of the market, it may request ACER to review the framework guideline within a reasonable period and resubmit it to the Commission.
8. If ACER fails to submit or resubmit a framework guideline within the period set by the Commission under paragraph 4 or 7, the Commission shall develop the framework guideline in question.
9. The Commission shall request the ENTSO for Electricity or, where provided for in the priority list referred to in paragraph 3, the EU DSO entity in cooperation with the ENTSO for Electricity, to submit a proposal for a network code in accordance with the relevant framework guideline, to ACER within a reasonable period, not exceeding 12 months, of receipt of the Commission's request.
10. The ENTSO for Electricity, or where provided for in the priority list referred to in paragraph 3 the EU DSO entity, in cooperation with the ENTSO for Electricity, shall convene a drafting committee to support it in the network code development process. The drafting committee shall consist of representatives of ACER, the ENTSO for Electricity, where appropriate the EU DSO entity and NEMOs, and a limited number of the main affected stakeholders. The ENTSO for Electricity or where provided for in the priority list pursuant to paragraph 3 the EU DSO entity, in cooperation with the ENTSO for Electricity, shall develop proposals for network codes in the areas referred to in paragraphs 1 and 2 where so requested by the Commission in accordance with paragraph 9.
11. ACER shall revise the proposed network code to ensure that the network code to be adopted complies with the relevant framework guidelines and contributes to market integration, non-discrimination, effective competition, and the efficient functioning of the market and, submit the revised network code to the Commission within six months of receipt of the proposal. In the proposal submitted to the Commission, ACER shall take into account the views provided by all involved parties during the drafting of the proposal led by the ENTSO for Electricity or the EU DSO entity and shall consult the relevant stakeholders on the version to be submitted to the Commission.
12. Where the ENTSO for Electricity or the EU DSO entity have failed to develop a network code within the period set by the Commission under paragraph 9, the Commission may request ACER to prepare a draft network code on the basis of the relevant framework guideline. ACER may launch a further consultation in the course of preparing a draft network code under this paragraph. ACER shall submit a draft network code prepared under this paragraph to the Commission and may recommend that it be adopted.
13. The Commission may adopt, on its own initiative, where the ENTSO for Electricity or the EU DSO entity have failed to develop a network code, or ACER has failed to develop a draft network code as referred to in paragraph 12, or upon the proposal of ACER under paragraph 11, one or more network codes in the areas listed in paragraphs 1 and 2.
14. Where the Commission proposes to adopt a network code on its own initiative, the Commission shall consult ACER, the ENTSO for Electricity and all relevant stakeholders in regard to the draft network code during a period of no less than two months.
15. This Article shall be without prejudice to the Commission's right to adopt and amend the guidelines as laid down in Article 61. It shall be without prejudice to the possibility for the ENTSO for Electricity to develop non-binding guidance in the areas set out in paragraphs 1 and 2 where such guidance does not relate to areas covered by a request addressed to the ENTSO for Electricity by the Commission. The ENTSO for Electricity shall submit any such guidance to ACER for an opinion and shall duly take that opinion into account.

*Article 60***Amendments of network codes**

1. The Commission is empowered to amend the network codes within the areas listed in Article 59(1) and (2) in accordance with the relevant procedure set out in that Article. ACER may also propose amendments to the network codes in accordance with paragraphs 2 and 3 of this Article.
2. Persons who are likely to have an interest in any network code adopted under Article 59, including the ENTSO for Electricity, the EU DSO entity, regulatory authorities, transmission system operators, distribution system operators, system users and consumers, may propose draft amendments to that network code to ACER. ACER may also propose amendments on its own initiative.
3. ACER may make reasoned proposals to the Commission for amendments, explaining how such proposals are consistent with the objectives of the network codes set out in Article 59(3) of this Regulation. Where it considers an amendment proposal to be admissible and where it proposes amendments on its own initiative, ACER shall consult all stakeholders in accordance with Article 14 of Regulation (EU) 2019/942.

*Article 61***Guidelines**

1. The Commission is empowered to adopt binding guidelines in the areas listed in this Article.
2. The Commission is empowered to adopt guidelines in the areas where such acts could also be developed under the network code procedure pursuant to Article 59(1) and (2). Those guidelines shall be adopted in the form of delegated or implementing acts, depending on the relevant empowerment provided for in this Regulation.
3. The Commission is empowered to adopt delegated acts in accordance with Article 68 supplementing this Regulation by setting out guidelines relating to the inter-transmission system operator compensation mechanism. Those guidelines shall specify, in accordance with the principles set out in Articles 18 and 49:
 - (a) details of the procedure for determining which transmission system operators are liable to pay compensation for cross-border flows including as regards the split between the operators of national transmission systems from which cross-border flows originate and the systems where those flows end, in accordance with Article 49(2);
 - (b) details of the payment procedure to be followed, including the determination of the first period for which compensation is to be paid, in accordance with the second subparagraph of Article 49(3);
 - (c) details of methodologies for determining the cross-border flows hosted for which compensation is to be paid under Article 49, in terms of both quantity and type of flows, and the designation of the magnitudes of such flows as originating or ending in transmission systems of individual Member States, in accordance with Article 49(5);
 - (d) details of the methodology for determining the costs and benefits incurred as a result of hosting cross-border flows, in accordance with Article 49(6);
 - (e) details of the treatment of electricity flows originating or ending in countries outside the European Economic Area in the context of the inter-transmission system operator compensation mechanism; and
 - (f) arrangements for the participation of national systems which are interconnected through direct current lines, in accordance with Article 49.
4. Where appropriate, the Commission may adopt implementing acts setting out guidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation. Those guidelines may specify:
 - (a) details of rules for the trading of electricity implementing Article 6 of Directive (EU) 2019/944 and Articles 5 to 10, 13 to 17, 35, 36 and 37 of this Regulation;
 - (b) details of investment incentive rules for interconnector capacity including locational signals implementing Article 19.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

5. The Commission may adopt implementing acts setting out guidelines on operational coordination between transmission system operators at Union level. Those guidelines shall be consistent with and build upon the network codes referred to in Article 59 and shall build upon the adopted specifications referred to in point (i) of Article 30(1). When adopting those guidelines, the Commission shall take into account differing regional and national operational requirements.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

6. When adopting or amending guidelines, the Commission shall consult ACER, the ENTSO for Electricity, the EU DSO entity and, where relevant, other stakeholders.

Article 62

Right of Member States to provide for more detailed measures

This Regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out in this Regulation, in the guidelines referred to in Article 61 or in the network codes referred to in Article 59, provided that those measures are compatible with Union law.

CHAPTER VIII

FINAL PROVISIONS

Article 63

New interconnectors

1. New direct current interconnectors may, upon request, be exempted, for a limited period, from Article 19(2) and (3) of this Regulation and from Articles 6 and 43, Article 59(7) and Article 60(1) of Directive (EU) 2019/944 provided that the following conditions are met:

- (a) the investment enhances competition in electricity supply;
- (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;
- (c) the interconnector is owned by a natural or legal person which is separate, at least in terms of its legal form, from the system operators in whose systems that interconnector is to be built;
- (d) charges are levied on users of that interconnector;
- (e) since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council ⁽²⁴⁾, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and
- (f) an exemption would not be to the detriment of competition or the effective functioning of the internal market for electricity, or the efficient functioning of the regulated system to which the interconnector is linked.

2. Paragraph 1 shall also apply, in exceptional cases, to alternating current interconnectors provided that the costs and risks of the investment in question are particularly high when compared with the costs and risks normally incurred when connecting two neighbouring national transmission systems by an alternating current interconnector.

3. Paragraph 1 shall also apply to significant increases of capacity in existing interconnectors.

⁽²⁴⁾ Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (OJ L 27, 30.1.1997, p. 20).

4. The decision granting an exemption as referred to in paragraphs 1, 2 and 3 shall be taken on a case-by-case basis by the regulatory authorities of the Member States concerned. An exemption may cover all or part of the capacity of the new interconnector, or of the existing interconnector with significantly increased capacity.

Within two months of receipt of the request for exemption by the last of the regulatory authorities concerned, ACER may provide those regulatory authorities with an opinion. The regulatory authorities may base their decision on that opinion.

In deciding to grant an exemption, regulatory authorities shall take into consideration, on a case-by-case basis, the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the interconnector. When deciding on those conditions, regulatory authorities shall, in particular, take account of additional capacity to be built or the modification of existing capacity, the time-frame of the project and national circumstances.

Before granting an exemption, the regulatory authorities of the Member States concerned shall decide on the rules and mechanisms for management and allocation of capacity. Those congestion-management rules shall include the obligation to offer unused capacity on the market and users of the facility shall be entitled to trade their contracted capacities on the secondary market. In the assessment of the criteria referred to in points (a), (b) and (f) of paragraph 1, the results of the capacity-allocation procedure shall be taken into account.

Where all the regulatory authorities concerned have reached agreement on the exemption decision within six months of receipt of the request, they shall inform ACER of that decision.

The exemption decision, including any conditions referred to in the third subparagraph of this paragraph, shall be duly reasoned and published.

5. The decision referred to in paragraph 4 shall be taken by ACER:

- (a) where the regulatory authorities concerned have not been able to reach an agreement within six months from the date on which the last of those regulatory authorities received the exemption request; or
- (b) upon a joint request from the regulatory authorities concerned.

Before taking such a decision, ACER shall consult the regulatory authorities concerned and the applicants.

6. Notwithstanding paragraphs 4 and 5, Member States may provide for the regulatory authority or ACER, as the case may be, to submit, for a formal decision, to the relevant body in the Member State, its opinion on the request for an exemption. That opinion shall be published together with the decision.

7. A copy of every request for exemption shall be transmitted for information without delay by the regulatory authorities to the Commission and ACER on receipt. The decision shall be notified, without delay, by the regulatory authorities concerned or by ACER (the notifying bodies), to the Commission, together with all the relevant information with respect to the decision. That information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision. In particular, the information shall contain:

- (a) the detailed reasons on the basis of which the exemption was granted or refused, including the financial information justifying the need for the exemption;
- (b) the analysis undertaken of the effect on competition and the effective functioning of the internal market for electricity resulting from the grant of the exemption;
- (c) the reasons for the time period and the share of the total capacity of the interconnector in question for which the exemption is granted; and
- (d) the result of the consultation of the regulatory authorities concerned.

8. Within 50 working days of the day following that of receipt of the notification under paragraph 7, the Commission may take a decision requesting the notifying bodies to amend or withdraw the decision to grant an exemption. That period may be extended by an additional 50 working days where further information is requested by the Commission. The additional period shall begin on the day following receipt of the complete information. The initial period may also be extended by consent of both the Commission and the notifying bodies.

Where the requested information is not provided within the period set out in the Commission's request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period is extended by consent of both the Commission and the notifying bodies, or the notifying bodies, in a duly reasoned statement, inform the Commission that they consider the notification to be complete.

The notifying bodies shall comply with a Commission decision to amend or withdraw the exemption decision within one month of receipt and shall inform the Commission accordingly.

The Commission shall protect the confidentiality of commercially sensitive information.

The Commission's approval of an exemption decision shall expire two years after the date of its adoption in the event that construction of the interconnector has not started by that date, and five years after the date of its adoption if the interconnector has not become operational by that date, unless the Commission decides, on the basis of a reasoned request by the notifying bodies, that any delay is due to major obstacles beyond the control of the person to whom the exemption has been granted.

9. Where the regulatory authorities of the Member States concerned decide to modify an exemption decision, they shall notify their decision to the Commission without delay, together with all the relevant information with respect to the decision. Paragraphs 1 to 8 shall apply to the decision to modify an exemption decision, taking into account the particularities of the existing exemption.

10. The Commission may, on request or on its own initiative, reopen proceedings relating to an exemption request where:

- (a) taking due account of the legitimate expectations of the parties and of the economic balance achieved in the original exemption decision, there has been a material change in any of the facts on which the decision was based;
- (b) the undertakings concerned act contrary to their commitments; or
- (c) the decision was based on incomplete, incorrect or misleading information, which was provided by the parties.

11. The Commission is empowered to adopt delegated acts in accordance with Article 68 supplementing this Regulation by specifying guidelines for the application of the conditions laid down in paragraph 1 of this Article and setting out the procedure to be followed for the application of paragraphs 4 and 7 to 10 of this Article.

Article 64

Derogations

1. Member States may apply for derogations from the relevant provisions of Articles 3 and 6, Article 7(1), Article 8(1) and (4), Articles 9, 10 and 11, Articles 14 to 17, Articles 19 to 27, Articles 35 to 47 and Article 51 provided that:

- (a) the Member State can demonstrate that there are substantial problems for the operation of small isolated systems and small connected systems;
- (b) outermost regions within the meaning of Article 349 TFEU cannot be interconnected with the Union's energy market for evident physical reasons.

In the situation referred to in point (a) of the first subparagraph, the derogation shall be limited in time and shall subject to conditions aiming to increase competition and integration with the internal market for electricity.

In the situation referred to in point (b) of the first subparagraph, the derogation shall not be limited in time.

The Commission shall inform the Member States of those applications before adopting the decision, protecting the confidentiality of commercially sensitive information.

A derogation granted under this Article shall aim to ensure that it does not obstruct the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response.

In its decision granting a derogation the Commission shall set out to what extent the derogation is to take into account the application of the network codes and guidelines.

2. Articles 3, 5 and 6, Article 7(1), points (c) and (g) of Article 7(2)) Articles 8 to 17, Article 18(5) and (6), Articles 19 and 20, Article 21(1), (2) and (4) to (8), point (c) of Article 22(1), points (b) and (c) of Article 22(2), the last subparagraph of Article 22 (2), Articles 23 to 27, Article 34(1), (2) and (3), Articles 35 to 47, Article 48(2) and Articles 49 and 51 shall not apply to Cyprus until its transmission system is connected to other Member States' transmission systems via interconnections.

If the transmission system of Cyprus is not connected to other Member States' transmission systems by means of interconnections by 1 January 2026, Cyprus shall assess the need for derogation from those provisions and may submit a request to prolong the derogation to the Commission. The Commission shall assess whether the application of the provisions risks causing substantial problems to the operation of the electricity system in Cyprus or whether their application in Cyprus is expected to provide benefits to the functioning of the market. On the basis of that assessment, the Commission shall issue a reasoned decision to prolong the derogation in full or in part. The decision shall be published in the *Official Journal of the European Union*.

3. This Regulation shall not affect the application of the derogations granted under Article 66 of Directive (EU) 2019/944.

4. In relation to the attainment of the 2030 interconnection target, as stipulated under Regulation (EU) 2018/1999, the electricity link between Malta and Italy shall be duly taken into account.

Article 65

Provision of information and confidentiality

1. Member States and the regulatory authorities shall, on request, provide the Commission with all the information necessary for the purposes of enforcing this Regulation.

The Commission shall set a reasonable time limit within which the information is to be provided, taking into account the complexity and urgency of the information required.

2. If the Member State or the regulatory authority concerned does not provide the information referred to in paragraph 1 within the time limit referred to in paragraph 1 the Commission may request all the information necessary for the purpose of enforcing this Regulation directly from the undertakings concerned.

When sending a request for information to an undertaking, the Commission shall, at the same time, forward a copy of the request to the regulatory authorities of the Member State in whose territory the seat of the undertaking is situated.

3. In its request for information under paragraph 1, the Commission shall state the legal basis of the request, the time limit within which the information is to be provided, the purpose of the request, and the penalties provided for in Article 66(2) for supplying incorrect, incomplete or misleading information.

4. The owners of the undertakings or their representatives and, in the case of legal persons, the natural persons authorised to represent the undertaking by law or by their instrument of incorporation, shall supply the information requested. Where lawyers are authorised to supply the information on behalf of their client, the client shall remain fully responsible in the event that the information supplied is incomplete, incorrect or misleading.

5. Where an undertaking does not provide the information requested within the time limit set by the Commission or supplies incomplete information, the Commission may by decision require the information to be provided. That decision shall specify what information is required and set an appropriate time limit within which it is to be supplied. It shall indicate the penalties provided for in Article 66(2). It shall also indicate the right to have the decision reviewed by the Court of Justice of the European Union.

The Commission shall, at the same time, send a copy of its decision to the regulatory authorities of the Member State within the territory of which the person is resident or the seat of the undertaking is situated.

6. The information referred to in paragraphs 1 and 2 shall be used only for the purposes of enforcing this Regulation.

The Commission shall not disclose information acquired pursuant to this Regulation where that information is covered by the obligation of professional secrecy.

*Article 66***Penalties**

1. Without prejudice to paragraph 2 of this Article, the Member States shall lay down the rules on penalties applicable to infringements of this Regulation, the network codes adopted pursuant to Article 59, and the guidelines adopted pursuant to Article 61 and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it without delay of any subsequent amendment affecting them.
2. The Commission may, by decision, impose on undertakings fines not exceeding 1 % of the total turnover in the preceding business year where, intentionally or negligently, those undertakings supply incorrect, incomplete or misleading information in response to a request made pursuant to Article 65(3) or fail to supply information within the time-limit set in a decision adopted pursuant to the first subparagraph of Article 65(5). In setting the amount of a fine, the Commission shall have regard to the gravity of the failure to comply with the requirements referred to in paragraph 1 of this Article.
3. The penalties provided for pursuant to paragraph 1 and any decisions taken pursuant to paragraph 2 shall not be of a criminal law nature.

*Article 67***Committee procedure**

1. The Commission shall be assisted by the committee set up by Article 68 of Directive (EU) 2019/944. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 68***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 34(3), Article 49(4), Article 59(2), Article 61(2) and Article 63(11) shall be conferred on the Commission until 31 December 2028. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of that period and, if applicable, before the end of subsequent periods. The delegation of power shall be tacitly extended for periods of eight years, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 34(3), Article 49(4), Article 59(2), Article 61(2) and Article 63(11) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated act already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 34(3), Article 49(4), Article 59(2), Article 61(2) and Article 63(11) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 69***Commission reviews and reports**

1. By 1 July 2025, the Commission shall review the existing network codes and guidelines in order to assess which of their provisions could be appropriately incorporated into legislative acts of the Union concerning the internal electricity market and how the empowerments for network codes and guidelines laid down in Articles 59 and 61 could be revised.

The Commission shall submit a detailed report of its assessment to the European Parliament and to the Council by the same date.

By 31 December 2026, the Commission shall, where appropriate, submit legislative proposals on the basis of its assessment.

2. By 31 December 2030 the Commission shall review this Regulation and shall submit a report to the European Parliament and to the Council on the basis of that review, accompanied by a legislative proposal where appropriate.

*Article 70***Repeal**

Regulation (EC) No 714/2009 is repealed. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex III.

*Article 71***Entry into force**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from 1 January 2020.

Notwithstanding the first subparagraph, Articles 14, 15, 22(4), 23(3) and (6), 35, 36 and 62 shall apply from the date of entry into force of this Regulation. For the purpose of implementing Article 14(7) and Article 15(2), Article 16 shall apply from that date.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 June 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

ANNEX I

TASKS OF REGIONAL COORDINATION CENTRES

1. Coordinated capacity calculation
 - 1.1 Regional coordination centres shall carry out the coordinated calculation of cross-zonal capacities.
 - 1.2 Coordinated capacity calculation shall be performed for the day-ahead and intraday timeframes.
 - 1.3 Coordinated capacity calculation shall be performed on the basis of the methodologies developed pursuant to the guideline on capacity allocation and congestion management adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009.
 - 1.4 Coordinated capacity calculation shall be performed based on a common grid model in accordance with point 3.
 - 1.5 Coordinated capacity calculation shall ensure an efficient congestion management in accordance with the principles of congestion management defined in this Regulation.
2. Coordinated security analysis
 - 2.1 Regional coordination centres shall carry out a coordinated security analysis aiming to ensure secure system operation.
 - 2.2 Security analysis shall be performed for all operational planning timeframes, between the year-ahead and intraday timeframes, using the common grid models.
 - 2.3 Coordinated security analysis shall be performed on the basis of the methodologies developed pursuant to the system operation guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009.
 - 2.4 Regional coordination centres shall share the results of the coordinated security analysis with at least the transmission system operators in the system operation region.
 - 2.5 When as a result of the coordinated security analysis a regional coordination centre detects a possible constraint, it shall design remedial actions maximising effectiveness and economic efficiency.
3. Creation of common grid models
 - 3.1 Regional coordination centres shall set up efficient processes for the creation of a common grid model for each operational planning timeframe between the year-ahead and intraday timeframes.
 - 3.2 Transmission system operators shall appoint one regional coordination centre to build the Union-wide common grid models.
 - 3.3 Common grid models shall be performed in accordance with the methodologies developed pursuant to the system operation guideline and the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009.
 - 3.4 Common grid models shall include relevant data for efficient operational planning and capacity calculation in all operational planning timeframes between the year-ahead and intraday timeframes.
 - 3.5 Common grid models shall be made available to all regional coordination centres, transmission system operators, ENTSO for Electricity and, upon request, to ACER.
4. Support for transmission system operators' defence and restoration plans with regard to the consistency assessment
 - 4.1 Regional coordination centres shall support the transmission system operators in the system operation region in carrying out the consistency assessment of transmission system operators' defence plans and restoration plans pursuant to the procedures set out in the network code on electricity emergency and restoration adopted on the basis of Article 6(11) of Regulation (EC) No 714/2009.

- 4.2 All transmission system operators shall agree on a threshold above which the impact of actions of one or more transmission system operators in the emergency, blackout or restoration states is considered significant for other transmission system operators synchronously or non-synchronously interconnected.
- 4.3 In providing support to the transmission system operators, the regional coordination centre shall:
 - (a) identify potential incompatibilities;
 - (b) propose mitigation actions.
- 4.4 Transmission system operators shall assess and take into account the proposed mitigation actions.
5. Support the coordination and optimisation of regional restoration
- 5.1 Each relevant regional coordination centre shall support the transmission system operators appointed as frequency leaders and the resynchronisation leaders pursuant to the network code on emergency and restoration adopted on the basis of Article 6(11) of Regulation (EC) No 714/2009 to improve the efficiency and effectiveness of system restoration. The transmission system operators in the system operation region shall establish the role of the regional coordination centre relating to the support to the coordination and optimisation of regional restoration.
- 5.2 Transmission system operators may request assistance from regional coordination centres if their system is in a blackout or restoration state.
- 5.3 Regional coordination centres shall be equipped with the close to real time supervisory control and data acquisition systems with the observability defined by applying the threshold referred to in point 4.2.
6. Post-operation and post-disturbances analysis and reporting
- 6.1 Regional coordination centres shall investigate and prepare a report on any incident above the threshold referred to in point 4.2. The regulatory authorities in the system operation region and ACER may be involved in the investigation upon their request. The report shall contain recommendations aiming to prevent similar incidents in future.
- 6.2 Regional coordination centres shall publish the report. ACER may issue recommendations aiming to prevent similar incidents in future.
7. Regional sizing of reserve capacity
- 7.1 Regional coordination centres shall calculate the reserve capacity requirements for the system operation region. The determination of reserve capacity requirements shall:
 - (a) pursue the general objective to maintain operational security in the most cost effective manner;
 - (b) be performed at the day-ahead or intraday timeframe, or both;
 - (c) calculate the overall amount of required reserve capacity for the system operation region;
 - (d) determine minimum reserve capacity requirements for each type of reserve capacity;
 - (e) take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement;
 - (f) set out the necessary requirements for the geographical distribution of required reserve capacity, if any.
8. Facilitation of the regional procurement of balancing capacity
- 8.1 Regional coordination centres shall support the transmission system operators in the system operation region in determining the amount of balancing capacity that needs to be procured. The determination of the amount of balancing capacity shall:
 - (a) be performed at the day-ahead or intraday timeframe, or both;

- (b) take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement;
 - (c) take into account the volumes of required reserve capacity that are expected to be provided by balancing energy bids, which are not submitted based on a contract for balancing capacity.
- 8.2 Regional coordination centres shall support the transmission system operators of the system operation region in procuring the required amount of balancing capacity determined in accordance with point 8.1. The procurement of balancing capacity shall:
- (a) be performed at the day-ahead or intraday timeframe, or both;
 - (b) take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement.
9. Week-ahead to at least day-ahead regional system adequacy assessments and preparation of risk reducing actions
- 9.1 Regional coordination centres shall carry out week-ahead to at least day-ahead regional adequacy assessments in accordance with the procedures set out in Regulation (EU) 2017/1485 and on the basis of the methodology developed pursuant Article 8 of Regulation (EU) 2019/941.
- 9.2 Regional coordination centres shall base the short-term regional adequacy assessments on the information provided by the transmission system operators of system operation region with the aim of detecting situations where a lack of adequacy is expected in any of the control areas or at regional level. Regional coordination centres shall take into account possible cross-zonal exchanges and operational security limits in all relevant operational planning timeframes.
- 9.3 When performing a regional system adequacy assessment, each regional coordination centre shall coordinate with other regional coordination centres to:
- (a) verify the underlying assumptions and forecasts;
 - (b) detect possible cross-regional lack of adequacy situations.
- 9.4 Each regional coordination centre shall deliver the results of the regional system adequacy assessments together with the actions it proposes to reduce risks of lack of adequacy to the transmission system operators in the system operation region and to other regional coordination centres.
10. Regional outage planning coordination
- 10.1 Each Regional coordination centre shall carry out regional outage coordination in accordance with the procedures set out in the system operation guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009 in order to monitor the availability status of the relevant assets and coordinate their availability plans to ensure the operational security of the transmission system, while maximising the capacity of the interconnectors and the transmission systems affecting cross-zonal flows.
- 10.2 Each Regional coordination centre shall maintain a single list of relevant grid elements, power generating modules and demand facilities of the system operation region and make it available on the ENTSO for Electricity operational planning data environment.
- 10.3 Each Regional coordination centre shall carry out the following activities related to outage coordination in the system operation region:
- (a) assess outage planning compatibility using all transmission system operators' year-ahead availability plans;
 - (b) provide the transmission system operators in the system operation region with a list of detected planning incompatibilities and the solutions it proposes to solve the incompatibilities.
11. Optimisation of inter-transmission system operator compensation mechanisms
- 11.1 The transmission system operators in the system operation region may jointly decide to receive support from the regional coordination centre in administering the financial flows related to settlements between transmission system operators involving more than two transmission system operators, such as redispatching costs, congestion income, unintentional deviations or reserve procurement costs.

12. Training and certification of staff working for regional coordination centres
 - 12.1 Regional coordination centres shall prepare and carry out training and certification programmes focusing on regional system operation for the personnel working for regional coordination centres.
 - 12.2 The training programs shall cover all the relevant components of system operation, where the regional coordination centre performs tasks including scenarios of regional crisis.
 13. Identification of regional electricity crisis scenarios
 - 13.1 If the ENTSO for Electricity delegates this function, regional coordination centres shall identify regional electricity crisis scenarios in accordance with the criteria set out in Article 6(1) of Regulation (EU) 2019/941.

The identification of regional electricity crisis scenarios shall be performed in accordance with the methodology set out in Article 5 of Regulation (EU) 2019/941.
 - 13.2 Regional coordination centres shall support the competent authorities of each system operation region upon their request in the preparation and carrying out of biennial crisis simulation in accordance with Article 12(3) of Regulation (EU) 2019/941.
 14. Identification of needs for new transmission capacity, for upgrade of existing transmission capacity or their alternatives
 - 14.1 Regional coordination centres shall support transmission system operators in the identification of needs for new transmission capacity, for an upgrade of existing transmission capacity or for their alternatives, to be submitted to the regional groups established pursuant to Regulation (EU) No 347/2013 and to be included in the ten-year network development plan referred to in Article 51 of Directive (EU) 2019/944.
 15. Calculation of the maximum entry capacity available for the participation of foreign capacity in capacity mechanisms
 - 15.1 Regional coordination centres shall support transmission system operator in calculating the maximum entry capacity available for the participation of foreign capacity in capacity mechanisms taking into account the expected availability of interconnection and the likely concurrence of system stress between the system where the mechanism is applied and the system in which the foreign capacity is located.
 - 15.2 The calculation shall be performed in accordance with the methodology set out in point (a) of Article 26(11).
 - 15.3 Regional coordination centres shall provide a calculation for each bidding zone border covered by the system operation region.
 16. Preparation of seasonal adequacy assessments
 - 16.1 If the ENTSO for Electricity delegates this function pursuant to Article 9 of Regulation (EU) 2019/941, regional coordination centres shall carry out regional seasonal adequacy assessments.
 - 16.2 The preparation of seasonal adequacy assessments shall be carried out on the basis of the methodology developed pursuant to Article 8 of Regulation (EU) 2019/941.
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ANNEX II

REPEALED REGULATION WITH LIST OF THE SUCCESSIVE AMENDMENTS THERETO

Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39)	Point (a) of Article 8(3) Point (a) of Article 8(10) Article 11 Article 18(4a) Article 23(3)
Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council (OJ L 163, 15.6.2013, p. 1)	Points 5.5 to 5.9 of Annex I

ANNEX III

CORRELATION TABLE

Regulation (EC) No 714/2009	This Regulation
—	Article 1(a)
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—	Article 2 (6) to (71)
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—	Article 28(2)
Article 5	Article 29 (1) to (4)
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Article 8(3)(b)	Article 30(1)(b)
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Article 8(3)(c)	Article 30 (1)(d)
—	Article 30 (1)(e) and (f)
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DIRECTIVES

DIRECTIVE (EU) 2019/944 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 June 2019
on common rules for the internal market for electricity and amending Directive 2012/27/EU
(recast)
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) A number of amendments are to be made to Directive 2009/72/EC of the European Parliament and of the Council ⁽⁴⁾. In the interests of clarity, that Directive should be recast.
- (2) The internal market for electricity, which has been progressively implemented throughout the Union since 1999, aims, by organising competitive electricity markets across country borders, to deliver real choice for all Union final customers, be they citizens or businesses, new business opportunities, competitive prices, efficient investment signals and higher standards of service, and to contribute to security of supply and sustainability.
- (3) Directive 2003/54/EC of the European Parliament and of the Council ⁽⁵⁾ and Directive 2009/72/EC have made a significant contribution towards the creation of the internal market for electricity. However, the Union's energy system is in the middle of a profound change. The common goal of decarbonising the energy system creates new opportunities and challenges for market participants. At the same time, technological developments allow for new forms of consumer participation and cross-border cooperation. There is a need to adapt the Union market rules to a new market reality.
- (4) The Commission Communication of 25 February 2015, entitled 'A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy', sets out a 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 and participate actively in the market, and where vulnerable consumers are protected.

⁽¹⁾ OJ C 288, 31.8.2017, p. 91.

⁽²⁾ OJ C 342, 12.10.2017, p. 79.

⁽³⁾ Position of the European Parliament of 26 March 2019 (not yet published in the Official Journal) and Decision of the Council of 22 May 2019.

⁽⁴⁾ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

⁽⁵⁾ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ L 176, 15.7.2003, p. 37), repealed and replaced, with effect from 2 March 2011, by Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

- (5) The Commission Communication of 15 July 2015, entitled 'Delivering a New Deal for Energy Consumers', put forward the Commission's vision for a retail market that better serves energy consumers, including by better linking wholesale and retail markets. By taking advantage of new technology, new and innovative energy service companies should enable all consumers to fully participate in the energy transition, managing their consumption to deliver energy efficient solutions which save them money and contribute to the overall reduction of energy consumption.
- (6) The Commission Communication of 15 July 2015, entitled 'Launching the public consultation process on a new energy market design', highlighted that the move away from generation in large central generating installations towards decentralised production of electricity from renewable sources and towards decarbonised markets requires adapting the current rules of electricity trading and changing the existing market roles. The Communication underlined the need to organise electricity markets in a more flexible manner and to fully integrate all market players – including producers of renewable energy, new energy service providers, energy storage and flexible demand. It is equally important for the Union to invest urgently in interconnection at Union level for the transfer of energy through high-voltage electricity transmission systems.
- (7) With a view to creating an internal market for electricity, Member States should foster the integration of their national markets and cooperation among system operators at Union and regional level, and incorporate isolated systems that form electricity islands that persist in the Union.
- (8) In addition to addressing new challenges, this Directive seeks to address the persisting obstacles to the completion of the internal market for electricity. The refined regulatory framework needs to contribute to overcoming the current problems of fragmented national markets which are still often determined by a high degree of regulatory interventions. Such interventions have led to obstacles to the supply of electricity on equal terms as well as higher costs in comparison to solutions based on cross-border cooperation and market-based principles.
- (9) The Union would most effectively meet its renewable energy targets through the creation of a market framework that rewards flexibility and innovation. A well-functioning electricity market design is the key factor enabling the uptake of renewable energy.
- (10) Consumers have an essential role to play in achieving the flexibility necessary to adapt the electricity system to variable and distributed renewable electricity generation. Technological progress in grid management and the generation of renewable electricity has unlocked many opportunities for consumers. Healthy competition in retail markets is essential to ensuring the market-driven deployment of innovative new services that address consumers' changing needs and abilities, while increasing system flexibility. However, the lack of real-time or near real-time information provided to consumers about their energy consumption has prevented them from being active participants in the energy market and the energy transition. By empowering consumers and providing them with the tools to participate more in the energy market, including participating in new ways, it is intended that citizens in the Union benefit from the internal market for electricity and that the Union's renewable energy targets are attained.
- (11) The freedoms which the Treaty on the Functioning of the European Union (TFEU) guarantees the citizens of the Union — inter alia, the free movement of goods, the freedom of establishment and the freedom to provide services — are achievable only in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.
- (12) Promoting fair competition and easy access for different suppliers is of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market for electricity. Nonetheless, it is possible that market failure persists in peripheral small electricity systems and in systems not connected with other Member States, where electricity prices fail to provide the right signal to drive investment, and therefore requires specific solutions to ensure an adequate level of security of supply.
- (13) In order to foster competition and ensure the supply of electricity at the most competitive price, Member States and regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of generation, energy storage and demand response.

- (14) Member States should ensure that no undue barriers exist within the internal market for electricity as regards market entry, operation and exit. At the same time, it should be clarified that that obligation is without prejudice to the competence that Member States retain in relation to third countries. That clarification should not be interpreted as enabling a Member State to exercise the exclusive competence of the Union. It should also be clarified that market participants from third countries who operate within the internal market are to comply with the applicable Union and national law in the same manner as other market participants.
- (15) Market rules allow for the entry and exit of producers and suppliers based on their assessment of the economic and financial viability of their operations. That principle is not incompatible with the possibility for Member States to impose on undertakings operating in the electricity sector public service obligations in the general economic interest in accordance with the Treaties, in particular with Article 106 TFEU, and with this Directive and Regulation (EU) 2019/943 of the European Parliament and of the Council ⁽⁶⁾.
- (16) The European Council of 23 and 24 October 2014 stated in its conclusions that the Commission, supported by the Member States, is to take urgent measures in order to ensure the achievement of a minimum target of 10 % of existing electricity interconnections, as a matter of urgency, and no later than 2020, at least for Member States which have not yet attained a minimum level of integration in the internal energy market, which are the Baltic States, Portugal and Spain, and for Member States which constitute their main point of access to the internal energy market. It further stated that the Commission is also to report regularly to the European Council with the objective of arriving at a 15 % target by 2030.
- (17) Sufficient physical interconnection with neighbouring countries is important to enable Member States and neighbouring countries to benefit from the positive effects of the internal market as stressed in the Commission Communication of 23 November 2017, entitled 'Communication on strengthening Europe's energy networks', and as reflected in Member States' integrated national energy and climate plans under Regulation (EU) 2018/1999 of the European Parliament and of the Council ⁽⁷⁾.
- (18) Electricity markets differ from other markets such as those for natural gas, for example because they involve the trading in a commodity which cannot currently be easily stored and which is produced using a large variety of generating installations, including through distributed generation. This has been reflected in the different approaches to the regulatory treatment of interconnectors in the electricity and gas sectors. The integration of electricity markets requires a high degree of cooperation among system operators, market participants and regulatory authorities, in particular where electricity is traded via market coupling.
- (19) Securing common rules for a true internal market and a broad supply of electricity that is accessible to all should also be one of the main goals of this Directive. To that end, undistorted market prices would provide incentives for cross-border interconnections and for investments in new electricity generation while leading to price convergence in the long term.
- (20) Market prices should give the right incentives for the development of the network and for investing in new electricity generation.
- (21) Different types of market organisation exist in the internal market for electricity. The measures that Member States could take in order to ensure a level playing field should be based on overriding requirements of general interest. The Commission should be consulted on the compatibility of those measures with the TFEU and with other Union law.
- (22) Member States should maintain wide discretion to impose public service obligations on electricity undertakings in pursuing objectives of general economic interest. Member States should ensure that household customers and, where Member States consider it to be appropriate, small enterprises, enjoy the right to be supplied with electricity of a specified quality at clearly comparable, transparent and competitive prices. Nevertheless, public

⁽⁶⁾ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (see page 54 of this Official Journal).

⁽⁷⁾ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

service obligations in the form of price setting for the supply of electricity constitute a fundamentally distortive measure that often leads to the accumulation of tariff deficits, the limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, lower levels of consumer engagement and satisfaction, and the restriction of competition, as well as to there being fewer innovative products and services on the market. Consequently, Member States should apply other policy tools, in particular targeted social policy measures, to safeguard the affordability of electricity supply to their citizens. Public interventions in price setting for the supply of electricity should be carried out only as public service obligations and should be subject to specific conditions set out in this Directive. A fully liberalised, well-functioning retail electricity market would stimulate price and non-price competition among existing suppliers and provide incentives to new market entrants, thereby improving consumer choice and satisfaction.

- (23) Public service obligations in the form of price setting for the supply of electricity should be used without overriding the principle of open markets in clearly defined circumstances and beneficiaries and should be limited in duration. Such circumstances might occur for example where supply is severely constrained, causing significantly higher electricity prices than normal, or in the event of a market failure where interventions by regulatory authorities and competition authorities have proven to be ineffective. This would disproportionately affect households and, in particular, vulnerable customers who typically expend a higher share of their disposable income on energy bills compared to high-income consumers. In order to mitigate the distortive effects of public service obligations in price setting for the supply of electricity, Member States applying such interventions should put in place additional measures, including measures to prevent distortions of price setting in the wholesale market. Member States should ensure that all beneficiaries of regulated prices are able to benefit fully from the offers available on the competitive market when they choose to do so. To that end, those beneficiaries need to be equipped with smart metering systems and have access to dynamic electricity price contracts. In addition, they should be directly and regularly informed of the offers and savings available on the competitive market, in particular relating to dynamic electricity price contracts, and should be provided with assistance to respond to and benefit from market-based offers.
- (24) The entitlement of beneficiaries of regulated prices to receive individual smart meters without extra costs should not prevent Member States from modifying the functionality of smart metering systems where smart meter infrastructure does not exist because the cost-benefit assessment regarding the deployment of smart metering systems was negative.
- (25) Public interventions in price setting for the supply of electricity should not lead to direct cross-subsidisation between different categories of customer. According to that principle, price systems must not explicitly make certain categories of customer bear the cost of price interventions that affect other categories of customer. For example, a price system, in which the cost is borne by suppliers or other operators in a non-discriminatory manner, should not be considered to be direct cross-subsidisation.
- (26) In order to ensure the maintenance of the high standards of public service in the Union, all measures taken by Member States to achieve the objective of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high standards of public service.
- (27) It should be possible for Member States to appoint a supplier of last resort. That supplier might be the sales division of a vertically integrated undertaking which also performs distribution functions, provided that it meets the unbundling requirements of this Directive.
- (28) It should be possible for measures implemented by Member States for the purpose of achieving the objectives of social and economic cohesion to include, in particular, the provision of adequate economic incentives, using, where appropriate, any existing national and Union tools. Such tools may include liability mechanisms to guarantee the necessary investment.
- (29) To the extent that measures taken by Member States to fulfil public service obligations constitute State aid under Article 107(1) TFEU, there is an obligation under Article 108(3) TFEU to notify them to the Commission.

- (30) Cross-sectorial law provides a strong basis for consumer protection for a wide range of energy services that exist, and is likely to evolve. Nevertheless, certain basic contractual rights of customers should be clearly established.
- (31) Plain and unambiguous information should be made available to consumers concerning their rights in relation to the energy sector. The Commission has established, after consulting relevant stakeholders, including Member States, regulatory authorities, consumer organisations and electricity undertakings, an energy consumer checklist that provides consumers with practical information about their rights. That checklist should be kept up to date, provided to all consumers and made publicly available.
- (32) Several factors impede consumers from accessing, understanding and acting upon the various sources of market information available to them. It follows that the comparability of offers should be improved and barriers to switching should be minimised to the greatest practicable extent without unduly limiting consumer choice.
- (33) Smaller customers are still being charged a broad range of fees directly or indirectly as a result of switching supplier. Such fees make it more difficult to identify the best product or service and diminish the immediate financial advantage of switching. Although removing such fees might limit consumer choice by eliminating products based on rewarding consumer loyalty, restricting their use further should improve consumer welfare, consumer engagement and competition in the market.
- (34) Shorter switching times are likely to encourage consumers to search for better energy deals and switch supplier. With the increased deployment of information technology, by the year 2026, the technical switching process of registering a new supplier in a metering point at the market operator should typically be possible to complete within 24 hours on any working day. Notwithstanding other steps in the switching process that are to be completed before the technical process of switching is initiated, ensuring that it is possible by that date for the technical process of switching to take place within 24 hours would minimise switching times, helping to increase consumer engagement and retail competition. In any event, the total duration of the switching process should not exceed three weeks from the date of the customer's request.
- (35) Independent comparison tools, including websites, are an effective means for smaller customers to assess the merits of the different energy offers that are available on the market. Such tools lower search costs as customers no longer need to collect information from individual suppliers and service providers. Such tools can provide the right balance between the need for information to be clear and concise and the need for it to be complete and comprehensive. They should aim to include the broadest possible range of available offers, and to cover the market as completely as is feasible so as to give the customer a representative overview. It is crucial that smaller customers have access to at least one comparison tool and that the information given on such tools be trustworthy, impartial and transparent. To that end, Member States could provide for a comparison tool that is operated by a national authority or a private company.
- (36) Greater consumer protection is guaranteed by the availability of effective, independent out-of-court dispute settlement mechanisms for all consumers, such as an energy ombudsman, a consumer body or a regulatory authority. Member States should introduce speedy and effective complaint-handling procedures.
- (37) All consumers should be able to benefit from directly participating in the market, in particular by adjusting their consumption according to market signals and, in return, benefiting from lower electricity prices or other incentive payments. The benefits of such active participation are likely to increase over time, as the awareness of otherwise passive consumers is raised about their possibilities as active customers and as the information on the possibilities of active participation becomes more accessible and better known. Consumers should have the possibility of participating in all forms of demand response. They should therefore have the possibility of benefiting from the full deployment of smart metering systems and, where such deployment has been negatively assessed, of choosing to have a smart metering system and a dynamic electricity price contract. This should allow them to adjust their consumption according to real-time price signals that reflect the value and cost of electricity or transportation in different time periods, while Member States should ensure the reasonable exposure of

consumers to wholesale price risk. Consumers should be informed about benefits and potential price risks of dynamic electricity price contracts. Member States should also ensure that those consumers who choose not to actively engage in the market are not penalised. Instead, their ability to make informed decisions on the options available to them should be facilitated in the manner that is the most suited to domestic market conditions.

- (38) In order to maximise the benefits and effectiveness of dynamic electricity pricing, Member States should assess the potential for making more dynamic or reducing the share of fixed components in electricity bills, and where such potential exists, should take appropriate action.
- (39) All customer groups (industrial, commercial and households) should have access to the electricity markets to trade their flexibility and self-generated electricity. Customers should be allowed to make full use of the advantages of aggregation of production and supply over larger regions and benefit from cross-border competition. Market participants engaged in aggregation are likely to play an important role as intermediaries between customer groups and the market. Member States should be free to choose the appropriate implementation model and approach to governance for independent aggregation while respecting the general principles set out in this Directive. Such a model or approach could include choosing market-based or regulatory principles which provide solutions to comply with this Directive, such as models where imbalances are settled or where perimeter corrections are introduced. The chosen model should contain transparent and fair rules to allow independent aggregators to fulfil their roles as intermediaries and to ensure that the final customer adequately benefits from their activities. Products should be defined on all electricity markets, including ancillary services and capacity markets, so as to encourage the participation of demand response.
- (40) The Commission Communication of 20 July 2016, entitled 'European Strategy for Low-Emission Mobility', stresses the need for the decarbonisation of the transport sector and the reduction of its emissions, especially in urban areas, and highlights the important role that electromobility can play in contributing to those objectives. Moreover, the deployment of electromobility constitutes an important element of the energy transition. Market rules set out in this Directive should therefore contribute to creating favourable conditions for electric vehicles of all kinds. In particular, they should ensure the effective deployment of publicly accessible and private recharging points for electric vehicles and should ensure the efficient integration of vehicle charging into the system.
- (41) Demand response is pivotal to enabling the smart charging of electric vehicles and thereby enabling the efficient integration of electric vehicles into the electricity grid which will be crucial for the process of decarbonising transport.
- (42) Consumers should be able to consume, to store and to sell self-generated electricity to the market and to participate in all electricity markets by providing flexibility to the system, for instance through energy storage, such as storage using electric vehicles, through demand response or through energy efficiency schemes. New technology developments will facilitate those activities in the future. However, legal and commercial barriers exist, including, for example, disproportionate fees for internally consumed electricity, obligations to feed self-generated electricity to the energy system, and administrative burdens, such as the need for consumers who self-generate electricity and sell it to the system to comply with the requirements for suppliers, etc. Such obstacles, which prevent consumers from self-generating electricity and from consuming, storing or selling self-generated electricity to the market, should be removed while it should be ensured that such consumers contribute adequately to system costs. Member States should be able to have different provisions in their national law with respect to taxes and levies for individual and jointly-acting active customers, as well as for household and other final customers.
- (43) Distributed energy technologies and consumer empowerment have made community energy an effective and cost-efficient way to meet citizens' needs and expectations regarding energy sources, services and local participation. Community energy offers an inclusive option for all consumers to have a direct stake in producing, consuming or sharing energy. Community energy initiatives focus primarily on providing affordable energy of a specific kind, such as renewable energy, for their members or shareholders rather than on prioritising profit-making like a traditional electricity undertaking. By directly engaging with consumers, community energy initiatives demonstrate their potential to facilitate the uptake of new technologies and consumption patterns,

including smart distribution grids and demand response, in an integrated manner. Community energy can also advance energy efficiency at household level and help fight energy poverty through reduced consumption and lower supply tariffs. Community energy also enables certain groups of household customers to participate in the electricity markets, who otherwise might not have been able to do so. Where they have been successfully operated such initiatives have delivered economic, social and environmental benefits to the community that go beyond the mere benefits derived from the provision of energy services. This Directive aims to recognise certain categories of citizen energy initiatives at the Union level as 'citizen energy communities', in order to provide them with an enabling framework, fair treatment, a level playing field and a well-defined catalogue of rights and obligations. Household customers should be allowed to participate voluntarily in community energy initiatives as well as to leave them, without losing access to the network operated by the community energy initiative or losing their rights as consumers. Access to a citizen energy community's network should be granted on fair and cost-reflective terms.

- (44) Membership of citizen energy communities should be open to all categories of entities. However, the decision-making powers within a citizen energy community should be limited to those members or shareholders that are not engaged in large-scale commercial activity and for which the energy sector does not constitute a primary area of economic activity. Citizen energy communities are considered to be a category of cooperation of citizens or local actors that should be subject to recognition and protection under Union law. The provisions on citizen energy communities do not preclude the existence of other citizen initiatives such as those stemming from private law agreements. It should therefore be possible for Member States to provide that citizen energy communities take any form of entity, for example that of an association, a cooperative, a partnership, a non-profit organisation or a small or medium-sized enterprise, provided that the entity is entitled to exercise rights and be subject to obligations in its own name.
- (45) The provisions of this Directive on citizen energy communities provide for rights and obligations, which are possible to deduce from other, existing rights and obligations, such as the freedom of contract, the right to switch supplier, the responsibilities of the distribution system operator, the rules on network charges, and balancing obligations.
- (46) Citizen energy communities constitute a new type of entity due to their membership structure, governance requirements and purpose. They should be allowed to operate on the market on a level playing field without distorting competition, and the rights and obligations applicable to the other electricity undertakings on the market should be applied to citizen energy communities in a non-discriminatory and proportionate manner. Those rights and obligations should apply in accordance with the roles that they undertake, such as the roles of final customers, producers, suppliers or distribution system operators. Citizen energy communities should not face regulatory restrictions when they apply existing or future information and communications technologies to share electricity produced using generation assets within the citizen energy community among their members or shareholders based on market principles, for example by offsetting the energy component of members or shareholders using the generation available within the community, even over the public network, provided that both metering points belong to the community. Electricity sharing enables members or shareholders to be supplied with electricity from generating installations within the community without being in direct physical proximity to the generating installation and without being behind a single metering point. Where electricity is shared, the sharing should not affect the collection of network charges, tariffs and levies related to electricity flows. The sharing should be facilitated in accordance with the obligations and correct timeframes for balancing, metering and settlement. The provisions of this Directive on citizen energy communities do not interfere with the competence of Member States to design and implement policies relating to the energy sector in relation to network charges and tariffs, or to design and implement energy policy financing systems and cost sharing, provided that those policies are non-discriminatory and lawful.
- (47) This Directive empowers Member States to allow citizen energy communities to become distribution system operators either under the general regime or as 'closed distribution system operators'. Once a citizen energy community is granted the status of a distribution system operator, it should be treated as, and be subject to the same obligations as, a distribution system operator. The provisions of this Directive on citizen energy communities only clarify aspects of distribution system operation that are likely to be relevant for citizen energy communities, while other aspects of distribution system operation apply in accordance with the rules relating to distribution system operators.

- (48) Electricity bills are an important means by which final customers are informed. As well as providing data on consumption and costs, they can also convey other information that helps consumers to compare their current arrangements with other offers. However, disputes over bills are a very common source of consumer complaints, a factor which contributes to the persistently low levels of consumer satisfaction and engagement in the electricity sector. It is therefore necessary to make bills clearer and easier to understand, as well as to ensure that bills and billing information prominently display a limited number of important items of information that are necessary to enable consumers to regulate their energy consumption, compare offers and switch supplier. Other items of information should be made available to final customers in, with or signposted to within their bills. Such items should be displayed on the bill or be in a separate document attached to the bill, or the bill should contain a reference to where the final customer is easily able to find the information on a website, through a mobile application or by other means.
- (49) The regular provision of accurate billing information based on actual electricity consumption, facilitated by smart metering, is important for helping customers to control their electricity consumption and costs. Nevertheless, customers, in particular household customers, should have access to flexible arrangements for the actual payment of their bills. For example, it could be possible for customers to be provided with frequent billing information, while paying only on a quarterly basis, or there could be products for which the customer pays the same amount every month, independently of the actual consumption.
- (50) The provisions on billing in Directive 2012/27/EU of the European Parliament and of the Council ⁽⁸⁾ should be updated, streamlined and moved to this Directive, where they fit more coherently.
- (51) Member States should encourage the modernisation of distribution networks, such as through the introduction of smart grids, which should be built in a way that encourages decentralised generation and energy efficiency.
- (52) Engaging consumers requires appropriate incentives and technologies such as smart metering systems. Smart metering systems empower consumers because they allow them to receive accurate and near real-time feedback on their energy consumption or generation, and to manage their consumption better, to participate in and reap benefits from demand response programmes and other services, and to lower their electricity bills. Smart metering systems also enable distribution system operators to have better visibility of their networks, and as a consequence, to reduce their operation and maintenance costs and to pass those savings on to the consumers in the form of lower distribution tariffs.
- (53) When it comes to deciding at national level on the deployment of smart metering systems, it should be possible to base this decision on an economic assessment. That economic assessment should take into account the long-term benefits of the deployment of smart metering systems to consumers and the whole value chain, such as better network management, more precise planning and identification of network losses. Should that assessment conclude that the introduction of such metering systems is cost-effective only for consumers with a certain amount of electricity consumption, Member States should be able to take that conclusion into account when proceeding with the deployment of smart metering systems. However, such assessments should be reviewed regularly in response to significant changes in the underlying assumptions, or at least every four years, given the fast pace of technological developments.
- (54) Member States that do not systematically deploy smart metering systems should allow consumers to benefit from the installation of a smart meter, upon request and under fair and reasonable conditions, and should provide them with all the relevant information. Where consumers do not have smart meters, they should be entitled to meters that fulfil the minimum requirements necessary to provide them with the billing information specified in this Directive.

⁽⁸⁾ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

- (55) In order to assist consumers' active participation in the electricity markets, the smart metering systems to be deployed by Member States in their territory should be interoperable, and should be able to provide data required for consumer energy management systems. To that end, Member States should have due regard to the use of relevant available standards, including standards that enable interoperability on the level of the data model and the application layer, to best practices and the importance of the development of data exchange, to future and innovative energy services, to the deployment of smart grids and to the internal market for electricity. Moreover, the smart metering systems that are deployed should not represent a barrier to switching supplier, and should be equipped with fit-for-purpose functionalities that allow consumers to have near real-time access to their consumption data, to modulate their energy consumption and, to the extent that the supporting infrastructure permits, to offer their flexibility to the network and to electricity undertakings and to be rewarded for it, and to obtain savings in their electricity bills.
- (56) A key aspect of supplying customers is providing access to objective and transparent consumption data. Thus, consumers should have access to their consumption data and to the prices and service costs associated with their consumption, so that they can invite competitors to make offers based on that information. Consumers should also have the right to be properly informed about their energy consumption. Prepayments should not place a disproportionate disadvantage on their users, while different payment systems should be non-discriminatory. The information on energy costs that is provided to consumers sufficiently frequently would create incentives for energy savings because it would give customers direct feedback on the effects of investment in energy efficiency and on changes of behaviour. In that respect, the full implementation of Directive 2012/27/EU will help consumers to reduce their energy costs.
- (57) Currently, different models for the management of data have been developed or are under development in Member States following deployment of smart metering systems. Independently of the data management model it is important that Member States put in place transparent rules under which data can be accessed under non-discriminatory conditions and ensure the highest level of cybersecurity and data protection as well as the impartiality of the entities which process data.
- (58) Member States should take the necessary measures to protect vulnerable and energy poor customers in the context of the internal market for electricity. Such measures may differ according to the particular circumstances in the Member States in question and may include social or energy policy measures relating to the payment of electricity bills, to investment in the energy efficiency of residential buildings, or to consumer protection such as disconnection safeguards. Where universal service is also provided to small enterprises, measures to ensure universal service provision may differ according to whether those measures are aimed at household customers or small enterprises.
- (59) Energy services are fundamental to safeguarding the well-being of the Union citizens. Adequate warmth, cooling and lighting, and energy to power appliances are essential services to guarantee a decent standard of living and citizens' health. Furthermore, access to those energy services enables Union citizens to fulfil their potential and enhances social inclusion. Energy poor households are unable to afford those energy services due to a combination of low income, high expenditure on energy and poor energy efficiency of their homes. Member States should collect the right information to monitor the number of households in energy poverty. Accurate measurement should assist Member States in identifying households that are affected by energy poverty in order to provide targeted support. The Commission should actively support the implementation of the provisions of this Directive on energy poverty by facilitating the sharing of good practices between Member States.
- (60) Where Member States are affected by energy poverty and have not developed national action plans or other appropriate frameworks to tackle energy poverty, they should do so, with the aim of decreasing the number of energy poor customers. Low income, high expenditure on energy, and poor energy efficiency of homes are relevant factors in establishing criteria for the measurement of energy poverty. In any event, Member States should ensure the necessary supply for vulnerable and energy poor customers. In doing so, an integrated approach, such as in the framework of energy and social policy, could be used and measures could include social policies or energy efficiency improvements for housing. This Directive should enhance national policies in favour of vulnerable and energy poor customers.

- (61) Distribution system operators have to cost-efficiently integrate new electricity generation, especially installations generating electricity from renewable sources, and new loads such as loads that result from heat pumps and electric vehicles. For that purpose, distribution system operators should be enabled, and provided with incentives, to use services from distributed energy resources such as demand response and energy storage, based on market procedures, in order to efficiently operate their networks and to avoid costly network expansions. Member States should put in place appropriate measures such as national network codes and market rules, and should provide incentives to distribution system operators through network tariffs which do not create obstacles to flexibility or to the improvement of energy efficiency in the grid. Member States should also introduce network development plans for distribution systems in order to support the integration of installations generating electricity from renewable energy sources, facilitate the development of energy storage facilities and the electrification of the transport sector, and provide to system users adequate information regarding the anticipated expansions or upgrades of the network, as currently such procedures do not exist in the majority of Member States.
- (62) System operators should not own, develop, manage or operate energy storage facilities. In the new electricity market design, energy storage services should be market-based and competitive. Consequently, cross-subsidisation between energy storage and the regulated functions of distribution or transmission should be avoided. Such restrictions on the ownership of energy storage facilities is to prevent distortion of competition, to eliminate the risk of discrimination, to ensure fair access to energy storage services to all market participants and to foster the effective and efficient use of energy storage facilities, beyond the operation of the distribution or transmission system. That requirement should be interpreted and applied in accordance with the rights and principles established under the Charter of Fundamental Rights of the European Union (the 'Charter'), in particular the freedom to conduct a business and the right to property guaranteed by Articles 16 and 17 of the Charter.
- (63) Where energy storage facilities are fully integrated network components that are not used for balancing or for congestion management, they should not, subject to approval by the regulatory authority, be required to comply with the same strict limitations for system operators to own, develop, manage or operate those facilities. Such fully integrated network components can include energy storage facilities such as capacitors or flywheels which provide important services for network security and reliability, and contribute to the synchronisation of different parts of the system.
- (64) With the objective of progress towards a completely decarbonised electricity sector that is fully free of emissions, it is necessary to make progress in seasonal energy storage. Such energy storage is an element that would serve as a tool for the operation of the electricity system to allow for short-term and seasonal adjustment, in order to cope with variability in the production of electricity from renewable sources and the associated contingencies in those horizons.
- (65) Non-discriminatory access to the distribution network determines downstream access to customers at retail level. To create a level playing field at retail level, the activities of distribution system operators should therefore be monitored so that distribution system operators are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to household customers and small non-household customers.
- (66) Where a closed distribution system is used to ensure the optimal efficiency of an integrated supply that requires specific operational standards, or where a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the system users. Industrial sites, commercial sites or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities, and chemical industry sites can include closed distribution systems because of the specialised nature of their operations.
- (67) Without the effective separation of networks from activities of generation and supply (effective unbundling), there is an inherent risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated undertakings to invest adequately in their networks.

- (68) Only the removal of the incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the appointment of the network owner as the system operator and its independence from any supply and production interests, is clearly an effective and stable way to solve the inherent conflict of interests and to ensure security of supply. For that reason, the European Parliament, in its resolution of 10 July 2007 on prospects for the internal gas and electricity market, referred to ownership unbundling at transmission level as the most effective tool for promoting investments in infrastructure in a non-discriminatory way, fair access to the network for new entrants and transparency in the market. Under ownership unbundling, Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control over a producer or supplier and, at the same time, exercise control or any right over a transmission system operator or transmission system. Conversely, control over a transmission system operator or transmission system should preclude the possibility of exercising control or any right over a producer or supplier. Within those limits, a producer or supplier should be able to have a minority shareholding in a transmission system operator or transmission system.
- (69) Any system for unbundling should be effective in removing any conflict of interests between producers, suppliers and transmission system operators, in order to create incentives for the necessary investments and to guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for regulatory authorities.
- (70) Since ownership unbundling requires the restructuring of undertakings in some instances, Member States that decide to implement ownership unbundling should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should apply across the two sectors.
- (71) Under ownership unbundling, to ensure full independence of network operation from supply and generation interests, and to prevent exchanges of any confidential information, the same person should not be a member of the managing board of both a transmission system operator or a transmission system and an undertaking performing any of the functions of generation or supply. For the same reason, the same person should not be entitled to appoint members of the managing boards of a transmission system operator or a transmission system and to exercise control or any right over a producer or supplier.
- (72) The setting up of a system operator or transmission operator that is independent from supply and generation interests should enable a vertically integrated undertaking to maintain its ownership of network assets while ensuring the effective separation of interests, provided that such independent system operator or independent transmission operator performs all of the functions of a system operator, and provided that detailed regulation and extensive regulatory control mechanisms are put in place.
- (73) Where, on 3 September 2009, an undertaking owning a transmission system was part of a vertically integrated undertaking, Member States should be given a choice between ownership unbundling and setting up a system operator or transmission operator which is independent from supply and generation interests.
- (74) To preserve fully the interests of the shareholders of vertically integrated undertakings, Member States should have the choice of implementing ownership unbundling either by direct divestments or by splitting the shares of the integrated undertaking into shares of a network undertaking and shares of a remaining supply and generation undertaking, provided that the requirements resulting from ownership unbundling are complied with.
- (75) The full effectiveness of the independent system operator or independent transmission operator solutions should be ensured by way of specific additional rules. The rules on independent transmission operators provide an appropriate regulatory framework to guarantee fair competition, sufficient investment, access for new market entrants and integration of electricity markets. Effective unbundling through provisions on independent transmission operators should be based on a pillar of organisational measures and measures relating to the governance of transmission system operators and on a pillar of measures relating to investment, to connecting new production capacities to the network and to market integration through regional cooperation. The independence of transmission operators should also be ensured, inter alia, through certain 'cooling-off' periods during which no management or other relevant activity giving access to the same information that could have been obtained in a managerial position is exercised in the vertically integrated undertaking.

- (76) Member States have the right to opt for full ownership unbundling in their territory. Where a Member State has exercised that right, an undertaking does not have the right to set up an independent system operator or an independent transmission operator. Furthermore, an undertaking performing any of the functions of generation or supply cannot directly or indirectly exercise control or any right over a transmission system operator from a Member State that has opted for full ownership unbundling.
- (77) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To that end, the same person should not be able to exercise control or any right, in violation of the rules of ownership unbundling or the independent system operator option, solely or jointly, over the composition, voting or decisions of both the bodies of the transmission system operators or the transmission systems and the bodies of the producer or supplier. With regard to ownership unbundling and the independent system operator solution, provided that the relevant Member State is able to demonstrate that the relevant requirements have been complied with, two separate public bodies should be able to control generation and supply activities, on the one hand, and transmission activities, on the other.
- (78) Fully effective separation of network activities from supply and generation activities should apply throughout the Union to both Union and non-Union undertakings. To ensure that network activities and supply and generation activities throughout the Union remain independent from each other, regulatory authorities should be empowered to refuse to certify transmission system operators that do not comply with the unbundling rules. To ensure the consistent application of those rules across the Union, the regulatory authorities should take the utmost account of Commission opinions when they take decisions on certification. In addition, to ensure respect for the international obligations of the Union, and to ensure solidarity and energy security within the Union, the Commission should have the right to give an opinion on certification in relation to a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries.
- (79) Authorisation procedures should not lead to administrative burdens that are disproportionate to the size and potential impact of the producers. Unduly lengthy authorisation procedures may constitute a barrier to access for new market entrants.
- (80) Regulatory authorities need to be able to take decisions in relation to all relevant regulatory issues if the internal market for electricity is to function properly, and need to be fully independent from any other public or private interests. This precludes neither judicial review nor parliamentary supervision in accordance with the constitutional laws of the Member States. In addition, the approval of the budget of the regulatory authority by the national legislator does not constitute an obstacle to budgetary autonomy. The provisions relating to the autonomy in the implementation of the allocated budget of the regulatory authority should be implemented in the framework defined by national budgetary law and rules. While contributing to the regulatory authorities' independence from any political or economic interest through an appropriate rotation scheme, it should be possible for Member States to take due account of the availability of human resources and of the size of the board.
- (81) Regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operators, or on the basis of a proposal agreed between those operators and the users of the network. In carrying out those tasks, regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from distributed generation and demand-side management measures.
- (82) Regulatory authorities should fix or approve individual grid tariffs for transmission and distribution networks or a methodology, or both. In either case, the independence of the regulatory authorities in setting network tariffs pursuant to point (b)(ii) of Article 57(4) should be preserved.
- (83) Regulatory authorities should ensure that transmission system operators and distribution system operators take appropriate measures to make their network more resilient and flexible. To that end, they should monitor those operators' performance based on indicators such as the capability of transmission system operators and distribution system operators to operate lines under dynamic line rating, the development of remote monitoring and real-time control of substations, the reduction of grid losses and the frequency and duration of power interruptions.

- (84) Regulatory authorities should have the power to issue binding decisions in relation to electricity undertakings and to impose effective, proportionate and dissuasive penalties on electricity undertakings which fail to comply with their obligations or to propose that a competent court impose such penalties on them. To that end, regulatory authorities should be able to request relevant information from electricity undertakings, to conduct appropriate and sufficient investigations, and to settle disputes. Regulatory authorities should also be granted the power to decide, irrespective of the application of competition rules, on appropriate measures that ensure customer benefits through the promotion of effective competition necessary for the proper functioning of the internal market for electricity.
- (85) Regulatory authorities should coordinate among themselves when carrying out their tasks to ensure that the European Network of Transmission System Operators for Electricity (the 'ENTSO for Electricity'), the European Entity for Distribution System Operators (the 'EU DSO entity'), and the regional coordination centres comply with their obligations under the regulatory framework of the internal market for electricity, and with decisions of the Agency for the Cooperation of Energy Regulators (ACER), established by Regulation (EU) 2019/942 of the European Parliament and of the Council⁽⁹⁾. With the expansion of the operational responsibilities of the ENTSO for Electricity, the EU DSO entity and the regional coordination centres, it is necessary to enhance oversight with regard to entities that operate at Union or regional level. Regulatory authorities should consult each other and should coordinate their oversight to jointly identify situations where the ENTSO for Electricity, the EU DSO entity or the regional coordination centres do not comply with their respective obligations.
- (86) Regulatory authorities should also be granted the power to contribute to ensuring high standards of universal and public service obligations in accordance with market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules, including the examination of mergers with a Union dimension, and the rules on the internal market, such as the rules on the free movement of capital. The independent body to which a party affected by the decision of a regulatory authority has a right to appeal could be a court or another tribunal that is empowered to conduct a judicial review.
- (87) This Directive and Directive 2009/73/EC of the European Parliament and of the Council⁽¹⁰⁾ do not deprive Member States of the possibility of establishing and issuing their national energy policy. It follows that, depending on a Member State's constitutional arrangements, it might be within Member State's competence to determine the policy framework in which the regulatory authorities are to operate, for example concerning security of supply. However, the general energy policy guidelines issued by the Member State should not impinge on the independence or autonomy of the regulatory authorities.
- (88) Regulation (EU) 2019/943 provides for the Commission to adopt guidelines or network codes to achieve the necessary degree of harmonisation. Such guidelines and network codes constitute binding implementing measures and, with regard to certain provisions of this Directive, are a useful tool that can be adapted quickly where necessary.
- (89) Member States and the Contracting Parties to the Treaty establishing the Energy Community⁽¹¹⁾ should cooperate closely on all matters concerning the development of an integrated electricity trading region and should take no measures that endanger the further integration of electricity markets or the security of supply of Member States and Contracting Parties.
- (90) This Directive should be read together with Regulation (EU) 2019/943, which lays down the key principles of the new market design for electricity which will enable better rewards for flexibility, provide adequate price signals, and ensure the development of functioning integrated short-term markets. Regulation (EU) 2019/943 also sets out new rules in various areas, including on capacity mechanisms and cooperation between transmission system operators.

⁽⁹⁾ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (see page 22 of this Official Journal).

⁽¹⁰⁾ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

⁽¹¹⁾ OJ L 198, 20.7.2006, p. 18.

- (91) This Directive respects the fundamental rights and observes the principles recognised in the Charter. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles, in particular the right to the protection of personal data guaranteed by Article 8 of the Charter. It is essential that any processing of personal data under this Directive comply with Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹²⁾.
- (92) In order to provide the minimum degree of harmonisation required to achieve the aim of this Directive, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to establish rules on the extent of the duties of the regulatory authorities to cooperate with each other and with ACER and setting out the details of the procedure for compliance with the network codes and guidelines. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹³⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of the delegated acts.
- (93) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to determine interoperability requirements and non-discriminatory and transparent procedures for access to metering data, consumption data, as well as data required for customer switching, demand response and other services. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁴⁾.
- (94) Where a derogation applies pursuant to Article 66(3), (4) or (5), that derogation should also cover any provisions in this Directive that are ancillary to, or that require the prior application of, any of the provisions from which it has been granted a derogation.
- (95) The provisions of Directive 2012/27/EU related to electricity markets, such as the provisions on metering and billing of electricity, demand response, priority dispatch and grid access for high-efficiency cogeneration, are updated by the provisions laid down in this Directive and in Regulation (EU) 2019/943. Directive 2012/27/EU should therefore be amended accordingly.
- (96) Since the objective of this Directive, namely the creation of a fully operational internal market for electricity, cannot be sufficiently achieved by the Member States but can rather, by the reasons of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (97) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽¹⁵⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (98) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to Directive 2009/72/EC. The obligation to transpose the provisions which are unchanged arises under Directive 2009/72/EC.
- (99) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the date of application of Directive 2009/72/EC set out in Annex III,

⁽¹²⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽¹³⁾ OJ L 123, 12.5.2016, p. 1.

⁽¹⁴⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽¹⁵⁾ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Directive establishes common rules for the generation, transmission, distribution, energy storage and supply of electricity, together with consumer protection provisions, with a view to creating truly integrated competitive, consumer-centred, flexible, fair and transparent electricity markets in the Union.

Using the advantages of an integrated market, this Directive aims to ensure affordable, transparent energy prices and costs for consumers, a high degree of security of supply and a smooth transition towards a sustainable low-carbon energy system. It lays down key rules relating to the organisation and functioning of the Union electricity sector, in particular rules on consumer empowerment and protection, on open access to the integrated market, on third-party access to transmission and distribution infrastructure, unbundling requirements, and rules on the independence of regulatory authorities in the Member States.

This Directive also sets out modes for Member States, regulatory authorities and transmission system operators to cooperate towards the creation of a fully interconnected internal market for electricity that increases the integration of electricity from renewable sources, free competition and security of supply.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'customer' means a wholesale or final customer of electricity;
- (2) 'wholesale customer' means a natural or legal person who purchases electricity for the purpose of resale inside or outside the system where that person is established;
- (3) 'final customer' means a customer who purchases electricity for own use;
- (4) 'household customer' means a customer who purchases electricity for the customer's own household consumption, excluding commercial or professional activities;
- (5) 'non-household customer' means a natural or legal person who purchases electricity that is not for own household use, including producers, industrial customers, small and medium-sized enterprises, businesses and wholesale customers;
- (6) 'microenterprise' means an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million;
- (7) 'small enterprise' means an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million;
- (8) 'active customer' means a final customer, or a group of jointly acting final customers, who consumes or stores electricity generated within its premises located within confined boundaries or, where permitted by a Member State, within other premises, or who sells self-generated electricity or participates in flexibility or energy efficiency schemes, provided that those activities do not constitute its primary commercial or professional activity;
- (9) 'electricity markets' means markets for electricity, including over-the-counter markets and electricity exchanges, markets for the trading of energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intraday markets;

- (10) ‘market participant’ means market participant as defined in point (25) of Article 2 of Regulation (EU) 2019/943;
- (11) ‘citizen energy community’ means a legal entity that:
- (a) is based on voluntary and open participation and is effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small enterprises;
 - (b) has for its primary purpose to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits; and
 - (c) may engage in generation, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders;
- (12) ‘supply’ means the sale, including the resale, of electricity to customers;
- (13) ‘electricity supply contract’ means a contract for the supply of electricity, but does not include electricity derivatives;
- (14) ‘electricity derivative’ means a financial instrument specified in point (5), (6) or (7) of Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council ⁽¹⁶⁾, where that instrument relates to electricity;
- (15) ‘dynamic electricity price contract’ means an electricity supply contract between a supplier and a final customer that reflects the price variation in the spot markets, including in the day-ahead and intraday markets, at intervals at least equal to the market settlement frequency;
- (16) ‘contract termination fee’ means a charge or penalty imposed on customers by suppliers or market participants engaged in aggregation, for terminating an electricity supply or service contract;
- (17) ‘switching-related fee’ means a charge or penalty for changing suppliers or market participants engaged in aggregation, including contract termination fees, that is directly or indirectly imposed on customers by suppliers, market participants engaged in aggregation or system operators;
- (18) ‘aggregation’ means a function performed by a natural or legal person who combines multiple customer loads or generated electricity for sale, purchase or auction in any electricity market;
- (19) ‘independent aggregator’ means a market participant engaged in aggregation who is not affiliated to the customer’s supplier;
- (20) ‘demand response’ means the change of electricity load by final customers from their normal or current consumption patterns in response to market signals, including in response to time-variable electricity prices or incentive payments, or in response to the acceptance of the final customer’s bid to sell demand reduction or increase at a price in an organised market as defined in point (4) of Article 2 of Commission Implementing Regulation (EU) No 1348/2014 ⁽¹⁷⁾, whether alone or through aggregation;
- (21) ‘billing information’ means the information provided on a final customer’s bill, apart from a request for payment;
- (22) ‘conventional meter’ means an analogue or electronic meter with no capability to both transmit and receive data;
- (23) ‘smart metering system’ means an electronic system that is capable of measuring electricity fed into the grid or electricity consumed from the grid, providing more information than a conventional meter, and that is capable of transmitting and receiving data for information, monitoring and control purposes, using a form of electronic communication;

⁽¹⁶⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

⁽¹⁷⁾ Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency (OJ L 363, 18.12.2014, p. 121).

- (24) 'interoperability' means, in the context of smart metering, the ability of two or more energy or communication networks, systems, devices, applications or components to interwork to exchange and use information in order to perform required functions;
- (25) 'imbalance settlement period' means imbalance settlement period as defined in point (15) of Article 2 of Regulation (EU) 2019/943;
- (26) 'near real-time' means, in the context of smart metering, a short time period, usually down to seconds or up to the imbalance settlement period in the national market;
- (27) 'best available techniques' means, in the context of data protection and security in a smart metering environment, the most effective, advanced and practically suitable techniques for providing, in principle, the basis for complying with the Union data protection and security rules;
- (28) 'distribution' means the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;
- (29) 'distribution system operator' means a natural or legal person who is responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity;
- (30) 'energy efficiency' means the ratio of output of performance, service, goods or energy, to input of energy;
- (31) 'energy from renewable sources' or 'renewable energy' means energy from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic) and geothermal energy, ambient energy, tide, wave and other ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas, and biogas;
- (32) 'distributed generation' means generating installations connected to the distribution system;
- (33) 'recharging point' means an interface that is capable of charging one electric vehicle at a time or exchanging the battery of one electric vehicle at a time;
- (34) 'transmission' means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply;
- (35) 'transmission system operator' means a natural or legal person who is responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;
- (36) 'system user' means a natural or legal person who supplies to, or is supplied by, a transmission system or a distribution system;
- (37) 'generation' means the production of electricity;
- (38) 'producer' means a natural or legal person who generates electricity;
- (39) 'interconnector' means equipment used to link electricity systems;
- (40) 'interconnected system' means a number of transmission and distribution systems linked together by means of one or more interconnectors;
- (41) 'direct line' means either an electricity line linking an isolated generation site with an isolated customer or an electricity line linking a producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and customers;
- (42) 'small isolated system' means any system that had consumption of less than 3 000 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems;

- (43) 'small connected system' means any system that had consumption of less than 3 000 GWh in the year 1996, where more than 5 % of annual consumption is obtained through interconnection with other systems;
- (44) 'congestion' means congestion as defined in point (4) of Article 2 of Regulation (EU) 2019/943;
- (45) 'balancing' means balancing as defined in point (10) of Article 2 of Regulation (EU) 2019/943;
- (46) 'balancing energy' means balancing energy as defined in point (11) of Article 2 of Regulation (EU) 2019/943;
- (47) 'balance responsible party' means balance responsible party as defined in point (14) of Article 2 of Regulation (EU) 2019/943;
- (48) 'ancillary service' means a service necessary for the operation of a transmission or distribution system, including balancing and non-frequency ancillary services, but not including congestion management;
- (49) 'non-frequency ancillary service' means a service used by a transmission system operator or distribution system operator for steady state voltage control, fast reactive current injections, inertia for local grid stability, short-circuit current, black start capability and island operation capability;
- (50) 'regional coordination centre' means a regional coordination centre established pursuant to Article 35 of Regulation (EU) 2019/943;
- (51) 'fully integrated network components' means network components that are integrated in the transmission or distribution system, including storage facilities, and that are used for the sole purpose of ensuring a secure and reliable operation of the transmission or distribution system, and not for balancing or congestion management;
- (52) 'integrated electricity undertaking' means a vertically integrated undertaking or a horizontally integrated undertaking;
- (53) 'vertically integrated undertaking' means an electricity undertaking or a group of electricity undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings performs at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply;
- (54) 'horizontally integrated undertaking' means an electricity undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply, and another non-electricity activity;
- (55) 'related undertaking' means affiliated undertakings as defined in point (12) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council ⁽¹⁸⁾, and undertakings which belong to the same shareholders;
- (56) 'control' means rights, contracts or other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
- (a) ownership or the right to use all or part of the assets of an undertaking;
 - (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking;
- (57) 'electricity undertaking' means a natural or legal person who carries out at least one of the following functions: generation, transmission, distribution, aggregation, demand response, energy storage, supply or purchase of electricity, and who is responsible for the commercial, technical or maintenance tasks related to those functions, but does not include final customers;
- (58) 'security' means both security of supply and provision of electricity, and technical safety;

⁽¹⁸⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (59) 'energy storage' means, in the electricity system, deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy or use as another energy carrier;
- (60) 'energy storage facility' means, in the electricity system, a facility where energy storage occurs.

CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE ELECTRICITY SECTOR

Article 3

Competitive, consumer-centred, flexible and non-discriminatory electricity markets

1. Member States shall ensure that their national law does not unduly hamper cross-border trade in electricity, consumer participation, including through demand response, investments into, in particular, variable and flexible energy generation, energy storage, or the deployment of electromobility or new interconnectors between Member States, and shall ensure that electricity prices reflect actual demand and supply.
2. When developing new interconnectors, Member States shall take into account the electricity interconnection targets set out in point (1) of Article 4(d) of Regulation (EU) 2018/1999.
3. Member States shall ensure that no undue barriers exist within the internal market for electricity as regards market entry, operation and exit, without prejudice to the competence that Member States retain in relation to third countries.
4. Member States shall ensure a level playing field where electricity undertakings are subject to transparent, proportionate and non-discriminatory rules, fees and treatment, in particular with respect to balancing responsibility, access to wholesale markets, access to data, switching processes and billing regimes and, where applicable, licensing.
5. Member States shall ensure that market participants from third countries, when operating within the internal market for electricity, comply with applicable Union and national law, including that concerning environmental and safety policy.

Article 4

Free choice of supplier

Member States shall ensure that all customers are free to purchase electricity from the supplier of their choice and shall ensure that all customers are free to have more than one electricity supply contract at the same time, provided that the required connection and metering points are established.

Article 5

Market-based supply prices

1. Suppliers shall be free to determine the price at which they supply electricity to customers. Member States shall take appropriate actions to ensure effective competition between suppliers.
2. Member States shall ensure the protection of energy poor and vulnerable household customers pursuant to Articles 28 and 29 by social policy or by other means than public interventions in the price setting for the supply of electricity.
3. By way of derogation from paragraphs 1 and 2, Member States may apply public interventions in the price setting for the supply of electricity to energy poor or vulnerable household customers. Such public interventions shall be subject to the conditions set out in paragraphs 4 and 5.
4. Public interventions in the price setting for the supply of electricity shall:
 - (a) pursue a general economic interest and not go beyond what is necessary to achieve that general economic interest;

- (b) be clearly defined, transparent, non-discriminatory and verifiable;
- (c) guarantee equal access for Union electricity undertakings to customers;
- (d) be limited in time and proportionate as regards their beneficiaries;
- (e) not result in additional costs for market participants in a discriminatory way.

5. Any Member State applying public interventions in the price setting for the supply of electricity in accordance with paragraph 3 of this Article shall also comply with point (d) of Article 3(3) and with Article 24 of Regulation (EU) 2018/1999, regardless of whether the Member State concerned has a significant number of households in energy poverty.

6. For the purpose of a transition period to establish effective competition for electricity supply contracts between suppliers, and to achieve fully effective market-based retail pricing of electricity in accordance with paragraph 1, Member States may apply public interventions in the price setting for the supply of electricity to household customers and to microenterprises that do not benefit from public interventions pursuant to paragraph 3.

7. Public interventions pursuant to paragraph 6 shall comply with the criteria set out in paragraph 4 and shall:

- (a) be accompanied by a set of measures to achieve effective competition and a methodology for assessing progress with regard to those measures;
- (b) be set using a methodology that ensures non-discriminatory treatment of suppliers;
- (c) be set at a price that is above cost, at a level where effective price competition can occur;
- (d) be designed to minimise any negative impact on the wholesale electricity market;
- (e) ensure that all beneficiaries of such public interventions have the possibility to choose competitive market offers and are directly informed at least every quarter of the availability of offers and savings in the competitive market, in particular of dynamic electricity price contracts, and shall ensure that they are provided with assistance to switch to a market-based offer;
- (f) ensure that, pursuant to Articles 19 and 21, all beneficiaries of such public interventions are entitled to, and are offered to, have smart meters installed at no extra upfront cost to the customer, are directly informed of the possibility of installing smart meters and are provided with necessary assistance;
- (g) not lead to direct cross-subsidisation between customers supplied at free market prices and those supplied at regulated supply prices.

8. Member States shall notify the measures taken in accordance with paragraphs 3 and 6 to the Commission within one month after their adoption and may apply them immediately. The notification shall be accompanied by an explanation of why other instruments were not sufficient to achieve the objective pursued, of how the requirements set out in paragraphs 4 and 7 are fulfilled and of the effects of the notified measures on competition. The notification shall describe the scope of the beneficiaries, the duration of the measures and the number of household customers affected by the measures, and shall explain how the regulated prices have been determined.

9. By 1 January 2022 and 1 January 2025, Member States shall submit reports to the Commission on the implementation of this Article, the necessity and proportionality of public interventions under this Article, and an assessment of the progress towards achieving effective competition between suppliers and the transition to market-based prices. Member States that apply regulated prices in accordance with paragraph 6 shall report on the compliance with the conditions set out in paragraph 7, including on compliance by suppliers that are required to apply such interventions, as well as on the impact of regulated prices on the finances of those suppliers.

10. By 31 December 2025, the Commission shall review and submit a report to the European Parliament and to the Council on the implementation of this Article for the purpose of achieving market-based retail pricing of electricity, together with or followed by a legislative proposal, if appropriate. That legislative proposal may include an end date for regulated prices.

*Article 6***Third-party access**

1. Member States shall ensure the implementation of a system of third-party access to the transmission and distribution systems based on published tariffs, applicable to all customers and applied objectively and without discrimination between system users. Member States shall ensure that those tariffs, or the methodologies underlying their calculation, are approved in accordance with Article 59 prior to their entry into force and that those tariffs, and the methodologies — where only methodologies are approved — are published prior to their entry into force.
2. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons shall be given for such refusal, in particular having regard to Article 9, and based on objective and technically and economically justified criteria. Member States or, where Member States have so provided, the regulatory authorities of those Member States, shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure. The regulatory authorities shall also ensure, where appropriate and when refusal of access takes place, that the transmission system operator or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. Such information shall be provided in all cases when access for recharging points has been denied. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.
3. This Article shall also apply to citizen energy communities that manage distribution networks.

*Article 7***Direct lines**

1. Member States shall take the measures necessary to enable:
 - (a) all producers and electricity supply undertakings established within their territory to supply their own premises, subsidiaries and customers through a direct line, without being subject to disproportionate administrative procedures or costs;
 - (b) all customers within their territory, individually or jointly, to be supplied through a direct line by producers and electricity supply undertakings.
2. Member States shall lay down the criteria for the grant of authorisations for the construction of direct lines in their territory. Those criteria shall be objective and non-discriminatory.
3. The possibility of supplying electricity through a direct line as referred to in paragraph 1 of this Article shall not affect the possibility of contracting electricity in accordance with Article 6.
4. Member States may issue authorisations to construct a direct line, subject either to the refusal of system access on the basis, as appropriate, of Article 6 or to the opening of a dispute settlement procedure under Article 60.
5. Member States may refuse to authorise a direct line if the granting of such an authorisation would obstruct the application of the provisions on public service obligations in Article 9. Duly substantiated reasons shall be given for such a refusal.

*Article 8***Authorisation procedure for new capacity**

1. For the construction of new generating capacity, Member States shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.
2. Member States shall lay down the criteria for the grant of authorisations for the construction of generating capacity in their territory. In determining appropriate criteria, Member States shall consider:
 - (a) the safety and security of the electricity system, installations and associated equipment;
 - (b) the protection of public health and safety;
 - (c) the protection of the environment;

- (d) land use and siting;
 - (e) the use of public ground;
 - (f) energy efficiency;
 - (g) the nature of the primary sources;
 - (h) the characteristics particular to the applicant, such as technical, economic and financial capabilities;
 - (i) compliance with measures adopted pursuant to Article 9;
 - (j) the contribution of generating capacity to meeting the overall Union target of at least a 32 % share of energy from renewable sources in the Union's gross final consumption of energy in 2030 referred to in Article 3(1) of Directive (EU) 2018/2001 of the European Parliament and of the Council ⁽¹⁹⁾;
 - (k) the contribution of generating capacity to reducing emissions; and
 - (l) the alternatives to the construction of new generating capacity, such as demand response solutions and energy storage.
3. Member States shall ensure that specific, simplified and streamlined authorisation procedures exist for small decentralised and/or distributed generation, which take into account their limited size and potential impact.

Member States may set guidelines for that specific authorisation procedure. Regulatory authorities or other competent national authorities, including planning authorities, shall review those guidelines and may recommend amendments thereto.

Where Member States have established particular land use permit procedures applying to major new infrastructure projects in generation capacity, Member States shall, where appropriate, include the construction of new generation capacity within the scope of those procedures and shall implement them in a non-discriminatory manner and within an appropriate time frame.

4. The authorisation procedures and criteria shall be made public. Applicants shall be informed of the reasons for any refusal to grant an authorisation. Those reasons shall be objective, non-discriminatory, well-founded and duly substantiated. Appeal procedures shall be made available to applicants.

Article 9

Public service obligations

1. Without prejudice to paragraph 2, Member States shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that electricity undertakings operate in accordance with the principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market for electricity, and shall not discriminate between those undertakings as regards either rights or obligations.
2. Having full regard to the relevant provisions of the TFEU, in particular Article 106 thereof, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including the security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable, and shall guarantee equality of access for electricity undertakings of the Union to national consumers. Public service obligations which concern the price setting for the supply of electricity shall comply with the requirements set out in Article 5 of this Directive.
3. Where financial compensation, other forms of compensation and exclusive rights which a Member State grants for the fulfilment of the obligations set out in paragraph 2 of this Article or for the provision of universal service as set out in Article 27 are provided, this shall be done in a non-discriminatory and transparent way.
4. Member States shall, upon implementation of this Directive, inform the Commission of all measures adopted to fulfil universal service and public service obligations, including consumer protection and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from this Directive. They shall subsequently inform the Commission every two years of any changes to those measures, whether or not they require a derogation from this Directive.

⁽¹⁹⁾ Directive (EU) 2018/2001 of the European Parliament and the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

5. Member States may decide not to apply Articles 6, 7 and 8 of this Directive insofar as their application would obstruct, in law or in fact, the performance of the obligations imposed on electricity undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Union. The interests of the Union include, inter alia, competition with regard to customers in accordance with Article 106 TFEU and this Directive.

CHAPTER III

CONSUMER EMPOWERMENT AND PROTECTION

Article 10

Basic contractual rights

1. Member States shall ensure that all final customers are entitled to have their electricity provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, provided that the supplier follows the applicable trading and balancing rules. In that regard, Member States shall take all measures necessary to ensure that administrative procedures do not discriminate against suppliers already registered in another Member State.

2. Without prejudice to Union rules on consumer protection, in particular Directive 2011/83/EU of the European Parliament and of the Council ⁽²⁰⁾ and Council Directive 93/13/EEC ⁽²¹⁾, Member States shall ensure that final customers have the rights provided for in paragraphs 3 to 12 of this Article.

3. Final customers shall have the right to a contract with their supplier that specifies:

- (a) the identity and address of the supplier;
- (b) the services provided, the service quality levels offered, as well as the time for the initial connection;
- (c) the types of maintenance service offered;
- (d) the means by which up-to-date information on all applicable tariffs, maintenance charges and bundled products or services may be obtained;
- (e) the duration of the contract, the conditions for renewal and termination of the contract and services, including products or services that are bundled with those services, and whether terminating the contract without charge is permitted;
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate or delayed billing;
- (g) the method of initiating an out-of-court dispute settlement procedure in accordance with Article 26;
- (h) information relating to consumer rights, including information on complaint handling and all of the information referred to in this paragraph, that is clearly communicated on the bill or the electricity undertaking's web site.

Conditions shall be fair and well known in advance. In any case, this information shall be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the information relating to the matters set out in this paragraph shall also be provided prior to the conclusion of the contract.

Final customers shall be provided with a summary of the key contractual conditions in a prominent manner and in concise and simple language.

4. Final customers shall be given adequate notice of any intention to modify contractual conditions and shall be informed about their right to terminate the contract when the notice is given. Suppliers shall notify their final

⁽²⁰⁾ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

⁽²¹⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

customers, in a transparent and comprehensible manner, directly of any adjustment in the supply price and of the reasons and preconditions for the adjustment and its scope, at an appropriate time no later than two weeks, or no later than one month in the case of household customers, before the adjustment comes into effect. Member States shall ensure that final customers are free to terminate contracts if they do not accept the new contractual conditions or adjustments in the supply price notified to them by their supplier.

5. Suppliers shall provide final customers with transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services.

6. Suppliers shall offer final customers a wide choice of payment methods. Such payment methods shall not unduly discriminate between customers. Any difference in charges related to payment methods or prepayment systems shall be objective, non-discriminatory and proportionate and shall not exceed the direct costs borne by the payee for the use of a specific payment method or a prepayment system, in line with Article 62 of Directive (EU) 2015/2366 of the European Parliament and of the Council ⁽²²⁾.

7. Pursuant to paragraph 6, household customers who have access to prepayment systems shall not be placed at a disadvantage by the prepayment systems.

8. Suppliers shall offer final customers fair and transparent general terms and conditions, which shall be provided in plain and unambiguous language and shall not include non-contractual barriers to the exercise of customers' rights, such as excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods.

9. Final customers shall have the right to a good standard of service and complaint handling by their suppliers. Suppliers shall handle complaints in a simple, fair and prompt manner.

10. When accessing universal service under the provisions adopted by Member States pursuant to Article 27, final customers shall be informed about their rights regarding universal service.

11. Suppliers shall provide household customers with adequate information on alternative measures to disconnection sufficiently in advance of any planned disconnection. Such alternative measures may refer to sources of support to avoid disconnection, prepayment systems, energy audits, energy consultancy services, alternative payment plans, debt management advice or disconnection moratoria and not constitute an extra cost to the customers facing disconnection.

12. Suppliers shall provide final customers with a final closure account after any switch of supplier no later than six weeks after such a switch has taken place.

Article 11

Entitlement to a dynamic electricity price contract

1. Member States shall ensure that the national regulatory framework enables suppliers to offer dynamic electricity price contracts. Member States shall ensure that final customers who have a smart meter installed can request to conclude a dynamic electricity price contract with at least one supplier and with every supplier that has more than 200 000 final customers.

2. Member States shall ensure that final customers are fully informed by the suppliers of the opportunities, costs and risks of such dynamic electricity price contracts, and shall ensure that suppliers are required to provide information to the final customers accordingly, including with regard to the need to have an adequate electricity meter installed. Regulatory authorities shall monitor the market developments and assess the risks that the new products and services may entail and deal with abusive practices.

3. Suppliers shall obtain each final customer's consent before that customer is switched to a dynamic electricity price contract.

⁽²²⁾ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

4. For at least a ten-year period after dynamic electricity price contracts become available, Member States or their regulatory authorities shall monitor, and shall publish an annual report on the main developments of such contracts, including market offers and the impact on consumers' bills, and specifically the level of price volatility.

Article 12

Right to switch and rules on switching-related fees

1. Switching supplier or market participant engaged in aggregation shall be carried out within the shortest possible time. Member States shall ensure that a customer wishing to switch suppliers or market participants engaged in aggregation, while respecting contractual conditions, is entitled to such a switch within a maximum of three weeks from the date of the request. By no later than 2026, the technical process of switching supplier shall take no longer than 24 hours and shall be possible on any working day.

2. Member States shall ensure that at least household customers and small enterprises are not charged any switching-related fees.

3. By way of derogation from paragraph 2, Member States may permit suppliers or market participants engaged in aggregation to charge customers contract termination fees where those customers voluntarily terminate fixed-term, fixed-price electricity supply contracts before their maturity, provided that such fees are part of a contract that the customer has voluntarily entered into and that such fees are clearly communicated to the customer before the contract is entered into. Such fees shall be proportionate and shall not exceed the direct economic loss to the supplier or the market participant engaged in aggregation resulting from the customer's termination of the contract, including the costs of any bundled investments or services that have already been provided to the customer as part of the contract. The burden of proving the direct economic loss shall be on the supplier or market participant engaged in aggregation, and the permissibility of contract termination fees shall be monitored by the regulatory authority, or by an other competent national authority.

4. Member States shall ensure that the right to switch supplier or market participants engaged in aggregation is granted to customers in a non-discriminatory manner as regards cost, effort and time.

5. Household customers shall be entitled to participate in collective switching schemes. Member States shall remove all regulatory or administrative barriers for collective switching, while providing a framework that ensures the utmost consumer protection to avoid any abusive practices.

Article 13

Aggregation contract

1. Member States shall ensure that all customers are free to purchase and sell electricity services, including aggregation, other than supply, independently from their electricity supply contract and from an electricity undertaking of their choice.

2. Member States shall ensure that, where a final customer wishes to conclude an aggregation contract, the final customer is entitled to do so without the consent of the final customer's electricity undertakings.

Member States shall ensure that market participants engaged in aggregation fully inform customers of the terms and conditions of the contracts that they offer to them.

3. Member States shall ensure that final customers are entitled to receive all relevant demand response data or data on supplied and sold electricity free of charge at least once every billing period if requested by the customer.

4. Member States shall ensure that the rights referred to in paragraphs 2 and 3 are granted to final customers in a non-discriminatory manner as regards cost, effort or time. In particular, Member States shall ensure that customers are not subject to discriminatory technical and administrative requirements, procedures or charges by their supplier on the basis of whether they have a contract with a market participant engaged in aggregation.

*Article 14***Comparison tools**

1. Member States shall ensure that at least household customers, and microenterprises with an expected yearly consumption of below 100 000 kWh, have access, free of charge, to at least one tool comparing the offers of suppliers, including offers for dynamic electricity price contracts. Customers shall be informed of the availability of such tools in or together with their bills or by other means. The tools shall meet at least the following requirements:

- (a) they shall be independent from market participants and ensure that electricity undertakings are given equal treatment in search results;
- (b) they shall clearly disclose their owners and the natural or legal person operating and controlling the tools, as well as information on how the tools are financed;
- (c) they shall set out clear and objective criteria on which the comparison is to be based, including services, and disclose them;
- (d) they shall use plain and unambiguous language;
- (e) they shall provide accurate and up-to-date information and state the time of the last update;
- (f) they shall be accessible to persons with disabilities, by being perceivable, operable, understandable and robust;
- (g) they shall provide an effective procedure for reporting incorrect information on published offers; and
- (h) they shall perform comparisons, while limiting the personal data requested to that strictly necessary for the comparison.

Member States shall ensure that at least one tool covers the entire market. Where multiple tools cover the market, those tools shall include, as complete as practicable, a range of electricity offers covering a significant part of the market and, where those tools do not completely cover the market, a clear statement to that effect, before displaying results.

2. The tools referred to in paragraph 1 may be operated by any entity, including private companies and public authorities or bodies.

3. Member States shall appoint a competent authority to be responsible for issuing trust marks for comparison tools that meet the requirements set out in paragraph 1, and for ensuring that comparison tools bearing a trust mark continue to meet the requirements set out in paragraph 1. That authority shall be independent of any market participants and comparison tool operators.

4. Member States may require comparison tools referred to in paragraph 1 to include comparative criteria relating to the nature of the services offered by the suppliers.

5. Any tool comparing the offers of market participants shall be eligible to apply for a trust mark in accordance with this Article on a voluntary and non-discriminatory basis.

6. By way of derogation from paragraphs 3 and 5, Member States may choose not to provide for the issuance of trust marks to comparison tools if a public authority or body provides a comparison tool that meets the requirements set out in paragraph 1.

*Article 15***Active customers**

1. Member States shall ensure that final customers are entitled to act as active customers without being subject to disproportionate or discriminatory technical requirements, administrative requirements, procedures and charges, and to network charges that are not cost-reflective.

2. Member States shall ensure that active customers are:

- (a) entitled to operate either directly or through aggregation;
- (b) entitled to sell self-generated electricity, including through power purchase agreements;

- (c) entitled to participate in flexibility schemes and energy efficiency schemes;
- (d) entitled to delegate to a third party the management of the installations required for their activities, including installation, operation, data handling and maintenance, without that third party being considered to be an active customer;
- (e) subject to cost-reflective, transparent and non-discriminatory network charges that account separately for the electricity fed into the grid and the electricity consumed from the grid, in accordance with Article 59(9) of this Directive and Article 18 of Regulation (EU) 2019/943, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the system;
- (f) financially responsible for the imbalances they cause in the electricity system; to that extent they shall be balance responsible parties or shall delegate their balancing responsibility in accordance with Article 5 of Regulation (EU) 2019/943.

3. Member States may have different provisions applicable to individual and jointly-acting active customers in their national law, provided that all rights and obligations under this Article apply to all active customers. Any difference in the treatment of jointly-acting active customers shall be proportionate and duly justified.

4. Member States that have existing schemes that do not account separately for the electricity fed into the grid and the electricity consumed from the grid, shall not grant new rights under such schemes after 31 December 2023. In any event, customers subject to existing schemes shall have the possibility at any time to opt for a new scheme that accounts separately for the electricity fed into the grid and the electricity consumed from the grid as the basis for calculating network charges.

5. Member States shall ensure that active customers that own an energy storage facility:

- (a) have the right to a grid connection within a reasonable time after the request, provided that all necessary conditions, such as balancing responsibility and adequate metering, are fulfilled;
- (b) are not subject to any double charges, including network charges, for stored electricity remaining within their premises or when providing flexibility services to system operators;
- (c) are not subject to disproportionate licensing requirements or fees;
- (d) are allowed to provide several services simultaneously, if technically feasible.

Article 16

Citizen energy communities

1. Member States shall provide an enabling regulatory framework for citizen energy communities ensuring that:

- (a) participation in a citizen energy community is open and voluntary;
- (b) members or shareholders of a citizen energy community are entitled to leave the community, in which case Article 12 applies;
- (c) members or shareholders of a citizen energy community do not lose their rights and obligations as household customers or active customers;
- (d) subject to fair compensation as assessed by the regulatory authority, relevant distribution system operators cooperate with citizen energy communities to facilitate electricity transfers within citizen energy communities;
- (e) citizen energy communities are subject to non-discriminatory, fair, proportionate and transparent procedures and charges, including with respect to registration and licensing, and to transparent, non-discriminatory and cost-reflective network charges in accordance with Article 18 of Regulation (EU) 2019/943, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the system.

2. Member States may provide in the enabling regulatory framework that citizen energy communities:
 - (a) are open to cross-border participation;
 - (b) are entitled to own, establish, purchase or lease distribution networks and to autonomously manage them subject to conditions set out in paragraph 4 of this Article;
 - (c) are subject to the exemptions provided for in Article 38(2).
3. Member States shall ensure that citizen energy communities:
 - (a) are able to access all electricity markets, either directly or through aggregation, in a non-discriminatory manner;
 - (b) are treated in a non-discriminatory and proportionate manner with regard to their activities, rights and obligations as final customers, producers, suppliers, distribution system operators or market participants engaged in aggregation;
 - (c) are financially responsible for the imbalances they cause in the electricity system; to that extent they shall be balance responsible parties or shall delegate their balancing responsibility in accordance with Article 5 of Regulation (EU) 2019/943;
 - (d) with regard to consumption of self-generated electricity, citizen energy communities are treated like active customers in accordance with point (e) of Article 15(2);
 - (e) are entitled to arrange within the citizen energy community the sharing of electricity that is produced by the production units owned by the community, subject to other requirements laid down in this Article and subject to the community members retaining their rights and obligations as final customers.

For the purposes of point (e) of the first subparagraph, where electricity is shared, this shall be without prejudice to applicable network charges, tariffs and levies, in accordance with a transparent cost-benefit analysis of distributed energy resources developed by the competent national authority.

4. Member States may decide to grant citizen energy communities the right to manage distribution networks in their area of operation and establish the relevant procedures, without prejudice to Chapter IV or to other rules and regulations applying to distribution system operators. If such a right is granted, Member States shall ensure that citizen energy communities:
 - (a) are entitled to conclude an agreement on the operation of their network with the relevant distribution system operator or transmission system operator to which their network is connected;
 - (b) are subject to appropriate network charges at the connection points between their network and the distribution network outside the citizen energy community and that such network charges account separately for the electricity fed into the distribution network and the electricity consumed from the distribution network outside the citizen energy community in accordance with Article 59(7);
 - (c) do not discriminate or harm customers who remain connected to the distribution system.

Article 17

Demand response through aggregation

1. Member States shall allow and foster participation of demand response through aggregation. Member States shall allow final customers, including those offering demand response through aggregation, to participate alongside producers in a non-discriminatory manner in all electricity markets.
2. Member States shall ensure that transmission system operators and distribution system operators, when procuring ancillary services, treat market participants engaged in the aggregation of demand response in a non-discriminatory manner alongside producers on the basis of their technical capabilities.
3. Member States shall ensure that their relevant regulatory framework contains at least the following elements:
 - (a) the right for each market participant engaged in aggregation, including independent aggregators, to enter electricity markets without the consent of other market participants;

- (b) non-discriminatory and transparent rules that clearly assign roles and responsibilities to all electricity undertakings and customers;
- (c) non-discriminatory and transparent rules and procedures for the exchange of data between market participants engaged in aggregation and other electricity undertakings that ensure easy access to data on equal and non-discriminatory terms while fully protecting commercially sensitive information and customers' personal data;
- (d) an obligation on market participants engaged in aggregation to be financially responsible for the imbalances that they cause in the electricity system; to that extent they shall be balance responsible parties or shall delegate their balancing responsibility in accordance with Article 5 of Regulation (EU) 2019/943;
- (e) provision for final customers who have a contract with independent aggregators not to be subject to undue payments, penalties or other undue contractual restrictions by their suppliers;
- (f) a conflict resolution mechanism between market participants engaged in aggregation and other market participants, including responsibility for imbalances.

4. Member States may require electricity undertakings or participating final customers to pay financial compensation to other market participants or to the market participants' balance responsible parties, if those market participants or balance responsible parties are directly affected by demand response activation. Such financial compensation shall not create a barrier to market entry for market participants engaged in aggregation or a barrier to flexibility. In such cases, the financial compensation shall be strictly limited to covering the resulting costs incurred by the suppliers of participating customers or the suppliers' balance responsible parties during the activation of demand response. The method for calculating compensation may take account of the benefits brought about by the independent aggregators to other market participants and, where it does so, the aggregators or participating customers may be required to contribute to such compensation but only where and to the extent that the benefits to all suppliers, customers and their balance responsible parties do not exceed the direct costs incurred. The calculation method shall be subject to approval by the regulatory authority or by another competent national authority.

5. Member States shall ensure that regulatory authorities or, where their national legal system so requires, transmission system operators and distribution system operators, acting in close cooperation with market participants and final customers, establish the technical requirements for participation of demand response in all electricity markets on the basis of the technical characteristics of those markets and the capabilities of demand response. Such requirements shall cover participation involving aggregated loads.

Article 18

Bills and billing information

1. Member States shall ensure that bills and billing information are accurate, easy to understand, clear, concise, user-friendly and presented in a manner that facilitates comparison by final customers. On request, final customers shall receive a clear and understandable explanation of how their bill was derived, especially where bills are not based on actual consumption.
2. Member States shall ensure that final customers receive all their bills and billing information free of charge.
3. Member States shall ensure that final customers are offered the option of electronic bills and billing information and are offered flexible arrangements for the actual payment of the bills.
4. If the contract provides for a future change of the product or price, or a discount, this shall be indicated on the bill together with the date on which the change takes place.
5. Member States shall consult consumer organisations when they consider changes to the requirements for the content of bills.
6. Member States shall ensure that bills and billing information fulfil the minimum requirements set out in Annex I.

*Article 19***Smart metering systems**

1. In order to promote energy efficiency and to empower final customers, Member States or, where a Member State has so provided, the regulatory authority shall strongly recommend that electricity undertakings and other market participants optimise the use of electricity, inter alia, by providing energy management services, developing innovative pricing formulas, and introducing smart metering systems that are interoperable, in particular with consumer energy management systems and with smart grids, in accordance with the applicable Union data protection rules.
2. Member States shall ensure the deployment in their territories of smart metering systems that assist the active participation of customers in the electricity market. Such deployment may be subject to a cost-benefit assessment which shall be undertaken in accordance with the principles laid down in Annex II.
3. Member States that proceed with the deployment of smart metering systems shall adopt and publish the minimum functional and technical requirements for the smart metering systems to be deployed in their territories, in accordance with Article 20 and Annex II. Member States shall ensure the interoperability of those smart metering systems, as well as their ability to provide output for consumer energy management systems. In that respect, Member States shall have due regard to the use of the relevant available standards, including those enabling interoperability, to best practices and to the importance of the development of smart grids and the development of the internal market for electricity.
4. Member States that proceed with the deployment of smart metering systems shall ensure that final customers contribute to the associated costs of the deployment in a transparent and non-discriminatory manner, while taking into account the long-term benefits to the whole value chain. Member States or, where a Member State has so provided, the designated competent authorities, shall regularly monitor such deployment in their territories to track the delivery of benefits to consumers.
5. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in paragraph 2, Member States shall ensure that this assessment is revised at least every four years, or more frequently, in response to significant changes in the underlying assumptions and in response to technological and market developments. Member States shall notify to the Commission the outcome of their updated cost-benefit assessment as it becomes available.
6. The provisions in this Directive concerning smart metering systems shall apply to future installations and to installations that replace older smart meters. Smart metering systems that have already been installed, or for which the 'start of works' began, before 4 July 2019, may remain in operation over their lifetime but, in the case of smart metering systems that do not meet the requirements of Article 20 and Annex II, shall not remain in operation after 5 July 2031.

For the purpose of this paragraph, 'start of works' means either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment.

*Article 20***Functionalities of smart metering systems**

Where the deployment of smart metering systems is positively assessed as a result of the cost-benefit assessment referred to in Article 19(2), or where smart metering systems are systematically deployed after 4 July 2019, Member States shall deploy smart metering systems in accordance with European standards, Annex II and the following requirements:

- (a) the smart metering systems shall accurately measure actual electricity consumption and shall be capable of providing to final customers information on actual time of use. Validated historical consumption data shall be made easily and securely available and visualised to final customers on request and at no additional cost. Non-validated near real-time consumption data shall also be made easily and securely available to final customers at no additional cost, through a standardised interface or through remote access, in order to support automated energy efficiency programmes, demand response and other services;

- (b) the security of the smart metering systems and data communication shall comply with relevant Union security rules, having due regard of the best available techniques for ensuring the highest level of cybersecurity protection while bearing in mind the costs and the principle of proportionality;
- (c) the privacy of final customers and the protection of their data shall comply with relevant Union data protection and privacy rules;
- (d) meter operators shall ensure that the meters of active customers who feed electricity into the grid can account for electricity fed into the grid from the active customers' premises;
- (e) if final customers request it, data on the electricity they fed into the grid and their electricity consumption data shall be made available to them, in accordance with the implementing acts adopted pursuant to Article 24, through a standardised communication interface or through remote access, or to a third party acting on their behalf, in an easily understandable format allowing them to compare offers on a like-for-like basis;
- (f) appropriate advice and information shall be given to final customers prior to or at the time of installation of smart meters, in particular concerning their full potential with regard to the management of meter reading and the monitoring of energy consumption, and concerning the collection and processing of personal data in accordance with the applicable Union data protection rules;
- (g) smart metering systems shall enable final customers to be metered and settled at the same time resolution as the imbalance settlement period in the national market.

For the purposes of point (e) of the first subparagraph, it shall be possible for final customers to retrieve their metering data or transmit them to another party at no additional cost and in accordance with their right to data portability under Union data protection rules.

Article 21

Entitlement to a smart meter

1. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in Article 19(2) and where smart metering systems are not systematically deployed, Member States shall ensure that every final customer is entitled on request, while bearing the associated costs, to have installed or, where applicable, to have upgraded, under fair, reasonable and cost-effective conditions, a smart meter that:

- (a) is equipped, where technically feasible, with the functionalities referred to in Article 20, or with a minimum set of functionalities to be defined and published by Member States at national level in accordance with Annex II;
- (b) is interoperable and able to deliver the desired connectivity of the metering infrastructure with consumer energy management systems in near real-time.

2. In the context of a customer request for a smart meter pursuant to paragraph 1, Member States or, where a Member State has so provided, the designated competent authorities shall:

- (a) ensure that the offer to the final customer requesting the installation of a smart meter explicitly states and clearly describes:
 - (i) the functions and interoperability that can be supported by the smart meter and the services that are feasible as well as the benefits that can be realistically attained by having that smart meter at that moment in time;
 - (ii) any associated costs to be borne by the final customer;
- (b) ensure that it is installed within a reasonable time, no later than four months after the customer's request;
- (c) regularly, and at least every two years, review and make publicly available the associated costs, and trace the evolution of those costs as a result of technology developments and potential metering system upgrades.

*Article 22***Conventional meters**

1. Where final customers do not have smart meters, Member States shall ensure that final customers are provided with individual conventional meters that accurately measure their actual consumption.
2. Member States shall ensure that final customers are able to easily read their conventional meters, either directly or indirectly through an online interface or through another appropriate interface.

*Article 23***Data management**

1. When laying down the rules regarding the management and exchange of data, Member States or, where a Member State has so provided, the designated competent authorities shall specify the rules on the access to data of the final customer by eligible parties in accordance with this Article and the applicable Union legal framework. For the purpose of this Directive, data shall be understood to include metering and consumption data as well as data required for customer switching, demand response and other services.
2. Member States shall organise the management of data in order to ensure efficient and secure data access and exchange, as well as data protection and data security.

Independently of the data management model applied in each Member State, the parties responsible for data management shall provide access to the data of the final customer to any eligible party, in accordance with paragraph 1. Eligible parties shall have the requested data at their disposal in a non-discriminatory manner and simultaneously. Access to data shall be easy and the relevant procedures for obtaining access to data shall be made publicly available.

3. The rules on access to data and data storage for the purpose of this Directive shall comply with the relevant Union law.

The processing of personal data within the framework of this Directive shall be carried out in accordance with Regulation (EU) 2016/679.

4. Member States or, where a Member State has so provided, the designated competent authorities, shall authorise and certify or, where applicable, supervise the parties responsible for the data management, in order to ensure that they comply with the requirements of this Directive.

Without prejudice to the tasks of the data protection officers under Regulation (EU) 2016/679, Member States may decide to require that parties responsible for the data management appoint compliance officers who are to be responsible for monitoring the implementation of measures taken by those parties to ensure non-discriminatory access to data and compliance with the requirements of this Directive.

Member States may appoint compliance officers or bodies referred to in point (d) of Article 35(2) of this Directive to fulfil the obligations under this paragraph.

5. No additional costs shall be charged to final customers for access to their data or for a request to make their data available.

Member States shall be responsible for setting the relevant charges for access to data by eligible parties.

Member States or, where a Member State has so provided, the designated competent authorities shall ensure that any charges imposed by regulated entities that provide data services are reasonable and duly justified.

*Article 24***Interoperability requirements and procedures for access to data**

1. In order to promote competition in the retail market and to avoid excessive administrative costs for the eligible parties, Member States shall facilitate the full interoperability of energy services within the Union.

2. The Commission shall adopt, by means of implementing acts, interoperability requirements and non-discriminatory and transparent procedures for access to data referred to in Article 23(1). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 68(2).
3. Member States shall ensure that electricity undertakings apply the interoperability requirements and procedures for access to data referred to in paragraph 2. Those requirements and procedures shall be based on existing national practices.

Article 25

Single points of contact

Member States shall ensure the provision of single points of contact, to provide customers with all necessary information concerning their rights, the applicable law and dispute settlement mechanisms available to them in the event of a dispute. Such single points of contact may be part of general consumer information points.

Article 26

Right to out-of-court dispute settlement

1. Member States shall ensure that final customers have access to simple, fair, transparent, independent, effective and efficient out-of-court mechanisms for the settlement of disputes concerning rights and obligations established under this Directive, through an independent mechanism such as an energy ombudsman or a consumer body, or through a regulatory authority. Where the final customer is a consumer within the meaning of Directive 2013/11/EU of the European Parliament and of the Council ⁽²³⁾, such out-of-court dispute settlement mechanisms shall comply with the quality requirements of Directive 2013/11/EU and shall provide, where warranted, for systems of reimbursement and compensation.
2. Where necessary, Member States shall ensure that alternative dispute resolution entities cooperate to provide simple, fair, transparent, independent, effective and efficient out-of-court dispute settlement mechanisms for any dispute that arises from products or services that are tied to, or bundled with, any product or service falling under the scope of this Directive.
3. The participation of electricity undertakings in out-of-court dispute settlement mechanisms for household customers shall be mandatory unless the Member State demonstrates to the Commission that other mechanisms are equally effective.

Article 27

Universal service

1. Member States shall ensure that all household customers, and, where Member States deem it to be appropriate, small enterprises, enjoy universal service, namely the right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort. Member States shall impose on distribution system operators an obligation to connect customers to their network under terms, conditions and tariffs set in accordance with the procedure laid down in Article 59(7). This Directive does not prevent Member States from strengthening the market position of the household customers and small and medium-sized non-household customers by promoting the possibilities for the voluntary aggregation of representation for that class of customers.
2. Paragraph 1 shall be implemented in a transparent and non-discriminatory way, and shall not impede the free choice of supplier provided for in Article 4.

⁽²³⁾ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).

*Article 28***Vulnerable customers**

1. Member States shall take appropriate measures to protect customers and shall ensure, in particular, that there are adequate safeguards to protect vulnerable customers. In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of electricity to such customers in critical times. The concept of vulnerable customers may include income levels, the share of energy expenditure of disposable income, the energy efficiency of homes, critical dependence on electrical equipment for health reasons, age or other criteria. Member States shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take measures to protect customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms.

2. Member States shall take appropriate measures, such as providing benefits by means of their social security systems to ensure the necessary supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified pursuant to point (d) of Article 3(3) of Regulation (EU) 2018/1999, including in the broader context of poverty. Such measures shall not impede the effective opening of the market set out in Article 4 or market functioning and shall be notified to the Commission, where relevant, in accordance with Article 9(4). Such notifications may also include measures taken within the general social security system.

*Article 29***Energy poverty**

When assessing the number of households in energy poverty pursuant to point (d) of Article 3(3) of Regulation (EU) 2018/1999, Member States shall establish and publish a set of criteria, which may include low income, high expenditure of disposable income on energy and poor energy efficiency.

The Commission shall provide guidance on the definition of 'significant number of households in energy poverty' in this context and in the context of Article 5(5), starting from the premise that any proportion of households in energy poverty can be considered to be significant.

CHAPTER IV

DISTRIBUTION SYSTEM OPERATION*Article 30***Designation of distribution system operators**

Member States shall designate or shall require undertakings that own or are responsible for distribution systems to designate one or more distribution system operators for a period of time to be determined by the Member States, having regard to considerations of efficiency and economic balance.

*Article 31***Tasks of distribution system operators**

1. The distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity, for operating, maintaining and developing under economic conditions a secure, reliable and efficient electricity distribution system in its area with due regard for the environment and energy efficiency.

2. In any event, the distribution system operator shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.

3. The distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system.

4. A Member State may require the distribution system operator, when dispatching generating installations, to give priority to generating installations using renewable sources or using high-efficiency cogeneration, in accordance with Article 12 of Regulation (EU) 2019/943.
5. Each distribution system operator shall act as a neutral market facilitator in procuring the energy it uses to cover energy losses in its system in accordance with transparent, non-discriminatory and market-based procedures, where it has such a function.
6. Where a distribution system operator is responsible for the procurement of products and services necessary for the efficient, reliable and secure operation of the distribution system, rules adopted by the distribution system operator for that purpose shall be objective, transparent and non-discriminatory, and shall be developed in coordination with transmission system operators and other relevant market participants. The terms and conditions, including rules and tariffs, where applicable, for the provision of such products and services to distribution system operators shall be established in accordance with Article 59(7) in a non-discriminatory and cost-reflective way and shall be published.
7. In performing the tasks referred to in paragraph 6, the distribution system operator shall procure the non-frequency ancillary services needed for its system in accordance with transparent, non-discriminatory and market-based procedures, unless the regulatory authority has assessed that the market-based provision of non-frequency ancillary services is economically not efficient and has granted a derogation. The obligation to procure non-frequency ancillary services does not apply to fully integrated network components.
8. The procurement of the products and services referred to in paragraph 6 shall ensure the effective participation of all qualified market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation, in particular by requiring regulatory authorities and distribution system operators in close cooperation with all market participants, as well as transmission system operators, to establish the technical requirements for participation in those markets on the basis of the technical characteristics of those markets and the capabilities of all market participants.
9. Distribution system operators shall cooperate with transmission system operators for the effective participation of market participants connected to their grid in retail, wholesale and balancing markets. Delivery of balancing services stemming from resources located in the distribution system shall be agreed with the relevant transmission system operator in accordance with Article 57 of Regulation (EU) 2019/943 and Article 182 of Commission Regulation (EU) 2017/1485 ⁽²⁴⁾.
10. Member States or their designated competent authorities may allow distribution system operators to perform activities other than those provided for in this Directive and in Regulation (EU) 2019/943, where such activities are necessary for the distribution system operators to fulfil their obligations under this Directive or Regulation (EU) 2019/943, provided that the regulatory authority has assessed the necessity of such a derogation. This paragraph shall be without prejudice to the right of the distribution system operators to own, develop, manage or operate networks other than electricity networks where the Member State or the designated competent authority has granted such a right.

Article 32

Incentives for the use of flexibility in distribution networks

1. Member States shall provide the necessary regulatory framework to allow and provide incentives to distribution system operators to procure flexibility services, including congestion management in their areas, in order to improve efficiencies in the operation and development of the distribution system. In particular, the regulatory framework shall ensure that distribution system operators are able to procure such services from providers of distributed generation, demand response or energy storage and shall promote the uptake of energy efficiency measures, where such services cost-effectively alleviate the need to upgrade or replace electricity capacity and support the efficient and secure operation of the distribution system. Distribution system operators shall procure such services in accordance with transparent, non-discriminatory and market-based procedures unless the regulatory authorities have established that the procurement of such services is not economically efficient or that such procurement would lead to severe market distortions or to higher congestion.

⁽²⁴⁾ Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ L 220, 25.8.2017, p. 1).

2. Distribution system operators, subject to approval by the regulatory authority, or the regulatory authority itself, shall, in a transparent and participatory process that includes all relevant system users and transmission system operators, establish the specifications for the flexibility services procured and, where appropriate, standardised market products for such services at least at national level. The specifications shall ensure the effective and non-discriminatory participation of all market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation. Distribution system operators shall exchange all necessary information and shall coordinate with transmission system operators in order to ensure the optimal utilisation of resources, to ensure the secure and efficient operation of the system and to facilitate market development. Distribution system operators shall be adequately remunerated for the procurement of such services to allow them to recover at least their reasonable corresponding costs, including the necessary information and communication technology expenses and infrastructure costs.
3. The development of a distribution system shall be based on a transparent network development plan that the distribution system operator shall publish at least every two years and shall submit to the regulatory authority. The network development plan shall provide transparency on the medium and long-term flexibility services needed, and shall set out the planned investments for the next five-to-ten years, with particular emphasis on the main distribution infrastructure which is required in order to connect new generation capacity and new loads, including recharging points for electric vehicles. The network development plan shall also include the use of demand response, energy efficiency, energy storage facilities or other resources that the distribution system operator is to use as an alternative to system expansion.
4. The distribution system operator shall consult all relevant system users and the relevant transmission system operators on the network development plan. The distribution system operator shall publish the results of the consultation process along with the network development plan, and submit the results of the consultation and the network development plan to the regulatory authority. The regulatory authority may request amendments to the plan.
5. Member States may decide not to apply the obligation set out in paragraph 3 to integrated electricity undertakings which serve less than 100 000 connected customers or which serve small isolated systems.

Article 33

Integration of electromobility into the electricity network

1. Without prejudice to Directive 2014/94/EU of the European Parliament and of the Council ⁽²⁵⁾, Member States shall provide the necessary regulatory framework to facilitate the connection of publicly accessible and private recharging points to the distribution networks. Member States shall ensure that distribution system operators cooperate on a non-discriminatory basis with any undertaking that owns, develops, operates or manages recharging points for electric vehicles, including with regard to connection to the grid.
2. Distribution system operators shall not own, develop, manage or operate recharging points for electric vehicles, except where distribution system operators own private recharging points solely for their own use.
3. By way of derogation from paragraph 2, Member States may allow distribution system operators to own, develop, manage or operate recharging points for electric vehicles, provided that all of the following conditions are fulfilled:
 - (a) other parties, following an open, transparent and non-discriminatory tendering procedure that is subject to review and approval by the regulatory authority, have not been awarded a right to own, develop, manage or operate recharging points for electric vehicles, or could not deliver those services at a reasonable cost and in a timely manner;
 - (b) the regulatory authority has carried out an *ex ante* review of the conditions of the tendering procedure under point (a) and has granted its approval;
 - (c) the distribution system operator operates the recharging points on the basis of third-party access in accordance with Article 6 and does not discriminate between system users or classes of system users, and in particular in favour of its related undertakings.

⁽²⁵⁾ Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

The regulatory authority may draw up guidelines or procurement clauses to help distribution system operators ensure a fair tendering procedure.

4. Where Member States have implemented the conditions set out in paragraph 3, Member States or their designated competent authorities shall perform, at regular intervals or at least every five years, a public consultation in order to reassess the potential interest of other parties in owning, developing, operating or managing recharging points for electric vehicles. Where the public consultation indicates that other parties are able to own, develop, operate or manage such points, Member States shall ensure that distribution system operators' activities in this regard are phased-out, subject to the successful completion of the tendering procedure referred to in point (a) of paragraph 3. As part of the conditions of that procedure, regulatory authorities may allow the distribution system operator to recover the residual value of its investment in recharging infrastructure.

Article 34

Tasks of distribution system operators in data management

Member States shall ensure that all eligible parties have non-discriminatory access to data under clear and equal terms, in accordance with the relevant data protection rules. In Member States where smart metering systems have been deployed in accordance with Article 19 and where distribution system operators are involved in data management, the compliance programmes referred to in point (d) of Article 35(2) shall include specific measures in order to exclude discriminatory access to data from eligible parties as provided for in Article 23. Where distribution system operators are not subject to Article 35(1), (2) or (3), Member States shall take all necessary measures to ensure that vertically integrated undertakings do not have privileged access to data for the conduct of their supply activities.

Article 35

Unbundling of distribution system operators

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system operator from the vertically integrated undertaking.

2. In addition to the requirements under paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:

- (a) the persons responsible for the management of the distribution system operator must not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, transmission or supply of electricity;
- (b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;
- (c) the distribution system operator must have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network. In order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, physical and financial resources. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 59(7), in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument; and

- (d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet that objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator, to the regulatory authority referred to in Article 57(1) and shall be published. The compliance officer of the distribution system operator shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfil its task.
3. Where the distribution system operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion with respect to the separate identity of the supply branch of the vertically integrated undertaking.
4. Member States may decide not to apply paragraphs 1, 2 and 3 to integrated electricity undertakings which serve less than 100 000 connected customers, or serving small isolated systems.

Article 36

Ownership of energy storage facilities by distribution system operators

1. Distribution system operators shall not own, develop, manage or operate energy storage facilities.
2. By way of derogation from paragraph 1, Member States may allow distribution system operators to own, develop, manage or operate energy storage facilities, where they are fully integrated network components and the regulatory authority has granted its approval, or where all of the following conditions are fulfilled:
- (a) other parties, following an open, transparent and non-discriminatory tendering procedure that is subject to review and approval by the regulatory authority, have not been awarded a right to own, develop, manage or operate such facilities, or could not deliver those services at a reasonable cost and in a timely manner;
 - (b) such facilities are necessary for the distribution system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the distribution system and the facilities are not used to buy or sell electricity in the electricity markets; and
 - (c) the regulatory authority has assessed the necessity of such a derogation and has carried out an assessment of the tendering procedure, including the conditions of the tendering procedure, and has granted its approval.

The regulatory authority may draw up guidelines or procurement clauses to help distribution system operators ensure a fair tendering procedure.

3. The regulatory authorities shall perform, at regular intervals or at least every five years, a public consultation on the existing energy storage facilities in order to assess the potential availability and interest in investing in such facilities. Where the public consultation, as assessed by the regulatory authority, indicates that third parties are able to own, develop, operate or manage such facilities in a cost-effective manner, the regulatory authority shall ensure that the distribution system operators' activities in this regard are phased out within 18 months. As part of the conditions of that procedure, regulatory authorities may allow the distribution system operators to receive reasonable compensation, in particular to recover the residual value of their investment in the energy storage facilities.
4. Paragraph 3 shall not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until 4 July 2019, provided that such battery storage facilities are:
- (a) connected to the grid at the latest two years thereafter;
 - (b) integrated into the distribution system;

- (c) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and
- (d) not used to buy or sell electricity in the electricity markets, including balancing.

Article 37

Confidentiality obligation of distribution system operators

Without prejudice to Article 55 or another legal requirement to disclose information, the distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner.

Article 38

Closed distribution systems

1. Member States may provide for regulatory authorities or other competent authorities to classify a system which distributes electricity within a geographically confined industrial, commercial or shared services site and does not, without prejudice to paragraph 4, supply household customers, as a closed distribution system if:

- (a) for specific technical or safety reasons, the operations or the production process of the users of that system are integrated; or
- (b) that system distributes electricity primarily to the owner or operator of the system or their related undertakings.

2. Closed distribution systems shall be considered to be distribution systems for the purposes of this Directive. Member States may provide for regulatory authorities to exempt the operator of a closed distribution system from:

- (a) the requirement under Article 31(5) and (7) to procure the energy it uses to cover energy losses and the non-frequency ancillary services in its system in accordance with transparent, non-discriminatory and market-based procedures;
- (b) the requirement under Article 6(1) that tariffs, or the methodologies underlying their calculation, are approved in accordance with Article 59(1) prior to their entry into force;
- (c) the requirements under Article 32(1) to procure flexibility services and under Article 32(3) to develop the operator's system on the basis of network development plans;
- (d) the requirement under Article 33(2) not to own, develop, manage or operate recharging points for electric vehicles; and
- (e) the requirement under Article 36(1) not to own, develop, manage or operate energy storage facilities.

3. Where an exemption is granted under paragraph 2, the applicable tariffs, or the methodologies underlying their calculation, shall be reviewed and approved in accordance with Article 59(1) upon request by a user of the closed distribution system.

4. Incidental use by a small number of households with employment or similar associations with the owner of the distribution system and located within the area served by a closed distribution system shall not preclude an exemption under paragraph 2 being granted.

Article 39

Combined operator

Article 35(1) shall not prevent the operation of a combined transmission and distribution system operator, provided that the operator complies with Article 43(1), Articles 44 and 45, or Section 3 of Chapter VI, or that the operator falls under Article 66(3).

CHAPTER V

GENERAL RULES APPLICABLE TO TRANSMISSION SYSTEM OPERATORS

Article 40

Tasks of transmission system operators

1. Each transmission system operator shall be responsible for:
 - (a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission system with due regard to the environment, in close cooperation with neighbouring transmission system operators and distribution system operators;
 - (b) ensuring adequate means to meet its obligations;
 - (c) contributing to security of supply through adequate transmission capacity and system reliability;
 - (d) managing electricity flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services, including those provided by demand response and energy storage facilities, insofar as such availability is independent from any other transmission systems with which its system is interconnected;
 - (e) providing to the operator of other systems with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system;
 - (f) ensuring non-discrimination as between system users or classes of system users, particularly in favour of its related undertakings;
 - (g) providing system users with the information they need for efficient access to the system;
 - (h) collecting congestion rents and payments under the inter-transmission system operator compensation mechanism, in accordance with Article 49 of Regulation (EU) 2019/943, granting and managing third-party access and giving reasoned explanations when it denies such access, which shall be monitored by the regulatory authorities; in carrying out their tasks under this Article transmission system operators shall primarily facilitate market integration;
 - (i) procuring ancillary services to ensure operational security;
 - (j) adopting a framework for cooperation and coordination between the regional coordination centres;
 - (k) participating in the establishment of the European and national resource adequacy assessments pursuant to Chapter IV of Regulation (EU) 2019/943;
 - (l) the digitalisation of transmission systems;
 - (m) data management, including the development of data management systems, cybersecurity and data protection, subject to the applicable rules, and without prejudice to the competence of other authorities.
2. Member States may provide that one or several responsibilities listed in paragraph 1 of this Article be assigned to a transmission system operator other than the one which owns the transmission system to which the responsibilities concerned would otherwise be applicable. The transmission system operator to which the tasks are assigned shall be certified under the ownership unbundling, the independent system operator or the independent transmission system operator model, and fulfil the requirements provided for in Article 43, but shall not be required to own the transmission system it is responsible for.

The transmission system operator which owns the transmission system shall fulfil the requirements provided for in Chapter VI and be certified in accordance with Article 43. This shall be without prejudice to the possibility for transmission system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model to delegate, on their own initiative and under their supervision, certain tasks to other transmission system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model where that delegation of tasks does not endanger the effective and independent decision-making rights of the delegating transmission system operator.

3. In performing the tasks referred to in paragraph 1, transmission system operators shall take into account the recommendations issued by the regional coordination centres.

4. In performing the task referred to in point (i) of paragraph 1, transmission system operators shall procure balancing services subject to the following:

- (a) transparent, non-discriminatory and market-based procedures;
- (b) the participation of all qualified electricity undertakings and market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation.

For the purpose of point (b) of the first subparagraph, regulatory authorities and transmission system operators shall, in close cooperation with all market participants, establish technical requirements for participation in those markets, on the basis of the technical characteristics of those markets.

5. Paragraph 4 shall apply to the provision of non-frequency ancillary services by transmission system operators, unless the regulatory authority has assessed that the market-based provision of non-frequency ancillary services is economically not efficient and has granted a derogation. In particular, the regulatory framework shall ensure that transmission system operators are able to procure such services from providers of demand response or energy storage and shall promote the uptake of energy efficiency measures, where such services cost-effectively alleviate the need to upgrade or replace electricity capacity and support the efficient and secure operation of the transmission system.

6. Transmission system operators, subject to approval by the regulatory authority, or the regulatory authority itself, shall, in a transparent and participatory process that includes all relevant system users and the distribution system operators, establish the specifications for the non-frequency ancillary services procured and, where appropriate, standardised market products for such services at least at national level. The specifications shall ensure the effective and non-discriminatory participation of all market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation. Transmission system operators shall exchange all necessary information and shall coordinate with distribution system operators in order to ensure the optimal utilisation of resources, to ensure the secure and efficient operation of the system and to facilitate market development. Transmission system operators shall be adequately remunerated for the procurement of such services to allow them to recover at least the reasonable corresponding costs, including the necessary information and communication technology expenses and infrastructure costs.

7. The obligation to procure non-frequency ancillary services referred to in paragraph 5 does not apply to fully integrated network components.

8. Member States or their designated competent authorities may allow transmission system operators to perform activities other than those provided for in this Directive and in Regulation (EU) 2019/943 where such activities are necessary for the transmission system operators to fulfil their obligations under this Directive or Regulation (EU) 2019/943, provided that the regulatory authority has assessed the necessity of such a derogation. This paragraph shall be without prejudice to the right of the transmission system operators to own, develop, manage or operate networks other than electricity networks where the Member State or the designated competent authority has granted such a right.

Article 41

Confidentiality and transparency requirements for transmission system operators and transmission system owners

1. Without prejudice to Article 55 or another legal duty to disclose information, each transmission system operator and each transmission system owner shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. In particular it shall not disclose any commercially sensitive information to the remaining parts of the undertaking, unless such disclosure is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information unbundling, Member States shall ensure that the transmission system owner and the remaining part of the undertaking do not use joint services, such as joint legal services, apart from purely administrative or IT functions.

2. Transmission system operators shall not, in the context of sales or purchases of electricity by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.
3. Information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to preserving the confidentiality of commercially sensitive information.

Article 42

Decision-making powers regarding the connection of new generating installations and energy storage facilities to the transmission system

1. The transmission system operator shall establish and publish transparent and efficient procedures for non-discriminatory connection of new generating installations and energy storage facilities to the transmission system. Those procedures shall be subject to approval by the regulatory authorities.
2. The transmission system operator shall not be entitled to refuse the connection of a new generating installation or energy storage facility on the grounds of possible future limitations to available network capacities, such as congestion in distant parts of the transmission system. The transmission system operator shall supply necessary information.

The first subparagraph shall be without prejudice to the possibility for transmission system operators to limit the guaranteed connection capacity or to offer connections subject to operational limitations, in order to ensure economic efficiency regarding new generating installations or energy storage facilities, provided that such limitations have been approved by the regulatory authority. The regulatory authority shall ensure that any limitations in guaranteed connection capacity or operational limitations are introduced on the basis of transparent and non-discriminatory procedures and do not create undue barriers to market entry. Where the generating installation or energy storage facility bears the costs related to ensuring unlimited connection, no limitation shall apply.

3. The transmission system operator shall not be entitled to refuse a new connection point, on the ground that it would lead to additional costs resulting from the necessary capacity increase of system elements in the close-up range to the connection point.

CHAPTER VI

UNBUNDLING OF TRANSMISSION SYSTEM OPERATORS

Section 1

Ownership unbundling

Article 43

Ownership unbundling of transmission systems and transmission system operators

1. Member States shall ensure that:
 - (a) each undertaking which owns a transmission system acts as a transmission system operator;
 - (b) the same person or persons are not entitled either:
 - (i) directly or indirectly to exercise control over an undertaking performing any of the functions of generation or supply, and directly or indirectly to exercise control or exercise any right over a transmission system operator or over a transmission system; or
 - (ii) directly or indirectly to exercise control over a transmission system operator or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of generation or supply;

- (c) the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of generation or supply; and
 - (d) the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of generation or supply and a transmission system operator or a transmission system.
2. The rights referred to in points (b) and (c) of paragraph 1 shall include, in particular:
- (a) the power to exercise voting rights;
 - (b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking; or
 - (c) the holding of a majority share.
3. For the purpose of point (b) of paragraph 1, the notion 'undertaking performing any of the functions of generation or supply' shall include 'undertaking performing any of the functions of production and supply' within the meaning of Directive 2009/73/EC, and the terms 'transmission system operator' and 'transmission system' shall include 'transmission system operator' and 'transmission system' within the meaning of that Directive.
4. The obligation set out in point (a) of paragraph 1 shall be deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in two or more Member States for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 44 as an independent system operator or as an independent transmission operator for the purposes of Section 3.
5. For the implementation of this Article, where the person referred to in points (b), (c) and (d) of paragraph 1 is the Member State or another public body, two separate public bodies exercising control over a transmission system operator or over a transmission system on the one hand, and over an undertaking performing any of the functions of generation or supply on the other, shall be deemed not to be the same person or persons.
6. Member States shall ensure that neither commercially sensitive information referred to in Article 41 held by a transmission system operator which was part of a vertically integrated undertaking, nor the staff of such a transmission system operator, is transferred to undertakings performing any of the functions of generation and supply.
7. Where on 3 September 2009, the transmission system belongs to a vertically integrated undertaking a Member State may decide not to apply paragraph 1.

In such case, the Member State concerned shall either:

- (a) designate an independent system operator in accordance with Article 44; or
 - (b) comply with Section 3.
8. Where, on 3 September 2009, the transmission system belongs to a vertically integrated undertaking and there are arrangements in place which guarantee more effective independence of the transmission system operator than Section 3, a Member State may decide not to apply paragraph 1.
9. Before an undertaking is approved and designated as a transmission system operator under paragraph 8 of this Article, it shall be certified in accordance with the procedures laid down in Article 52(4), (5), and (6) of this Directive and in Article 51 of Regulation (EU) 2019/943, pursuant to which the Commission shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than Section 3 of this Chapter.
10. Vertically integrated undertakings which own a transmission system shall not in any event be prevented from taking steps to comply with paragraph 1.
11. Undertakings performing any of the functions of generation or supply shall not in any event be able to directly or indirectly take control over or exercise any right over unbundled transmission system operators in Member States which apply paragraph 1.

Section 2

Independent system operator*Article 44***Independent system operator**

1. Where the transmission system belongs to a vertically integrated undertaking on 3 September 2009, Member States may decide not to apply Article 43(1) and designate an independent system operator upon a proposal from the transmission system owner. Such designation shall be subject to approval by the Commission.
2. The Member State may approve and designate an independent system operator provided that:
 - (a) the candidate operator has demonstrated that it complies with the requirements laid down in points (b), (c) and (d) of Article 43(1);
 - (b) the candidate operator has demonstrated that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks under Article 40;
 - (c) the candidate operator has undertaken to comply with a ten-year network development plan monitored by the regulatory authority;
 - (d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 5. To that end, it shall provide all the draft contractual arrangements with the candidate operator and any other relevant entity; and
 - (e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EU) 2019/943, including the cooperation of transmission system operators at European and regional level.
3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 53 and paragraph 2 of this Article shall be approved and designated as independent system operators by Member States. The certification procedure in either Article 52 of this Directive and Article 51 of Regulation (EU) 2019/943 or in Article 53 of this Directive shall be applicable.
4. Each independent system operator shall be responsible for granting and managing third-party access, including the collection of access charges, congestion charges, and payments under the inter-transmission system operator compensation mechanism in accordance with Article 49 of Regulation (EU) 2019/943, as well as for operating, maintaining and developing the transmission system, and for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system, the independent system operator shall be responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, the independent system operator shall act as a transmission system operator in accordance with this Section. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.
5. Where an independent system operator has been designated, the transmission system owner shall:
 - (a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;
 - (b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority. Prior to such approval, the regulatory authority shall consult the transmission system owner together with the other interested parties;
 - (c) provide for the coverage of liability relating to the network assets, excluding the liability relating to the tasks of the independent system operator; and
 - (d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to point (b), it has given its agreement to financing by any interested party including the independent system operator.

6. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 5.

Article 45

Unbundling of transmission system owners

1. A transmission system owner, where an independent system operator has been appointed, which is part of a vertically integrated undertaking shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to transmission.

2. In order to ensure the independence of the transmission system owner referred to in paragraph 1, the following minimum criteria shall apply:

- (a) persons responsible for the management of the transmission system owner shall not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;
- (b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner are taken into account in a manner that ensures that they are capable of acting independently; and
- (c) the transmission system owner shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

Section 3

Independent transmission operators

Article 46

Assets, equipment, staff and identity

1. Transmission system operators shall be equipped with all human, technical, physical and financial resources necessary for fulfilling their obligations under this Directive and carrying out the activity of electricity transmission, in particular:

- (a) assets that are necessary for the activity of electricity transmission, including the transmission system, shall be owned by the transmission system operator;
- (b) personnel, necessary for the activity of electricity transmission, including the performance of all corporate tasks, shall be employed by the transmission system operator;
- (c) leasing of personnel and rendering of services, to and from other parts of the vertically integrated undertaking shall be prohibited. A transmission system operator may, however, render services to the vertically integrated undertaking, provided that:
 - (i) the provision of those services does not discriminate between system users, is available to all system users on the same terms and conditions and does not restrict, distort or prevent competition in generation or supply; and
 - (ii) the terms and conditions of the provision of those services are approved by the regulatory authority;
- (d) without prejudice to the decisions of the Supervisory Body under Article 49, appropriate financial resources for future investment projects and/or for the replacement of existing assets shall be made available to the transmission system operator in due time by the vertically integrated undertaking after an appropriate request from the transmission system operator.

2. The activity of electricity transmission shall include at least the following tasks in addition to those listed in Article 40:
 - (a) the representation of the transmission system operator and contacts to third parties and the regulatory authorities;
 - (b) the representation of the transmission system operator within the ENTSO for Electricity;
 - (c) granting and managing third-party access on a non-discriminatory basis between system users or classes of system users;
 - (d) the collection of all the transmission system related charges including access charges, energy for losses and ancillary services charges;
 - (e) the operation, maintenance and development of a secure, efficient and economic transmission system;
 - (f) investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;
 - (g) the setting up of appropriate joint ventures, including with one or more transmission system operators, power exchanges, and the other relevant actors pursuing the objectives to develop the creation of regional markets or to facilitate the liberalisation process; and
 - (h) all corporate services, including legal services, accountancy and IT services.
3. Transmission system operators shall be organised in a legal form as referred to in Annex I to Directive (EU) 2017/1132 of the European Parliament and of the Council ⁽²⁶⁾.
4. The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion with respect to the separate identity of the vertically integrated undertaking or any part thereof.
5. The transmission system operator shall not share IT systems or equipment, physical premises and security access systems with any part of the vertically integrated undertaking nor use the same consultants or external contractors for IT systems or equipment, and security access systems.
6. The accounts of transmission system operators shall be audited by an auditor other than the one auditing the vertically integrated undertaking or any part thereof.

Article 47

Independence of the transmission system operator

1. Without prejudice to the decisions of the Supervisory Body under Article 49, the transmission system operator shall have:
 - (a) effective decision-making rights, independent from the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the transmission system; and
 - (b) the power to raise money on the capital market in particular through borrowing and capital increase.
2. The transmission system operator shall at all times act so as to ensure it has the resources it needs in order to carry out the activity of transmission properly and efficiently and develop and maintain an efficient, secure and economic transmission system.
3. Subsidiaries of the vertically integrated undertaking performing functions of generation or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated undertaking performing functions of generation or supply, nor receive dividends or other financial benefits from that subsidiary.
4. The overall management structure and the corporate statutes of the transmission system operator shall ensure effective independence of the transmission system operator in accordance with this Section. The vertically integrated undertaking shall not determine, directly or indirectly, the competitive behaviour of the transmission system operator in relation to the day-to-day activities of the transmission system operator and management of the network, or in relation to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 51.

⁽²⁶⁾ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

5. In fulfilling their tasks in Article 40 and Article 46(2) of this Directive, and in complying with obligations set out in Articles 16, 18, 19 and 50 of Regulation (EU) 2019/943, transmission system operators shall not discriminate against different persons or entities and shall not restrict, distort or prevent competition in generation or supply.
6. Any commercial and financial relations between the vertically integrated undertaking and the transmission system operator, including loans from the transmission system operator to the vertically integrated undertaking, shall comply with market conditions. The transmission system operator shall keep detailed records of such commercial and financial relations and make them available to the regulatory authority upon request.
7. The transmission system operator shall submit for approval by the regulatory authority all commercial and financial agreements with the vertically integrated undertaking.
8. The transmission system operator shall inform the regulatory authority of the financial resources, referred to in point (d) of Article 46(1), available for future investment projects and/or for the replacement of existing assets.
9. The vertically integrated undertaking shall refrain from any action impeding or prejudicing the transmission system operator from complying with its obligations in this Chapter and shall not require the transmission system operator to seek permission from the vertically integrated undertaking in fulfilling those obligations.
10. An undertaking which has been certified by the regulatory authority as being in accordance with the requirements of this Chapter shall be approved and designated as a transmission system operator by the Member State concerned. The certification procedure in either Article 52 of this Directive and Article 51 of Regulation (EU) 2019/943 or in Article 53 of this Directive shall apply.

Article 48

Independence of the staff and the management of the transmission system operator

1. Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the term of office of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator shall be taken by the Supervisory Body of the transmission system operator appointed in accordance with Article 49.
2. The identity and the conditions governing the term, the duration and the termination of office of the persons nominated by the Supervisory Body for appointment or renewal as persons responsible for the executive management and/or as members of the administrative bodies of the transmission system operator, and the reasons for any proposed decision terminating such term of office, shall be notified to the regulatory authority. Those conditions and the decisions referred to in paragraph 1 shall become binding only if the regulatory authority has raised no objections within three weeks of notification.

The regulatory authority may object to the decisions referred to in paragraph 1 where:

 - (a) doubts arise as to the professional independence of a nominated person responsible for the management and/or member of the administrative bodies; or
 - (b) in the case of premature termination of a term of office, doubts exist regarding the justification of such premature termination.
3. No professional position or responsibility, interest or business relationship, directly or indirectly, with the vertically integrated undertaking or any part of it or its controlling shareholders other than the transmission system operator shall be exercised for a period of three years before the appointment of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator who are subject to this paragraph.
4. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall have no other professional position or responsibility, interest or business relationship, directly or indirectly, with another part of the vertically integrated undertaking or with its controlling shareholders.

5. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall hold no interest in or receive any financial benefit, directly or indirectly, from any part of the vertically integrated undertaking other than the transmission system operator. Their remuneration shall not depend on activities or results of the vertically integrated undertaking other than those of the transmission system operator.
6. Effective rights of appeal to the regulatory authority shall be guaranteed for any complaints by the persons responsible for the management and/or members of the administrative bodies of the transmission system operator against premature terminations of their term of office.
7. After termination of their term of office in the transmission system operator, the persons responsible for its management and/or members of its administrative bodies shall have no professional position or responsibility, interest or business relationship with any part of the vertically integrated undertaking other than the transmission system operator, or with its controlling shareholders for a period of not less than four years.
8. Paragraph 3 shall apply to the majority of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator.

The persons responsible for the management and/or members of the administrative bodies of the transmission system operator who are not subject to paragraph 3 shall have exercised no management or other relevant activity in the vertically integrated undertaking for a period of at least six months before their appointment.

The first subparagraph of this paragraph and paragraphs 4 to 7 shall be applicable to all the persons belonging to the executive management and to those directly reporting to them on matters related to the operation, maintenance or development of the network.

Article 49

Supervisory Body

1. The transmission system operator shall have a Supervisory Body which shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the transmission system operator, in particular decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of the transmission system operator and the amount of dividends distributed to shareholders. The decisions falling under the remit of the Supervisory Body shall exclude those that are related to the day-to-day activities of the transmission system operator and management of the network, and to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 51.
2. The Supervisory Body shall be composed of members representing the vertically integrated undertaking, members representing third-party shareholders and, where the relevant national law so provides, members representing other interested parties such as employees of the transmission system operator.
3. The first subparagraph of Article 48(2) and Article 48(3) to (7) shall apply to at least half of the members of the Supervisory Body minus one.

Point (b) of the second subparagraph of Article 48(2) shall apply to all the members of the Supervisory Body.

Article 50

Compliance programme and compliance officer

1. Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that the compliance with that programme is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. It shall be subject to approval by the regulatory authority. Without prejudice to the powers of the regulatory authority, compliance with the programme shall be independently monitored by a compliance officer.

2. The compliance officer shall be appointed by the Supervisory Body, subject to approval by the regulatory authority. The regulatory authority may refuse the approval of the compliance officer only for reasons of lack of independence or professional capacity. The compliance officer may be a natural or legal person. Article 48(2) to (8) shall apply to the compliance officer.

3. The compliance officer shall be in charge of:

- (a) monitoring the implementation of the compliance programme;
- (b) elaborating an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority;
- (c) reporting to the Supervisory Body and issuing recommendations on the compliance programme and its implementation;
- (d) notifying the regulatory authority on any substantial breaches with regard to the implementation of the compliance programme; and
- (e) reporting to the regulatory authority on any commercial and financial relations between the vertically integrated undertaking and the transmission system operator.

4. The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the network to the regulatory authority. This shall occur at the latest when the management and/or the competent administrative body of the transmission system operator submits them to the Supervisory Body.

5. Where the vertically integrated undertaking, in the general assembly or through the vote of the members of the Supervisory Body it has appointed, has prevented the adoption of a decision with the effect of preventing or delaying investments, which under the ten-year network development plan was to be executed in the following three years, the compliance officer shall report this to the regulatory authority, which then shall act in accordance with Article 51.

6. The conditions governing the mandate or the employment conditions of the compliance officer, including the duration of its mandate, shall be subject to approval by the regulatory authority. Those conditions shall ensure the independence of the compliance officer, including by providing all the resources necessary for fulfilling the compliance officer's duties. During his or her mandate, the compliance officer shall have no other professional position, responsibility or interest, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.

7. The compliance officer shall report regularly, either orally or in writing, to the regulatory authority and shall have the right to report regularly, either orally or in writing, to the Supervisory Body of the transmission system operator.

8. The compliance officer may attend all meetings of the management or administrative bodies of the transmission system operator, and those of the Supervisory Body and the general assembly. The compliance officer shall attend all meetings that address the following matters:

- (a) conditions for access to the network, as laid down in Regulation (EU) 2019/943, in particular regarding tariffs, third-party access services, capacity allocation and congestion management, transparency, ancillary services and secondary markets;
- (b) projects undertaken in order to operate, maintain and develop the transmission system, including interconnection and connection investments;
- (c) energy purchases or sales necessary for the operation of the transmission system.

9. The compliance officer shall monitor the compliance of the transmission system operator with Article 41.

10. The compliance officer shall have access to all relevant data and to the offices of the transmission system operator and to all the information necessary for the fulfilment of his task.

11. The compliance officer shall have access to the offices of the transmission system operator without prior announcement.

12. After prior approval by the regulatory authority, the Supervisory Body may dismiss the compliance officer. It shall dismiss the compliance officer for reasons of lack of independence or professional capacity upon request of the regulatory authority.

Article 51

Network development and powers to make investment decisions

1. At least every two years, transmission system operators shall submit to the regulatory authority a ten-year network development plan based on existing and forecast supply and demand after having consulted all the relevant stakeholders. That network development plan shall contain efficient measures in order to guarantee the adequacy of the system and the security of supply. The transmission system operator shall publish the ten-year network development plan on its website.
2. The ten-year network development plan shall in particular:
 - (a) indicate to market participants the main transmission infrastructure that needs to be built or upgraded over the next ten years;
 - (b) contain all the investments already decided and identify new investments which have to be executed in the next three years; and
 - (c) provide for a time frame for all investment projects.
3. When elaborating the ten-year network development plan, the transmission system operator shall fully take into account the potential for the use of demand response, energy storage facilities or other resources as alternatives to system expansion, as well as expected consumption, trade with other countries and investment plans for Union-wide and regional networks.
4. The regulatory authority shall consult all actual or potential system users on the ten-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential system users may be required to substantiate such claims. The regulatory authority shall publish the result of the consultation process, in particular possible needs for investments.
5. The regulatory authority shall examine whether the ten-year network development plan covers all investment needs identified during the consultation process, and whether it is consistent with the non-binding Union-wide ten-year network development plan ('Union-wide network development plan') referred to in point (b) of Article 30(1) of Regulation (EU) 2019/943. If any doubt arises as to the consistency with the Union-wide network development plan, the regulatory authority shall consult ACER. The regulatory authority may require the transmission system operator to amend its ten-year network development plan.

The competent national authorities shall examine the consistency of the ten-year network development plan with the national energy and climate plan submitted in accordance with Regulation (EU) 2018/1999.

6. The regulatory authority shall monitor and evaluate the implementation of the ten-year network development plan.
7. In circumstances where the transmission system operator, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten-year network development plan, was to be executed in the following three years, Member States shall ensure that the regulatory authority is required to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten-year network development plan:
 - (a) to require the transmission system operator to execute the investments in question;
 - (b) to organise a tender procedure open to any investors for the investment in question; or
 - (c) to oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.
8. Where the regulatory authority has made use of its powers under point (b) of paragraph 7, it may oblige the transmission system operator to agree to one or more of the following:
 - (a) financing by any third party;
 - (b) construction by any third party;

- (c) building the new assets concerned itself;
- (d) operating the new asset concerned itself.

The transmission system operator shall provide the investors with all information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment project.

The relevant financial arrangements shall be subject to approval by the regulatory authority.

9. Where the regulatory authority has made use of its powers under paragraph 7, the relevant tariff regulations shall cover the costs of the investments in question.

Section 4

Designation and certification of transmission system operators

Article 52

Designation and certification of transmission system operators

1. Before an undertaking is approved and designated as transmission system operator, it shall be certified in accordance with the procedures laid down in paragraphs 4, 5 and 6 of this Article and in Article 51 of Regulation (EU) 2019/943.
2. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 43 pursuant to the certification procedure below, shall be approved and designated as transmission system operators by Member States. The designation of transmission system operators shall be notified to the Commission and published in the *Official Journal of the European Union*.
3. Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 43.
4. Regulatory authorities shall monitor the continuing compliance of transmission system operators with the requirements of Article 43. They shall open a certification procedure to ensure such compliance:
 - (a) upon notification by the transmission system operator pursuant to paragraph 3;
 - (b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Article 43, or where they have reason to believe that such an infringement may have occurred; or
 - (c) upon a reasoned request from the Commission.
5. The regulatory authorities shall adopt a decision on the certification of a transmission system operator within four months of the date of the notification by the transmission system operator or from the date of the Commission request. After expiry of that period, the certification shall be deemed to be granted. The explicit or tacit decision of the regulatory authority shall become effective only after conclusion of the procedure set out in paragraph 6.
6. The explicit or tacit decision on the certification of a transmission system operator shall be notified without delay to the Commission by the regulatory authority, together with all the relevant information with respect to that decision. The Commission shall act in accordance with the procedure laid down in Article 51 of Regulation (EU) 2019/943.
7. The regulatory authorities and the Commission may request from transmission system operators and undertakings performing any of the functions of generation or supply any information relevant for the fulfilment of their tasks under this Article.
8. Regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

Article 53

Certification in relation to third countries

1. Where certification is requested by a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries, the regulatory authority shall notify the Commission.

The regulatory authority shall also notify to the Commission without delay any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system or a transmission system operator.

2. The transmission system operator shall notify to the regulatory authority any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator.

3. The regulatory authority shall adopt a draft decision on the certification of a transmission system operator within four months of the date of notification by the transmission system operator. It shall refuse the certification if it has not been demonstrated:

- (a) that the entity concerned complies with the requirements of Article 43; and
- (b) to the regulatory authority or to another competent national authority designated by the Member State that granting certification will not put at risk the security of energy supply of the Member State and the Union. In considering that question the regulatory authority or other competent national authority shall take into account:
 - (i) the rights and obligations of the Union with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the Union is a party and which addresses the issues of security of energy supply;
 - (ii) the rights and obligations of the Member State with respect to that third country arising under agreements concluded with it, insofar as they comply with Union law; and
 - (iii) other specific facts and circumstances of the case and the third country concerned.

4. The regulatory authority shall notify the decision to the Commission without delay, together with all the relevant information with respect to that decision.

5. Member States shall provide for the regulatory authority or the designated competent authority referred to in point (b) of paragraph 3, before the regulatory authority adopts a decision on the certification, to request an opinion from the Commission on whether:

- (a) the entity concerned complies with the requirements of Article 43; and
- (b) granting certification will not put at risk the security of energy supply to the Union.

6. The Commission shall examine the request referred to in paragraph 5 as soon as it is received. Within two months of receiving the request, it shall deliver its opinion to the regulatory authority or, if the request was made by the designated competent authority, to that authority.

In preparing the opinion, the Commission may request the views of ACER, the Member State concerned, and interested parties. In the event that the Commission makes such a request, the two-month period shall be extended by two months.

In the absence of an opinion by the Commission within the period referred to in the first and second subparagraphs, the Commission shall be deemed not to raise objections to the decision of the regulatory authority.

7. When assessing whether the control by a person or persons from a third country or third countries will put at risk the security of energy supply to the Union, the Commission shall take into account:

- (a) the specific facts of the case and the third country or third countries concerned; and
- (b) the rights and obligations of the Union with respect to that third country or third countries arising under international law, including an agreement concluded with one or more third countries to which the Union is a party and which addresses the issues of security of supply.

8. The regulatory authority shall, within two months of the expiry of the period referred to in paragraph 6, adopt its final decision on the certification. In adopting its final decision the regulatory authority shall take utmost account of the Commission's opinion. In any event Member States shall have the right to refuse certification where granting certification puts at risk the Member State's security of energy supply or the security of energy supply of another Member State. Where the Member State has designated another competent national authority to make the assessment referred to in point (b) of paragraph 3, it may require the regulatory authority to adopt its final decision in accordance with the assessment of that competent national authority. The regulatory authority's final decision and the Commission's opinion shall be published together. Where the final decision diverges from the Commission's opinion, the Member State concerned shall provide and publish, together with that decision, the reasoning underlying such decision.
9. Nothing in this Article shall affect the right of Member States to exercise, in accordance with Union law, national legal controls to protect legitimate public security interests.
10. This Article, with exception of point (a) of paragraph 3 thereof, shall also apply to Member States which are subject to a derogation under Article 66.

Article 54

Ownership of energy storage facilities by transmission system operators

1. Transmission system operators shall not own, develop, manage or operate energy storage facilities.
2. By way of derogation from paragraph 1, Member States may allow transmission system operators to own, develop, manage or operate energy storage facilities, where they are fully integrated network components and the regulatory authority has granted its approval, or where all of the following conditions are fulfilled:
 - (a) other parties, following an open, transparent and non-discriminatory tendering procedure that is subject to review and approval by the regulatory authority, have not been awarded a right to own, develop, manage or operate such facilities, or could not deliver those services at a reasonable cost and in a timely manner;
 - (b) such facilities or non-frequency ancillary services are necessary for the transmission system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the transmission system and they are not used to buy or sell electricity in the electricity markets; and
 - (c) the regulatory authority has assessed the necessity of such a derogation, has carried out an *ex ante* review of the applicability of a tendering procedure, including the conditions of the tendering procedure, and has granted its approval.

The regulatory authority may draw up guidelines or procurement clauses to help transmission system operators ensure a fair tendering procedure.

3. The decision to grant a derogation shall be notified to the Commission and ACER together with relevant information about the request and the reasons for granting the derogation.
4. The regulatory authorities shall perform, at regular intervals or at least every five years, a public consultation on the existing energy storage facilities in order to assess the potential availability and interest of other parties in investing in such facilities. Where the public consultation, as assessed by the regulatory authority, indicates that other parties are able to own, develop, operate or manage such facilities in a cost-effective manner, the regulatory authority shall ensure that transmission system operators' activities in this regard are phased-out within 18 months. As part of the conditions of that procedure, regulatory authorities may allow the transmission system operators to receive reasonable compensation, in particular to recover the residual value of their investment in the energy storage facilities.
5. Paragraph 4 shall not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until 2024, provided that such battery storage facilities are:
 - (a) connected to the grid at the latest two years thereafter;
 - (b) integrated into the transmission system;

- (c) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and
- (d) not used to buy or sell electricity in the electricity markets, including balancing.

Section 5

Unbundling and transparency of accounts

Article 55

Right of access to accounts

1. Member States or any competent authority that they designate, including the regulatory authorities referred to in Article 57, shall, insofar as necessary to carry out their functions, have right of access to the accounts of electricity undertakings as set out in Article 56.
2. Member States and any designated competent authority, including the regulatory authorities, shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where such disclosure is necessary in order for the competent authorities to carry out their functions.

Article 56

Unbundling of accounts

1. Member States shall take the necessary steps to ensure that the accounts of electricity undertakings are kept in accordance with paragraphs 2 and 3.
2. Electricity undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to Directive 2013/34/EU.

Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public in their head office.

3. Electricity undertakings shall, in their internal accounting, keep separate accounts for each of their transmission and distribution activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution. Revenue from ownership of the transmission or distribution system shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-electricity activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.
4. The audit referred to in paragraph 2 shall, in particular, verify that the obligation to avoid discrimination and cross-subsidisation referred to in paragraph 3 is respected.

CHAPTER VII

REGULATORY AUTHORITIES

Article 57

Designation and independence of regulatory authorities

1. Each Member State shall designate a single regulatory authority at national level.
2. Paragraph 1 shall be without prejudice to the designation of other regulatory authorities at regional level within Member States, provided that there is one senior representative for representation and contact purposes at Union level within ACER's Board of Regulators in accordance with Article 21(1) of Regulation (EU) 2019/942.

3. By way of derogation from paragraph 1, a Member State may designate regulatory authorities for small systems in a geographically separate region whose consumption, in 2008, accounted for less than 3 % of the total consumption of the Member State of which it is part. That derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at Union level within ACER's Board of Regulators in accordance with Article 21(1) of Regulation (EU) 2019/942.

4. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For that purpose, Member States shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:

- (a) is legally distinct and functionally independent from other public or private entities;
- (b) ensures that its staff and the persons responsible for its management:
 - (i) act independently from any market interest; and
 - (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. That requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 59.

5. In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:

- (a) the regulatory authority can take autonomous decisions, independently from any political body;
- (b) the regulatory authority has all the necessary human and financial resources it needs to carry out its duties and exercise its powers in an effective and efficient manner;
- (c) the regulatory authority has a separate annual budget allocation and autonomy in the implementation of the allocated budget;
- (d) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once;
- (e) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed based on objective, transparent and published criteria, in an independent and impartial procedure, which ensures that the candidates have the necessary skills and experience for the relevant position in the regulatory authority;
- (f) conflict of interest provisions are in place and confidentiality obligations extend beyond the end of the mandate of the members of the board of the regulatory authority or, in the absence of a board, the end of the mandate of the regulatory authority's top management;
- (g) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management can be dismissed only based on transparent criteria in place.

In regard to point (d) of the first subparagraph, Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

6. Member States may provide for the *ex post* control of the regulatory authorities' annual accounts by an independent auditor.

7. By 5 July 2022 and every four years thereafter, the Commission shall submit a report to the European Parliament and the Council on the compliance of national authorities with the principle of independence set out in this Article.

*Article 58***General objectives of the regulatory authority**

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures in pursuit of the following objectives within the framework of its duties and powers as laid down in Article 59, in close consultation with other relevant national authorities, including competition authorities, as well as authorities, including regulatory authorities, from neighbouring Member States and neighbouring third countries, as appropriate, and without prejudice to their competence:

- (a) promoting, in close cooperation with regulatory authorities of other Member States, the Commission and ACER, a competitive, flexible, secure and environmentally sustainable internal market for electricity within the Union, and effective market opening for all customers and suppliers in the Union, and ensuring appropriate conditions for the effective and reliable operation of electricity networks, taking into account long-term objectives;
- (b) developing competitive and properly functioning regional cross-border markets within the Union with a view to achieving the objectives referred to in point (a);
- (c) eliminating restrictions on trade in electricity between Member States, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate electricity flows across the Union;
- (d) helping to achieve, in the most cost-effective way, the development of secure, reliable and efficient non-discriminatory systems that are consumer-oriented, and promoting system adequacy and, in accordance with general energy policy objectives, energy efficiency, as well as the integration of large and small-scale production of electricity from renewable sources and distributed generation in both transmission and distribution networks, and facilitating their operation in relation to other energy networks of gas or heat;
- (e) facilitating access to the network for new generation capacity and energy storage facilities, in particular removing barriers that could prevent access for new market entrants and of electricity from renewable sources;
- (f) ensuring that system operators and system users are granted appropriate incentives, in both the short and the long term, to increase efficiencies, especially energy efficiency, in system performance and to foster market integration;
- (g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure a high level of consumer protection, in close cooperation with relevant consumer protection authorities;
- (h) helping to achieve high standards of universal service and of public service in electricity supply, contributing to the protection of vulnerable customers and contributing to the compatibility of necessary data exchange processes for customer switching.

*Article 59***Duties and powers of the regulatory authorities**

1. The regulatory authority shall have the following duties:
 - (a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies, or both;
 - (b) ensuring the compliance of transmission system operators and distribution system operators and, where relevant, system owners, as well as the compliance of any electricity undertakings and other market participants, with their obligations under this Directive, Regulation (EU) 2019/943, the network codes and the guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/943, and other relevant Union law, including as regards cross-border issues, as well as with ACER's decisions;

- (c) in close coordination with the other regulatory authorities, ensuring the compliance of the ENTSO for Electricity and the EU DSO entity with their obligations under this Directive, Regulation (EU) 2019/943, the network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/943, and other relevant Union law, including as regards cross-border issues, as well as with ACER's decisions, and jointly identifying non-compliance of the ENTSO for Electricity and the EU DSO entity with their respective obligations; where the regulatory authorities have not been able to reach an agreement within a period of four months after the start of consultations for the purpose of jointly identifying non-compliance, the matter shall be referred to the ACER for a decision, pursuant to Article 6(10) of Regulation (EU) 2019/942;
- (d) approving products and procurement process for non-frequency ancillary services;
- (e) implementing the network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/943 through national measures or, where so required, coordinated regional or Union-wide measures;
- (f) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with ACER, in particular through participation in the work of ACER's Board of Regulators pursuant to Article 21 of Regulation (EU) 2019/942;
- (g) complying with, and implementing, any relevant legally binding decisions of the Commission and of ACER;
- (h) ensuring that transmission system operators make available interconnector capacities to the utmost extent pursuant to Article 16 of Regulation (EU) 2019/943;
- (i) reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Commission and ACER, including on the steps taken and the results obtained as regards each of the tasks listed in this Article;
- (j) ensuring that there is no cross-subsidisation between transmission, distribution and supply activities or other electricity or non-electricity activities;
- (k) monitoring investment plans of the transmission system operators and providing in its annual report an assessment of the investment plans of the transmission system operators as regards their consistency with the Union-wide network development plan; such assessment may include recommendations to amend those investment plans;
- (l) monitoring and assessing the performance of transmission system operators and distribution system operators in relation to the development of a smart grid that promotes energy efficiency and the integration of energy from renewable sources, based on a limited set of indicators, and publish a national report every two years, including recommendations;
- (m) setting or approving standards and requirements for quality of service and quality of supply or contributing thereto together with other competent authorities and monitoring compliance with and reviewing the past performance of network security and reliability rules;
- (n) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of electricity undertakings with transparency obligations;
- (o) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on electricity exchanges, prices for household customers including prepayment systems, the impact of dynamic electricity price contracts and of the use of smart metering systems, switching rates, disconnection rates, charges for maintenance services, the execution of maintenance services, the relationship between household and wholesale prices, the evolution of grid tariffs and levies, and complaints by household customers, as well as any distortion or restriction of competition, including by providing any relevant information, and bringing any relevant cases to the relevant competition authorities;
- (p) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent customers from contracting simultaneously with more than one supplier or restrict their choice to do so, and, where appropriate, informing the national competition authorities of such practices;
- (q) monitoring the time taken by transmission system operators and distribution system operators to make connections and repairs;
- (r) helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced;

- (s) publishing recommendations, at least annually, in relation to compliance of supply prices with Article 5, and providing those recommendations to the competition authorities, where appropriate;
- (t) ensuring non-discriminatory access to customer consumption data, the provision, for optional use, of an easily understandable harmonised format at national level for consumption data, and prompt access for all customers to such data pursuant to Articles 23 and 24;
- (u) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers, customers and other market participants pursuant to Regulation (EU) 2019/943;
- (v) monitoring investment in generation and storage capacities in relation to security of supply;
- (w) monitoring technical cooperation between Union and third-country transmission system operators;
- (x) contributing to the compatibility of data exchange processes for the most important market processes at regional level;
- (y) monitoring the availability of comparison tools that meet the requirements set out in Article 14;
- (z) monitoring the removal of unjustified obstacles to and restrictions on the development of consumption of self-generated electricity and citizen energy communities.

2. Where a Member State has so provided, the monitoring duties set out in paragraph 1 may be carried out by other authorities than the regulatory authority. In such a case, the information resulting from such monitoring shall be made available to the regulatory authority as soon as possible.

While preserving their independence, without prejudice to their own specific competence and consistent with the principles of better regulation, the regulatory authority shall, as appropriate, consult transmission system operators and, as appropriate, closely cooperate with other relevant national authorities when carrying out the duties set out in paragraph 1.

Any approvals given by a regulatory authority or ACER under this Directive are without prejudice to any duly justified future use of its powers by the regulatory authority under this Article or to any penalties imposed by other relevant authorities or the Commission.

3. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in this Article in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

- (a) to issue binding decisions on electricity undertakings;
- (b) to carry out investigations into the functioning of the electricity markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the Commission in conducting an investigation relating to competition law;
- (c) to require any information from electricity undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access, and any information on measures necessary to reinforce the network;
- (d) to impose effective, proportionate and dissuasive penalties on electricity undertakings not complying with their obligations under this Directive, Regulation (EU) 2019/943 or any relevant legally binding decisions of the regulatory authority or of ACER, or to propose that a competent court impose such penalties, including the power to impose or propose the imposition of penalties of up to 10 % of the annual turnover of the transmission system operator on the transmission system operator or of up to 10 % of the annual turnover of the vertically integrated undertaking on the vertically integrated undertaking, as the case may be, for non-compliance with their respective obligations pursuant to this Directive; and
- (e) appropriate rights of investigation and relevant powers of instruction for dispute settlement under Article 60(2) and (3).

4. The regulatory authority located in the Member State in which the ENTSO for Electricity or the EU DSO entity has its seat shall have the power to impose effective, proportionate and dissuasive penalties on those entities where they do not comply with their obligations under this Directive, Regulation (EU) 2019/943 or any relevant legally binding decisions of the regulatory authority or of ACER, or to propose that a competent court impose such penalties.

5. In addition to the duties conferred upon it under paragraphs 1 and 3 of this Article, when an independent system operator has been designated under Article 44, the regulatory authority shall:

- (a) monitor the transmission system owner's and the independent system operator's compliance with their obligations under this Article, and issue penalties for non-compliance in accordance with point (d) of paragraph 3;
- (b) monitor the relations and communications between the independent system operator and the transmission system owner so as to ensure compliance of the independent system operator with its obligations, and in particular approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner with respect to any complaint submitted by either party pursuant to Article 60(2);
- (c) without prejudice to the procedure under point (c) of Article 44(2), for the first ten-year network development plan, approve the investments planning and the multi-annual network development plan submitted at least every two years by the independent system operator;
- (d) ensure that network access tariffs collected by the independent system operator include remuneration for the network owner or network owners, which provides for adequate remuneration of the network assets and of any new investments made therein, provided they are economically and efficiently incurred;
- (e) have the powers to carry out inspections, including unannounced inspections, at the premises of transmission system owner and independent system operator; and
- (f) monitor the use of congestion charges collected by the independent system operator in accordance with Article 19(2) of Regulation (EU) 2019/943.

6. In addition to the duties and powers conferred on it under paragraphs 1 and 3 of this Article, when a transmission system operator has been designated in accordance with Section 3 of Chapter VI, the regulatory authority shall be granted at least the following duties and powers:

- (a) to impose penalties in accordance with point (d) of paragraph 3 for discriminatory behaviour in favour of the vertically integrated undertaking;
- (b) to monitor communications between the transmission system operator and the vertically integrated undertaking so as to ensure compliance of the transmission system operator with its obligations;
- (c) to act as dispute settlement authority between the vertically integrated undertaking and the transmission system operator with respect to any complaint submitted pursuant to Article 60(2);
- (d) to monitor commercial and financial relations including loans between the vertically integrated undertaking and the transmission system operator;
- (e) to approve all commercial and financial agreements between the vertically integrated undertaking and the transmission system operator on the condition that they comply with market conditions;
- (f) to request a justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article 50(4), such justification including, in particular, evidence demonstrating that no discriminatory behaviour to the advantage of the vertically integrated undertaking has occurred;
- (g) to carry out inspections, including unannounced ones, on the premises of the vertically integrated undertaking and the transmission system operator; and
- (h) to assign all or specific tasks of the transmission system operator to an independent system operator appointed in accordance with Article 44 in the case of a persistent breach by the transmission system operator of its obligations under this Directive, in particular in the case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking.

7. The regulatory authorities, except where ACER is competent to fix and approve the terms and conditions or methodologies for the implementation of network codes and guidelines under Chapter VII of Regulation (EU) 2019/943 pursuant to Article 5(2) of Regulation (EU) 2019/942 because of their coordinated nature, shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the national methodologies used to calculate or establish the terms and conditions for:

- (a) connection and access to national networks, including transmission and distribution tariffs or their methodologies, those tariffs or methodologies shall allow the necessary investments in the networks to be carried out in a manner allowing those investments to ensure the viability of the networks;
- (b) the provision of ancillary services which shall be performed in the most economic manner possible and provide appropriate incentives for network users to balance their input and off-takes, such ancillary services shall be provided in a fair and non-discriminatory manner and be based on objective criteria; and
- (c) access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.

8. The methodologies or the terms and conditions referred to in paragraph 7 shall be published.

9. With a view to increasing transparency in the market and providing all interested parties with all necessary information and decisions or proposals for decisions concerning transmission and distribution tariffs as referred in Article 60(3), regulatory authorities shall make publicly available the detailed methodology and underlying costs used for the calculation of the relevant network tariffs, while preserving the confidentiality of commercially sensitive information.

10. The regulatory authorities shall monitor congestion management of national electricity systems including interconnectors, and the implementation of congestion management rules. To that end, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the regulatory authorities. Regulatory authorities may request amendments to those rules.

Article 60

Decisions and complaints

1. Regulatory authorities shall have the authority to require transmission system operators and distribution system operators, if necessary, to modify the terms and conditions, including tariffs or methodologies referred to Article 59 of this Directive, to ensure that they are proportionate and applied in a non-discriminatory manner, in accordance with Article 18 of Regulation (EU) 2019/943. In the event of delay in the fixing of transmission and distribution tariffs, regulatory authorities shall have the power to fix or approve provisional transmission and distribution tariffs or methodologies and to decide on the appropriate compensatory measures if the final transmission and distribution tariffs or methodologies deviate from those provisional tariffs or methodologies.

2. Any party having a complaint against a transmission or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months of receipt of the complaint. That period may be extended by two months where additional information is sought by the regulatory authority. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal.

3. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to Article 59 or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, may, within two months, or within a shorter period as provided for by Member States, after publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

4. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. Those mechanisms shall take account of the provisions of the TFEU, and in particular Article 102 thereof.

5. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

6. Complaints referred to in paragraphs 2 and 3 shall be without prejudice to the exercise of rights of appeal under Union or national law.
7. Decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information.
8. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 61

Regional cooperation between regulatory authorities on cross-border issues

1. Regulatory authorities shall closely consult and cooperate with each other, in particular within ACER, and shall provide each other and ACER with any information necessary for the fulfilment of their tasks under this Directive. With respect to the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.
2. Regulatory authorities shall cooperate at least at a regional level to:
 - (a) foster the creation of operational arrangements in order to enable an optimal management of the network, promote joint electricity exchanges and the allocation of cross-border capacity, and to enable an adequate level of interconnection capacity, including through new interconnection, within the region and between regions to allow for development of effective competition and improvement of security of supply, without discriminating between suppliers in different Member States;
 - (b) coordinate the joint oversight of entities performing functions at regional level;
 - (c) coordinate, in cooperation with other involved authorities, the joint oversight of national, regional and European resource adequacy assessments;
 - (d) coordinate the development of all network codes and guidelines for the relevant transmission system operators and other market actors; and
 - (e) coordinate the development of the rules governing the management of congestion.
3. Regulatory authorities shall have the right to enter into cooperative arrangements with each other to foster regulatory cooperation.
4. The actions referred to in paragraph 2 shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competence.
5. The Commission is empowered to adopt delegated acts in accordance with Article 67 in order to supplement this Directive by establishing guidelines on the extent of the duties of regulatory authorities to cooperate with each other and with ACER.

Article 62

Duties and powers of regulatory authorities with respect to regional coordination centres

1. The regional regulatory authorities of the system operation region in which a regional coordination centre is established shall, in close coordination with each other:
 - (a) approve the proposal for the establishment of regional coordination centres in accordance with Article 35(1) of Regulation (EU) 2019/943;
 - (b) approve the costs related to the activities of the regional coordination centres, which are to be borne by the transmission system operators and to be taken into account in the calculation of tariffs, provided that they are reasonable and appropriate;

- (c) approve the cooperative decision-making process;
- (d) ensure that the regional coordination centres are equipped with all the necessary human, technical, physical and financial resources for fulfilling their obligations under this Directive and carrying out their tasks independently and impartially;
- (e) propose jointly with other regulatory authorities of a system operation region possible additional tasks and additional powers to be assigned to the regional coordination centres by the Member States of the system operation region;
- (f) ensure compliance with the obligations under this Directive and other relevant Union law, in particular as regards cross-border issues, and jointly identify non-compliance of the regional coordination centres with their respective obligations; where the regulatory authorities have not been able to reach an agreement within a period of four months after the start of consultations for the purpose of jointly identifying non-compliance, the matter shall be referred to ACER for a decision, pursuant to Article 6(10) of Regulation (EU) 2019/942;
- (g) monitor the performance of system coordination and report annually to ACER in this respect in accordance with Article 46 of Regulation (EU) 2019/943.

2. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1 in an efficient and expeditious manner. For this purpose, the regulatory authorities shall have at least the following powers:

- (a) to request information from the regional coordination centres;
- (b) to carry out inspections, including unannounced inspections, at the premises of the regional coordination centres;
- (c) to issue joint binding decisions on the regional coordination centres.

3. The regulatory authority located in the Member State in which a regional coordination centre has its seat shall have the power to impose effective, proportionate and dissuasive penalties on the regional coordination centre where it does not comply with its obligations under this Directive, Regulation (EU) 2019/943 or any relevant legally binding decisions of the regulatory authority or of ACER, or shall have the power to propose that a competent court impose such penalties.

Article 63

Compliance with the network codes and guidelines

1. Any regulatory authority and the Commission may request the opinion of ACER on the compliance of a decision taken by a regulatory authority with the network codes and guidelines referred to in this Directive or in Chapter VII of Regulation (EU) 2019/943.

2. ACER shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within three months of the date of receipt of the request.

3. Where the regulatory authority which has taken the decision does not comply with ACER's opinion within four months of the date of receipt of that opinion, ACER shall inform the Commission accordingly.

4. Any regulatory authority may inform the Commission where it considers that a decision relevant for cross-border trade taken by another regulatory authority does not comply with the network codes and guidelines referred to in this Directive or in Chapter VII of Regulation (EU) 2019/943 within two months of the date of that decision.

5. Where the Commission, within two months of having been informed by ACER in accordance with paragraph 3, or by a regulatory authority in accordance with paragraph 4, or, on its own initiative, within three months of the date of the decision, finds that the decision of a regulatory authority raises serious doubts as to its compatibility with the network codes and guidelines referred to in this Directive or in Chapter VII of Regulation (EU) 2019/943, the Commission may decide to examine the case further. In such a case, it shall invite the regulatory authority and the parties to the proceedings before the regulatory authority to submit observations.

6. Where the Commission takes a decision to examine the case further, it shall, within four months of the date of such decision, issue a final decision:

- (a) not to raise objections against the decision of the regulatory authority; or
- (b) to require the regulatory authority concerned to withdraw its decision on the basis that network codes and guidelines have not been complied with.

7. Where the Commission has not taken a decision to examine the case further or a final decision within the time-limits set in paragraphs 5 and 6 respectively, it shall be deemed not to have raised objections to the decision of the regulatory authority.

8. The regulatory authority shall comply with the Commission decision requiring it to withdraw its decision within two months and shall inform the Commission accordingly.

9. The Commission is empowered to adopt delegated acts in accordance with Article 67 supplementing this Directive by establishing guidelines setting out the details of the procedure to be followed for the application of this Article.

Article 64

Record keeping

1. Member States shall require suppliers to keep at the disposal of the national authorities, including the regulatory authority, the national competition authorities and the Commission, for the fulfilment of their tasks, for at least five years, the relevant data relating to all transactions in electricity supply contracts and electricity derivatives with wholesale customers and transmission system operators.

2. The data shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled electricity supply contracts and electricity derivatives.

3. The regulatory authority may decide to make available to market participants elements of that information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2014/65/EU.

4. This Article shall not create additional obligations towards the authorities referred to in paragraph 1 for entities falling within the scope of Directive 2014/65/EU.

5. In the event that the authorities referred to in paragraph 1 need access to data kept by entities falling within the scope of Directive 2014/65/EU, the authorities responsible under that Directive shall provide them with the required data.

CHAPTER VIII

FINAL PROVISIONS

Article 65

Level playing field

1. Measures that the Member States may take pursuant to this Directive in order to ensure a level playing field shall be compatible with the TFEU, in particular Article 36 thereof, and with Union law.

2. The measures referred to in paragraph 1 shall be proportionate, non-discriminatory and transparent. Those measures may be put into effect only following the notification to and approval by the Commission.

3. The Commission shall act on the notification referred to in paragraph 2 within two months of the receipt of the notification. That period shall begin on the day after receipt of the complete information. In the event that the Commission has not acted within that two-month period, it shall be deemed not to have raised objections to the notified measures.

*Article 66***Derogations**

1. Member States which can demonstrate that there are substantial problems for the operation of their small connected systems and small isolated systems, may apply to the Commission for derogations from the relevant provisions of Articles 7 and 8 and of Chapters IV, V and VI.

Small isolated systems and France, for the purpose of Corsica, may also apply for a derogation from Articles 4, 5 and 6.

The Commission shall inform the Member States of such applications before taking a decision, taking into account respect for confidentiality.

2. Derogations granted by the Commission as referred to in paragraph 1 shall be limited in time and subject to conditions that aim to increase competition in and the integration of the internal market and to ensure that the derogations do not hamper the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response.

For outermost regions within the meaning of Article 349 TFEU, that cannot be interconnected with the Union electricity markets, the derogation shall not be limited in time and shall be subject to conditions aimed to ensure that the derogation does not hamper the transition towards renewable energy.

Decisions to grant derogations shall be published in the *Official Journal of the European Union*.

3. Article 43 shall not apply to Cyprus, Luxembourg and Malta. In addition, Articles 6 and 35 shall not apply to Malta and Articles 44, 45, 46, 47, 48, 49, 50 and 52 shall not apply to Cyprus.

For the purposes of point (b) of Article 43(1), the notion 'undertaking performing any of the functions of generation or supply' shall not include final customers who perform any of the functions of generation and/or supply of electricity, either directly or via undertakings over which they exercise control, either individually or jointly, provided that the final customers including their shares of the electricity produced in controlled undertakings are, on an annual average, net consumers of electricity and provided that the economic value of the electricity they sell to third parties is insignificant in proportion to their other business operations.

4. Until 1 January 2025, or until a later date set out in a decision pursuant to paragraph 1 of this Article, Article 5 shall not apply to Cyprus and Corsica.

5. Article 4 shall not apply to Malta until 5 July 2027. That period may be extended for a further additional period, not exceeding eight years. The extension for a further additional period shall be made by means of a decision pursuant to paragraph 1.

*Article 67***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 61(5) and Article 63(9) shall be conferred on the Commission for an indeterminate period of time from 4 July 2019.

3. The delegation of power referred to in Article 61(5) and Article 63(9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated act already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 61(5) and Article 63(9) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 68

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 69

Commission monitoring, reviewing and reporting

1. The Commission shall monitor and review the implementation of this Directive and shall submit a progress report to the European Parliament and the Council as an annex to the State of the Energy Union Report referred to in Article 35 of Regulation (EU) 2018/1999.
2. By 31 December 2025, the Commission shall review the implementation of this Directive and shall submit a report to the European Parliament and to the Council. If appropriate, the Commission shall submit a legislative proposal together with or after submitting the report.

The Commission's review shall, in particular, assess whether customers, especially those who are vulnerable or in energy poverty, are adequately protected under this Directive.

Article 70

Amendments to Directive 2012/27/EU

Directive 2012/27/EU is amended as follows:

(1) Article 9 is amended as follows:

(a) the title is replaced by the following:

'Metering for natural gas';

(b) in paragraph 1, the first subparagraph is replaced by the following:

'1. Member States shall ensure that, in so far as it is technically possible, financially reasonable, and proportionate to the potential energy savings, for natural gas final customers are provided with competitively priced individual meters that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use.';

(c) paragraph 2 is amended as follows:

(i) the introductory part is replaced by the following:

'2. Where, and to the extent that, Member States implement intelligent metering systems and roll out smart meters for natural gas in accordance with Directive 2009/73/EC';

(ii) points (c) and (d) are deleted;

(2) Article 10 is amended as follows:

(a) the title is replaced by the following:

'Billing information for natural gas';

(b) in paragraph 1, the first subparagraph is replaced by the following:

'1. Where final customers do not have smart meters as referred to in Directive 2009/73/EC, Member States shall ensure, by 31 December 2014, that billing information for natural gas is reliable, accurate and based on actual consumption, in accordance with point 1.1 of Annex VII, where that is technically possible and economically justified.';

(c) in paragraph 2, the first subparagraph is replaced by the following:

'2. Meters installed in accordance with Directive 2009/73/EC shall enable the provision of accurate billing information based on actual consumption. Member States shall ensure that final customers have the possibility of easy access to complementary information on historical consumption allowing detailed self-checks.';

(3) in Article 11, the title is replaced by the following:

'Cost of access to metering and billing information for natural gas';

(4) in Article 13, the words 'Articles 7 to 11' are replaced by the words 'Articles 7 to 11a';

(5) Article 15 is amended as follows:

(a) paragraph 5 is amended as follows:

(i) the first and second subparagraphs are deleted;

(ii) the third subparagraph is replaced by the following:

'Transmission system operators and distribution system operators shall comply with the requirements set out in Annex XII.';

(b) paragraph 8 is deleted;

(6) in Annex VII, the title is replaced by the following:

'Minimum requirements for billing and billing information based on actual consumption of natural gas'.

Article 71

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 2 to 5, Article 6(2) and (3), Article 7(1), point (j) and (l) of Article 8(2), Article 9(2), Article 10(2) to (12), Articles 11 to 24, Articles 26, 28 and 29, Articles 31 to 34 and 36, Article 38(2), Articles 40 and 42, point (d) of Article 46(2), Articles 51 and 54, Articles 57 to 59, Articles 61 to 63, points (1) to (3), (5)(b) and (6) of Article 70 and Annexes I and II by 31 December 2020. They shall immediately communicate the text of those provisions to the Commission.

However, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with:

(a) point (5)(a) of Article 70 by 31 December 2019;

(b) point (4) of Article 70 by 25 October 2020.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 72

Repeal

Directive 2009/72/EC is repealed with effect from 1 January 2021, without prejudice to the obligations of Member States relating to the time-limit for the transposition into national law and the date of application of the Directive set out in Annex III.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex IV.

Article 73

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 6(1), Article 7 (2) to (5), Article 8(1), points (a) to (i) and (k) of Article 8(2) and Article 8(3) and (4), Article 9(1), (3), (4) and (5), Article 10(2) to (10), Articles 25, 27, 30, 35 and 37, Article 38(1), (3) and (4), Articles 39, 41, 43, 44 and 45, Article 46(1), points (a), (b) and (c) and (e) to (h) of Article 46(2), Article 46(3) to (6), Article 47 to 50, Articles 52, 53, 55, 56, 60, 64 and 65 shall apply from 1 January 2021.

Points (1) to (3), (5)(b) and (6) of Article 70 shall apply from 1 January 2021.

Point (5)(a) of Article 70 shall apply from 1 January 2020.

Point (4) of Article 70 shall apply from 26 October 2020.

Article 74

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 5 June 2019.

For the European Parliament
The President
A. TAJANI

For the Council
The President
G. CIAMBA

ANNEX I

MINIMUM REQUIREMENTS FOR BILLING AND BILLING INFORMATION

1. Minimum information to be contained on the bill and in the billing information
 - 1.1. The following key information shall be prominently displayed to final customers in their bills, distinctly separate from other parts of the bill:
 - (a) the price to be paid and a breakdown of the price where possible, together with a clear statement that all energy sources may also benefit from incentives that were not financed through the levies indicated in the breakdown of the price;
 - (b) the date on which payment is due.
 - 1.2. The following key information shall be prominently displayed to final customers in their bills and billing information, distinctly separate from other parts of the bill and billing information:
 - (a) electricity consumption for the billing period;
 - (b) the name and contact details of the supplier, including a consumer support hotline and email address;
 - (c) the tariff name;
 - (d) the end date of the contract, if applicable;
 - (e) the information on the availability and benefits of switching;
 - (f) the final customer's switching code or unique identification code for the final customer's supply point;
 - (g) information on final customers' rights as regards out-of-court dispute settlement, including the contact details of the entity responsible pursuant to Article 26;
 - (h) the single point of contact referred to in Article 25;
 - (i) a link or reference to where comparison tools referred to in Article 14 can be found.
 - 1.3. Where bills are based on actual consumption or remote reading by the operator, the following information shall be made available to final customers in, with or signposted to within their bills and periodic settlement bills:
 - (a) comparisons of the final customer's current electricity consumption with the final customer's consumption for the same period in the previous year in graphic form;
 - (b) contact information for consumer organisations, energy agencies or similar bodies, including website addresses, from which information may be obtained on available energy efficiency improvement measures for energy-using equipment;
 - (c) comparisons with an average normalised or benchmarked final customer in the same user category.
2. Frequency of billing and the provision of billing information:
 - (a) billing on the basis of actual consumption shall take place at least once a year;
 - (b) where the final customer does not have a meter that allows remote reading by the operator, or where the final customer has actively chosen to disable remote reading in accordance with national law, accurate billing information based on actual consumption shall be made available to the final customer at least every six months, or once every three months, if requested or where the final customer has opted to receive electronic billing;

- (c) where the final customer does not have a meter that allows remote reading by the operator, or where the final customer has actively chosen to disable remote reading in accordance with national law, the obligations in points (a) and (b) may be fulfilled by means of a system of regular self-reading by the final customer, whereby the final customer communicates readings from the meter to the operator; billing or billing information may be based on estimated consumption or a flat rate only where the final customer has not provided a meter reading for a given billing interval;
- (d) where the final customer has a meter that allows remote reading by the operator, accurate billing information based on actual consumption shall be provided at least every month; such information may also be made available via the internet, and shall be updated as frequently as allowed by the measurement devices and systems used.

3. Breakdown of the final customer's price

The customer's price is the sum of the following three components: the energy and supply component, the network component (transmission and distribution) and the component comprising taxes, levies, fees and charges.

Where a breakdown of the final customer's price is presented in bills, the common definitions of the three components in that breakdown established under Regulation (EU) 2016/1952 of the European Parliament and of the Council ⁽¹⁾ shall be used throughout the Union.

4. Access to complementary information on historical consumption

Member States shall require that, to the extent that complementary information on historical consumption is available, such information is made available, at the request of the final customer, to the supplier or service provider designated by the final customer.

Where the final customer has a meter that allows remote reading by the operator installed, the final customer shall have easy access to complementary information on historical consumption allowing detailed self-checks.

Complementary information on historical consumption shall include:

- (a) cumulative data for at least the three previous years or the period since the start of the electricity supply contract, if that period is shorter. The data shall correspond to the intervals for which frequent billing information has been produced; and
- (b) detailed data according to the time of use for any day, week, month and year, which is made available to the final customer without undue delay via the internet or the meter interface, covering the period of at least the previous 24 months or the period since the start of the electricity supply contract, if that period is shorter.

5. Disclosure of energy sources

Suppliers shall specify in bills the contribution of each energy source to the electricity purchased by the final customer in accordance with the electricity supply contract (product level disclosure).

The following information shall be made available to final customers in, with, or signposted to within their bills and billing information:

- (a) the contribution of each energy source to the overall energy mix of the supplier (at national level, namely in the Member State in which the electricity supply contract has been concluded, as well as at the level of the supplier if the supplier is active in several Member States) over the preceding year in a comprehensible and clearly comparable manner;
- (b) information on the environmental impact, in at least terms of CO₂ emissions and the radioactive waste resulting from the electricity produced by the overall energy mix of the supplier over the preceding year.

As regards point (a) of the second subparagraph, with respect to electricity obtained via an electricity exchange or imported from an undertaking situated outside the Union, aggregate figures provided by the exchange or the undertaking in question over the preceding year may be used.

⁽¹⁾ Regulation (EU) 2016/1952 of the European Parliament and of the Council of 26 October 2016 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC (OJ L 311, 17.11.2016, p. 1).

For the disclosure of electricity from high efficiency cogeneration, guarantees of origin issued under Article 14(10) of Directive 2012/27/EU may be used. The disclosure of electricity from renewable sources shall be done by using guarantees of origin, except in the cases referred to in points (a) and (b) of Article 19(8) of Directive (EU) 2018/2001.

The regulatory authority or another competent national authority shall take the necessary steps to ensure that the information provided by suppliers to final customers pursuant to this point is reliable and is provided at a national level in a clearly comparable manner.

ANNEX II

SMART METERING SYSTEMS

1. Member States shall ensure the deployment of smart metering systems in their territories that may be subject to an economic assessment of all of the long-term costs and benefits to the market and the individual consumer or which form of smart metering is economically reasonable and cost-effective and which time frame is feasible for their distribution.
2. Such assessment shall take into consideration the methodology for the cost-benefit analysis and the minimum functionalities for smart metering systems provided for in Commission Recommendation 2012/148/EU ⁽¹⁾ as well as the best available techniques for ensuring the highest level of cybersecurity and data protection.
3. Subject to that assessment, Member States or, where a Member State has so provided, the designated competent authority, shall prepare a timetable with a target of up to ten years for the deployment of smart metering systems. Where the deployment of smart metering systems is assessed positively, at least 80 % of final customers shall be equipped with smart meters either within seven years of the date of the positive assessment or by 2024 for those Member States that have initiated the systematic deployment of smart metering systems before 4 July 2019.

⁽¹⁾ Commission Recommendation 2012/148/EU of 9 March 2012 on preparations for the roll-out of smart metering systems (OJ L 73, 13.3.2012, p. 9).

ANNEX III

TIME-LIMIT FOR TRANSPOSITION INTO NATIONAL LAW AND DATE OF APPLICATION

(REFERRED TO IN ARTICLE 72)

Directive	Time-limit for transposition	Date of application
Directive 2009/72/EC of the European Parliament and of the Council (OJ L 211, 14.8.2009, p. 55)	3 March 2011	3 September 2009

ANNEX IV

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