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From: General Secretariat of the Council  
To: Delegations

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND  
OF THE COUNCIL on the internal market for electricity (recast)

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Delegations will find attached the Presidency's revised proposal on the draft regulation, amended in light of the discussions in the Energy Working Party and the written comments received. Furthermore, the text includes revisions in line with the opinion of the Consultative Working Party of Legal Services, as set out in doc. 10556/17.

New text compared to the Commission proposal is indicated in **bold underline**. Deletions are marked by [~~brackets and strikethrough~~].

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2016/0379 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**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 establishing the European Community~~,  Treaty on the Functioning of the European Union,  and in particular Article ~~95~~  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,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the  ordinary legislative  procedure,

Whereas:

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↓ new

- (1) Regulation (EC) No 714/2009 of the European Parliament and of the Council<sup>1</sup> has been substantially amended several times. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

↓ 714/2009 recital 1 (adapted)

⇒ new

- (2) ⇒ The Energy Union aims at providing consumers – 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 in electricity, which has been progressively implemented since 1999, aims to deliver a real choice for all consumers in the ☒ Union ☒ ~~Community~~, ~~both be they~~ citizens ~~and~~ businesses, 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 in electricity has increased competition, in particular at the wholesale level, and cross-border trade. It remains the foundation of an efficient energy market. ⇐

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<sup>1</sup> 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).

- (3) Europe'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 to decarbonise 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) 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.
- (5) 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. To integrate growing shares of renewable energy, the future electricity system should make use of all available sources of flexibility, particularly demand response and storage. To achieve effective decarbonisation at lowest cost, it also needs to encourage energy efficiency.
- (6) 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.

~~(2) 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<sup>1</sup> and 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<sup>2</sup> have made significant contributions towards the creation of such an internal market in electricity.~~

~~(3) However, at present, there are obstacles to the sale of electricity on equal terms, without discrimination or disadvantage in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision do not yet exist in each Member State, and isolated markets persist.~~

~~(4) The Communication of the Commission of 10 January 2007 entitled ‘An Energy Policy for Europe’ highlighted the importance of completing the internal market in electricity and creating a level playing field for all electricity undertakings in the Community. The Communications of the Commission of 10 January 2007 entitled ‘Prospects for the internal gas and electricity market’ and ‘Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)’ demonstrated that the present rules and measures neither provide the necessary framework nor provide for the creation of interconnection capacities to achieve the objective of a well-functioning, efficient and open internal market.~~

~~(5) In addition to thoroughly implementing the existing regulatory framework, the regulatory framework for the internal market in electricity set out in Regulation (EC) No 1228/2003 should be adapted in line with those communications.~~

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<sup>1</sup> ~~OJ L 176, 15.7.2003, p. 37.~~

<sup>2</sup> ~~OJ L 176, 15.7.2003, p. 1.~~

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↓ new

- (7) 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 single act.
- (8) Core market principles should set out that electricity prices are to be determined through demand and supply. Those prices should signal when electricity is needed, providing market-based incentives for investments into flexibility sources such as flexible generation, interconnection, demand response or storage.
- (9) The decarbonisation of the electricity sector, with renewable energy becoming a major part of the market, is a core objective of the Energy Union. As the Union moves towards the decarbonisation of the electricity sector and increasing penetration of renewable energy sources, 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 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.

- (10) Short-term markets will improve liquidity and competition by enabling more resources to participate fully in the market, especially those that are more flexible. Effective scarcity pricing will encourage market participants to be available when the market most needs it and ensures that they can recover their costs in the wholesale market. It is therefore critical to ensure that, as far as possible, administrative and implicit price caps are removed to allow scarcity prices to increase up to the value of lost load. When fully embedded in the market structure, short-term markets and scarcity pricing will contribute to the removal of other measures, such as capacity mechanisms, to ensure security of supply. At the same time, scarcity pricing without price caps on the wholesale market should not jeopardize the possibility for reliable and stable prices for final customers, in particular households and SMEs.
- (11) **Subject to Union State aid rules pursuant to Articles 107, 108 and 109** derogations to fundamental market principles such as balancing responsibility, market-based dispatch, or ~~curtailment and~~ redispatch reduce flexibility signals and act as barriers to the development of solutions such as storage, demand response or aggregation. While derogations are still necessary to avoid unnecessary administrative burden for certain actors, in particular households and SMEs, broad derogations covering entire technologies are not consistent with the objective of achieving market-based and efficient decarbonisation and should thus be replaced by more targeted measures.

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↓ 714/2009 recital 16

- (12) The precondition for effective competition in the internal market in electricity is non-discriminatory and transparent charges for network use including interconnecting lines in the transmission system. The available capacity of those lines should be set at the maximum levels consistent with the safety standards of secure network operation.

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↓ 714/2009 recital 17

- (13) 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.

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↓ new

- (14) 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 or transmission infrastructure, bidding zones should reflect structural congestion. In particular, cross-zonal capacity should not be reduced in order to resolve internal congestion.



(15) 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.

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↓ 714/2009 recital 10

(16) This Regulation should lay down basic principles with regard to tariffication and capacity allocation, whilst providing for the adoption of ~~g~~Guidelines detailing further relevant principles and methodologies, in order to allow rapid adaptation to changed circumstances.

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↓ 714/2009 recital 22

(17) The management of congestion problems should provide correct economic signals to transmission system operators and market participants and should be based on market mechanisms.

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↓ 714/2009 recital 11

(18) 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.

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↓ 714/2009 recital 12

- (19) Payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs.

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↓ 714/2009 recital 13

- (20) 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.

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↓ 714/2009 recital 21

- (21) There should be rules on the use of revenues flowing from congestion-management procedures, unless the specific nature of the interconnector concerned justifies an exemption from those rules.

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↓ new

- (22) To provide for a level playing field between all market participants, network tariffs should be applied in a way which does not discriminate between production connected at the distribution-level with regard to the production connected at the transmission level, either positively or negatively. They should not discriminate against energy storage, and should not create disincentives for participation in demand response or represent an obstacle to improvements in energy efficiency.

- (23) In order to increase transparency and comparability in tariff-setting where binding harmonization is not seen as adequate, recommendations on tariff methodologies should be issued by the European Agency for the Cooperation of Energy Regulators established by [recast of Regulation (EC) No 713/2009 as proposed by COM(2016) 863/2] ("the Agency").
- (24) To better ensure optimum investment in the trans-European grid and 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 only allowed in order to guarantee availability and maintain or increase interconnection capacities.

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↓ 714/2009 recital 7 (adapted)

- (25) In order to ensure optimal management of the electricity transmission network and to allow trading and supplying electricity across borders in the ~~Union~~ ~~Community~~, a European Network of Transmission System Operators for Electricity (the ENTSO for Electricity), should be established. The tasks of the ENTSO for Electricity should be carried out in compliance with ~~Union's~~ ~~Community~~ 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, transparency and the representative nature of the ENTSO for Electricity. 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~~ ~~Community~~ 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 in electricity.

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↓ new

- (26) A robust medium to long-term Union level resource adequacy assessment should be carried out by the ENTSO for Electricity to provide an objective basis for the assessment of adequacy concerns. The resource adequacy concern that capacity mechanisms address should be based on the EU assessment.
- (27) The medium to long-term resource adequacy assessment (from 10 year-ahead to year-ahead) set out in this regulation has a different purpose than the seasonal outlooks (six months ahead) as set out in Article 9 [Regulation on risk preparedness as proposed by COM(2016) 862]. Medium- to long-term assessments are mainly used to assess the need for capacity mechanisms whereas seasonal outlooks are used to alert to 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 Operational Centres~~] **Regional Security Coordinators** [+] also carry out regional adequacy assessments as defined in European legislation on electricity transmission system operation. These are very short-term adequacy assessments (from weak-ahead to day-ahead) used in the context of system operation.
- (28) Prior to introducing capacity mechanisms, Member States should assess regulatory distortions contributing to the related resource adequacy concern. They should be required to adopt measures to eliminate the identified distortions including a timeline for their implementation. Capacity mechanisms should only be introduced for the residual concerns that cannot be addressed through removing such distortions.

- (29) Member States intending to introduce capacity mechanisms should derive resource adequacy targets following a transparent and verifiable process. Member States should have the freedom to set their own desired level of security of supply.
- (30) Main principles of capacity mechanisms should be laid down, building on the environmental and energy State aid principles and the findings of DG Competition's Sector Inquiry on capacity mechanisms. Capacity mechanisms already in place should be reviewed in light of these principles. In case the European resource adequacy assessment reveals the absence of any adequacy concern, no new capacity mechanism should be established and no new capacity commitments under mechanisms already in place should be made. The application of the State aid control rules pursuant to Articles 107 to 109 TFUE must be complied with at all times.
- (31) Detailed rules for facilitating effective cross-border participation in capacity mechanisms other than reserve schemes should be laid down. Transmission system operators across the borders should facilitate interested generators wanting to participate in capacity mechanisms in other Member States. Therefore, they should calculate capacities up to which cross-border participation would be possible, enable participation and check availabilities. National regulatory authorities should enforce the cross-border rules in the Member States.
- (32) In view of differences in national energy systems and technical limitations of existing electricity networks, the best approach to achieving progress in market integration will often be at a regional level. Regional cooperation of transmission system operators should thus be strengthened. In order to ensure efficient cooperation, a new regulatory framework should foresee stronger regional governance and regulatory oversight, including by strengthening the decision-making power of the Agency for cross-border issues. Closer cooperation of Member States could be needed also in crisis situations, to increase security of supply and limit market distortions.

- (33) The coordination between transmission system operators at regional level has been formalised with the mandatory participation of transmission system operators in regional security coordinators, which should be complemented by an enhanced institutional framework via the establishment of ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+]. The creation of ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] should take into account existing regional coordination initiatives and support the increasingly integrated operation of electricity systems across the Union, ensuring their efficient and secure performance.
- (34) The geographical scope of ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] should allow them to play an effective coordination role by optimising the operations of transmission system operators over larger regions.
- (35) ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] should carry out functions where their regionalisation brings added value compared to functions performed at national level. The functions of ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] should cover the functions carried out by regional security coordinators as well as additional system operation, market operation and risk preparedness functions. The functions carried out by ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] should exclude real time operation of the electricity system.
- (36) ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] should primarily act in the interest of system and market operation of the region over the interests of any single entity. Hence, ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] should be entrusted with decision-making powers to act and to direct 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.

(37) ENTSO for Electricity should ensure that the actions of [~~Regional Operational Centres~~] **Regional Security Coordinators** [+] are coordinated across the regions' boundaries.

(38) In order to raise efficiencies in the electricity distribution networks in the Union and ensure close cooperation with transmission system operators and ENTSO for electricity, a European 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 amongst the Union distribution system operators. The EU DSO Entity should closely cooperate with 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 storage in distribution networks or other areas which relate to the management of distribution networks.

- (39) ~~In particular,~~ 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 ☒ Community, including the creation of interconnection capacities, with due regard to the environment. Those network codes should be in line with framework guidelines, which are non-binding in nature (framework guidelines) and which are developed by the Agency ~~for the Cooperation of Energy Regulators established by 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<sup>1</sup> (the Agency)~~. The Agency should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with the framework guidelines, and it should be enabled to recommend them for adoption by the Commission. The Agency 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.

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<sup>1</sup> ~~See page 1 of this Official Journal.~~



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↓ 714/2009 recital 24

- (40) To ensure the smooth functioning of the internal market in electricity, provision should be made for procedures which allow the adoption of decisions and ~~g~~Guidelines with regard, inter alia, to tariffication and capacity allocation by the Commission whilst ensuring the involvement of Member States' regulatory authorities in that process, where appropriate through their European association. 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 in electricity.

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↓ 714/2009 recital 8 (adapted)

- (41) 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 ~~the Union for the Coordination of Transmission of Electricity~~,  via  national regulators or the Agency, should play an important role.

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↓ 714/2009 recital 9 (adapted)

(42) In order to ensure greater transparency regarding the entire electricity transmission network in the ☒ Union ~~☒-Community~~, the ENTSO for Electricity should draw up, publish and regularly update a non-binding ☒ Union ~~☒-Community~~-wide ten-year network development plan (☒ Union ~~☒-Community~~-wide 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.

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↓ new

(43) Experience with the development and adoption of network codes has shown that it is useful to streamline the development procedure by clarifying that the Agency has the right to revise draft electricity network codes before submitting them to the Commission.

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↓ 714/2009 recital 14

~~A proper system of long-term locational signals is necessary, based on the principle that the level of the network access charges should reflect the balance between generation and consumption of the region concerned, on the basis of a differentiation of the network access charges on producers and/or consumers.~~

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↓ 714/2009 recital 15

~~It would not be appropriate to apply distance-related tariffs or, provided appropriate locational signals are in place, a specific tariff to be paid only by exporters or importers in addition to the general charge for access to the national network.~~

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↓ 714/2009 recital 18

~~Market monitoring undertaken over recent years by the national regulatory authorities and by the Commission has shown that current transparency requirements and rules on access to infrastructure are not sufficient to secure a genuine, well-functioning, open and efficient internal market in electricity.~~

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↓ 714/2009 recital 19

~~Equal access to information on the physical status and efficiency of the system is necessary to enable all market participants to assess the overall demand and supply situation and identify the reasons for movements in the wholesale price. This includes more precise information on electricity generation, supply and demand including forecasts, network and interconnection capacity, flows and maintenance, balancing and reserve capacity.~~

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↓ 714/2009 recital 23

(44) Investments in major new infrastructure should be promoted strongly while ensuring the proper functioning of the internal market in 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, the Agency 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<sup>1</sup> continue to apply until the scheduled expiry date as decided in the granted exemption decision.

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↓ 714/2009 recital 25

~~National regulatory authorities should ensure compliance with the rules contained in this Regulation and the Guidelines adopted pursuant thereto.~~

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<sup>1</sup> 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).

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↓ 714/2009 recital 20

- (45) 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 supply undertakings. In the electricity market, many relevant decisions are made by the generators, which should keep information in relation thereto available to and easily accessible by the competent authorities for a fixed period of time. The competent authorities should, furthermore, regularly monitor the compliance of the transmission system operators with the rules. Small generators with no real ability to distort the market should be exempt from that obligation.

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↓ 714/2009 recital 26

- (46) The Member States and the competent national 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 national authorities are informed.

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↓ 714/2009 recital 27

(47) 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 must be effective, proportionate and dissuasive.

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↓ 714/2009 recital 28

~~The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup>.~~

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↓ 714/2009 recital 29

~~In particular, the Commission should be empowered to establish or adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aims of this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.~~

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<sup>1</sup> ~~OJ L 184, 17.7.1999, p. 23.~~

- (48) Member States and the Energy Community Contracting Parties 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.
- (49) In order to ensure the minimum degree of harmonization required for effective market functioning, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be [delegated] to the Commission in respect of areas which are fundamental for market integration. These should include the geographical area for regional cooperation of transmission system operators, the amount of compensation payments between transmission system operators, the adoption and amendment of network codes and guidelines, 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 on Better Law-Making of 13 April 2016<sup>1</sup>. 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.

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<sup>1</sup> OJ L 123, 12.5.2016, p. 1.

(50) 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 and can therefore be better achieved at ~~the~~ Union ~~Community~~ level, the ~~the~~ Union ~~Community~~ may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty ~~on~~ European Union ~~Community~~. 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.

**(51) Market rules should enable the integration of electricity from renewable energy sources and provide incentives for increasing energy efficiency;**

**(52) Market rules should deliver appropriate investment incentives for generation, storage, energy efficiency and demand response to meet market needs and thus ensure security of supply while reflecting both the real internal and external costs as well as the principle of sustainable development;**

**(53) Market rules should allow for progress in research and development to be realized and used to the benefit of society;**

**(54) With regard to balancing markets, efficient and non-distortive price formation in the procurement of balancing capacity and balancing energy requires that balancing capacity does not set the price for balancing energy. This is without prejudice for the dispatching systems using an integrated scheduling process according to the [Commission Regulation XXX on establishing a guideline on electricity balancing].**



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↓ 714/2009 recital 31

~~Given the scope of the amendments that are being made herein to Regulation (EC) No 1228/2003, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast by bringing them all together in a single text in a new Regulation,~~

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↓ 714/2009 (adapted)

HAVE ADOPTED THIS REGULATION:

## **Chapter I**

### **⊠ Subject matter, scope and definitions ⊠**

#### *Article 1*

##### *Subject-matter and scope*

This Regulation aims at:

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↓ new

- (a) setting the basis for an efficient achievement of the objectives of the European Energy Union and in particular the climate and energy framework for 2030<sup>1</sup> by enabling market signals to be delivered for increased flexibility, **sustainability**, decarbonisation and innovation;

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<sup>1</sup> COM/2014/015 final.

(b) setting fundamental principles for well-functioning, integrated electricity markets, which allow non-discriminatory market access for all resource providers and electricity customers, empower consumers, enable demand response and energy efficiency, facilitate aggregation of distributed demand and supply, and contribute to the decarbonisation of the economy by enabling market integration and market-based remuneration of electricity generated from renewable sources;

↓ 714/2009 (adapted)

⇒ new

(~~ca~~) setting fair rules for cross-border exchanges in electricity, thus enhancing competition within the internal market in electricity, taking into account the particular characteristics of national and regional markets. This ~~⊗~~ includes ~~⊗ will involve~~ the establishment of a compensation mechanism for cross-border flows of electricity and the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems;

(~~db~~) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in electricity. It provides for mechanisms to harmonise the rules for cross-border exchanges in electricity.

## Article 2

### Definitions

1. For the purpose of this Regulation, the definitions contained in Article 2 of Directive ~~2009/72/EC~~ [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2] ~~of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity~~ ⇒, in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council<sup>1</sup>, in Article 2 of Commission Regulation (EU) No 543/2013<sup>2</sup> and in Article 2 of [Recast Renewable Energies Directive]⇐ apply, ~~with the exception of the definition of ‘interconnector’ which shall be replaced by the following: ‘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. ⊗ In addition, ⊗ ~~t~~he following definitions shall apply:
  - (a) ‘regulatory authorities’ means the regulatory authorities referred to in Article ~~57~~<sup>35</sup>(1) of [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2] ~~Directive 2009/72/EC~~;
  - (b) ‘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 and/or ⊗ customers ⊗ ~~consumers~~ outside that Member State on its transmission network;

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<sup>1</sup> 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).

<sup>2</sup> 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).

(c) 'congestion' means a situation in which ⇒ all requests from market participants to trade between [two bidding zones] **network areas** cannot be accommodated because they would significantly affect the physical flows on network elements which cannot accommodate those flows ⇐ ~~an interconnection linking national transmission networks cannot accommodate all physical flows resulting from international trade requested by market participants, because of a lack of capacity of the interconnectors and/or the national transmission systems concerned;~~

~~(d) 'declared export' means the dispatch of electricity in one Member State on the basis of an underlying contractual arrangement to the effect that the simultaneous corresponding take-up (declared import) of electricity will take place in another Member State or a third country;~~

~~(e) 'declared transit' means a circumstance where a declared export of electricity occurs and where the nominated path for the transaction involves a country in which neither the dispatch nor the simultaneous corresponding take-up of the electricity will take place;~~

~~(f) 'declared import' means the take-up of electricity in a Member State or a third country simultaneously with the dispatch of electricity (declared export) in another Member State;~~

~~(g)~~(d) 'new interconnector' means an interconnector not completed by 4 August 2003;;

↓ new

(e) 'structural congestion' means congestion in the transmission system that is predictable, is geographically stable over time, and is frequently reoccurring under normal power system conditions;

- (f) 'market operator' means an entity that provides a service whereby the offers to sell electricity are matched with bids to buy electricity;
- (g) 'nominated electricity market operator' or 'NEMO' means a market operator designated by the competent authority to perform tasks related to single day-ahead or single intraday coupling;
- (h) 'value of lost load' means an estimation in €/MWh, of the maximum electricity price that customers are willing to pay to avoid an outage;
- (i) 'balancing' means all actions and processes, in all timelines, through which transmission system operators ensure, in a continuous way, maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality;
- (j) 'balancing energy' means energy used by transmission system operators to perform balancing;
- (k) 'balancing service provider' means a market participant providing either or both balancing energy and balancing capacity to transmission system operators;
- (l) 'balancing capacity' means a volume of capacity that a balancing service provider has agreed to hold to 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;

- (m) 'balance responsible party' means a market participant or its chosen representative responsible for its imbalances in the electricity market;
- (n) 'imbalance settlement period' means the time unit for which the imbalance of the balance responsible parties is calculated;
- (o) 'imbalance price' means the price, be it positive, zero or negative, in each imbalance settlement period for an imbalance in each direction;
- (p) 'imbalance price area' means the area in which an imbalance price is calculated;
- (q) 'prequalification process' means the process to verify the compliance of a provider of balancing capacity with the requirements set by the transmission system operators;
- (r) '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;
- (s) 'priority dispatch' means **in self-dispatch model systems** the dispatch of power plants on the basis of criteria different from the economic order of bids and, in central dispatch **model** systems, **also from** network constraints, giving priority to the dispatch of particular generation technologies;

- (t) 'capacity calculation region' means the geographic area in which the coordinated capacity calculation is applied;
- (u) 'capacity mechanism' means an administrative measure to ensure the achievement of the desired level of **resource adequacy** [security of supply] by remunerating resources for their availability not including measures relating to ancillary services;
- ~~(v) 'strategic reserve' means a capacity mechanism in which resources are only dispatched in case day-ahead and intraday markets have failed to clear, transmission system operators have exhausted their balancing resources to establish an equilibrium between demand and supply, and imbalances in the market during periods where the reserves were dispatched are settled at the value of lost load;]~~
- (w) 'high-efficiency cogeneration' means cogeneration meeting the criteria laid down in Annex II of Directive 2012/27/EU of the European Parliament and of the Council<sup>1</sup>;
- (x) 'demonstration project' means a project demonstrating a technology as a first of its kind in the Union and representing a significant innovation that goes well beyond the state of the art.

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<sup>1</sup> 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).



- (y) 'market participant' means a natural or legal person, who is buying or selling electricity, demand response or storage services, including the placing of orders to trade, in one or more electricity markets including balancing energy markets.
- (z) 'redispatching'<sup>1</sup> means a measure activated by one or several system operators by altering the generation and/or load pattern in order to change physical flows in the transmission system and relieve a physical congestion.
- (aa) 'countertrading' means a exchange initiated by system operators between two network areas to relieve physical congestion.
- (bb) '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 at one or more connection points.
- (cc) '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 TSO within the integrated scheduling process.

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<sup>1</sup> Definition included in Commission Regulation (EU) No 543/2013

## Chapter II

### General rules for the electricity market

#### Article 3

##### *Principles regarding the operation of electricity markets*

1. Member States, national regulatory authorities, transmission system operators, distribution system operators, and market operators shall ensure that electricity markets are operated in accordance with the following principles:
  - (a) prices shall be formed based on demand and supply;
  - (b) actions which prevent price formation on the basis of demand and supply or constitute a disincentive to the development of more flexible generation, low carbon generation, or more flexible demand shall be avoided;
  - (c) customers shall be enabled to benefit from market opportunities and increased competition on retail markets;
  - (d) market participation of consumers and small businesses shall be enabled by aggregation of generation from multiple generation facilities or load from multiple demand facilities to provide joint offers on the electricity market and be jointly operated in the electricity system, subject to compliance with EU treaty rules on competition;

- ~~[(e) market rules shall support the decarbonisation of the economy by enabling the integration of electricity from renewable energy sources and providing incentives for energy efficiency;]~~
- ~~[(f) market rules shall deliver appropriate investment incentives for generation, storage, energy efficiency and demand response to meet market needs and thus ensure security of supply;]~~
- (g) barriers to cross-border electricity flows and cross-border transactions on electricity markets and related services markets shall be avoided;
- (h) market rules shall provide for regional cooperation where effective;
- (i) all generation, storage and demand resources shall participate on equal footing in the market, **unless otherwise provided for in the EU law**;
- (j) all producers shall be directly or indirectly responsible for selling the electricity they generate;
- ~~[(k) market rules shall allow for progress in research and development to be realized and used to the benefit of society;]~~
- (l) market rules shall enable the efficient dispatch of generation assets and demand response;
- (m) market rules shall allow for entry and exit of electricity generation and electricity supply undertakings based on their assessment of the economic and financial viability of their operations;

- (n) long-term hedging opportunities, which allow market participants to hedge against price volatility risks on a market basis, and ~~[eliminate]~~ **mitigate** uncertainty on future returns on investment shall be tradable on exchanges in a transparent manner subject to compliance with EU treaty rules on competition.
- (o) **market participants have a right to obtain access to the transmissin and distribution networks on objective, transparent and non--discriminatory terms.**

#### *Article 4*

##### *~~Balance~~ responsibility*

1. All market participants ~~[shall aim for system balance and]~~ shall be financially responsible for **the** imbalances they cause in the system. They shall either be balance responsible parties or **contractually** delegate their responsibility to a balance responsible party of their choice. **Market rules shall incentivise all market participants to aim for system balance.**
2. Member States may provide for derogation from **the financial responsibility of imbalances** ~~[balance responsibility]~~ in respect of:
  - (a) demonstration projects **for emerging technologies as defined in Article 66 and 67 of the Commission Regulation (EU) 2016/631;**
  - (b) **power generating facility,** using renewable energy sources or high-efficiency cogeneration with an **total** installed electricity capacity of less than ~~[500]~~ **250** kW;

(c) installations benefitting from support approved by the Commission under Union State aid rules pursuant to Articles 107 to 109 TFEU, and commissioned prior to [OP: entry into force]. Member States may, subject to Union state aid rules, incentivize market participants which are fully or partly exempted from balancing responsibility to accept full balancing responsibility. [~~against appropriate compensation.~~]

**2a. When a Member State chooses to provide a derogation according to Article 4 (2), they need to ensure that the financial responsibilities of imbalances are fulfilled by another party.**

3. For **power generating facilities commissioned after** 1 January 2026, point (b) of paragraph 2 shall apply only to renewable energy sources or high-efficiency cogeneration with an **total** installed electricity capacity of less than [~~250~~] **50**<sup>1</sup> kW.

## *Article 5*

### *Balancing market*

[~~1. All market participants shall have access to the balancing market be it individually or through aggregation. Balancing market rules and products shall respect the need to accommodate increasing shares of variable generation as well as increased demand responsiveness and the advent of new technologies.~~]

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<sup>1</sup> **RES directive Art 17 to be checked for consistency**

2. 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 system, a transparent and technologically neutral definition of services and their transparent, market based procurement** [~~capability of generation from variable renewable sources and demand side response and storage~~];
  - (b) **ensure access to all prequalified market participants, be it individual or through aggregation;**
  - (c) **respect the need to accommodate increasing shares of variable generation as well as increased demand responsiveness and the advent of new technologies.**
3. Balancing energy shall be procured separately from balancing capacity **except in case of a central dispatching model. The price of balancing energy shall not be pre-determined in a contract of balancing except where an exemption is applied in accordance with paragraph 6 of Article 16 of the [Commission Regulation XXX on establishing a guideline on electricity balancing].** Procurement processes shall be transparent while at the same time respecting confidentiality.
4. Balancing markets shall ensure operational security whilst allowing for maximum use and efficient allocation of cross-zonal capacity across timeframes in accordance with Article 15.

5. ~~[Marginal pricing shall be used for]~~ **The settlement of balancing energy shall be based on marginal pricing.** Market participants shall be allowed to bid as close to real time as possible, and ~~[at least after]~~ **balancing energy gate closure times shall not be before** the intraday cross-zonal gate closure time determined in accordance with Article 59 of Commission Regulation (EU) 2015/1222<sup>1</sup>. **Transmission system operator applying a central dispatching model may define additional rules in accordance with paragraph six Article 24 of the [Commission Regulation (EU) 2017/XXX on establishing a guideline on electricity balancing]**
6. The imbalances shall be settled at a price that reflects the real time value of energy **and shall be calculated in accordance with Title V [Commission Regulation (EU) 2017/XXX on establishing a guideline on electricity balancing].**
- 6a. Each imbalance price area should be equal to a bidding zone, except for central dispatching model.**
7. The sizing of reserve capacity shall be performed at ~~regional level~~ in accordance with point 7 of Annex I. ~~[Regional Operational Centres]~~ **Regional Security Coordinators [+** shall support transmission system operators in determining the amount of balancing capacity that needs to be procured in accordance with point 8 of Annex I.

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<sup>1</sup> 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. The procurement of balancing capacity shall be **performed by the transmission system operators and** facilitated on a regional level in accordance with point 8 of Annex I. The procurement shall be based on a primary market and organised in such a way as to be non-discriminatory between market participants in the prequalification process individually or through aggregation. **The allocation of cross-zonal capacity for the exchange of balancing capacity or sharing of reserve shall be limited to 5% of the available capacity for the exchange of energy of the previous relevant calendar year between the respective bidding zones.**
9. The procurement of upward balancing capacity and downward balancing capacity shall be carried out separately, **except in cases defined in paragraph three of Article 32 of the [Commission Regulation (EU) 2017/XXX on establishing a guideline on electricity balancing]. To the extent possible, and at least for a minimum of [75] % of the balancing capacity.** ~~the contracting of balancing capacity~~ shall be performed for not longer than one day before the provision of the balancing capacity and the contracting period shall have a maximum of 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 the contracting period of the remaining part of balancing capacity shall have a maximum period of one month.**
- 9a. On the request of the transmission system operator the national regulatory authority may lower the threshold referred to in paragraph 9 to [60]% provided that such decision will be limited in time, and the positive effects in terms of lowering of costs for consumers will exceed the negative impacts on the market. The request shall include:**



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

10. Transmission system operators shall publish, as soon as possible but not later than 30 minutes after ~~[close to]~~ real-time, the information on the current system balance ~~[balancing state]~~ of their ~~[control]~~ scheduling areas and the estimated ~~[imbalance price]~~ balancing energy prices.

## Article 6

### *Day-ahead and intraday markets*

1. Transmission system operators and nominated electricity market operators shall jointly organise the management of the integrated day-ahead and intraday markets based on market coupling as set out in Regulation (EU) 2015/1222. Transmission system operators and nominated electricity market operators shall cooperate at Union level or, where more appropriate, on a regional basis 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 the provisions of Union competition law. In their functions relating to electricity trading, transmission system operators and nominated **electricity** market operators shall be subject to regulatory oversight by regulators and the Agency pursuant to Article 59 of [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2] and Articles 4 and 9 of [recast of Regulation (EC) No 713/2009 as proposed by COM(2016) 863/2].
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 [~~contribute to avoid system~~] **manage their** imbalances;

- (c) maximise the opportunities for **all** market participants to participate in cross-~~border~~ **zonal** trade 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**, and that market participants can rely on when agreeing on longer-term hedging products;
- (e) ensure operational security whilst allowing for maximum use of transmission capacity;
- (f) be transparent while at the same time respecting confidentiality **and ensuring trading occurs in an anonymous manner; and**;
- ~~{(g) ensure trades are anonymous; and}~~
- (h) make no distinction between trades made within a bidding zone and across bidding zones.

~~[3. Market operators shall be free to develop products and trading opportunities that suit market participants' demand and needs and ensure that all market participants are able to access the market individually or through aggregation. They shall respect the need to accommodate increasing shares of variable generation as well as increased demand responsiveness and the advent of new technologies.]~~

## Article 7

### *Trade on day-ahead and intraday markets*

1. **Nominated electricity** Market operators 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 determined in accordance with Article 59 of Regulation (EU) 2015/1222.
2. **Nominated electricity** Market operators shall provide market participants with the opportunity to trade in energy in time intervals at least as short as the imbalance settlement period in both day-ahead and intraday markets.
3. **Nominated electricity** Market operators shall provide products for trading in day-ahead and intraday markets which are sufficiently small in size, with minimum bid sizes of 1 Megawatt [~~or less~~], to allow for the effective participation of demand-side response, energy storage and small-scale renewables.
4. By 1 January 2025~~1~~, the imbalance settlement period shall be 15 minutes in all control areas **unless a derogation has been granted by a regulatory authority in accordance with Article 62(2)(d) of Commission Regulation (EU) 2017/XXX [Balancing]. No derogation shall apply after 1 January 2025.**

## Article 8

### Forward markets

1. In line 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, ~~in particular~~ **including** owners of generation facilities using renewable energy sources, to hedge price risks across bidding zone borders, **unless an assessment of the forward market performed by the competent regulatory authorities on the bidding zone borders shows sufficient hedging opportunities in the concerned bidding zones in accordance with Article 30 of Commission Regulation (EU) 2016/1719.**
2. Long-term transmission rights shall be allocated in a transparent, market based and non-discriminatory manner through a single allocation platform **according to the provisions of the Regulation (EU) 2016/1719.** ~~[Long term transmission rights shall be firm and be transferable between market participants.]~~
3. Subject to compliance with treaty rules on competition, market operators shall be free to develop forward hedging products including for the long-term to provide market participants, in particular owners of generation facilities using renewable energy sources, with appropriate possibilities to hedge financial risks from price fluctuations. Member States shall not restrict such hedging activity to trades within a Member State or bidding zone.

## Article 9

### ~~[Price Restrictions]~~ **Technical bidding limits**

1. **Balancing energy prices, including bidding and clearing prices, shall not be subject to a minimum limit.** They shall **also** be **not subject to a** maximum limit ~~[of the wholesale electricity price]~~ unless it is set at the value of lost load as determined in accordance with Article 10. ~~[There shall be no minimum limit of the wholesale electricity price unless it is set at a value of minus 2000 € or less and, in the event that it is or anticipated to be reached, set at a lower value for the following day. This provision shall apply, inter alia, to bidding and clearing in all timeframes and include balancing energy and imbalance prices.]~~
2. ~~[By way of derogation from paragraph 1, until [OP: two years after entry into]]~~ **Nominated electricity** market operators may apply limits on maximum **and minimum** clearing prices for day-ahead and intraday timeframes in accordance with Articles 41 and 54 of Regulation (EU) 2015/1222. **These limits shall take into account the value of lost load.** In the event that **the set** limits are, or are anticipated to be, reached, they shall be raised for the following day.
3. Transmission system operators shall not take any measures with the aim of changing the wholesale prices. ~~[All dispatch orders shall be reported to the national regulatory authority within one day.]~~
4. **National regulatory authorities or other competent authorities designated by Member States** shall identify policies and measures applied within their territory that could contribute to indirectly restrict 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 results or to prevent abuse of dominant positions or inefficiently defined bidding zones.

5. Where a **national regulatory authority or other competent authority designated by** Member State has identified a policy or measure which could serve to restrict price formation it shall take all appropriate actions to eliminate or, if not possible, mitigate the impact on bidding behaviour. Member States shall provide a report to the Commission by [OP: *six months after entry into force*] detailing the measures and actions they have taken or intend to take.

#### *Article 10*

##### *Value of lost load*

1. By [OP: one year after entry into force] **national regulatory authorities or other competent authorities designated by** Member States shall establish a single-estimate of the Value of Lost Load (VoLL) for their territory, expressed in €/MWh. That estimate shall be [~~reported to the Commission and~~] made publically available. **National regulatory authorities or other competent authorities designated by** Member States may establish different **estimates individually** [~~VoLL~~] per bidding zone if they have several bidding zones in their territory. **In case a bidding zone consists of territories of more than one member state, the concerned Member States shall establish a single VoLL for that bidding zone.** In establishing VoLL, **national regulatory authorities or other competent authorities designated by** Member States shall apply the methodology developed pursuant to Article 19(5).
2. Member States shall update their estimate at least every five years.

## Article 11

### *Dispatching of generation and demand response*

1. Dispatching of power generation facilities and demand response shall be non-discriminatory, **transparent** and, **unless otherwise provided under Article 11 (2) to Article 11 (4)**, market based. [~~unless otherwise provided under paragraphs 2 to 4.~~]
2. [~~When dispatching electricity generating installations, transmission system operators give priority to~~] **Without prejudice to Union State aid rules pursuant to Articles 107 to 109 TFEU Member States may provide for electricity** generated [~~installations~~] using renewable energy sources or high-efficiency cogeneration from small [~~generating installations or generating installations~~] **power generating facility** or **power generating facility** using emerging technologies **to be granted priority dispatch** to the following extent:
  - (a) [~~generating installations~~] **power generating facility** using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than [~~500~~] **250** kW; or
  - (b) demonstration projects for **emerging** [~~innovative~~] technologies **as defined in Article 66 and 67 of the Commission Regulation (EU) 2016/631**.



3. Where the total ~~[capacity]~~ **annual energy production** of ~~[generating installations]~~ **power generating facility** subject to priority dispatch under paragraph 2 is higher than 15 % of the total ~~[installed generating capacity]~~ **annual electricity production** in a Member State, ~~[point (a) of paragraph 2 shall apply only to additional generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 250 kW.]~~ **this Member State may decide not to apply point (a) of paragraph 2 to power generating facilities commissioned after 31 December of the second year after the year in which the threshold has been reached.**

*(Second paragraph of 3, moved as 3a below)*

**3a.** **For power generating facility commissioned as f**From 1 January 2026, point (a) of paragraph 2 shall apply only to **power generating facilities** ~~[generating installations]~~ using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 250 kW ~~[-or, if the threshold under the first sentence of this paragraph has been reached, of less than 125 kW].~~

4. ~~[Generating installations]~~ **power generating facility** using renewable energy sources or high-efficiency cogeneration which have been commissioned prior to [OP: entry into force] and have, when commissioned, been subject to priority dispatch under Article 15(5) of Directive 2012/27/EU of the European Parliament and of the Council or Article 16(2) of Directive 2009/28/EC of the European Parliament and of the Council<sup>1</sup> shall ~~[remain subject to]~~ **continue to benefit from** priority dispatch. Priority dispatch shall no longer be applicable from the date where the ~~[generating installation]~~ **power generating facility** is subject to significant modifications, which shall be the case at least where a new connection agreement is required or the generation capacity is increased.

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<sup>1</sup> 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).

5. Priority dispatch shall not endanger the secure operation of the electricity system, shall not be used as a justification for curtailment of cross-border capacities beyond what is provided for in Article 14 and shall be based on transparent and non-discriminatory criteria.

## Article 12

### *Redispatching [~~and curtailment~~]*<sup>1</sup>

1. [~~Curtailment or~~] **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, storage and demand response, including operators located in other Member States unless technically not feasible.**
2. The resources [~~curtailed or~~] redispatched shall be selected amongst generation, **storage** or demand facilities [~~submitting offers for curtailment or redispatching~~] using market-based mechanisms and be financially compensated. **Bids used for redispatching shall be excluded from setting the price in other timeframes.**

*(Parts of 2, moved as 2a below)*

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<sup>1</sup> Definition of redispatching includes curtailment

**2a.** Without prejudice to Union State aid rules pursuant to Articles 107 to 109 TFEU ~~non-~~ market-based ~~[curtailment or]~~ redispatching of generation or redispatching of demand response shall only be used where~~,~~:

**(a)** no market-based alternative is available,

**(b)** ~~[where]~~ **that** all available market-based resources have been used, or

**(c)** ~~[where]~~ **that** the number of generation or demand facilities available in the area where suitable generation or demand facilities for the provision of the service are located is too low to ensure effective competition. ~~[The provision of market-based resources shall be open to all generation technologies, storage and demand response, including operators located in other Member States unless technically not feasible.]~~

3. The responsible system operators shall report at least once per year to the competent regulatory authority on ~~[curtailment or]~~ downward redispatching of **power generating facility** ~~generating installations~~ using renewable energy sources or high-efficiency cogeneration and on measures taken to reduce the need for such ~~[curtailment or]~~ downward redispatching in the future. ~~[Curtailment or redispatching of generating installations using renewable energy sources or high-efficiency cogeneration shall be subject to compensation pursuant to paragraph 6.]~~

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

- (a) guarantee the capability of transmission and distribution networks to transmit electricity produced from renewable energy sources or high-efficiency cogeneration with minimum possible ~~curtailment or~~ redispatching. That shall not prevent network planning from taking into account limited ~~curtailment or~~ redispatching where this is shown to be more economically efficient and **unless otherwise provided by a Member State in which electricity from power generating facility using renewable energy sources or high-efficiency cogeneration represents more than 50 % of annual gross final consumption of electricity,** does not exceed 5 % of installed capacities using renewable energy sources or high-efficiency cogeneration in their area;
- (b) take appropriate grid and market-related operational measures in order to minimise the ~~curtailment or~~ downward redispatching of electricity produced from renewable energy sources or high-efficiency cogeneration.
5. Where non-market-based downward redispatching ~~or curtailment~~ is used, the following principles shall apply:
- (a) ~~generating installations~~ **power generating facility** using renewable energy sources shall only be subject to downward redispatching or curtailment if no other alternative exists or if other solutions would result in disproportionate costs or **severe** risks to network security;
- (b) **electricity generated in a** ~~generating installations using~~ high-efficiency cogeneration shall only be subject to downward redispatching or curtailment if, other than ~~curtailment or~~ downward redispatching of ~~generating installations~~ **power generating facility** 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 curtailed unless no other solution would resolve network security issues;]~~

(d) downward redispatching ~~[or curtailment]~~ under letters a ~~[to]~~ **and b** ~~[e]~~ shall be duly and transparently justified. The justification shall be included in the report under paragraph 3.

6. Where non-market based ~~[curtailment or]~~ redispatching is used, it shall be subject to financial compensation by the system operator requesting the ~~[curtailment or]~~ redispatching to the ~~[owner]~~ **operator** of the ~~[curtailed or]~~ redispatched generation or demand facility **except in the case of generators accepting non-firm connections.** Financial compensation shall at least be equal to the highest of the following elements:

(a) additional operating cost caused by the ~~[curtailment or]~~ redispatching, such as additional fuel costs in case of upward redispatching, or backup heat provision in case of downward redispatching or curtailment of ~~[generating installations]~~ **power generating facility** using high-efficiency cogeneration;

~~[90 % of the n]~~ Net revenues from the sale of electricity on the day-ahead market that the generating or demand facility would have generated without the ~~[curtailment or]~~ redispatching request. Where financial support is granted to generating or demand facilities based on the electricity volume generated or consumed, lost financial support shall be deemed part of the net revenues.

## Chapter III

### Network access and congestion management

#### SECTION 1

#### CAPACITY ALLOCATION

##### *Article 13*

##### *Definition of bidding zones*

1. Bidding zone borders shall be based on ~~[long-term]~~, structural congestions in the transmission network and bidding zones shall not contain such congestions. The configuration of bidding zones in the Union shall be designed in such a way as to maximise economic efficiency and cross-border trading opportunities while maintaining security of supply.
- ~~[2. Each bidding zone should be equal to an imbalance price area.]~~

3. In order to ensure an optimal bidding zone definition in [~~closely interconnected areas~~], a bidding zone review shall be carried out. That review shall include analysis of ~~the~~ **different** configurations of bidding zones in a coordinated manner with the involvement of affected stakeholders from all affected Member States, following the process in accordance with Articles 32 to 34 of Regulation (EU) 2015/1222. **Based on the proposal from the concerned transmission system operators,** ~~The Agency shall [approve and may request amendments to]~~ **decide on** the methodology and assumptions that will be used in the bidding zone review process as well as the alternative bidding zone configurations considered.
4. The transmission system operators participating in the bidding zone review shall submit a proposal to the Commission regarding whether to amend or maintain the bidding zone configuration. Based on that proposal, the Commission shall **for a maximum of three months consult with all affected Member States. Following the consultation, the Commission shall** adopt a decision whether to amend or maintain the bidding zone configuration, [*no later than 6 months after entry into force of this Regulation, specific date to be inserted by OP*] or by [~~six~~] **nine** months after the conclusion of the bidding zone [~~configuration~~] **review** launched in accordance with points (a), (b) or (c) of Article 32(1) of Regulation (EU) 2015/1222, whichever comes later.
5. The decision referred to in paragraph 4 shall be based on the result of the bidding zone review and the transmission system operators' proposal concerning its maintenance or amendment **and the views of the affected member States and Capacity Calculation Region**. The decision shall be justified, in particular as regards possible deviations from the result of the bidding zone review.
6. Where further bidding zone reviews are launched under Article 32(1)(a), (b) or (c) of Regulation (EU) 2015/1222 the Commission **shall follow the procedure outlined in Article 34 of Regulation (EU) 2015/1222 and** may adopt a decision within [~~six~~] **nine** months of the conclusion of that bidding zone review.

7. The Commission shall consult relevant stakeholders on its decisions under this Article before they are adopted.
8. The Commission decision shall specify the date of implementation of a change. That implementation date shall balance the need for expediency with practical considerations, including forward trade of electricity **and shall not be less than 12 months after the decision is published unless otherwise agreed with the relevant Member States.** The Commission may define appropriate transitional **and/or** arrangements as part of its decision.

↓ 714/2009 (adapted)

⇒ new

#### Article ~~1416~~

##### *General principles of ~~the~~ capacity allocation and ~~the~~ 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 ~~preferentially~~ be solved with non-transaction based methods, i.e. 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) 1222/2015. ⇐



2. Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and re-dispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner. Except in cases of force majeure, market participants who have been allocated capacity shall be compensated for any curtailment.
3. **Unless otherwise provided in paragraphs 7, 7a and 8,** ~~The maximum capacity of the interconnections and/or the transmission networks affected~~ **by cross-border [flows] transactions** shall be made available to market participants, complying with safety standards of secure network operation. ⇨ **After implementation of redispatching and countertrading cost sharing methodology in accordance with Article 74 of Commission Regulation (EU) 2015/1222 and Article 76 of Commission Regulation (EU) 2017/XYZZ** ~~Counter-trading and redispatch, including cross-border redispatch, shall be used to maximise available capacities [unless it is demonstrated that it is not beneficial to economic efficiency at Union level.]~~ ⇨
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↓ new

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

5. **In 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 Regulation 714/2009 or Article 59, establishing reserve prices in capacity-allocation methods shall not be allowed.
6. 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.
7. Transmission system operators shall not limit the volume of interconnection capacity to be made available to ~~other~~ market participants in order to solve congestion inside their own **bidding zone** ~~[control area]~~ or as a means of managing flows ~~[on a border between two control areas observed even without any transaction, that is to say flows over control areas caused by origin and destination within one control area]~~ **leaving and re-entering a bidding zone without being scheduled.**

*(Part of 7, moved as 7a below)*

**7a.** Upon request by a transmission system operator **and subject to the coordination procedure set out in this paragraph**, the relevant regulatory authority may grant a derogation from [the first subparagraph] **paragraph 7** where it is necessary for maintaining operational security or where **a socio-economic cost benefit analysis, including cross-border effects, shows that the related costs are expected to be higher than benefits**. Such a derogation, which may not relate to curtailment of already allocated capacities pursuant to paragraph 5, shall be limited in time, strictly limited to what is necessary, and 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 an affected capacity calculation region. In case a regulatory authority disagrees with the proposed derogation, the Agency shall decide on the derogation pursuant to Article 6(8)(a) [recast of Regulation (EC) No 713/2009 as proposed by COM(2016) 863/2]. 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 is reached or, once the solution is applied, whichever is earlier.

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↓ 714/2009

~~4.8.~~ Market participants shall inform the transmission system operators concerned a reasonable time in advance of the relevant operational period whether they intend to use allocated capacity. Any allocated capacity that will not be used shall be reattributed to the market, in an open, transparent and non-discriminatory manner.

~~5.9.~~ Transmission system operators shall, as far as technically possible, net the capacity requirements of any power flows in opposite direction 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 never be denied.

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↓ new

10. The financial consequences of failure to honour obligations associated with the allocation of capacity shall be attributed to those 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 on a secondary basis or give the capacity back in due time, they shall lose the rights to such capacity and pay a cost-reflective charge. Any cost-reflective charges for the non-use of capacity shall be justified and proportionate. If a transmission system operator does not fulfil its obligation, 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 national regulatory authority or authorities.

**11. When allocating costs of remedial actions between transmission system operators, regulators shall analyse to what extent flows leaving and re-entering a bidding zone without being scheduled contribute to the congestion between two bidding zones observed, and allocate the costs in proportion to the contribution to the congestion.**

## Article 15

### *Allocation of cross-zonal capacity across timeframes*

1. Transmission system operators shall recalculate available cross-zonal capacity at least after day-ahead 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 next cross-zonal capacity allocation process.
2. When 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 operating the imbalance netting process.
3. Transmission system operators shall use the methodologies developed in network codes and guidelines on balancing, where applicable, to allocate cross-zonal capacity for the exchange of balancing capacity or sharing of reserves pursuant to Article 5(4) and (7).
4. 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.

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↓ 714/2009 (adapted)

⇒ new

## SECTION 2

### ⊗ NETWORK CHARGES AND CONGESTION INCOME ⊗

#### *Article ~~16~~*

##### *Charges for connection and access to networks*

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 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. ⇒ [~~In particular,~~] **Without prejudice to Article 15(1) and (6) and the criteria in Annex XI of Directive 2012/27/EU** they shall **in particular** be applied in a way which does not discriminate between production connected at the distribution level and production connected at the transmission level, either positively or negatively. They shall not **unduly** discriminate **either positively or negatively** against energy storage and shall not create disincentives for participation in demand response. Without prejudice to paragraph 3, ⇐ ~~t~~hose charges shall not be distance-related.

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↓ new

2. Tariffs **methodologies** shall ~~grant~~ **reflect** appropriate incentives to transmission and distribution system operators, **The allowed revenues to be recovered through distribution and transmission tariffs shall reflect appropriate incentives to transmission and distribution system operators** over both the short and long term, to increase efficiencies, including energy efficiency, foster market integration ~~and~~ security of supply, and support investments and ~~the related research activities~~ **facilitate innovation**.
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↓ 714/2009 (adapted)

⇒ new

- ~~3.3.~~ Where appropriate, the level of the tariffs applied to producers and/or consumers shall provide locational signals at  Union  ~~Community~~ level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure.
- ~~3.4.~~ 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 of time, estimated on the basis of past periods.

4.5. Setting the charges for network access under this Article shall be without prejudice to charges ~~on declared exports and declared imports~~ resulting from congestion management referred to in Article ~~1416~~.

5.6. There shall be no specific network charge on individual transactions for ~~⇒ cross-[border]~~ **zonal** trade ~~⇐ declared transits~~ of electricity.

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↓ new

7. Distribution tariffs shall reflect the cost of use of the distribution network by system users including active customers, 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 may introduce]~~ time differentiated network tariffs **may be introduced**, reflecting the use of the network, in a transparent and foreseeable way for the consumer.

8. ~~[Regulatory authorities shall provide incentives to distribution system operators to procure services for the operation and development of their networks and integrate innovative solutions in the distribution systems. For that purpose authorities shall recognise as eligible and include all relevant costs in distribution tariffs and introduce]~~ Distribution tariffs may include performance targets in order to incentivise distribution system operators ~~[to raise efficiencies, including energy efficiency, in their networks]~~ **to operate their networks as efficiently as possible.**

~~9.~~ By ~~[OP: please add specific date – three months after entry into force]~~ the Agency shall provide a **best practice report** ~~[recommendation addressed to regulatory authorities]~~ on the progressive convergence of transmission and distribution tariff methodologies. That recommendation shall address at least:



- (a) the ratio of tariffs applied to producers and to consumers;
- (b) the costs to be recovered by tariffs;
- (c) time differentiated network tariffs;
- (d) locational signals;
- (e) the relationship between transmission and distribution tariffs, including principles relating to non-discrimination;
- (f) methods to ensure transparency in the setting and structure of tariffs;
- (g) groups of network users subject to tariffs, including tariff exemptions.]

**The Agency shall update its report at least once every two years.**

[10. — Without prejudice to further harmonisation by way of [delegated] acts pursuant to Article 55(1)(k), regulatory authorities shall take the Agency's recommendation duly into consideration when approving or fixing transmission tariffs or their methodologies in accordance with Article 59(6)(a) of [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2].

[11. — The Agency shall monitor the implementation of its recommendation and provide a report to the Commission by 31st January each year. It shall update the recommendation at least once every two years.]

*Article 17*

*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 7 of Regulation (EC) No 1228/2003, Article 17 of Regulation (EC) No 714/2009 or Article 59. 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.

↓ 714/2009 (adapted)

⇒ new

~~2.6.~~ Any revenues resulting from the allocation of interconnection ~~⊗~~ capacity ~~⊗~~ shall be used for the following purposes:

- (a) guaranteeing the actual availability of the allocated capacity **including firmness compensation; and/or**
- (b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors **and internal lines which are listed in Ten Years Network Development Plan of ENTSOE as being relevant to reduce interconnector congestion, as well as cross-border remedial actions such as redispatch and counter-trading.**

*(Part of 2(b), moved as 2a below)*

**2a.** If a socio-economic cost-benefit analysis demonstrates that the revenues cannot be efficiently used for the purposes set out in points (a) and/or (b) of [the first sub]paragraph 2, ⇨ they shall be placed on a separate internal account line for future use on these purposes or may be used, subject to approval by the regulatory authorities of the Member States concerned, as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs and/or fixing network tariffs.

~~they may be used, subject to approval by the regulatory authorities of the Member States concerned, up to a maximum amount to be decided by those regulatory authorities, as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs and/or fixing network tariffs.~~

~~The rest of revenues shall be placed on a separate internal account line until such time as it can be spent on the purposes set out in points (a) and/or (b) of the first subparagraph. The regulatory authority shall inform the Agency of the approval referred to in the second subparagraph.~~

↓ new

3. The use of revenues in accordance with points (a) and (b) of paragraph 2 shall be subject to a methodology proposed by the transmission system operators [the Agency] and approved by the Agency [the Commission]. ~~The Agency's proposal shall be submitted to the Commission by [OP: 12 months after entry into force] and be approved within six months.]~~ The transmission system operators shall submit the proposal to the Agency by [OP: 12 months after entry into force] and the Agency shall decide on it within six months.

~~[The Agency may, at its own initiative or upon a request from the Commission update the methodology and the Commission shall approve the updated methodology not later than six months from its submission.]~~

~~[Before submission to the Commission, the Agency shall consult on the methodology pursuant to Article 15 [recast of Regulation (EC) No 713/2009 as proposed by COM(2016) 863/2]].~~

*(Part of 3, moved as 3a below)*

- 3a.** The methodology shall detail as a minimum the conditions under which the revenues ~~[can be used for]~~ **are deemed to have fulfilled the objectives expressed in** points (a) and (b) of paragraph 2, **the main elements to cover in a cost benefit analysis of the social welfare benefits of further interconnection,** ~~[and]~~ the conditions under which, and for how long, they may be placed on a separate internal account line for future use on those purposes **or taken into account for calculation of network tariffs.**

Transmission system operators shall clearly establish beforehand how any congestion income will be used, and report on the actual use of that income. On an annual basis, and by 31 ~~July~~ **January** each year, the national regulatory authorities shall publish a report setting out the amount of revenue collected for the 12-month period ending on 30~~1~~ ~~June~~ **December** of the ~~same~~ **previous calendar** year and how that revenue was used, including the specific projects the income has been used for or the amount placed on a separate account line **or the amount that has been used when calculating network tariffs**, together with verification that that use complies with this Regulation and the methodology developed pursuant to paragraph 3. **In such cases where some of the congestion revenues are used when calculating network tariffs, the report shall set out how the TSOs fulfilled the priority objectives in Article 2.**

## Chapter IV

### Resource adequacy

#### Article 18

##### Resource adequacy

1. Member States shall monitor resource adequacy within their territory **and contribute to** ~~[based on]~~ the European resource adequacy assessment pursuant to Article 19
2. Where the European resource adequacy assessments ~~identifies~~ a resource adequacy concern Member States shall identify any regulatory distortions **or system bottlenecks** that caused or contributed to the emergence of the concern.
3. Member States shall publish **roadmap with a concrete** a timeline for adopting measures to eliminate any identified ~~[regulatory distortions]~~ **issues**. When addressing resource adequacy concerns Member States shall in particular **take into account the principles defined in Article 3 and** consider removing regulatory distortions, enabling scarcity pricing **via free price formation**, developing interconnection, **allowing for undistorted market access for all market participants including** energy storage, **and** demand side measures and energy efficiency.

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↓ 714/2009 (adapted)

⇒ new

### Article 19

#### ⊗ European resource adequacy assessment ⊗

4.1. The European ⇒ resource adequacy assessment ⇐ ~~generation adequacy outlook referred to in point (b) of paragraph 3~~ shall cover the overall adequacy of the electricity system to supply current and projected demands for electricity ⇒ for a ten-year period from the date of that assessment, in a yearly resolution **and taking into account the national contributions under paragraph one of Article 18.** ⇐ ~~for the next five-year period as well as for the period between five and 15 years from the date of that outlook. The European generation adequacy outlook shall build on national generation adequacy outlooks prepared by each individual transmission system operator.~~

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↓ new

2. By [OP: six months after entry into force of this Regulation], the ENTSO for Electricity shall submit to the Agency a draft methodology for the European resource adequacy assessment based on the principles provided for in paragraph 4.
3. Transmission system operators shall provide the ENTSO for Electricity with the data it needs to carry out, [every year,] the European resource adequacy assessment. The ENTSO for Electricity shall carry out the assessment every year. **Generators and other market participants shall provide transmission system operators with data regarding expected utilization of the generation resources, considering the availability of primary resources and appropriate scenarios of projected demand and supply.**

4. The European resource adequacy assessment shall be based on a methodology which shall ensure that the assessment:
- (a) is carried out on **each respective** bidding zone level covering at least all Member States **and taking appropriately into account the conditions and specificities at the Member State level;**
  - (b) is based on appropriate scenarios of projected demand and supply including an economic assessment of the likelihood of retirement, new-build of generation assets and measures to reach energy efficiency targets and appropriate sensitivities on wholesale prices and carbon price developments;
  - (c) appropriately takes account of the contribution of all resources including existing and future generation, energy storage, demand response, and import and export possibilities and their contribution to flexible system operation;
  - (d) anticipates the likely impact of the measures referred in Article 18(3);
  - (e) includes scenarios without **and with** existing or planned capacity mechanisms;
  - (f) is based on a market model using, where applicable, the flow-based approach;
  - (g) applies probabilistic calculations;
  - (h) applies at least the following indicators:
    - "expected energy not served", and
    - "loss of load expectation";



(i) identifies the sources of possible resource adequacy concerns, in particular whether it is a network or a resource constraint, or both.

(j) **Ensuring that national properties of resources (e.g. generation, demand flexibility, storage), including the availability of primary resources, are properly taken into consideration**

5. By [OP: *six months after entry into force of this Regulation*], the ENTSO for Electricity shall submit to the Agency 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 20** [~~expressed as "expected energy not served" the "loss of load expectation".~~]

6. The proposals under paragraphs 2 and 5 **for the draft methodology** [~~and the results of the European resource adequacy assessment under paragraph 3~~] shall be subject to prior consultation and approval by the Agency under the procedure set out in Article 22.

#### *Article 20*

##### *Reliability standard*

1. When applying capacity mechanisms Member States shall have a reliability standard in place indicating their desired level of security of supply in a transparent manner.

2. The reliability standard shall be set by the [~~national regulatory authority~~] **Member State or a competent authority designated by the Member State** based on the methodology pursuant to Article 19(5).

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 be expressed as "expected energy not served" and the "loss of load expectation"**.
4. The parameters determining the amount of capacity procured in the capacity mechanism shall be approved by the **Member State or another competent authority designated by the Member State.** [~~national regulatory authority.~~]

#### *Article 21*

##### *Cross-border participation in capacity mechanisms*

1. Mechanisms other than strategic reserves shall be open to direct participation of capacity providers located in another Member State [~~provided there is a network connection between that Member State and the bidding zone applying the mechanism~~] **pursuant to the provisions of paragraph 2 of this Article.**
2. Member States shall ensure that foreign capacity capable of providing [~~equivalent technical performance~~] **contribution to the desired level of adequacy on the same conditions as** [~~to~~]-domestic capacities has the opportunity to participate in the same competitive process as domestic capacity. **Member States may apply following requirements to the foreign capacity:**
  - (a) **the capacity is located in a bidding zone with a direct network connection between that bidding zone and the bidding zone applying the mechanism,**
  - (b) **the capacity is not participating in another capacity mechanism for which the capacity needs to be available.**

3. Member States shall not restrict capacity which is located in their territory from participating in capacity mechanisms of other Member States.
4. Cross-border participation in market-wide capacity mechanisms shall not change, alter or otherwise impact cross-zonal schedules and physical flows between Member States which shall be determined solely by the outcome of capacity allocation pursuant to Article 14.
5. Capacity providers **shall be subject to non-availability payments in case of non-availability. In case capacity providers** ~~[shall be able to]~~ participate in more than one mechanism for the same delivery period, ~~They shall be subject to [non-availability payments in case of non-availability, and subject to]~~ two or more non-availability payments where there is concurrent scarcity in two or more bidding zones where the capacity provider is contracted.
6. ~~[Regional Operational Centres]~~ **Regional Security Coordinators [+]** established pursuant to Article 32 shall annually calculate the maximum entry capacity available for the participation of foreign capacity 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. A calculation is required for each bidding zone border.
7. Member States shall ensure that the entry capacity referred to in paragraph 6 is allocated to eligible capacity providers in a transparent, non-discriminatory and market-based manner.
8. Any difference in the cost of foreign capacity and domestic capacity arising through the allocation referred to in paragraph 7 shall accrue to transmission system operators and be shared between them according to the methodology referred in point (b) of paragraph 10. Transmission system operators shall use such revenues for the purposes set out in Article 17(2).

9. 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 the capacity provider in the registry as eligible capacity providers.
  - (b) carry out availability checks ~~[as appropriate.]~~
  - (c) **be notified by the respective capacity provider without delay about its participation in foreign capacity mechanism**
10. By [OP: *twelve months after entry into force of this Regulation*] the ENTSO for Electricity shall submit to the Agency:
- (a) a methodology for calculating the maximum entry capacity for cross-border participation as referred to in paragraph 6;
  - (b) a methodology for sharing the revenues referred to in paragraph 8;
  - (c) common rules to carry out availability checks referred to in point (b) of paragraph 9;
  - (d) common rules to determine when a non-availability payment is due;
  - (e) terms of the operation of the registry as referred to in point (a) of paragraph 9;
  - (f) common rules to identify capacity eligible to participate as referred to in point (a) of paragraph 9.

The proposal shall be subject to prior consultation and approval by the Agency under the procedure set out in Article 22.

11. The [Agency] **national regulatory authorities concerned** shall verify whether the capacities have been calculated in line with the methodology as referred to in point (a) of paragraph 10.
12. National 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.
13. Allocated capacities as referred to in paragraph 7 shall be transferable between eligible capacity providers. Eligible capacity providers shall notify any transfer to the registry as referred to in point (a) of paragraph 9.
14. No later than [OP: *two years after the entry into force of this Regulation*] the ENTSO for Electricity shall set up and operate the registry as referred to in point (a) of paragraph 9. The registry shall be open to all eligible capacity providers, the systems applying the mechanisms and their transmission system operators.

## *Article 22*

### *Approval procedure*

1. Where reference is made to this Article, the procedure set out in paragraphs 2 to 4 shall be applicable to the approval of a proposal submitted by the ENTSO for Electricity.
2. Prior to submitting the proposal, the ENTSO for Electricity shall conduct a consultation process involving all relevant stakeholders, national regulatory authorities and other national authorities **and shall take the results of a consultation process duly into consideration.**

3. Within three months from the date of receipt, the Agency shall either approve the proposal or amend it. In the latter case, the Agency shall consult the ENTSO for Electricity before adopting the amended proposal. The adopted proposal shall be published on the Agency's website at the latest three months after the date of receipt of the proposed documents.
4. The Agency may request changes to the approved proposal at any time. Within six months from the request, the ENTSO for Electricity shall submit to the Agency a draft of the proposed changes. Within a period of three months from the date of receipt of the draft, the Agency shall amend or approve the changes and publish it on its website.

### *Article 23*

#### *Design principles for capacity mechanisms*

1. To address residual concerns that cannot be eliminated by the measures pursuant to Article 18(3), Member States may introduce capacity mechanisms, subject to the provisions of this Article and ~~[to]~~ **without prejudice to** the Union State aid rules.
2. Where a Member State wishes to implement a capacity mechanism, it shall consult on the proposed mechanism at least with its electrically connected neighbouring Member States, **based on a comprehensive study on the possible effects on those Member States.**
  - 2a. **When a capacity mechanism is designed as a strategic reserve, resources in the strategic reserve shall only be dispatched in case transmission system operators have exhausted their balancing resources to establish an equilibrium between demand and supply. During periods where resources in the strategic reserve were dispatched imbalances in the market shall be settled at least at the value of lost load.**

3. Capacity mechanisms shall:
- (a) not create unnecessary market distortions and not limit cross~~[-border]~~**zonal** trade;
  - (b) **be market-based;**
  - (c) **be open to participation of all resources in a technology neutral manner, including participation of storage and demand response, that are capable of providing the required technical performance;**
  - (d) **be temporary;**
  - (e) ~~[The amount of capacity committed in the mechanism shall]~~ not go beyond what is necessary to address the concern.
4. Generation capacity for which a final investment decision has been made after [OP: *entry into force*] **operating for more than [X] hours per year** shall only be eligible to participate in a capacity mechanism if its emissions are below 550 gr CO<sub>2</sub>/kWh. Generation capacity **operating for more than [X] hours per year** emitting 550 gr CO<sub>2</sub>/kWh or more shall not be committed in capacity mechanisms ~~5~~ **7** years after the entry into force of this Regulation.
5. Where the European resource adequacy assessment has not identified a resource adequacy concern, Member States shall not apply capacity mechanisms.
- 5a. When designing capacity mechanisms, Member States shall include a provision allowing for efficient phase-out of a capacity mechanism in case the European resource adequacy assessment proves that the adequacy concern is not present anymore.**

*Article 24*

*Existing mechanisms*

Member States applying capacity mechanisms on [OP: *entry into force of this Regulation*] shall adapt their mechanisms to comply with Articles 18, 21 and 23 of this Regulation **within 7 years after entry into force of this Regulation.**



## Chapter V

### ⊗ Transmission system operation ⊗

#### *Article 254*

##### *European network of transmission system operators for electricity*

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

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↓ new

2. In performing its functions under EU law, the ENTSO for Electricity shall [~~aet for the European good and independent from individual national interests or the national interests of transmission system operators, 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.**

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↓ 714/2009

⇒ new

*Article ~~26~~<sup>5</sup>*

*Establishment of the ENTSO for Electricity*

1. ~~By 3 March 2011,~~ The transmission system operators for electricity shall submit to the Commission and to the Agency the draft statutes, a list of members and draft rules of procedure, including the rules of procedures on the consultation of other stakeholders, of the ENTSO for Electricity to be established.
2. Within two months of the day of the receipt, the Agency, after formally consulting the organisations representing all stakeholders, in particular the system users, including customers, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.
3. The Commission shall deliver an opinion on the draft statutes, list of members and draft rules of procedures taking into account the opinion of the Agency provided for in paragraph 2 and within three months of the day of the receipt of the opinion of the Agency.
4. Within three months of the day of receipt of the Commission's ⇒ favourable ⇐ opinion, the transmission system operators shall establish the ENTSO for Electricity and adopt and publish its statutes and rules of procedure.

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↓ new

5. The documents referred to in paragraph 1 shall be submitted to the Commission and to the Agency in case of changes thereof or upon reasoned request of the Commission or of the Agency. The Agency and the Commission shall deliver an opinion in accordance with paragraphs 2 to 4.

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↓ 714/2009 (adapted)

⇒ new

*Article ~~27~~<sup>28</sup>*

*Tasks of the ENTSO for Electricity*

~~1. The ENTSO for Electricity shall elaborate network codes in the areas referred to in paragraph 6 of this Article upon a request addressed to it by the Commission in accordance with Article 6(6).~~

1. The ENTSO for Electricity ~~may~~ ⇒ shall ⇐ :

(a) elaborate network codes in the areas set out in ~~paragraph 6~~ Article 55(1) with a view to achieving the objectives set out in Article 254 ~~where those network codes do not relate to areas covered by a request addressed to it by the Commission. Those network codes shall be submitted to the Agency for an opinion. That opinion shall be duly taken into account by the ENTSO for Electricity.~~

~~3. The ENTSO for Electricity shall adopt:~~

(b)  adopt and publish  a non-binding  Union  ~~Community~~-wide ten-year network development plan, ( Union  ~~Community~~-wide network development plan), ~~including a European generation adequacy outlook~~, every two years;

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↓ new

(c) prepare and adopt proposals related to the European resource adequacy assessment pursuant to Article 19(2), (3) and (5) and for the technical specifications for cross-border participation in capacity mechanisms pursuant to Article 21(10);

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↓ 714/2009 (adapted)

~~(e)~~ (d)  adopt  recommendations relating to the coordination of technical cooperation between  Union  ~~Community~~ and third-country transmission system operators;

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↓ new

(e) adopt a framework for the cooperation and coordination between **regional security coordinators**;

(f) adopt a proposal defining the **security coordinated** ~~[system operation]~~ region covered by each regional **security coordinator** ~~[operational centre]~~;

**(f1) cooperate with distribution system operators.**

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↓ 347/2013 (adapted)

⇒ new

~~(a)~~ (g) ☒ adopt ☒ common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incidents~~g~~ classification scale, and research plans ⇒, including the deployment of these plans through an efficient research programme ⇐. These tools shall specify inter alia:

- (i) the information, including appropriate day ahead, intra-day 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 the Agency; 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 the Agency concerning such information.

~~The ENTSO for Electricity shall submit the adopted specifications on points (i) to (iv) above to the Agency and to the Commission by 16 May 2015.~~

~~Within 12 months of the adoption of the specifications, the Agency shall issue an opinion in which it considers whether they sufficiently contribute to the promotion of cross-border trade and to ensuring the optimal management, coordinated operation, efficient use and sound technical evolution of the European electricity transmission network.~~

↓ 714/2009 (adapted)

⇒ new

~~(d)~~ (h) ☒ adopt ☒ an annual work programme;

~~(e)~~ (i) ☒ adopt ☒ an annual report;

(j)~~(f)~~ ☒ carry out and adopt ☒ ~~annual summer and winter generation~~ ⇒ seasonal ⇐ adequacy outlooks ☒ pursuant to Article 9(2) [Regulation on risk preparedness as proposed by COM(2016) 862] ☒ ~~.~~

~~4. The European generation adequacy outlook referred to in point (b) of paragraph 3 shall cover the overall adequacy of the electricity system to supply current and projected demands for electricity for the next five-year period as well as for the period between five and 15 years from the date of that outlook. The European generation adequacy outlook shall build on national generation adequacy outlooks prepared by each individual transmission system operator.~~

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↓ new

2. The ENTSO for Electricity shall report to the Agency on shortcomings identified regarding the establishment and performance of [~~Regional Operational Centres~~] **Regional Security Coordinators** [+].

3. The ENTSO for Electricity shall publish the minutes of its Assembly, Board and Committees meetings and provide the public with regular information on its decision-making and activities.

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↓ 714/2009 (adapted)

⇒ new

~~5.4.~~ The annual work programme referred to in ~~(d)~~ (h) of paragraph ~~3~~ 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.

~~9.5.~~ The ENTSO for Electricity shall make available all information required by the Agency to fulfil its tasks under Article ~~299~~(1). ⇒ Transmission system operators shall make available all information required for the ENTSO for Electricity to fulfil its task under sentence 1. ⇐

~~6.12.~~ Upon request of the Commission, the ENTSO for Electricity shall give its views to the Commission on the adoption of the ~~g~~ Guidelines as laid down in Article ~~57~~~~48~~.

~~7.~~ The network codes shall be developed for cross-border network issues and market integration issues and shall be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade.

~~8. The ENTSO for Electricity shall monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission in accordance with Article 6(11), and their effect on the harmonisation of applicable rules aimed at facilitating market integration. The ENTSO for Electricity shall report its findings to the Agency and shall include the results of the analysis in the annual report referred to in point (e) of paragraph 3 of this Article.~~

## *Article ~~2810~~*

### *Consultations*

1. While preparing the ~~⇒~~ proposals pursuant to the tasks referred to in Article 27(1) ~~⇐~~ ~~network codes, the draft Community wide network development plan and the annual work programme referred to in Article 8(1), (2) and (3),~~ the ENTSO for Electricity shall conduct an extensive consultation process, at an early stage and in an open and transparent manner, involving all relevant ~~⊗~~ stakeholders ~~⊗~~ market participants, and, in particular, the organisations representing all stakeholders, in accordance with the rules of procedure referred to in Article ~~26~~ ~~5(1)~~. That consultation shall also involve national 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 pursuant to Article 27(1) ⇐ ~~annual work programme and the network codes referred to in Article 8(1), (2) and (3)~~, 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 ~~29~~*

#### *Monitoring by the Agency*

1. The Agency shall monitor the execution of the tasks referred to in ~~Article 27~~(1), (2) and (3) of the ENTSO for Electricity and report to the Commission.

The Agency shall monitor the implementation by the ENTSO for Electricity of network codes elaborated under ~~Article 55(14) 8(2) and network codes which have been developed in accordance with Article 6(1) to (10) but which have not been adopted by the Commission under Article 6(11)~~. Where the ENTSO for Electricity has failed to implement such network codes, the Agency shall request the ENTSO for Electricity to provide a duly reasoned explanation as to why it has failed to do so. The Agency shall inform the Commission of that explanation and provide its opinion thereon.

The Agency shall monitor and analyse the implementation of the network codes and the ~~g~~Guidelines adopted by the Commission as laid down in ~~Article 54(1) 6(11)~~, 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  ~~Community~~-wide network development plan, the draft annual work programme, including the information regarding the consultation process, and the other documents referred to in Article 27(1) ~~8(3)~~ to the Agency for its opinion.

Within two months from the day of receipt, the Agency shall provide a duly reasoned opinion as well as recommendations to the ENTSO for Electricity and to the Commission where it considers that the draft annual work programme or the draft  Union  ~~Community~~-wide network development plan submitted by the ENTSO for Electricity do 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.

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↓ 347/2013
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*Article ~~30~~*

*Costs*

The costs related to the activities of the ENTSO for Electricity referred to in Articles 25 to 29 and 54 to 57 ~~4 to 12~~ of this Regulation, and in Article 11 of Regulation (EU) No 347/2013 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.

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↓ 714/2009

⇒ new

*Article ~~31~~<sup>12</sup>*

*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 ~~27~~<sup>28</sup>(1), (2) and (3). In particular, they shall publish a regional investment plan every two years, 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 are not yet 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.

3. For the purposes of achieving the goals set in paragraphs 1 and 2 of this Article, the geographical area covered by each regional cooperation structure may be defined by the Commission, taking into account existing regional cooperation structures. Each Member State shall be allowed to promote cooperation in more than one geographical area. ⇒ The Commission is empowered to adopt [delegated] acts in accordance with Article 63 concerning the geographical area covered by each regional cooperation structure. ⇐ ~~The measure referred to in the first sentence, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23 (2).~~ For that purpose, the Commission shall consult the Agency and the ENTSO for Electricity.
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↓ new

#### Article 32

#### *Establishment and mission of [Regional Operational Centres] **Regional Security Coordinators** [+]*

1. By [OP: *twelve months after entry into force*], all transmission system operators of a **system operation region** shall [-establish [Regional Operational Centres] in accordance with the criteria set out in this chapter. [Regional Operational Centres] shall be established in the territory of one of the Member States of the region where it will operate.] **submit a proposal for the establishment of Regional Security Coordinators** [+] **for approval by the respective regulatory authorities.**

2. ~~[Regional Operational Centres]~~ **Regional Security Coordinators [+]** shall be organised in a legal form as referred to in Article 1 of Directive 2009/101/EC of the European Parliament and of the Council.<sup>1</sup>
3. ~~[Regional Operational Centres]~~ **Transmission system operators shall manage electricity flows and ensure a secure, reliable and efficient electricity system in accordance with applicable Union and national legislation. Regional Security Coordinators [+]** shall complement the role of transmission system operators by performing ~~[functions]~~ **tasks** of regional relevance **assigned to them in accordance with Article 34**. ~~[They shall establish operational arrangements in order to ensure the efficient, secure and reliable operation of the interconnected transmission system.]~~ **Regional Security Coordinators [+]** shall take up their activities by 1 January 2025.

### Article 33

#### *[ Geographical scope of regional operational centres*

1. By ~~[OP: six months after entry into force of this Regulation]~~ the ENTSO for Electricity shall submit to the Agency a proposal defining system operation regions covered by regional operational centres, taking into account existing regional security coordinators, on the basis of the following criteria:
  - (a) The grid topology, including the degree of interconnection and of interdependency of the power systems in terms of flows;

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<sup>1</sup> Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

- (b) the synchronous connection of the systems;
  - (c) the size of the region, which shall cover at least one capacity calculation region;
  - (d) the geographical optimization of balancing reserves.
2. Within three months of receipt, the Agency shall either approve the proposal defining the system operation regions or propose amendments. In the latter case, the Agency shall consult the ENTSO for Electricity before adopting the amendments. The adopted proposal shall be published on the Agency's website.]

#### *Article 34*

#### *Tasks of ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+]*

1. Each ~~[regional operational centre]~~ regional **security coordinator** shall perform all the following ~~[functions]~~ **tasks towards transmission system operators** in the system operation region ~~[where established, and Regional Operational Centres shall perform at least the following tasks functions]~~, set out in more detail in Annex I:
- (a) coordinated capacity calculation **in accordance with the methodologies developed pursuant to Articles 21, 26, 29, and 30 of [Commission Regulation XXX establishing a guideline on capacity allocation and congestion management]**;
  - (b) coordinated security analysis **in accordance with the methodologies developed pursuant to Articles 75 and 76 of [Commission Regulation XXX establishing a guideline on electricity transmission system operation]**;

- (c) creation of common system models in accordance with the methodologies and procedures developed pursuant to Articles 67, 70 and 79 of [Commission Regulation establishing a guideline on electricity transmission system operation];
- (d) consistency assessment of transmission system operators' defense plans and restoration plans in accordance with the procedure set out in Article 6 of [Commission Regulation establishing a network code on electricity emergency and restoration];
- (da) regional week ahead to intraday system adequacy forecasts and preparation of risk reducing actions in accordance with the procedures set out in Article 81 of [Commission Regulation XXX establishing a guideline on electricity transmission system operation]**
- (db) outage planning coordination in accordance with the procedures set out in Article 80 of [Commission Regulation XXX establishing a guideline on electricity transmission system operation]**
- (dc) short-term adequacy assessment pursuant to Article 9(2) of [Regulation on risk preparedness as proposed by COM(2016) 862]**
- (dd) training and certification of staff working for Regional Security Coordinators[+]**

*[additional functions to be discussed:*

*where Regional Security Coordinators[+] will issue only Recommendations subject to Article 38:*

[(e) coordination and optimization of regional restoration;]

[(f) post-operation and post-disturbances analysis and reporting;]

*(g) was moved below*

[(h) facilitate the regional procurement of balancing capacity;]

~~[(i) regional week ahead to intraday system adequacy forecasts and preparation of risk reducing actions;]~~

~~[(j) outage planning coordination;]~~

[(k) optimisation of compensation mechanisms between transmission system operators]

~~[(l) training and certification;]~~

[(m) identification of regional crisis scenarios if and to the extent they are requested pursuant to Article 6(1) of [Regulation on risk preparedness as proposed by COM(2016) 862]

[(n) preparation and carrying out of yearly crisis simulations in cooperation with competent authorities pursuant to Article 12(3) of [Regulation on risk preparedness as proposed by COM(2016) 862];]



~~[(o) tasks related to the identification of regional crisis scenarios if and to the extent they are [delegated] to the Regional Operational Centres pursuant to Article 6(1) of [Regulation on risk preparedness as proposed by COM(2016) 862];]~~

[(p) tasks related to the seasonal adequacy outlooks if and to the extent they are requested pursuant to Article 9(2) of [Regulation on risk preparedness as proposed by COM(2016) 862];

*with possible oversight by NRAs and/or Member States:*

[(g) regional sizing of reserve capacity;]

[(q) calculate the maximum entry capacity available for the participation of foreign capacity in capacity mechanisms pursuant to Article 21(6).]

2. ~~[The Commission may add other functions to the Regional Operational Centres not involving decision making power, pursuant to Chapter VII of this Regulation.].~~

3. Transmission system operators shall provide their ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+]~~with the information necessary to carry out its functions.~~

4. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+]~~shall provide transmission system operators of the system operation region with all the information necessary to implement the decisions~~ **proposals for coordinated remedial actions** and recommendations proposed by the ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+]

Article 35

*Cooperation within [Regional Operational Centres] and between Regional Security Coordinators*

[+]

1. The day-to-day [operation of Regional Operational Centres] **coordination within Regional Security Coordinators** [+] shall be managed through cooperative ~~decision-making~~ **process**. [The cooperative decision making process shall be] based on:
  - (a) working arrangements to address planning and operational aspects [related to the functions, in accordance with Article 36] **relevant for the services referred to in Article 34(1)**;
  - (b) a procedure for **sharing analysis and consulting Regional Security Coordinators proposals with** the transmission system operators [of the system operation region in the exercise of its operational duties and tasks,] in accordance with Article 37;
  - (c) a procedure for the adoption of decisions and recommendations in accordance with Article 38;
  - (d) a procedure for the revision of [~~decisions~~] **coordinated actions** and recommendations [adopted by Regional Operational Centres] **issued by Regional Security Coordinators** [+] in accordance with Article 39.

## Article 36

### *Working arrangements*

1. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ shall develop working arrangements to address planning and operational aspects related to the functions to be performed, taking into account, in particular, the specificities and requirements of those functions as specified in Annex I.
2. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ shall ensure that the working arrangements contain rules for the notification of parties concerned.

## Article 37

### *Consultation procedure*

~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ 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 **other Regional Security Coordinators** ~~[+]~~ and of relevant stakeholders. In order to ensure that regulatory issues can be addressed, regulatory authorities shall be involved when required.

Article 38

~~[Adoption of decisions]~~ **Coordinated actions** and recommendations

1. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] shall develop a procedure for the adoption of ~~[decisions]~~ **coordinated actions** and recommendations.
2. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] shall ~~[adopt binding decisions]~~ **set-out coordinated actions** addressed to the transmission system operators in respect of the functions referred to in points (a), (b), ~~[(g) and (q)]~~ *[additional functions to be discussed]* of Article 34(1). Transmission system operators **may not** ~~[shall]~~ implement the **coordinated actions** ~~[binding decisions]~~ issued by the **Regional Security Coordinators** [+] where **the impementation of the coordinated actions would result in a violation of the operational security limits defined by each transmission system operator in accordance with Article 25 of [Commission Regulation XXX establishing a guideline on electricity transmission system operation]** ~~[Regional Operational Centres except in cases when the safety of the system will be negatively affected.]~~
  - 2a. **Where a transmission system operator decides not to implement a coordinated action for the reasons set out in paragraph 2, it shall notify it to the Regional Security Coordinator** [+] with the shortest delay possible. **In such cases, the Regional Security Coordinator** [+] shall assess the impact on the other transmission system operators of the system operation region and may propose a different set of coordinated actions **subject to a procedure in paragraph 2.**
3. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** [+] shall adopt recommendations addressed to the transmission system operators for the functions referred to in points (c) to *[additional functions to be discussed]* ~~[(f) and (h) to (p)]~~ of Article 34(1).

4. The regulatory authorities of a system operation region may jointly decide to grant binding decision-making powers to the ~~[regional operational centre]~~ **Regional Security Coordinators** <sup>[+]</sup> for one or more of the functions provided for in ~~[points (e) to (f) and (h) to (l) of]~~ Article 34(1).

#### Article 39

##### *Revision of ~~[decisions]~~ **coordinated actions** and recommendations*

1. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** <sup>[+]</sup> shall develop a procedure for the revision of ~~[decisions]~~ **coordinated actions** and recommendations **referred to tasks described in Article 34.**
2. The procedure shall be triggered at the request of one or more of the transmission system operators of the system operation region. Following the revision of the ~~[decisions]~~ **coordinated action** or recommendation, ~~[Regional Operational Centres]~~ **Regional Security Coordinators** <sup>[+]</sup> shall confirm or modify the measure.
3. Where the measure subject to revision is a ~~[binding decisions]~~ **coordinated actions** in accordance with Article 38(2), the request for revision shall not suspend the ~~[decisions]~~ **coordinated action** except in cases ~~[when the safety of the system will be negatively affected.]~~ **where the impementation of the coordinated actions would result in a violation of the operational security limits defined by each transmission system operator in accordance with Article 25 of [Commission Regulation XXX establishing a guideline on electricity transmission system operation]**

4. Where the measure subject to revision is a recommendation in accordance with Article 38(3) and following its revision a transmission system operator decides to deviate from the recommendation, the transmission system operator shall submit a ~~[detailed]~~ justification to the ~~[Regional Operational Centres]~~ **Regional Security Coordinators [ + ]** and to the other transmission system operators of the system operation region.

*Article 40*

*Management board of ~~[Regional Operational Centres]~~ **Regional Security Coordinators [ + ]***

1. In order to adopt measures related to their governance and to monitor their performance, the ~~[Regional Operational Centres]~~ **Regional Security Coordinators [ + ]** shall establish a management board.
2. The management board shall be composed of members representing the transmission system operators ~~[ and of observers representing the regulatory authorities of the system operation region. The representatives of the regulatory authorities shall have no voting rights. ]~~
3. The management board shall be responsible for:
  - (a) drafting and endorsing the statutes and rules of procedure of the ~~[Regional Operational Centres]~~ **Regional Security Coordinators [ + ]**;
  - (a) deciding upon and implementing the organisational structure;
  - (b) preparing and endorsing the annual budget;

(c) developing and endorsing the cooperative decision-making processes in accordance with Article 35.

4. The competences of the management board shall exclude those that are related to the day-to-day activities of ~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ and the performance of its functions.

#### *Article 41*

##### *Organisational structure*

1. **Transmission system operators shall establish the necessary arrangements for** Regional security coordinators ~~[operational centres shall set up and]~~ **to** manage their organisation according to a structure that supports the safety of their **tasks** ~~[functions]~~. Their organisational structure shall specify:

(a) the authority, duties and responsibilities of the management personnel;

(b) the relationship and reporting lines between different parts and processes of the organisation.

2. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ may set up regional desks to address ~~[local]~~ **sub-regional** specificities or back-up regional security coordinators for the efficient and reliable exercise of their functions.

*Article 42*

*Equipment and staff*

~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ shall be equipped with all the human, technical, physical and financial resources necessary for fulfilling their obligations under this Regulation and carrying out their functions.

*Article 43*

*Monitoring and reporting*

1. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ shall establish a process for the continuous monitoring of at least:
  - (a) their operational performance;
  - (b) the ~~[decisions]~~ **coordinated actions** and recommendations issued and the outcome achieved;
  - (c) the effectiveness and efficiency of each of the ~~[functions]~~ **tasks** for which they are responsible.
2. Regional Operational Centres shall submit to the Agency and to the regulatory authorities of the system operation region the data resulting from their continuous monitoring at least annually.



3. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ shall establish their costs in a transparent manner and report them to the Agency and to the regulatory authorities of the system operation region.
4. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ shall submit an annual report concerning their performance to ENTSO for Electricity, the Agency, the regulatory authorities of the system operation region and the Electricity Coordination Group established pursuant to Article 1 of Commission Decision 2012/C 353/02<sup>1</sup>.
5. ~~[Regional Operational Centres]~~ **Regional Security Coordinators** ~~[+]~~ shall report shortcomings identified in the monitoring process under paragraph 1 to ENTSO for electricity, the regulatory authorities of the system ~~[operational]~~ **security coordinators**, the Agency and the competent authorities of Member States responsible for the prevention and management of crisis situations.

#### *Article 44*

#### *Liability*

~~[Regional Operational Centres]~~ **In the proposal for the establishment of regional security coordinators in accordance with Article 32, the transmission system operators of the system operation region** shall take the necessary steps to cover liability related to the execution of their tasks, ~~[in particular, where they adopt decisions on transmission system operators]~~. The method employed to provide the cover shall take into account the legal status of the ~~[regional operational centre]~~ **Regional Security Coordinators** ~~[+]~~ and the level of commercial insurance cover available.

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<sup>1</sup> Commission Decision of 15 November 2012 setting up the Electricity Coordination Group (OJ C 353, 17.11.2012, p.2).

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↓ 714/2009 (adapted)

*Article ~~45~~*

*⊗ Ten-year network development plan ⊗*

1. ~~10. The ENTSO for Electricity shall adopt and publish a Community-wide network development plan every two years.~~ The ⊗ Union ⊗ ~~Community~~-wide network development plan ⊗ referred to under Article 27(1)(b) ⊗ shall include the modelling of the integrated network, scenario development, ~~a European generation adequacy outlook~~ and an assessment of the resilience of the system.

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

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↓ 347/2013

- (a) build on national investment plans, taking into account regional investment plans as referred to in Article 12(1), and, if appropriate, Union aspects of network planning as set out in Regulation (EU) No 347/2013 of the European Parliament and of the Council ~~of 17 April 2013 on guidelines for trans-European energy infrastructure~~<sup>1</sup>; it shall be subject to a cost-benefit analysis using the methodology established as set out in Article 11 of that Regulation;

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<sup>1</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure (OJ L 115, 25.4.2013, p. 39).

- (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 ~~Article 8 and Articles 4413 and 5122~~ of [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2] ~~Directive 2009/72/EC~~; and
- (c) identify investment gaps, notably with respect to cross-border capacities.

In regard to point (c) ~~of the second 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 ~~☒-Community~~-wide network development plan.

~~112.~~ The Agency shall provide an opinion on the national ten-year network development plans to assess their consistency with the ☒ Union ~~☒-Community~~-wide network development plan. If the Agency identifies inconsistencies between a national ten-year network development plan and the ☒ Union ~~☒-Community~~-wide network development plan, it shall recommend amending the national ten-year network development plan or the ☒ Union ~~☒-Community~~-wide network development plan as appropriate. If such national ten-year network development plan is elaborated in accordance with Article ~~5122~~ of [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2] ~~Directive 2009/72/EC~~, the Agency shall recommend that the competent national regulatory authority amend the national ten-year network development plan in accordance with Article ~~5122~~(7) of that Directive and inform the Commission thereof.

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↓ 714/2009 (adapted)

⇒ new

*Article ~~46~~<sup>13</sup>*

*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 of time in the past. Ex-post adjustments of compensation paid shall be made where necessary, to reflect costs actually incurred.

The first period of time for which compensation payments shall be made shall be determined in the ~~Guidelines~~ referred to in Article ~~57~~<sup>18</sup>.

4. The Commission shall ~~decide on~~ ⇒ adopt [delegated] acts in accordance with [Article 63] concerning ⇐ the amounts of compensation payments payable. ~~That measure, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).~~

5. The magnitude of cross-border flows hosted and the magnitude of cross-border flows designated as originating and/or ending in national transmission systems shall be determined on the basis of the physical flows of electricity actually measured during a given period of time.
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 ~~referred to in Article 13~~ 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 Article 2(2)(b) of the first subparagraph of this paragraph~~ and giving rise to compensation payments under paragraph 1 of this Article 13. 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.

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↓ 714/2009

⇒ new

*Article ~~47~~<sup>45</sup>*

*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 the approval of 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, and on balancing power and reserve capacity. For availability and actual use of small generation and load units, 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,  $\Rightarrow$  or which have a portfolio comprising at least 400 MW of generation assets,  $\Leftarrow$  shall keep at the disposal of the national 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.
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$\Downarrow$  new

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 their 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 48~~3~~*

*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 ~~5210~~(6) of [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2] ~~Directive 2009/72/EC~~ as soon as it is received. Within two months of the day of receipt of such notification, the Commission shall deliver its opinion to the relevant national regulatory authority as to its compatibility with Article ~~5210~~(2) or Article ~~5311~~ and Article ~~439~~ of [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2] ~~Directive 2009/72/EC~~.

When preparing the opinion referred to in the first subparagraph, the Commission may request the Agency to provide its opinion on the national 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 deemed not to raise objections to the regulatory authority's decision.



2. Within two months of receiving an opinion of the Commission, the national 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 and/or the Commission may request from a transmission system operator and/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 preserve the confidentiality of commercially sensitive information.

~~5. The Commission may adopt Guidelines setting out the details of the procedure to be followed for the application of paragraphs 1 and 2 of this Article. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).~~

~~5.6~~ Where the Commission has received notification of the certification of a transmission system operator under Article ~~439(949)~~ of [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2] ~~Directive 2009/72/EC~~, the Commission shall take a decision relating to certification. The regulatory authority shall comply with the Commission decision.

## Chapter VI

### Distribution system operation

#### *Article 49*

##### *European entity for distribution system operators*

1. Distribution system operators which are not part of a vertically integrated undertaking or which are unbundled according to the provisions of Article 35 [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2], shall cooperate at Union level through a European Entity for Distribution system operators ("EU DSO entity"), in order to promote the completion and functioning of the internal market in 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 become registered members of the entity.

#### *Article 50*

##### *Establishment of the EU DSO entity for electricity*

1. By [OP: *twelve months after entry into force*], the distribution system operators **and country representatives as defined in Article 49 (2)** with the administrative support of the Agency, shall submit to the Commission and to the Agency the draft statutes, a list of registered members, the draft rules of procedure, including the rules of procedures on the consultation with ENTSO for Electricity and other stakeholders **rules on a fair voting procedure** and the financing rules, of the EU DSO entity to be established.

- 1a. Where non-consensus is reached among DSOs for decisions with regard to their tasks pursuant to Article 51, they shall decide by qualified majority. A qualified majority shall require a majority of:**
- (a) DSOs representing at least 55% of the Member States; and**
- (b) DSOs representing Member States comprising at least 65% of the population of the Union.**
- 1b. A blocking minority for decisions with regard to the tasks of the EU DSO entity pursuant to Article 51 must include DSOs representing at least four Member States, failing of which the qualified majority shall be deemed attained.**
2. Within two months of receipt, the Agency, after formally consulting the organisations representing all stakeholders, in particular distribution system users, shall provide an opinion to the Commission on the draft statutes, the list of members and the draft rules of procedure.
3. The Commission shall deliver an opinion on the draft statutes, the list of members and the draft rules of procedure taking into account the opinion of the Agency provided for in paragraph 2, within three months of receipt of the opinion of the Agency.
4. Within three months of the day of receipt of the Commission's positive opinion, the distribution system operators shall establish the EU DSO entity and adopt and publish its statutes and rules of procedure.
5. The documents referred to in paragraph 1 shall be submitted to the Commission and to the Agency in case of changes thereof or upon their reasoned request. The Agency and the Commission shall deliver an opinion in line with the process set out in paragraphs 2 to 4.

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

#### *Article 51*

##### *Tasks of the EU DSO entity*

1. The tasks of the EU DSO entity shall be the following:
  - (a) coordinated operation and planning of transmission and distribution networks;
  - (b) integration of renewable energy resources, distributed generation and other resources embedded in the distribution network such as energy storage;
  - (c) development of demand response;
  - (d) digitalisation of distribution networks including deployment of smart grids and intelligent metering systems;
  - (e) data management, cyber security and data protection;
  - (f) participation in the elaboration of network codes **which are relevant to the operation and planning of distribution grids and the coordinated operation of the transmission and distribution networks** pursuant to Article 55.

2. In addition the EU DSO entity shall:

- (a) cooperate with ENTSO for electricity on the monitoring of implementation of the network codes and guidelines which are relevant to the operation and planning of distribution grids and the coordinated operation of the transmission and distribution networks and which are adopted pursuant to this Regulation;
- (b) cooperate with 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 full compliance with competition rules.

## *Article 52*

### *Consultations in the network code development process*

1. While preparing possible network codes pursuant to Article 55, 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, the organisations representing all stakeholders, in accordance with the rules of procedure referred to in Article 50. That consultation shall also involve national 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. The EU DSO entity shall take into consideration the views provided during the consultations. Before adopting proposals for network codes referred to in Article 55 the EU DSO entity 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 53*

#### *Cooperation between distribution system operators and transmission system operators*

1. Distribution system operators and **transmission system operators** shall cooperate with **each other** [~~transmission system operators~~] in planning and operating their networks. In particular, transmission and distribution 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. Transmission and distribution 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 and the transmission system.

## Chapter VII

### Network codes and guidelines

#### *Article 54*

##### *Adoption of network codes and guidelines*

1. The Commission may, subject to the empowerments in Articles 55 and 57, adopt [delegated] acts. Such [delegated] acts can either be adopted as network codes on the basis of text proposals developed by the ENTSO for Electricity, or, where so decided in the priority list pursuant to Article 55 paragraph 2, by the EU DSO entity **in cooperation with the ENTSO for Electricity** and the Agency pursuant to the procedure in Article 55 or as guidelines pursuant to the procedure in Article 57.
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, where appropriate, regional specificities;
  - (c) not go beyond what is necessary for that purpose; and
  - (d) be without prejudice to the Member States' right to establish national network codes which do not affect cross[~~-border~~] **zonal** trade.

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↓ 714/2009 (adapted)

⇒ new

*Article ~~55~~*

*Establishment of network codes*

~~1.~~ ⇒ The Commission is empowered to adopt [delegated] acts in accordance with [Article 63] concerning the establishment of network codes in ~~↳ The network codes referred to in paragraphs 1 and 2 shall cover~~ the following areas, ~~taking into account, if appropriate, regional specificities:~~

- (a) network security and reliability rules including rules for technical transmission reserve capacity for operational network security;
- (b) network connection rules;
- (c) third-party access rules;
- (d) data exchange and settlement rules;
- (e) interoperability rules;
- (f) operational procedures in an emergency;
- (g) capacity-allocation and congestion-management rules ⇒ [including curtailment of ~~generation and redispatch of generation and demand~~] ~~↳~~;



- (h) rules for trading related to technical and operational provision of network access services and system balancing;
  - (i) transparency rules;
  - (j) balancing rules including network-related reserve power rules;
  - (k) rules regarding harmonised transmission ⇔ and distribution ⇔ tariff structures ⇔ **as referred to in Article 16** [~~and connection charges~~] ⇔ including locational signals and inter-transmission system operator compensation rules; ~~and~~
  - (l) energy efficiency regarding electricity networks; ~~and~~
- 

↓ new

- (m) rules for non-discriminatory, transparent provision of non-frequency ancillary services, including steady state voltage control, inertia, fast reactive current injection, black-start capability;
- (n) demand response **as covered in Article 17 and 32 of the [Electricity Directive XXX]**, [~~including aggregation, energy storage, and demand curtailment rules;~~]
- (o) cyber security rules; and
- ~~[(p) rules concerning Regional Operational Centres]~~

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↓ 714/2009

⇒ new

~~2.2.~~ The Commission shall, after consulting the Agency, the ENTSO for Electricity, **the EU DSO Entity** and the other relevant stakeholders, establish an ~~annual~~ priority list ⇒ every three years, ⇐ identifying the areas set out in ~~paragraph 1 Article 8(6)~~ 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** [less] relevant for the transmission, the Commission may require the EU DSO entity for electricity [~~instead of~~] **in cooperation with** ⇐ of the ENTSO for Electricity to convene a drafting committee and submit a proposal for a network code to the agency. ⇐

~~2.3.~~ The Commission shall request the Agency to submit to it within a reasonable period of time not exceeding six months a non-binding framework guideline (framework guideline) setting out clear and objective principles, ~~in accordance with Article 8(7)~~, for the development of network codes relating to the areas identified in the priority list. ⇒ 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 the Agency, the Commission may extend that period.

~~3.4.~~ The Agency shall formally 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.

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↓ new

5. The Agency shall submit a non-binding framework guideline to the Commission where requested to do so under paragraph 3. The Agency shall review the non-binding framework guideline and re-submit it to the Commission where requested to do so under paragraph 6.

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↓ 714/2009

⇒ new

~~4.6.~~ 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 the Agency to review the framework guideline within a reasonable period of time and re-submit it to the Commission.

~~5.7.~~ If the Agency fails to submit or re-submit a framework guideline within the period set by the Commission under paragraphs ~~32~~ or ~~64~~, the Commission shall elaborate the framework guideline in question.

~~6.8.~~ The Commission shall request the ENTSO for Electricity ⇒ or, where so decided in the priority list pursuant to paragraph 2, the EU DSO entity for Electricity **in co-operation with the ENTSO for Electricity** ⇐, to submit a ⇒ proposal for a ⇐ network code which is in line with the relevant framework guideline, to the Agency within a reasonable period of time not exceeding 12 months.

~~7. Within a period of three months of the day of the receipt of a network code, during which the Agency may formally consult the relevant stakeholders, the Agency shall provide a reasoned opinion to the ENTSO for Electricity on the network code.~~

~~8. The ENTSO for Electricity may amend the network code in the light of the opinion of the Agency and re-submit it to the Agency.~~

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↓ 714/2009 (adapted)

⇒ new

~~9.~~ ⇒ The ENTSO for Electricity, or where so decided in the priority list pursuant to paragraph 2, the EU DSO entity, shall convene a drafting committee to support it in the network code development process. The drafting committee shall consist of representatives of the ENTSO for Electricity, the Agency, **where appropriate of** the EU DSO entity, where appropriate of nominated electricity market operators and a limited number of the main affected stakeholders. ⇐ The ENTSO for Electricity ⇒ or where so decided in the priority list pursuant to paragraph 2 the EU DSO entity, **in co-operation with the ENTSO for Electricity** ⇐ shall elaborate ⇒ proposals for ⇐ network codes in the areas referred to in ~~paragraph 6 Article~~ paragraph 1 upon a request addressed to it by the Commission in accordance with ~~paragraph 8 Article 6(6)~~.

~~9-10. When~~ ⇐ The Agency ⇒ shall revise the network code and ensure ⇐ ~~is satisfied~~ that the network code is in line with the relevant framework guideline ⇒ and contributes to market integration, non-discrimination, effective competition, and the efficient functioning of the market and ⇐ , ~~the Agency shall~~ submit the ⇒ revised ⇐ network code to the Commission ~~and may recommend that it be adopted~~ within ⇒ six months of the day of the receipt of the proposal ⇐ ~~a reasonable time period. The Commission shall provide reasons in the event that it does not adopt that network code.~~ ⇒ In the proposal submitted to the Commission, the Agency 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 formally consult the relevant stakeholders on the version to be submitted to the Commission. ⇐

~~10.11.~~ Where the ENTSO for Electricity  $\Rightarrow$  or the EU DSO entity  $\Leftarrow$  ~~have~~<sup>has</sup> failed to develop a network code within the period of time set by the Commission under paragraph ~~86~~, the Commission may request the Agency to prepare a draft network code on the basis of the relevant framework guideline. The Agency may launch a further consultation in the course of preparing a draft network code under this paragraph. The Agency shall submit a draft network code prepared under this paragraph to the Commission and may recommend that it be adopted.

~~11.12.~~ The Commission may adopt, on its own initiative, where the ENTSO for Electricity  $\Rightarrow$  or the EU DSO entity have  $\Leftarrow$  ~~has~~ failed to develop a network code, or the Agency has failed to develop a draft network code as referred to in paragraph ~~1110~~ of this Article, or upon recommendation of the Agency under paragraph ~~109~~ of this Article, one or more network codes in the areas listed in paragraph 1 Article 8(6).

~~13.~~ Where the Commission proposes to adopt a network code on its own initiative, the Commission shall consult the Agency, the ENTSO for Electricity and all relevant stakeholders in regard to the draft network code during a period of no less than two months. ~~Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).~~

~~12.14.~~ This Article shall be without prejudice to the Commission's right to adopt and amend the ~~g~~Guidelines as laid down in Article ~~5718~~.  $\Rightarrow$  It shall be without prejudice to the possibility for the ENTSO for Electricity to develop non-binding guidance in the areas set out in paragraph 1 where this does not relate to areas covered by a request addressed to it by the Commission. This guidance shall be submitted to the Agency for an opinion. This opinion shall be taken duly into account by the ENTSO for Electricity.  $\Leftarrow$

*Article 56~~7~~*

*Amendments of network codes*

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↓ new

1. The Commission is empowered to adopt [delegated] acts in accordance with [Article 63] concerning the amendment of network codes following the procedure under Article 55. Amendments can also be proposed by the Agency under the procedure set out in paragraphs 2 to 4 of this Article.
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↓ 714/2009 (adapted)

⇒ new

~~2.~~ Draft amendments to any network code adopted under Article ~~55~~ may be proposed to the Agency by persons who are likely to have an interest in that network code, including the ENTSO for Electricity, ⇒ the EU DSO entity, ⇐ transmission system operators, system users and consumers. The Agency may also propose amendments on its own initiative **in close cooperation with ENTSO-E**.

~~3.~~ ~~The Agency shall consult all stakeholders in accordance with Article 10 of Regulation (EC) No 713/2009. Following that process, †~~The Agency may make reasoned proposals for amendments to the Commission **in close cooperation with ENTSO-E**, explaining how such proposals are consistent with the objectives of the network codes set out in Article ~~6~~ ~~55~~(2). ⇒ Where it deems an amendment proposal admissible and on amendments on its own initiative, ⇐ ☒ the Agency shall consult all stakeholders in accordance with Article 15 [recast of Regulation (EC) No 713/2009 as proposed by COM(2016) 863/2]. ☒

~~3.4.~~ The Commission ~~is empowered to~~ ~~may~~ adopt, taking account of the Agency's proposals, amendments to any network code adopted under Article 55 ~~6.~~ ~~Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted~~ ⇨ as [delegated] acts ⇐ in accordance with ~~The Commission is empowered to adopt [delegated] acts in accordance with Article 63 the regulatory procedure with scrutiny referred to in Article 23(2)~~

~~4.5.~~ Consideration of proposed amendments under the procedure set out in ~~Article 63 23(2)~~ shall be limited to consideration of the aspects related to the proposed amendment. Those proposed amendments are without prejudice to other amendments which the Commission may propose.

*Article ~~57~~<sup>48</sup>*

*Guidelines*

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↓ new

1. The Commission may adopt binding guidelines in the areas listed below.
2. The Commission may adopt a [delegated] act as a Guideline in the areas where such acts could also be developed under the network code procedure pursuant to Article 55 (1).

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↓ 714/2009 (adapted)

⇒ new

~~1.3.~~ ~~Where appropriate,~~ Guidelines ~~⇒~~ may be adopted ~~⇐~~ relating to the inter-transmission system operator compensation mechanism. ~~⊗~~ They ~~⊗~~ shall specify, in accordance with the principles set out in Articles ~~4613~~ and ~~1614~~:

- (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 ~~4613~~(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 ~~4613~~(3);
- (c) details of methodologies for determining the cross-border flows hosted for which compensation is to be paid under Article ~~4613~~, in terms of both quantity and type of flows, and the designation of the magnitudes of such flows as originating and/or ending in transmission systems of individual Member States, in accordance with Article ~~4613~~(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 ~~4613~~(6);
- (e) details of the treatment in the context of the inter-transmission system operator compensation mechanism of electricity flows originating or ending in countries outside the European Economic Area; and



(f) the participation of national systems which are interconnected through direct current lines, in accordance with Article ~~46~~<sup>43</sup>.

~~2.4.~~ Guidelines may also determine appropriate rules ~~leading to a progressive harmonisation of the underlying principles for the setting of~~  relating to  charges applied to producers,  energy storage  and  customers  consumers (load) under national  distribution and transmission  tariff systems  and connection regimes  , including the reflection of the inter-transmission system operator compensation mechanism in national network charges and the provision of appropriate and efficient locational signals, in accordance with the principles set out in Article ~~16~~<sup>14</sup>.

The ~~g~~<sup>G</sup>uidelines  may  ~~shall~~ make provision for appropriate and efficient harmonised locational signals at  Union  ~~Community~~ level.

Any such harmonisation shall not prevent Member States from applying mechanisms to ensure that network access charges borne by  customers  consumers (load) are comparable throughout their territory.

~~3.5.~~ Where appropriate, ~~g~~<sup>G</sup>uidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation ~~shall~~  may  also specify:

~~(a) details relating to provision of information, in accordance with the principles set out in Article 15;~~

~~(a)~~ details of rules for the trading of electricity;

~~(b)~~ details of investment incentive rules for interconnector capacity including locational signals;

~~(b) details of the areas listed in Article 8(6).~~

~~For that purpose, the Commission shall consult the Agency, the ENTSO for Electricity.~~

~~4. Guidelines on the management and allocation of available transmission capacity of interconnections between national systems are laid down in Annex I.~~

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↓ 347/2013 (adapted)

~~4a.6.~~ The Commission may adopt guidelines on the implementation of 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 ~~556~~ of this Regulation and build upon the adopted specifications ~~and the Agency opinion~~ referred to in Article ~~27(1)(g)8(3)(a)~~ of this Regulation. When adopting those guidelines, the Commission shall take into account differing regional and national operational requirements.

Those guidelines shall be adopted in accordance with the examination procedure referred to in Article ~~23(3)~~ 62(2).

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↓ 714/2009 (adapted)

⇒ new

~~75. The Commission may adopt Guidelines on the issues listed in paragraphs 1, 2 and 3 of this Article. It may amend the Guidelines referred to in paragraph 4 of this Article, in accordance with the principles set out in Articles 15 and 16, in particular so as to include detailed Guidelines on all capacity allocation methodologies applied in practice and to ensure that congestion management mechanisms evolve in a manner compatible with the objectives of the internal market. Where appropriate, in the course of such amendments common rules on minimum safety and operational standards for the use and operation of the network, as referred to in Article 15(2) shall be established. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).~~

When adopting or amending ~~g~~G Guidelines, the Commission shall ~~;~~ ⇒ consult the Agency, the ENTSO for Electricity and other stakeholders where relevant. ⇐

~~(a) ensure that the Guidelines provide the minimum degree of harmonisation required to achieve the aims of this Regulation and do not go beyond what is necessary for that purpose; and~~

~~(b) indicate what actions it has taken with respect to the conformity of rules in third countries, which form part of the Community electricity system, with the Guidelines in question.~~

~~When adopting Guidelines under this Article for the first time, the Commission shall ensure that they cover in a single draft measure at least the issues referred to in points (a) and (d) of paragraph 1 and in paragraph 2.~~

*Article ~~58~~<sup>21</sup>*

*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, herein or in the ~~Guidelines~~ referred to in Article ~~57~~<sup>18</sup> ⇨ or in the network codes referred to in Article 55, provided those measures do not endanger the effectiveness of Union legislation ⇐.

## Chapter VIII

### ⊠ Final provisions ⊠

#### *Article ~~59~~<sup>17</sup>*

##### *New interconnectors*

1. New direct current interconnectors may, upon request, be exempted, for a limited period of time, from the provisions of Article ~~17(2)~~<sup>16(6)</sup> of this Regulation and Articles ~~69, 43~~<sup>32</sup> and Article ~~59~~<sup>37</sup>(6) and ~~60(1)~~<sup>(10)</sup> of [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2]~~Directive 2009/72/EC~~ under the following conditions:
  - (a) the investment must enhance 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 must be 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 will 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 ~~of 19 December 1996 concerning common rules for the internal market in electricity~~<sup>1</sup>, 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) the exemption must not be to the detriment of competition or the effective functioning of the internal market in 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.
4. The decision on the exemption under 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 from the date on which the request for exemption was received by the last of the regulatory authorities concerned, the Agency may submit an advisory opinion to those regulatory authorities which could provide a basis for their decision.

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<sup>1</sup> 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).

In deciding to grant an exemption, consideration shall be given, on a case-by-case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the interconnector. When deciding those conditions, account shall, in particular, be taken 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 upon the rules and mechanisms for management and allocation of capacity. 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, they shall inform the Agency of that decision.

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

5. The decision referred to in paragraph 4 shall be taken by the Agency:
  - (a) where all the regulatory authorities concerned have not been able to reach an agreement within six months from the date the exemption was requested before the last of those regulatory authorities; or
  - (b) upon a joint request from the regulatory authorities concerned.

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

6. Notwithstanding paragraphs 4 and 5, Member States may provide for the regulatory authority or the Agency, as the case may be, to submit, for 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 Agency and to the Commission on receipt. The decision shall be notified, without delay, by the regulatory authorities concerned or by the Agency (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 in 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 a period of ⇒ 50 working days ⇐ ~~two months~~ from the day following receipt of 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 ~~two-month~~ period ⇒ of 50 working days ⇐ may be extended by an additional period of ⇒ 50 working days ⇐ ~~two months~~ where further information is sought by the Commission. That additional period shall begin on the day following receipt of the complete information. The initial ~~two-month~~ period may also be extended by consent of both the Commission and the notifying bodies.



When the requested information is not provided within the period set out in the 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 and shall inform the Commission accordingly.

The Commission shall preserve 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 yet 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  $\Rightarrow$ , on the basis of a reasoned request by the notifying bodies,  $\Leftarrow$  that any delay is due to major obstacles beyond the control of the person to whom the exemption has been granted.

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$\Downarrow$  new

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

10. The Commission may, upon request or on its own initiative, reopen the proceedings:

(a) where, taking due consideration of legitimate expectations by 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) where the undertakings concerned act contrary to their commitments; or
- (c) where the decision was based on incomplete, incorrect or misleading information provided by the parties.

↓ 714/2009 (adapted)

⇒ new

11.9. The Commission ☒ is empowered to ☒ ~~may~~ adopt Guidelines ⇒ [delegated] acts in accordance with Article 63 concerning the adoption of guidelines ⇐ for the application of the conditions laid down in paragraph 1 of this Article and to set out the procedure to be followed for the application of paragraphs 4, 7 ~~and~~ 8 ⇒, 9 and 10 ⇐ of this Article. ~~Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).~~

#### ~~Article 19~~

#### Regulatory authorities

~~The regulatory authorities, when carrying out their responsibilities, shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 18. Where appropriate to fulfil the aims of this Regulation the regulatory authorities shall cooperate with each other, with the Commission and the Agency in compliance with Chapter IX of Directive 2009/72/EC.]~~

*Article ~~6020~~*

*Provision of information and confidentiality*

1. Member States and the regulatory authorities shall, on request, provide to the Commission all information necessary for the purposes of  $\Rightarrow$  enforcing the provisions of this Regulation  $\Leftarrow$  ~~Article 13(4) and Article 18~~.

~~In particular, for the purposes of Article 13(4) and (6), regulatory authorities shall, on a regular basis, provide information on the actual costs incurred by national transmission system operators, as well as data and all relevant information relating to the physical flows in transmission system operators' networks and the cost of the networks.~~

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

2. If the Member State or the regulatory authority concerned does not provide the information referred to in paragraph 1 within the given time-limit pursuant to paragraph 1 ~~of this Article~~, the Commission may request all information necessary for the purpose of  $\Rightarrow$  enforcing the provisions of this Regulation  $\Leftarrow$  ~~Article 13(4) and Article 18~~ 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 ~~6122~~(2) for supplying incorrect, incomplete or misleading information. The Commission shall fix a reasonable time-limit taking into account the complexity of the information required and the urgency with which the information is needed.
4. The owners of the undertakings or their representatives and, in the case of legal persons, the persons authorised to represent them by law or by their instrument of incorporation, shall supply the information requested. Where lawyers duly authorised so to act supply the information on behalf of their clients, 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 fixed 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 fix an appropriate time-limit within which it is to be supplied. It shall indicate the penalties provided for in Article ~~6122~~(2). It shall also indicate the right to have the decision reviewed by the Court of Justice of the European  Union  ~~Communities~~.

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 ~~Article 13(4) and Article 18~~ ⇒ enforcing the provisions of this Regulation ⇐.

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

*Article ~~61~~<sup>22</sup>*

*Penalties*

1. Without prejudice to paragraph 2, the Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation ⇨ , the network codes adopted pursuant to Article 55, and the guidelines adopted pursuant to Article 57 ⇐ and shall take all measures necessary to ensure that those provisions are implemented. The penalties provided for must be effective, proportionate and dissuasive. ~~The Member States shall notify the Commission by 1 July 2004 of those rules corresponding to the provisions laid down in Regulation (EC) No 1228/2003 and shall notify the Commission without delay of any subsequent amendment affecting them. They shall notify the Commission of those rules not corresponding to the provisions laid down in Regulation (EC) No 1228/2003 by 3 March 2011 and shall notify the Commission 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, they supply incorrect, incomplete or misleading information in response to a request made pursuant to Article ~~60~~20~~~~(3) or fail to supply information within the time-limit fixed by a decision adopted pursuant to the first subparagraph of Article ~~60~~20~~~~(5). In setting the amount of a fine, the Commission shall have regard to the gravity of the failure to comply with the requirements of the first subparagraph.
3. Penalties provided for pursuant to paragraph 1 and decisions taken pursuant to paragraph 2 shall not be of a criminal law nature.

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↓ 714/2009

*Article ~~6223~~*

*Committee procedure*

1. The Commission shall be assisted by the committee set up by Article ~~6846~~ of ~~Directive 2009/72/EC~~ [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2].

~~2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

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↓ 347/2013

~~23.~~ Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>1</sup> ~~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~~ shall apply.

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<sup>1</sup> 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).

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↓ 714/2009

*Article 24*

*Commission report*

~~The Commission shall monitor the implementation of this Regulation. In its report under Article 47(6) of Directive 2009/72/EC, the Commission shall also report on the experience gained in the application of this Regulation. In particular the report shall examine to what extent this Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for cross-border exchanges of electricity in order to contribute to customer choice in a well-functioning internal market in electricity and to long-term security of supply, as well as to what extent effective locational signals are in place. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.~~

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↓ new

*Article 63*

*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 31(3), Article 46(4), Article 55(1), Article 56(1) and (4)], and Article 59(11) shall be conferred on the Commission for an undetermined period of time from the [OP: *please insert the date of entry into force*].

3. The delegation of power referred to in Article 31(3), Article 46(4), Article 55(1), Article 56(1) and (4), and Article 59(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 on Better Law-Making of 13 April 2016.
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 31(3), Article 46(4), Article 55(1), Article 56(1) and (4)], and Article 59(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.



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↓ 714/2009 (adapted)

⇒ new

*Article ~~64~~<sup>25</sup>*

*Repeal*

Regulation (EC) No ~~1228/2003~~ <sup>714/2009</sup> shall be ~~is~~ repealed from ~~3 March 2011~~.  
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.

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↓ 714/2009 (adapted)

*Article ~~65~~<sup>26</sup>*

*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*.

It shall apply from ~~3 March 2011~~ <sup>1 January 2020</sup>.

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*