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## **PROPOSAL**

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 2 December 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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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 document COM(2016) 861 final.

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Encl.: COM(2016) 861 final



Brussels, 30.11.2016  
COM(2016) 861 final

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)

{SWD(2016) 410 final}

{SWD(2016) 411 final}

{SWD(2016) 412 final}

{SWD(2016) 413 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

#### *Policy Context*

European citizens spend a significant part of their income on energy, and energy is an important input for European industry. At the same time, the energy sector plays a key role in the obligation to reduce greenhouse gas emissions in the Union by at least 40% until 2030 with an expected share of 50% of renewables by 2030.

The proposals for a recast of the Directive on common rules for the internal market in electricity, the Regulation on the electricity market and the Regulation establishing a European Agency for the Cooperation of Energy Regulators are part of the Commission's broader package of initiatives ("Clean Energy for All"). The Clean Energy for All Package comprises the Commission's key proposals to implement the Energy Union, as foreseen in the Energy Union Roadmap<sup>1</sup>. It includes both legislative proposals as well as non-legislative initiatives to create a conducive enabling framework to deliver tangible benefits for citizens, jobs, growth and investments while contributing to all five dimensions of the Energy Union. The key priorities for the package are thus energy efficiency first, the EU's global leadership in renewables, and a fair deal for energy consumers.

Both the European Council<sup>2</sup> and the European Parliament<sup>3</sup> have repeatedly stressed that a well-functioning integrated energy market is the best tool to guarantee affordable energy prices, secure energy supplies and to allow for the integration and development of larger volumes of electricity produced from renewable sources in a cost efficient manner. Competitive prices are essential for achieving growth and consumer welfare in the European Union, and hence are at the heart of EU energy policy. The current electricity market design is based on the rules of the "Third Energy Package"<sup>4</sup>, adopted in 2009. These rules have subsequently been complemented by legislation against market abuses<sup>5</sup> and implementing

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy COM/2015/080 final.

<sup>2</sup> Outcome of the Council Meeting 3429<sup>th</sup> Meeting, transport, Telecommunications and Energy, 26 November 2015 14632/15, Outcome of the Council Meeting, 3472<sup>nd</sup> Meeting, Transport, Telecommunications and Energy, 6 June 2016 9736/16.

<sup>3</sup> European Parliament Resolution of 13 September 2016 on Towards a new Market Design (P8\_TA(2016)0333).

<sup>4</sup> Directive 2009/72 of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.8.2009, p. 55–93 (henceforth the "Electricity Directive"); 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 repealing Regulation (EC) No 1228/2003, OJ L 211, 14.8.2009, p. 15–35 (henceforth "Electricity Regulation"); Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators. OJ L 211, 14.8.2009, p. 1–14 (henceforth "ACER Regulation"),

<sup>5</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. 1–16; Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council OJ L 363, 18.12.2014, p. 121–142.

legislation concerning electricity trade and grid operation rules<sup>6</sup>. The EU internal energy market is built on well-established principles, such as the right of access for third parties to electricity grids, free choice of suppliers for consumers, robust unbundling rules, the removal of barriers to cross-border trade, market supervision by independent energy regulators, and the EU-wide cooperation of regulators and grid operators within the Agency for the Cooperation of Energy Regulators (ACER) and the European Network of Transmission System Operators (ENTSO).

The Third Energy Package has brought tangible progress for consumers. It has led to increased liquidity of European electricity markets and significantly increased cross-border trade. Consumers in many Member States can now benefit from more choice. Increased competition notably on wholesale markets helped to keep wholesale prices in check. New consumer rights introduced by the Third Energy Package have clearly improved the position of consumers in energy markets.

New developments have led to fundamental changes in European electricity markets. The share of electricity generated from renewable energy sources (RES-E) has steeply increased. This shift towards RES-E will continue as it is a key condition to fulfil the Union's obligations under the Paris Agreement on climate. The physical nature of RES-E – more variable, less predictable and decentralised than traditional generation – requires an adaptation of market and grid operation rules to the more flexible nature of the market. In parallel, state interventions, often designed in an uncoordinated manner, have led to distortions of the wholesale electricity market, with negative consequences for investments and cross-border trade<sup>7</sup>. Significant changes are also taking place on the technological side. Electricity is traded almost European-wide through so-called "market coupling", jointly organised by power exchanges and transmission system operators. Digitalisation and the rapid development of internet-based metering and trading solutions enable industry, businesses and even households to generate and store electricity, as well as participate in electricity markets via so-called 'demand response' solutions. The electricity market of the next decade will be characterised by more variable and decentralised electricity production, an increased interdependence between Member States and new technological opportunities for consumers to reduce their bills and actively participate in electricity markets through demand response, self-consumption or storage.

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<sup>6</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. 1–16; 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. 1–12; 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. 24–72; Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators OJ L 112, 27.4.2016, p. 1–68; Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection OJ L 223, 18.8.2016, p. 10–54; Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules OJ L 241, 8.9.2016, p. 1–65; Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation OJ L 259, 27.9.2016, p. 42–68; other Guidelines and network codes have been endorsed Member States' approval and are awaiting adoption.

<sup>7</sup> See Communication from the Commission "Delivering the internal electricity market and making the most of public intervention", C(2013) 7243 final of 5.11.2013.

The present electricity market design initiative thus aims to adapt the current market rules to new market realities, by allowing electricity to move freely to where it is most needed when it is most needed via undistorted price signals, whilst empowering consumers, reaping maximum benefits for society from cross-border competition and providing the right signals and incentives to drive the necessary investments to decarbonise our energy system. It will also give priority to energy efficiency solutions, and contribute to the goal of becoming a world leader in energy production from renewable energy sources, thus contributing to the Union's target to create jobs, growth and attract investments.

### *Adapting market rules*

The existing market rules are based on the predominant generation technologies of the last decade, i.e. centralised, large-scale fossil fuel-based power plants with limited participation of consumers. As variable RES-E will play an increasing role in the generation mix in future, and consumers should be enabled to participate in the markets if they wish so, the rules need to be adapted. Short-term electricity markets which allow trading RES-E across borders are key for the successful integration of RES-E into the market. This is because most generation from renewables can only be accurately forecasted shortly before the actual production (due to weather uncertainties). The creation of markets which allow participation at short notice before actual delivery (so-called "intraday" or "balancing" markets) are a crucial step to enable RES-E producers to sell their energy at fair terms and it will also increase liquidity in the market. Short-term markets will provide new business opportunities for participants to offer "back-up" energy solutions at times of high demand and scarce renewable generation. This includes the possibility for consumers to shift their demand ("demand response"), storage operators or flexible generators. While dealing with variability in small regions can be very expensive, aggregation of variable production over larger areas could help consumers save significant amounts of money. Yet, integrated short-term markets are still missing.

The shortcomings of the current market arrangements reduce the attractiveness of the energy sector for new investment. An adequately interconnected, market-based energy system in which prices follow market signals will stimulate the necessary investments into generation and transmission in an effective manner and ensure that they are made where they are most needed by the market, thereby minimising the need for state-planned investments.

National market rules (e.g. price caps) and state interventions currently hinder prices from reflecting when electricity is scarce. Furthermore, price zones do not always reflect actual scarcity if poorly configured and instead follow political borders. The new market design aims to improve price signals to drive investment in areas where it is needed most, reflecting grid constraints and demand centres, rather than national borders. Price signals should also allow for adequate remuneration of flexible resources (including demand-response and storage), as these resources rely on rewards for shorter periods of time (e.g. modern gas plants which are only used for peak hours or the reduction of industrial demand at times of peak demand or system stress). Effective price signals also ensure the efficient dispatch of existing generation assets. It is therefore critical to review any existing rules that distort price formation (such as rules prioritising the dispatch of certain installations) in order to activate and fully realise the flexibility potential that the demand side can offer

### *Putting consumers at the heart of the energy market*

Fully integrating industrial, commercial and residential consumers into the energy system can avoid significant costs for 'backup' generation; costs which consumers would otherwise end up paying. It even allows consumers to benefit from price fluctuations and to earn money

through participation in the market. Activating consumer participation is therefore a prerequisite for managing the energy transition successfully and in a cost-effective way.

Delivering a new deal for energy consumers is a key commitment of the Energy Union. However, current market rules often do not allow consumers to benefit from these new opportunities. Although consumers can generate and store electricity as well as manage their energy consumption more easily than ever, the current design of the retail market prevents them from being able to fully benefit from such opportunities.

In most Member States, consumers have little or no incentive to change their consumption in response to changing prices in the markets, as real-time price signals are not passed on to final consumers. The market design package is an opportunity to deliver on this commitment. More transparent real time price signals will stimulate consumer participation, either individually or through aggregation, and make the electricity system more flexible, facilitating the integration of electricity from renewable energy sources. Besides offering great energy saving potential for households, technological developments mean that appliances and systems, such as smart white electronics, electric vehicles, electric heating, air conditioning and heat pumps in insulated buildings and district heating and cooling, can automatically follow price fluctuations and, on a large scale, offer a significant and flexible contribution to the electricity grid. In order to enable consumers to benefit financially from those new opportunities, they must have access to fit-for-purpose smart systems as well as electricity supply contracts with dynamic prices linked to the spot market. In addition to consumers adjusting their consumption to price signals, new demand services are currently emerging whereby new market actors offer to manage the electricity consumption of a number of consumers by paying them a compensation for their flexibility. Although such services are already encouraged under existing EU legislation, the evidence suggests that these provisions have not been effective in removing the primary market barriers for those service providers to enter the market. Sharpening these provisions is necessary to further encourage such new services.

In many Member States, electricity prices do not follow demand and supply, but are regulated by the public authorities. Price regulation can limit the development of effective competition, discourage investments and the emergence of new market players. The Commission therefore committed in its Energy Union Framework Strategy<sup>8</sup> to phase-out regulated prices below cost and to encourage Member States to establish a road map for the phasing-out of all regulated prices. The new market design aims at ensuring that supply prices are free of any public intervention, and only with duly justified exceptions.

Rapidly falling technology costs mean that more and more consumers are able to reduce their energy bills by using technologies such as rooftop solar panels and batteries. However, self-generation is still hampered by a lack of common rules for 'prosumers'. Appropriate rules could remove these barriers, e.g. by guaranteeing consumers' rights to generate energy for their own consumption and sell surplus into the grid, while taking into account the costs and benefits for the system as a whole (e.g. appropriate participation in grid costs).

Local energy communities can be an efficient way of managing energy at community level by consuming the electricity they generate either directly for power or for (district) heating and cooling, with or without a connection to distribution systems. To ensure that such initiatives can freely develop, the new market design requires Member States to put in place appropriate legal frameworks to enable their activities.

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<sup>8</sup> See Communication "A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy ", COM/2015/080.

Today, more than 90% of variable renewable electricity sources are connected to distribution grids. The integration of local generation has in fact contributed to a significant increase in network tariffs for household consumers. In addition, taxes and levies to finance grid extensions and renewables' investments have risen drastically. The new market design and the revision of the Renewables Directive provide an opportunity to address these shortcomings, which can disproportionately impact certain household consumers.

Allowing Distribution System Operators (DSOs) to manage some of the challenges associated with variable generation more locally (e.g. by managing local flexibility resources) could significantly reduce network costs. However, since many DSOs are part of vertically integrated companies which are also active in the supply business, regulatory safeguards are necessary to guarantee the DSOs' neutrality in their new functions, e.g. in terms of data management and when using flexibility to manage local congestions.

Another key driver to competition and consumer engagement is information. Previous Commission consultations and studies have shown that consumers complain about a lack of transparency in electricity markets, reducing their ability to benefit from competition and actively participate in markets. Consumers do not feel informed enough about alternative suppliers, the availability of new energy services and complain about the complexity of offers and procedures for switching suppliers. The reform will also ensure data protection as an increased use of new technologies (notably smart metering systems) will generate a range of energy data carrying high commercial value.

In putting consumers at the heart of the energy market, an essential consideration in the new market design is how to ensure that the most vulnerable in society are protected and that the overall number of energy-poor households will not further increase. With rising levels of energy poverty as well as a lack of clarity on the most appropriate means of tackling consumer vulnerability and energy poverty, the new market design proposal requires Member States to duly measure and regularly monitor energy poverty based on principles defined at EU level. The revised Energy Efficiency and Energy Performance of Building Directives provide for further measures to tackle energy poverty.

#### *Security of electricity supply*

Security of electricity supply is indispensable in modern societies which largely depend on electricity and internet driven systems. It is therefore necessary to assess the ability of the European electricity system to offer sufficient generation and flexibility to ensure reliable electricity supply at all times (resource adequacy). Ensuring security of supply is not only a national obligation, but a key pillar of European energy policy<sup>9</sup>. This is because security of supply can, in a fully interconnected and synchronised network with well-functioning markets, be organised far more efficiently and competitively than on a purely national basis. Grid stability in individual Member States often heavily depends on electricity flows from neighbouring countries and potential security of supply problems therefore usually have a regional impact. For this reason, the most efficient remedies to national generation deficits are often regional solutions, allowing Member States to benefit from generation surpluses in other countries. A coordinated European adequacy assessment should therefore be introduced, following a jointly agreed methodology, in order to obtain a realistic picture of possible generation needs, taking into account the integration of electricity markets and potential flows from other countries. If the coordinated adequacy assessment shows that capacity mechanisms are necessary in certain countries or regions, such mechanisms should be designed so as to minimise distortions to the internal market. Clear and transparent criteria to minimise

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<sup>9</sup> See Article 194(1)(b) TFEU.

distortions of cross-border trade, maximise use of demand response, and reduce impacts affecting decarbonisation should therefore be defined to avoid the risk of fragmented national capacity mechanisms creating new market barriers and undermining competition<sup>10</sup>.

### *Strengthening regional cooperation*

The close interconnection of EU Member States through the common trans-European grid is unique in the world and a great asset when it comes to dealing efficiently with the energy transition. Without the ability to rely on generation or demand resources from other Member States, the costs of the energy transition for consumers would increase significantly. Today, system operation across borders is much more interrelated than it was in the past. This is due to the increase in variable and decentralised generation, together with closer market integration, especially in shorter market time intervals. This also means that national actions by regulators or grid operators can have an immediate effect on other EU Member States. Experience has shown that uncoordinated national decisions can lead to significant costs for European consumers.

The fact that some interconnectors are only used to 25% of their capacities, often due to uncoordinated national limitations, and that Member States have not been able to agree on appropriate price zones illustrates that there is a need for more coordination between Transmission System Operators (TSOs) and regulators. Successful examples of voluntary and mandatory cooperation between TSOs, regulators and governments have shown that regional cooperation can improve market functioning and reduce costs significantly. In certain areas, e.g. for the EU-wide 'market coupling' mechanism, TSO cooperation has already become mandatory, and the system of majority voting on some issues has proven to be successful in areas where voluntary cooperation (leaving each TSO a veto right) did not lead to efficient results for regional problems. Following this successful example, mandatory cooperation should be expanded to other areas in the regulatory framework. To this end, TSOs could decide within 'Regional Operational Centres' (ROCs) on those issues where fragmented and uncoordinated national actions could negatively affect the market and consumers (e.g. in the fields of system operation, capacity calculation for interconnectors, security of supply and risk preparedness).

### *Adapting regulatory oversight to regional markets*

It appears appropriate to also adapt regulatory oversight to the new realities of the market. All main regulatory decisions are currently taken by national regulators, even in cases where a common regional solution is needed. While ACER has been successful in providing a forum for the coordination of national regulators with diverging interests, its main role is currently confined to coordination, advising and monitoring. While market actors increasingly cooperate across borders and decide on certain matters concerning grid operation and electricity trading with qualified majority at a regional or even Union level<sup>11</sup>, there is no equivalent for these regional decision-making procedures at regulatory level. Regulatory oversight therefore remains fragmented, leading to a risk of diverging decisions and unnecessary delays. Strengthening the powers of ACER for those cross-border issues which require a coordinated regional decision would contribute to faster and more effective

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<sup>10</sup> See in this context also the proposal for a Regulation of the European Parliament and the Council on risk preparedness in the electricity sector, covering risks to security of supply related to the management of electricity crisis situations.

<sup>11</sup> See e.g. Article 9 of 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. 24–72.



decision-making on cross-border issues. National regulators, deciding within ACER on those issues through majority voting, would remain fully involved in the process.

It also appears appropriate to better define the role of ENTSO-E in order to strengthen its coordination role and render its decision-making process more transparent.

#### *Text clarifications*

Finally, the recast of the Electricity Regulation, the Agency Regulation and the Electricity Directive will be used to provide some editorial clarifications on some of the existing rules and to restructure some of them in order to make the highly technical rules of the three acts more comprehensible, without touching upon the substance of the provisions.

- **Consistency with other provisions and proposals in the policy area**

The market design initiative is strongly linked to other energy and climate legislative proposals brought forward in parallel. These notably include initiatives to improve Europe's energy efficiency, a renewable energy package, and the overarching initiative addressing governance and reporting mechanisms for the Energy Union. All those initiatives aim at implementing the necessary measures to achieve the objective of a competitive, secure and sustainable Energy Union. The intention of packaging the different initiatives, consisting of multiple legislative and non-legislative levers, is to ensure utmost coherence of the different but closely interlinked policy proposals.

Therefore, although the current proposal is centred on updating market rules so as to make a clean energy transition economically advantageous, these provisions work in synergy with the wider EU climate and energy policy framework. These links are further explained in the Commission's Impact Assessment<sup>12</sup>.

The proposal is closely linked to the proposal for a revised Renewable Energy Directive, providing for a framework to achieve the 2030 renewable target, including also principles in relation to support schemes for renewable energy sources, which would make them more market-oriented, cost-effective and more regionalised in scope in cases where Member States are opting to keep support schemes. Those measures aimed at the integration of renewable energies in the market, such as provisions on dispatching, market-related barriers to self-consumption and other market access rules – previously contained in the Renewable Energy Directive –, have now been integrated in the Electricity Regulation and the Electricity Directive.

The proposal for a Regulation on the Governance of the Energy Union will contribute to ensuring policy coherence by streamlining planning and reporting obligations by Member States so as to better support the convergence towards energy and climate goals set at EU level. As a new planning, reporting and monitoring instrument, it shall provide a temperature gauge on the state of progress from a Member State on the implementation of European-wide market requirements introduced by the present acts.

The proposal for a Regulation on risk preparedness in the electricity sector complements the current proposal, focusing in particular on government actions to manage electricity crisis situations and to prevent short term risks for the electricity system.

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<sup>12</sup> [OP: Please insert Link to Impact Assessment]

The current proposal is closely aligned with the Commission's competition policy in the field of energy. It incorporates notably the results of the Commission's Sector Inquiry on Capacity Mechanisms, ensuring full coherence with the Commission's energy state aid enforcement policy.

- **Consistency with other Union policies**

The proposal seeks to implement key objectives of the Energy Union, as defined in the Framework Strategy for a resilient Energy Union with a forward-looking climate change policy. As already stated above, the details of the package are also in line with the recent global-level engagement by the Union to achieve ambitious climate targets under the agreement found in Paris at the 21<sup>st</sup> UN Conference of the Parties (COP21). The current proposal is mutually reinforcing and complementary to the proposal for the revision of the EU Emissions Trading System made in July 2015.

Further, to the extent that a revision of the electricity market design is aimed at making Europe's energy market more competitive and accessible for new energy technologies, the proposal also contributes to fulfilling the Union's objectives to generate jobs and growth. By offering market opportunities for new technologies, the proposal will spur the uptake of a number of services and products that would give European businesses a first-mover advantage as the clean energy transition advances globally.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for the proposed measures is Article 194 of the Treaty on the Functioning of the European Union (TFEU), which consolidated and clarified the competences of the EU in the field of energy. According to Article 194 TFEU, the main aims of the EU's energy policy are to: ensure the functioning of the energy market; ensure security of energy supply in the Union; promote energy efficiency and energy saving and the development of new and renewable forms of energy; and promote the interconnection of energy networks.

The present initiative also builds upon a comprehensive set of legislative acts that have been adopted and updated during the past two decades. With the objective of creating an internal energy market, the EU has adopted three consecutive legislative packages between 1996 and 2009, with the overarching aim of integrating markets and liberalising national electricity and gas markets. These provisions cover a wide range of aspects, from market access to transparency, consumer rights and the independence of regulatory authorities, to name a few.

With an eye on existing legislation and the general trajectory of growing energy market integration, the current initiative should thus also be seen as part of an ongoing effort to ensure the integration and effective operation of Europe's energy markets.

Recent calls from the European Council<sup>13</sup> and the European Parliament for action at EU level to complete the European energy market have also created further ground for action.

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<sup>13</sup> In February 2011, the European Council set the objective of completing the internal energy market by 2014 and developing interconnection to end the grid isolation of certain Member States by 2015. In June 2016, the European Council also called for a Single Market Strategy in the field of energy, with action plans to be proposed by the Commission and to be implemented by 2018.

- **Subsidiarity**

The proposed changes to the provisions of the Regulation on electricity markets, the Directive on common rules for the internal electricity market and the Regulation establishing a European Agency for the Cooperation of Energy Regulators are necessary to achieve the purpose of an integrated EU electricity market and cannot be reached at national level in an equally efficient manner. As set out in detail in the evaluation of the recast legislative acts<sup>14</sup>, evidence has shown that isolated national approaches have led to delays in the implementation of the internal energy market, leading to sub-optimal and incompatible regulatory measures, unnecessary duplication of interventions and delays in correcting market inefficiencies. The creation of an internal energy market that delivers competitive and sustainable energy for all cannot be achieved on the basis of fragmented national rules where they concern the trading of energy, the operation of the shared grid and a certain amount of product standardisation.

The increasing interconnection of EU electricity markets requires closer coordination between national actors. National policy interventions in the electricity sector have a direct impact on neighbouring Member States due to energy interdependence and grid interconnections. Ensuring the stability of the grid and its efficient operation is increasingly difficult to do at national level alone, as rising cross-border trade, the uptake of decentralised generation and enhanced consumer participation, all increase the potential for spill-over effects. No state can effectively act alone and the consequences of unilateral action have become more pronounced over time. This general principle applies across the range of measures introduced by the current proposal, whether they concern energy trading, the operation of the grid and consumers' effective participation.

Since common regional issues which require a coordinated decision often have a significant economic impact on individual Member States, past experience has shown that voluntary cooperation, while useful in many areas of cooperation between Member States, has often not been able to overcome technically complex conflicts with significant distributive effects between Member States<sup>15</sup>. Existing voluntary initiatives, such as the Pentalateral Energy Forum, are also limited in their geography, as they only cover parts of the EU electricity market and do not necessarily combine all countries which are physically most closely interconnected.

To illustrate on a concrete example, uncoordinated national policies concerning the principles for distribution tariffs may distort the internal market to an extent that distributed generation or energy storage services will be under very different incentives to participate in the market. With the uptake of new technologies and energy services increasingly traded across borders, EU action has a significant value in ensuring a level playing field and more efficient market outcomes for all parties involved.

The coordinating function of ACER has been adapted to new developments in energy markets, such as the increased need for coordination in times of higher energy flows across borders and the rise of energy production from volatile RES-E. The independent national regulatory authorities (NRAs) play a major role in providing regulatory oversight over their national energy sector. A system which becomes more and more interdependent between the Member States both when it comes to market transactions and system operation requires, however, regulatory oversight beyond national borders. ACER is the body established to provide such regulatory oversight as far as situations are concerned which cover more than

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<sup>14</sup> [OP please add link to Impact assessment – evaluation part].

<sup>15</sup> See e.g. the discussion on congestion management in central Europe, where divergent national interests led to significant delays on the way to more market integration.

two Member States. The main role of ACER as a coordinator of the action of national regulators has been preserved; limited additional competences have been assigned to ACER in those areas where fragmented national decision-making on issues with cross-border relevance would lead to problems or inconsistencies for the internal market. For example, the creation of regional operational centres (ROCs) in the [recast of Regulation (EC) No 714/2009 as proposed by COM(2016) 861/2] calls for supra-national monitoring which needs to be performed by ACER, as the ROCs cover several Member States. Similarly, the introduction of an EU-wide coordinated adequacy assessment in the [recast of Regulation (EC) No 714/2009 as proposed by COM(2016) 861/2] calls for a regulatory approval of its methodology and calculations that may only be attributed to ACER as the adequacy assessment is to be performed across Member States.

While the assignment of new tasks to ACER will require a reinforcement of its staff, the coordinating role of ACER will lead to a lower burden for national authorities, thus freeing up administrative resources at national level. The proposed approach will streamline regulatory procedures (e.g. by introducing direct approval within ACER instead of 28 separate approvals). The coordinated development of methodologies (e.g. concerning adequacy assessment) will reduce the workload for national authorities and avoid extra work resulting from potential problems through non-aligned national regulatory action.

- **Proportionality**

The policy choices covered by the Electricity Regulation, the Electricity Directive and the Agency Regulation seek to adapt the electricity market design to the increasing share of decentralized generation and to ongoing technological developments.

The proposed reforms are strictly oriented on what is indispensable to achieve the necessary progress for the internal market, while leaving utmost competencies and responsibilities for Member States, national regulators and national actors.

Options considering a more far-reaching harmonisation, e.g. by proposing a single independent European energy regulator, a single integrated European transmission system operator or more straightforward prohibitions of state interventions without exemption possibilities have been consistently dismissed in the Impact Assessment. Instead the proposals aim at well-balanced solutions which only restrict the national scope for regulatory action where coordinated action clearly brings more benefits for the consumer.

The policy options adopted are aimed at creating a level playing field amongst all generation technologies and removing market distortions so that, amongst other things, renewable energy sources may compete on an equal footing in the energy market. In addition, all market participants would bear a financial responsibility for keeping the grid in balance. Barriers to services that provide flexibility to the grid, such as demand-response services, will be removed. Further, the measures seek to create a more liquid short-term market, so that price fluctuations can properly reflect scarcity and offer adequate incentives for a flexible grid.

At retail market level, Member States will also be encouraged to progressively phase-out blanket price regulation, starting with prices below cost. Vulnerable consumers can be protected by a transitional price regulation. To further increase competition, the use of contract termination fees will be restricted, so as to encourage switching. Equally, high-level principles shall ensure that energy bills are clear and easy to understand, and non-discriminatory access to consumer data will be granted, all whilst keeping in place general privacy provisions.

In line with the evolution of cross-border trade in electricity and the gradual integration of the market, the institutional framework will be adapted in line with the need for additional

regulatory cooperation and new tasks. ACER is to be given additional tasks, especially in the regional operation of the energy system, all whilst keeping the national regulators' centre role in energy regulation.

All of the options have been extensively checked to meet the requirements of proportionality, in the Impact Assessment accompanying the proposal. It should be noted here that the proposed policies present a compromise between bottom-up initiatives and top-down steering of the market. In keeping with proportionality, the measures do not in any way substitute the role of national governments, NRAs and TSOs in carrying out a variety of critical functions. If anything, national regulators are encouraged to come together more effectively in a regional setting, both formally and informally, to address issues arising from the management of the electricity system at a scale that is commensurate with the scale of the problem.

Far from endorsing a "full harmonisation" approach, the measures seek to create a level playing field for all market players, particularly where market opportunities extend beyond national borders. Ultimately, a certain standardisation of rules and products is essential to the effective trading of electricity across borders; whilst decisions concerning the operation of the grid would lead to sub-optimal market outcomes if left to single Member States and regulators acting in isolation. Direct experience in the formulation and adoption of common network and trading rules (so called "Network Codes" and "Guidelines") since the Third Energy Package of 2009 has shown a clear added value in having regulators and national authorities coming around the table to agree common rules and methodologies, both on high level and technical principles.

There is an increasing competitiveness gap between retail and wholesale markets, with the former still lagging behind in terms of service offer and tangible benefits to consumers. By monitoring energy poverty, transparency and clarity of consumer information and access to data, the proposed measures will not unduly limit national prerogatives.

- **Choice of legal instrument**

The proposal will amend the key legal acts that were part of the Third Energy Package. These include the Electricity Regulation (No 714/2009) and the Electricity Directive (No 2009/72/EC), alongside the Regulation establishing ACER (No 713/2009). The choice of a recast of said legal acts will enhance legal clarity. Recourse to an amending act may have been inadequate to address a wide set of new provisions. The choice of the instrument thus calls for a revision of rules already adopted and implemented, as a natural evolution of current legislation.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fit-for-purpose checks of existing legislation**

The Commission services have evaluated the performance of the current legislative framework (Third Energy Package) against five set criteria: relevance, effectiveness, efficiency, coherence and EU added value. A stand-alone evaluation has been carried out alongside the Impact Assessment, and the results of the evaluation have been reflected in the problem identification of the impact assessment.

The evaluation found that, overall, the Third Energy Package's aim to increase competition and remove obstacles to cross-border competition in electricity markets has been met. Active enforcement of the legislation has led to positive results for electricity markets and consumers, and markets are in general less concentrated and more integrated than in 2009. As

regards retail markets, the set of new consumer rights introduced by the Third Energy Package have clearly improved the position of the consumer in energy markets.

However, the success of the rules of the Third Energy Package in developing the internal electricity market remains limited in a number of fields, both at the wholesale and the retail level. In general, the evaluation showed that large gains can still be made by an improvement of the market design framework, as shown by untapped general welfare gains and ultimate benefits to consumers. At the level of wholesale markets, barriers to cross-border trade persist and interconnector capacities are rarely fully exploited. These originate, amongst other things, from insufficient cooperation between national grid operators and regulators on the shared use of interconnectors. The national perspective of the parties involved still prevents effective cross-border solutions in many cases and ultimately limits otherwise beneficial cross-border flows. The picture is not the same across all markets and timeframes, with varying degrees of integration across day-ahead, intra-day and balancing markets.

With regards to retail markets, competition performance could be significantly improved. Electricity prices still vary significantly from Member State to Member State for non-market reasons, and prices have risen steadily for households as a result of significant increases in non-contestable charges in recent years; these being network charges, taxes and levies. With regard to consumer protection, rising energy poverty, as well as lack of clarity on the most appropriate means of tackling consumer vulnerability and energy poverty, have been a drag on the further deepening of the internal energy market. Switching-related fees such as contract termination charges continue to constitute a significant financial barrier to consumer engagement. In addition, the high number of complaints related to billing<sup>16</sup> suggests that there is still scope to improve the comparability and clarity of billing information.

In addition to shortcomings in meeting the original objectives sought by the Third Energy Package, a new set of challenges has emerged which had not been envisaged at the time of preparing the Third Energy Package. These include, as mentioned above, the very strong increase of renewable sources in electricity generation, the increase of state interventions in the electricity markets for security of supply purposes, and changes taking place on the technological side. These have all led to significant changes in the way markets operate, especially during the past five years, to a dampening of the positive effect of the reforms for consumers and also an untapped potential from modernisation. This has opened a gap in the existing legislation regarding how to deal with these developments.

In line with the outcome of the evaluation and the related Impact Assessment, the current proposal seeks to close the gap and present an enabling framework to reflect technological developments in the sector as our energy systems' transition to new production and consumption models.

- **Stakeholder consultations**

In preparation for the present initiative, the Commission has conducted several public consultations. These were open to EU citizens and Member States' authorities, energy market participants and their associations, as well as to any other relevant stakeholders, including SMEs and energy consumers.

Three consultations and their respective results shall be highlighted in particular:

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<sup>16</sup> European Commission (2016), ' Second Consumer Market Study on the functioning of retail electricity markets for consumers in the EU ',

1) Resource adequacy related issues were the subject of a public consultation<sup>17</sup> conducted from 15 November 2012 to 7 February 2013, as per the "*Consultation on generation adequacy, capacity mechanisms, and the internal market in electricity*". This was aimed at obtaining stakeholders' views on ensuring resource adequacy and security of electricity supply in the internal market.

The consultation received 148 individual responses from public bodies, industry (both energy producing and consuming) and academia. A detailed chart of responses to the consultation is available online<sup>18</sup>, as well as all individual contributions and a summary of results from the consultation<sup>19</sup>.

2) A public consultation dedicated to electricity retail markets and end-consumers<sup>20</sup> was conducted from 22 January 2014 to 17 April 2014. The Commission received 237 responses to the consultation, with about 20% of submissions coming from energy suppliers, 14% from DSOs, 7% from consumer organisations, and 4% from NRAs. A significant number of individual citizens also participated in the consultation. A full summary of responses is available on the Commission's website<sup>21</sup>.

3) A wide public consultation<sup>22</sup> on a new energy market design was conducted from 15 July 2015 to 9 October 2015.

The Commission received 320 replies to this consultation. About 50% of submissions have come from national or EU-wide industry associations. 26% of answers originated from companies active in the energy sector (suppliers, intermediaries, consumers) and 9% from network operators. 17 national governments and several NRAs also fed back on the consultation. A significant number of individual citizens and academic institutes participated to the consultation as well. A detailed description of stakeholders' opinions under each of the specific policy options is available in the Impact Assessment accompanying this legislative initiative.

- **Collection and use of expertise**

The preparation of the proposed regulation and the Impact Assessment is based on a large body of material, all of which is referenced in the footnotes in the Impact Assessment. These include close to 30 studies and modelling tools, conducted mostly by independent external parties, aimed at assessing specific options under the current proposal. These are listed in full

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<sup>17</sup> European Commission (2012) 'Consultation Paper on generation adequacy, capacity mechanisms and the internal market in electricity'  
[https://ec.europa.eu/energy/sites/ener/files/documents/20130207\\_generation\\_adequacy\\_consultation\\_document.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/20130207_generation_adequacy_consultation_document.pdf)

<sup>18</sup> [https://ec.europa.eu/energy/sites/ener/files/documents/Charts\\_Public%20Consultation%20Retail%20Energy%20Market.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/Charts_Public%20Consultation%20Retail%20Energy%20Market.pdf)

<sup>19</sup> European Commission (2012) Consultation on generation adequacy, capacity mechanisms, and the internal market in electricity  
<https://ec.europa.eu/energy/en/consultations/consultation-generation-adequacy-capacity-mechanisms-and-internal-market-electricity>

<sup>20</sup> European Commission (2014) Consultation on the retail energy market  
<https://ec.europa.eu/energy/en/consultations/consultation-retail-energy-market>

<sup>21</sup> [https://ec.europa.eu/energy/sites/ener/files/documents/Charts\\_Public%20Consultation%20Retail%20Energy%20Market.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/Charts_Public%20Consultation%20Retail%20Energy%20Market.pdf)

<sup>22</sup> European Commission (2015) Consultation on a new Energy Market Design COM(2015) 340 final  
<https://ec.europa.eu/energy/en/consultations/public-consultation-new-energy-market-design>

under Annex V of the Impact Assessment. The studies cover a range of methodologies, with a focus on quantitative estimates of economic and social cost benefit analyses.

In addition, the Commission has also been conducting a sector inquiry into national capacity mechanisms whose interim outcomes were promptly fed into the preparatory phase of the current proposal<sup>23</sup>. The results from these studies have complemented the extensive feedback obtained by stakeholders as described above and, overall, have given the Commission an extensive evidence basis on which to ground the current proposals.

- **Impact assessment**

All proposed measures are supported by the Impact Assessment. The Regulatory Scrutiny Board issued a positive opinion on 7 November 2016. The manner in which the Regulatory Scrutiny Board's views were taken into account is set out in Annex I of the Impact Assessment.

The Impact Assessment looked at a number of policy options for each problem set identified. These problem sets and the alternative routes for intervention are listed below:

*Adapting Market Design to the rise in renewables and technological development:*

The Impact Assessment endorsed an enhancement of current market rules in order to create a level-playing field among all generation technologies and resources by removing existing market distortions. It addresses rules that discriminate between resources and which limit or favour the access of certain technologies to the electricity grid. In addition, all market participants would bear financial responsibility for imbalances caused on the grid and all resources would be remunerated in the market on equal terms. Barriers to demand-response would be removed. The chosen option would also strengthen short-term markets by bringing them closer to real-time in order to provide maximum opportunity to meet flexibility needs and by rendering balancing markets more efficient. The chosen option includes measures that would help pulling all flexible distributed resources concerning generation, demand and storage, into the market via proper incentives and a market framework better adapted to them and measures to better incentivise DSOs.

A non-regulatory approach was dismissed as providing little scope for improving the market and ensuring a level-playing field among resources. Indeed, the current EU regulatory framework in the relevant areas is limited or even non-existent for other areas. Furthermore, voluntary cooperation was deemed not to provide the appropriate level of harmonisation or certainty to the market. Equally, the option of full harmonisation of market rules was also discarded as the changes might breach proportionality principles and would generally be unnecessary given the state of European energy markets at present.

*Addressing future generation investments and uncoordinated capacity mechanisms*

Various policy options going beyond the baseline scenario were assessed, with each option proposing varying degrees of alignment and coordination among Member States at EU level, and a different extent to which market participants would rely on energy market payments.

A so-called 'energy-only market' option would see European markets being sufficiently improved and interconnected that it provides the necessary price signals to spur investments in new resources and in the right places. In such a scenario, no capacity mechanisms would be required any longer.

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<sup>23</sup> Interim Report of the Sector Inquiry on capacity Mechanisms, C(2016) 2107 final.



The chosen option builds on this energy-only market scenario but does not discard the possibility for Member States of using capacity mechanisms, provided however these are based on a shared resource adequacy assessment methodology carried out in full transparency through ENTSO-E and ACER and comply with common design features for better compatibility between national capacity mechanisms and harmonised cross-border cooperation. This option builds on the European Commission Guidelines on state aid for environmental protection and energy 2014-2020, alongside the Sector Inquiry on capacity mechanisms.

A non-regulatory approach was rejected as existing provisions under EU legislation are not sufficiently clear and robust to cope with the challenges facing the European electricity system. In addition, voluntary cooperation may not provide for appropriate levels of harmonisation across all Member States or certainty to the market. Legislation is needed in this area to address the issues in a consistent way. The option in which, based on regional or EU-wide generation adequacy assessments, entire regions or ultimately all EU Member States would be required to roll out capacity mechanisms on a mandatory basis was discarded as being disproportionate.

#### *Under-performance of Retail Markets: slow deployment and low levels of services*

The endorsed option includes a gradual phasing-out by Member States of blanket price regulation by a deadline set in EU legislation, starting with prices below costs. This option allows for transitional price regulation for vulnerable consumers. To increase consumer engagement, the use of contract termination fees is restricted. Consumer confidence in comparison websites is to be fostered through national authorities implementing a certification tool. In addition, high-level principles will ensure that energy bills are clear and easy to understand, through minimum content requirements. Member States are also required to monitor the number of households on energy poverty. Finally, to allow the development of new services by new entrants and energy service companies, non-discriminatory access to consumer data is ensured.

Other options considered, but discarded, included a full harmonization of consumer legislation alongside extensive consumer safeguards; exemptions to price regulation defined at EU level on the basis of either a consumption threshold or a price threshold; a standard data handling model to be enforced and the responsibility assigned to a neutral market actor such as a TSO; all switching fees including contract termination fees would be banned and the content of energy bills partially harmonized; and finally, an EU framework to monitor energy poverty based on an energy efficiency survey done by Member States of the housing stock as well as preventive measures to avoid disconnections are put in place. These options were all discarded on grounds of subsidiarity and proportionality principles. Maintaining the status quo was not considered a viable option either by almost all of the stakeholders consulted.

#### *Improvement of the institutional framework and role of the Agency*

The Third Package institutional framework aims at fostering the cooperation of NRAs as well as between TSOs. Since their establishment, ACER and the ENTSOs have played a key role in the progress towards a functioning internal energy market. However, the recent developments in the European energy markets that are considered in the current Impact Assessment and the subsequent proposals of the Market Design Initiative require an adaptation of the institutional framework. In addition, the implementation of the Third Package has also highlighted areas with room for improvement concerning the framework applicable to ACER and the ENTSOs. In terms of options considered for reforming the institutional framework, a business as usual scenario was discarded for it would open up regulatory and

market surveillance gaps, in line with evolving market provisions introduced elsewhere in this proposal as well as with the ongoing progress at EU level of secondary legislation.

A non-regulatory approach of "stronger enforcement" and voluntary collaboration without any new, additional measures to adapt the institutional framework was considered. Improved enforcement of existing legislation entails the continued implementation of the Third Package and full implementation of network codes and guidelines – as described under option "business as usual" – combined with stronger enforcement. However, stronger enforcement alone would not provide any improvement to the current institutional framework.

A legislative option transforming ACER to something closer to a pan-European regulator was also considered but ultimately discarded. In order for the Agency to perform such a role, it would require a significant reinforcement of ACER's budget and staff as this would make a strong concentration of experts in the Agency necessary. It appears also appropriate to maintain the involvement of national regulators in the Agency's decision-making process and not to substitute systematically majority decisions by national regulators through decisions by the director.

Legislative options to improve ACER on the basis of the existing framework were thus considered. The option endorsed by the Impact Assessment enables the adaptation of the EU institutional framework to the new realities of the electricity system. It also addresses the resulting need for additional regional cooperation and the existing and anticipated regulatory gaps in the energy market, thereby providing for flexibility by a combination of bottom-up and top-down approaches.

In addition, in order to address the existing regulatory gap as regards NRAs' regulatory functions at regional level, the policy initiatives under this option would set out a flexible regional regulatory framework to enhance the regional coordination and decision-making of NRAs. This option would introduce a system of coordinated regional decisions and oversight of certain topics by NRAs of the region (e.g. ROCs and others deriving from the proposed market design initiatives) and would give ACER a role for safeguarding the EU-interest.

#### *Fundamental rights*

The present proposal may have an impact on a number of fundamental rights established by the Charter on Fundamental Rights of the EU, in particular: the respect for private and family life (Article 7), the right to protection of personal data (Article 8), the prohibition of discrimination (Article 21), the right to social assistance (Article 34), access to services of general economic interest (Article 36), the integration of a high level of environmental protection (Article 37) and the right to an effective remedy (Article 47).

This is addressed in particular through a number of provisions concerning consumer protection, energy poverty, protection of vulnerable customers, access to services of general economic interest, data protection and privacy.

A summary of the Impact Assessment can be found on the Commission website<sup>24</sup>, alongside the positive opinion of the Regulatory Scrutiny Board.

- **Regulatory fitness and simplification**

The proposal may increase administrative requirements, albeit to a limited extent. For example, by bringing in a level-playing field for all technologies to participate fully in energy

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<sup>24</sup> [OP: Please insert link to Impact Assessment]

markets, these technologies would have to abide with a number of market compliance requirements that may generate some administrative workload.

The measures envisaged to improve the liquidity and integration of energy markets may also generate some short-term impact to businesses as these would have to adapt for new energy trading arrangements. These are however considered minimal compared to the baseline scenario of no action, as the economic gains of the reform would very largely surpass any short or long-term administrative reorganization.

Equally, the gradual phasing out of regulated prices at Member State level will require NRAs to step up efforts in monitoring markets, ensuring efficient competition and guaranteeing consumer protection. These impacts may be offset by increased consumer engagement, which would naturally act to foster competition in the market.

The range of activities to be performed under the updated institutional setting shall also generate a new set of requirements for engagement at administrative level on the part of national regulators and transmission operators. These include participation within ACER and through the decision-making processes leading to the agreement of methodologies and practices for the smooth trading of energy at the border.

A detailed administrative and economic impact on business and public authorities for each of the policy options considered can be found in chapter 6 of the Impact Assessment.

#### **4. BUDGETARY IMPLICATIONS**

The budgetary impact associated to the proposal under this package concerns the resources of the Agency for the Cooperation of Energy Regulators (ACER) which are described in the Legislative Financial Statement accompanying the Commission proposal for a recast of the Regulation establishing ACER. Essentially, the new tasks to be carried out by ACER, notably as regards the assessment of system adequacy and the establishment of Regional Operation Centres, require a phasing in of up to 18 additional FTE in the Agency in 2020, as well as corresponding financial resources. **5. OTHER ELEMENTS**

##### **• Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the transposition and compliance of the Member States and other actors with the measures that shall be ultimately adopted, and shall take enforcement measures if and when required. In addition, as it has already done in the context of the implementation of the Third Energy Package, the Commission will provide guidance documents providing assistance on the implementation of the adopted measures.

Across monitoring and implementation purposes, the Commission will notably be supported by ACER. The annual reporting by the Agency and parallel evaluations carried out by the Commission, together with the reporting from the Electricity Coordination Group are all part of the provisions in the current initiative. The Agency will be invited to further review its monitoring indicators to ensure their continuing relevance for monitoring progress towards the objectives underlying the present proposals, so that these may be adequately reflected, amongst other things, through ACER's annual market monitoring report document.

Parallel to the proposed initiatives, the Commission will bring forward an initiative concerning the governance of the Energy Union that will streamline the planning, reporting and monitoring requirements. Based on the initiative of the governance of the Energy Union, the current monitoring and reporting requirements of the Commission and Member States in the Third Energy Package will be integrated in horizontal progress and monitoring reports.

More information on the streamlining of the monitoring and reporting requirements can be found in the impact assessment for the governance of the European Union.

A more extensive treatment of monitoring mechanisms and benchmark indicators can be found in Chapter 8 of the Impact Assessment.

## **6. EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSALS**

### **• Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (Recast)**

*Chapter I* of the proposed Directive provides some clarifications to the scope and subject matter of the Directive, emphasising the focus on consumers and the importance of the internal market and its main principles. It provides also for an update of the main definitions used in the Directive.

*Chapter II* of the proposed Directive lays down the general principle that Member States have to ensure that the EU electricity market is competitive, consumer-centred, flexible and non-discriminatory. It emphasises that national measures should not unduly hamper cross-border flows, consumer participation or investments. It further enshrines the principle that supply prices shall be market-based, subject to duly justified exceptions. The chapter also clarifies certain principles relating to the functioning of the EU electricity markets, such as the right to choose a supplier. It also provides for updated rules on possible public service obligations which may be imposed by Member States on energy undertakings under certain circumstances.

Chapter III of the proposed Directive reinforces pre-existing consumer rights and introduces new rights that aim at putting consumers at the heart of the energy markets by ensuring that they are empowered and better protected. It sets rules on clearer billing information and on certified comparison tools. It contains provisions ensuring that consumers are able to freely choose and change suppliers or aggregators, are entitled to a dynamic price contract and are able to engage in demand response, self-generation and self-consumption of electricity. It entitles every consumer to request a smart meter equipped with a minimum set of functionalities. It also improves pre-existing rules on the consumers' possibility to share their data with suppliers and service providers by clarifying the role of the parties responsible for data management and by setting a common European data format to be developed by the Commission in an implementing act. It also aims to ensure that energy poverty is addressed by Member States. It further requires Member States to define frameworks for independent aggregators and for demand response along principles that enable their full participation in the market. It defines a framework for local energy communities which may engage in local energy generation, distribution, aggregation, storage, supply or energy efficiency services. It further provides some clarifications to pre-existing provisions on smart meters, single points of contacts, and rights to out-of-court settlement, universal service and vulnerable consumers.

Chapter IV of the proposed Directive provides for some clarifications concerning the tasks of DSOs, notably relating to the activities of DSOs concerning the procurement of network services to ensure flexibility, the integration of electrical vehicles and data management. It also clarifies the role of DSOs with respect to storage and recharging points for electric vehicles.

Chapter V of the proposed Directive summarises the general rules applicable to TSOs, largely based on existing text, providing only some clarifications concerning ancillary services and the new Regional Operational Centres.

Chapter VI of the proposed Directive, setting out the rules on unbundling as developed in the Third Energy Package, remains unchanged as concerns the main substantive rules on unbundling, notably with respect to the three regimes for TSOs (ownership unbundling, independent system operator and independent transmission operator), as well as with respect to the provisions on TSO designation and certification. It only provides a clarification on the possibility for TSOs to own storage or to provide ancillary services.

Chapter VII of the proposed Directive contains the rules on establishment, scope of powers and duties as well as rules of functioning of the independent national energy regulators. The proposal notably emphasises the obligation of regulators to cooperate with neighbouring regulators and ACER in case issues of cross-border relevance are concerned and updates the list of tasks of regulators, inter alia with respect to the supervision of the newly created Regional Operational Centres.

Chapter VIII of the proposed Directive changes some general provisions, inter alia on derogations to the Directive, exercise of delegated powers by the Commission and the Committee established under comitology rules pursuant to Regulation (EU) No 182/2011.

The new Annexes to the proposed Directive set out more requirements on comparison tools, billing and billing information and amends pre-existing requirements for smart meters and their roll-out.

- **Proposal for a Regulation of the European Parliament and of the Council on the internal electricity market (Recast)**

Chapter I of the proposed Regulation sets out the scope and subject matter and the definitions of terms used in it. It emphasises the importance of undistorted market signals to provide for increased flexibility, decarbonisation and innovation and updates and complements the main definitions used in the Regulation.

Chapter II of the proposed Regulation introduces a new Article which sets out the key principles to be respected by national energy legislation in order to allow for a functioning internal electricity market. It also sets out the main legal principles for electricity trading rules within different trading timeframes (balancing, intraday, day-ahead and forward markets), including principles for price formation. It clarifies the principle of balancing responsibility and provides for a framework for more market compatible rules for the dispatch and curtailment of generation and demand response, including conditions for any exceptions thereof.

Chapter III of the proposed Regulation describes the process to define bidding zones in a coordinated manner, in line with the review process created in Regulation 1222/2015 establishing a Guideline on Capacity Calculation and Congestion Management<sup>25</sup>. In order to address the persisting problem of significant national limitations to cross-border electricity flows, the conditions for such exceptional limitations are clarified, notably by rules that shall ensure that electricity imports and exports are not restricted by national actors for economic reasons. This Chapter further contains amendments to pre-existing principles for transmission and distribution network tariffs and sets a procedure for fostering the progressive convergence of transmission and distribution tariff methodologies. It also sets out amended rules for the usage of congestion rents.

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<sup>25</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. 24–72.

Chapter IV of the proposed Regulation sets out new general principles for addressing resource adequacy concerns by Member States in a coordinated manner. It sets out principles and a procedure for the development of a European resource adequacy assessment to better determine the need for capacity mechanisms and, if appropriate, the setting of a reliability standard by Member States. It clarifies how and under which conditions capacity mechanisms can be introduced in a market-compatible manner. It also clarifies market compatible design principles for capacity mechanisms, including rules for the participation of capacity located in another Member State and for interconnection usage. It sets out how Regional Operational Centres, national TSOs, the ENTSO for electricity and national regulators via ACER will be involved in the development of technical parameters for the participation of capacities located in another Member State as well as the operational rules for their participation.

Chapter V of the proposed Regulation sets out the tasks and duties of the ENTSO for Electricity and the monitoring tasks of ACER in this regard whilst clarifying its duty to act independently and for the European good. It defines the mission of Regional Operational Centres and provides for criteria and a procedure for defining system operation regions covered by each Regional Operational Centre and the coordination functions that these centres perform. It also sets out working and organisational arrangements, consultation requirements, requirements and procedures for the adoption of decisions and recommendations and their revision, the composition and responsibilities of the management board and liability arrangements of Regional Operational Centres. The chapter also incorporates rules on the connection of cogeneration units, previously included in Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency. The rules on a ten-year network development plan, inter-transmission system operator compensation, information exchange and certification remain largely unchanged.

Chapter VI of the proposed Regulation sets up a European entity for DSOs, defines a procedure for its establishment and its tasks including with regard to the consultation of stakeholders. It also provides detailed rules on the cooperation between DSOs and TSOs with regard to the planning and operation of their networks.

Chapter VII of the proposed Regulation sets out pre-existing powers and rules for the Commission to adopt delegated acts in the form of network codes or guidelines. It provides for clarifications as to the legal nature and the adoption of network codes and guidelines and enlarges their possible content to areas such as distribution tariff structures; rules for the provision of non-frequency ancillary services; demand response, energy storage and demand curtailment rules; cyber security rules; rules regarding to Regional Operational Centres; and, the curtailment of generation and redispatch of generation and demand. It simplifies and streamlines the procedure for the elaboration of electricity network codes and gives national regulators the possibility to decide within ACER on issues concerning the implementation of network codes and guidelines. It also includes the European entity for DSOs and other stakeholders more closely in the procedure of the development of proposals for electricity network codes.

Chapter VIII of the proposed Regulation sets out the final provisions of the proposed Regulation. It includes the pre-existing rules for the exemption of new direct current interconnectors from certain requirement of the Electricity Directive and Regulation whilst clarifying the procedure for subsequent amendments made by NRAs thereof.

The Annex to the proposed Regulation defines in more detail the functions attributed to the Regional Operational Centers created by the Regulation.

- **Proposal for a Regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (recast)**

In general, the rules concerning ACER are proposed to be adapted to the "Common Approach" on EU decentralised agencies agreed between the European Parliament, the Council of the EU and the European Commission (Common Approach)<sup>26</sup>. Keeping limited deviations from the "Common Approach" is, however, warranted for ACER at the present stage.

Chapter I of the proposed Regulation describes the role, objectives and tasks of ACER and the type of acts that it can adopt, and provides for rules on consultations and monitoring. The list of tasks has been updated to include ACER's duties in the field of wholesale market supervision and cross-border infrastructure which were attributed to ACER subsequent to the adoption of the Regulation.

With respect to the adoption of electricity network codes, ACER is given more responsibility in elaborating and submitting the final proposal for a network code to the Commission, while maintaining ENTSO-E's role as a technical expert. The proposal also includes a formal place for DSOs to be represented at EU level, notably in the development of network code proposals, in line with an increase in their responsibilities. The Agency is given the competence to decide on terms, methodologies and algorithms for the implementation of electricity network codes and guidelines.

For tasks in a regional context concerning only a limited number of national regulators, a regional decision-making process is introduced. Accordingly, the Director would have to give his opinion on whether the issue in question is primarily of regional relevance. If the Board of Regulators agrees that this is the case a regional sub-committee of the Board of Regulators should prepare the decision in question which would finally be taken or rejected by the Board of Regulators itself. Otherwise the Board of Regulators would decide without the intervention of a regional sub-committee.

The Chapter also defines a number of new tasks for ACER concerning the coordination of certain functions related to the Regional Operational Centres within the Agency, concerning the supervision of Nominated Electricity Market Operators and related to the approval of methods and proposal related to generation adequacy and risk preparedness.

Chapter II of the proposed Regulation contains organisational rules relating to the Administrative Board, the Board of Regulators, the Director, the Board of Appeal and, as a new provision, on the Agency's working groups. While adapting several individual provisions to the Common Approach on EU decentralised agencies or to the new Council voting rules, the main features of the existing governance structure, in particular the Board of Regulators, are preserved.

This deviation of ACER, from the Common Approach is justified as follows:

The main objectives of European Electricity Policy, security of supply, affordability of electricity and decarbonisation could be reached most cost effectively by an integrated European electricity market. Accordingly, the electricity transmission infrastructure is progressively interconnected, increasing volumes of electricity are traded cross border, generation capacities are shared at a European scale and the transmission system is operated

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<sup>26</sup> See joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19.7.2012.

taking regional, cross-border aspects into account. The present legislative packages further enhance these trends which are expected to result in efficiencies to the benefit of European customers.

A precondition for the creation of an internal electricity market is the opening of the sector to competition. As in other sectors of economy as well, the opening of the electricity market required new regulations, in particular with regard to the transmission and distribution system, and regulatory oversight. To this effect, independent regulatory authorities were put in place. These entities remain with a particular responsibility when it comes to overseeing national and European rules applicable to the electricity sector.

However, with the increasing cross-border trade and system operation which takes the regional and European context into account, NRAs were required to increasingly coordinate their action with NRAs from other Member States. ACER was designed to become the platform for this interaction and fulfils this duty since its creation in 2011. The body within the Agency where most opinions, recommendations and decisions of the Agency are prepared, together with ACER staff, is thus the Board of Regulators comprising senior representatives of the NRAs and a non-voting representative of the Commission. The first years of the existence of the Agency have shown that the Board of Regulators managed to contribute effectively to the fulfilment of the tasks of the Agency.

Since energy markets are still largely regulated at national level, national regulators are actors with a key role for energy markets. The main role of ACER is not the execution of delegated regulatory Commission competencies, but the coordination of the regulatory decisions of independent national regulators. The present legislative proposal still largely preserves this distribution of roles. The current structure strikes a fine-tuned balance of powers between the different actors, having regard to the special features of the developing internal energy market. Changing the balance at this stage might risk jeopardising the implementation of the policy initiatives in the legislative proposals and thereby would pose obstacles to the further integration of the energy market which is the main purpose of the present proposal. It therefore appears as premature to transfer decision-making powers to a Management Board as provided for in the Common Approach. Instead it seems rather appropriate to keep the current structure which ensures that the national regulators act without any direct intervention of EU institutions or Member States in the specific matters. At the same time, the overall work of the regulators remains subject to the approval of the EU institutions via programming, budgetary and strategic documents. EU institutions are also involved in administrative matters. As a consequence, it is not proposed to change the set-up and operation of the existing Board of Regulators.

Likewise, it is not proposed to adapt the concept of the Administrative Board to the model of the Common Approach Management Board. The Agency's Administrative Board in its existing composition proved to be particularly effective and efficient over the last years. Its operation is assured by representatives of the European Parliament, the Council and the Commission.

Even though at this stage, the Commission does not find it appropriate to adapt the governance structure of the Agency fully to the Common Approach, it will continue to monitor if the described deviations from the Common Approach are still justified, with the next evaluation scheduled for 2021 which in addition to an assessment of the Agency's objectives, mandate and tasks will have a particular focus on the governance structure of the Agency.

Chapter III of the proposed Regulation contains financial provisions. Several individual provisions are proposed to be adapted to the Common Approach on decentralised agencies.



Chapter IV of the proposed Regulation updates several individual provisions in line with the Common Approach and contains otherwise largely unchanged provisions on staff and liability.

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↓ 714/2009 (adapted)

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 (EU) No 714/2009 of the European Parliament and of the Council<sup>27</sup> has  
been substantially amended several times. Since further amendments are to be made,  
that Regulation should be recast in the interests of clarity.

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↓ 714/2009 recital 1 (adapted)  
⇒ new

(2) ⇒ The Energy Union aims at providing consumers – household and business – 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,

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<sup>27</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).

which has been progressively implemented since 1999, aims to deliver a real choice for all consumers in the ~~the~~ Union ~~the~~ Community, ~~both~~ ~~be~~ ~~the~~ citizens or 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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↓ new

- (3) Europe's energy system is in the middle of its most profound change in decades. The electricity market is at the heart of these processes. 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 without any 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 needs to 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 more volatile electricity production requires increased efforts to coordinate national energy policies with neighbours and to use the opportunities of cross-border electricity trade.
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↓ 714/2009 recitals 2 to 5

~~(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>28</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>29</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~~

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<sup>28</sup> OJ L 176, 15.7.2003, p. 37.

<sup>29</sup> OJ L 176, 15.7.2003, p. 1.

~~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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↓ 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 reflecting 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) 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 gGuidelines 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 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. The creation of regional operational centres 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 should allow them to play an effective coordination role by optimising the operations of transmission system operators over larger regions.
- (35) Regional operational centres should carry out functions where their regionalisation brings added value compared to functions performed at national level. The functions of regional operational centres 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 should exclude real time operation of the electricity system.



- (36) Regional operational centres 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 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 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.

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↓ 714/2009 recital 6 (adapted)

- (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>30</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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↓ 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 tarification and capacity allocation by the Commission whilst ensuring the involvement of Member States' regulatory authorities in that process,

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<sup>30</sup> ~~OJL 211, 14.8.2009, p. 1.~~

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>31</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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↓ 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

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<sup>31</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).

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>32</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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↓ new

- (48) Member States and the Energy Community Contracting Parties should closely cooperate on all matters concerning the development of an integrated electricity

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<sup>32</sup> OJL 184, 17.7.1999, p. 23.

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>33</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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↓ 714/2009 recital 30 (adapted)

- (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. 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.

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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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<sup>33</sup> OJ L 123, 12.5.2016, p. 1.

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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>34</sup> by enabling market signals to be delivered for increased flexibility, decarbonisation and innovation;
- (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;

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↓ 714/2009 (adapted)  
⇒ new

~~(c)~~ 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;

~~(d)~~ 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.

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<sup>34</sup> COM/2014/015 final.

## 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>35</sup> in Article 2 of Commission Regulation (EU) No 543/2013<sup>36</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,  ~~the~~ the 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;
  - (c) ‘congestion’ means a situation in which ⇨ all requests from market participants to trade between two bidding zones 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;<sup>36</sup>

<sup>35</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>36</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).

- (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 the dispatch of power plants on the basis of criteria different from the economic order of bids and, in central dispatch systems, 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 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>37</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.

## 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;

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<sup>37</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).

- (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;
- (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 uncertainty on future returns on investment shall be tradable on exchanges in a transparent manner subject to compliance with EU treaty rules on competition.

#### *Article 4*

##### *Balancing responsibility*

1. All market participants shall aim for system balance and shall be financially responsible for imbalances they cause in the system. They shall either be balance responsible parties or delegate their responsibility to a balance responsible party of their choice.
2. Member States may provide for derogation from balance responsibility in respect of:
  - (a) demonstration projects;
  - (b) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 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.
3. From 1 January 2026, point (b) of paragraph 2 shall apply only to generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 250 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.
2. Balancing markets shall be organised in such a way as to ensure effective non-discrimination between market participants taking account of the different technical capability of generation from variable renewable sources and demand side response and storage.
3. Balancing energy shall be procured separately from balancing capacity. 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. Market participants shall be allowed to bid as close to real time as possible, and at least after the intraday cross-zonal gate closure time determined in accordance with Article 29 of Commission Regulation (EU) 2015/1222<sup>38</sup>.
6. The imbalances shall be settled at a price that reflects the real time value of energy.
7. The dimensioning of reserve capacity and the amount of balancing capacity that needs to be procured shall be carried out on a regional level in accordance with points 7 and 8 of Annex I.
8. The procurement of balancing capacity shall be performed on a regional level in accordance with point 8 of Annex 1. 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.
9. The procurement of upward balancing capacity and downward balancing capacity shall be carried out separately. The contracting should be performed for not longer than one day before the provision of the balancing capacity and the contracting period shall have a maximum period of one day.
10. Transmission system operators shall publish close to real-time information on the current balancing state of their control areas, the imbalance price and the balancing energy price.

## 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

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<sup>38</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).

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 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 3 to 16 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 market participants to contribute to avoid system imbalances;
  - (c) maximise the opportunities for market participants to participate in cross-border trade as close as possible to real time across all bidding zones;
  - (d) provide prices that reflect market fundamentals 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;
  - (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. Market operators shall allow market participants to trade energy as close to real time as possible and at least to the intraday cross-zonal gate closure time determined in accordance with Article 59 of Regulation (EU) 2015/1222.
2. 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. 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, the imbalance settlement period shall be 15 minutes in all control areas.

## 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 owners of generation facilities using renewable energies, to hedge price risks across bidding zone borders.
2. Long-term transmission rights shall be allocated in a transparent, market based and non-discriminatory manner through a single allocation platform. 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 energies, 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

1. There shall be no 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 force] market operators may apply limits on maximum clearing prices for day-ahead and intraday timeframes in accordance with Articles 41 and 54 of Regulation (EU) 2015/1222. In the event that 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. 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 Member State has identified a policy or measure which could serve to restrict price formation they 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*] 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. Member States may establish different VoLL per bidding zone if they have several bidding zones in their territory. In establishing VoLL, 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 and market based unless otherwise provided under paragraphs 2 to 4.
2. When dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources or high-efficiency cogeneration from small generating installations or generating installations using emerging technologies to the following extent:
  - (a) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW; or
  - (b) demonstration projects for innovative technologies.
3. Where the total capacity of generating installations subject to priority dispatch under paragraph 2 is higher than 15 % of the total installed generating capacity 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.

From 1 January 2026, point (a) of paragraph 2 shall apply only to 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 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) Directive 2009/28/EC of the European Parliament and of the Council<sup>39</sup> shall remain subject to priority dispatch. Priority dispatch shall no longer be applicable

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<sup>39</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).

from the date where the generating installation 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.

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*

1. Curtailment or redispatching of generation and redispatching of demand response shall be based on objective, transparent and non-discriminatory criteria.
2. The resources curtailed or redispatched shall be selected amongst generation or demand facilities submitting offers for curtailment or redispatching using market-based mechanisms and be financially compensated. Non-market-based curtailment or redispatching of generation or redispatching of demand response shall only be used where no market-based alternative is available, where all available market-based resources have been used, or where 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 generating installations using renewable energies 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 renewable energies 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 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 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 risks to network security;
  - (b) 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 using renewable energy sources, no other alternative exists or if other solutions would result in disproportionate costs or risks to network security;
  - (c) self-generated electricity from generating installations using renewable energies 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 c 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 of the curtailed or redispatched generation or demand facility. 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 using high-efficiency cogeneration;
  - (b) 90 % of the 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 configuration 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. The Agency shall approve and may request amendments to 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 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 months after the conclusion of the bidding zone configuration 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. 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 may adopt a decision within six 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. The Commission may define appropriate transitional arrangements as part of its decision.
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↓ 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. The maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows shall be made available to market participants, complying with safety standards of secure network operation. ⇨ 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. The highest value bids, whether implicit or explicit 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 control area or as a means of managing flows on a border between two control areas observed even without any transaction, i.e. flows over control areas caused by origin and destination within one control area.

Upon request by a transmission system operator, the relevant regulatory authority may grant a derogation from the first subparagraph where it is necessary for maintaining operational security or where it is beneficial to economic efficiency at Union level. 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.

### *Article 15*

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

1. Transmission system operators shall recalculate available cross-zonal capacity at least after day-ahead market coupling 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.

↓ 714/2009 (adapted)  
⇒ new

## SECTION 2

### ⊗ NETWORK CHARGES AND CONGESTION INCOME ⊗

#### *Article ~~1614~~*

##### *Charges for 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, they shall 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 discriminate against energy storage and shall not create disincentives for participation in demand response. Without prejudice to paragraph 3, ⇐ ~~t~~ Those charges shall not be distance-related.

↓ new

2. Tariffs shall grant 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.

↓ 714/2009 (adapted)  
⇒ new

~~2.3.~~ 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 ~~1446~~.

~~5.6.~~ There shall be no specific network charge on individual transactions for ~~trade~~ ⇨ cross-border trade ⇐ ~~declared transits~~ of electricity.

↓ 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, 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 regulatory authorities shall recognise as eligible and include all relevant costs in distribution tariffs and introduce performance targets in order to incentivise distribution system operators to raise efficiencies, including energy efficiency, in their networks.
- 9. By [*OP: please add specific date – three months after entry into force*] the Agency shall provide a 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.
- 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; ~~and/or~~
- (b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors.

If the revenues cannot be efficiently used for the purposes set out in points (a) ~~and/or~~ (b) of the first subparagraph, ⇒ they shall be placed on a separate internal account line for future use on these purposes. ~~⇐ 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 Agency and approved by 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 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].

The methodology shall detail as a minimum the conditions under which the revenues can be used for points (a) and (b) of paragraph 2 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.

4. 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 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 June of the same 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, together with verification that that use complies with this Regulation and the methodology developed pursuant to paragraph 3.

## Chapter IV

### Resource adequacy

#### Article 18

##### Resource adequacy

1. Member States shall monitor resource adequacy within their territory based on the European resource adequacy assessment pursuant to Article 19.
2. Where the European resource adequacy assessment identifies a resource adequacy concern Member States shall identify any regulatory distortions that caused or contributed to the emergence of the concern.
3. Member States shall publish a timeline for adopting measures to eliminate any identified regulatory distortions. When addressing resource adequacy concerns Member States shall in particular consider removing regulatory distortions, enabling shortage pricing, developing interconnection, energy storage, demand side measures and energy efficiency.

↓ 714/2009 (adapted)  
⇒ new

#### Article 19

##### ⊗ European resource adequacy assessment ⊗

~~4.1. =~~ The European ⇒ resource adequacy assessment ⇐ ~~generation adequacy outlook referred to in point (gb) 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. ⇐ ~~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.
4. The European resource adequacy assessment shall be based on a methodology which shall ensure that the assessment:
  - (a) is carried out on bidding zone level covering at least all Member States;
  - (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 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.
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 expressed as "expected energy not served" and the "loss of load expectation".
6. The proposals under paragraphs 2 and 5 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 based on the methodology pursuant to Article 19 (5).
3. The reliability standard shall be calculated using the value of lost load and the cost of new entry over a given timeframe.
4. The parameters determining the amount of capacity procured in the capacity mechanism shall be approved by the 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.
2. Member States shall ensure that foreign capacity capable of providing equivalent technical performance to domestic capacities has the opportunity to participate in the same competitive process as domestic capacity.
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 able to participate in more than one mechanism for the same delivery period. They shall be subject to non-availability payments pursuant to Article 23 (1) h) 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 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.
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 as referred to in point (h) of Article 23 (1) 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 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(a). 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.
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 EU 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.
3. Capacity mechanisms shall not create unnecessary market distortions and not limit cross-border trade. 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*] shall only be eligible to participate in a capacity mechanism if its emissions are below 550 gr CO<sub>2</sub>/kWh. Generation capacity emitting 550 gr CO<sub>2</sub>/kWh or more shall not be committed in capacity mechanisms 5 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.

### *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.

## 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 trade and to ensure the optimal management, coordinated operation and sound technical evolution of the European electricity transmission network.

2. In performing its functions under EU law, the ENTSO for Electricity shall act 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.

#### *Article 265*

##### *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~~8~~

### *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).~~

~~2.1.~~ The ENTSO for Electricity ~~may~~  shall have the following tasks  :

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

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↓ new

(e) to adopt a framework for the cooperation and coordination between regional operational centres;

(f) to adopt a proposal defining the system operation region covered by each regional operational centre;

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↓ 347/2013 (adapted)

⇒ new

~~(e)~~ (g) ☒ to adopt ☒ common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incidents 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.~~

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↓ 714/2009 (adapted)  
⇒ new

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

~~(e)~~ (i) ☒ to adopt ☒ an annual report.<sup>5</sup>

(j)~~(f)~~ ☒ to 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.

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. ⇐

~~612.~~ 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 ~~5718~~.

~~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~~. 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 ~~299~~

### Monitoring by the Agency

1. The Agency shall monitor the execution of the tasks referred to in Article ~~27~~ ~~8~~(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

#### *Article ~~3011~~*

##### *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 ~~3112~~*

##### *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 ~~9~~(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 65 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*

1. By [OP: *twelve months after entry into force*], all transmission system operators 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.
2. Regional operational centres 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>40</sup>
3. Regional operational centres shall complement the role of transmission system operators by performing functions of regional relevance. They shall establish operational arrangements in order to ensure the efficient, secure and reliable operation of the interconnected transmission system.

## 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;
  - (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

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<sup>40</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).

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*

1. Each regional operational centre shall perform all the following functions in the system operation region where it is established and regional operational centres shall perform at least the following functions, set out in more detail in Annex I:
  - (a) coordinated capacity calculation;
  - (b) coordinated security analysis;
  - (c) creation of common system models;
  - (d) consistency assessment of transmission system operators' defense plans and restoration plans;
  - (e) coordination and optimization of regional restoration;
  - (f) post-operation and post-disturbances analysis and reporting;
  - (g) regional sizing of reserve capacity;
  - (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 according to Article 6(1) of [Regulation on risk preparedness as proposed by COM(2016) 862] if this task is delegated by ENTSO for Electricity;
  - (n) preparation and carrying out of yearly crisis simulations in cooperation with competent authorities according to Art 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 delegated to the regional operational centres pursuant to Article 9 (2) of [Regulation on risk preparedness as proposed by COM(2016) 862];
  - (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 centre with the information necessary to carry out its functions.
4. Regional operational centres shall provide transmission system operators of the system operation region with all the information necessary to implement the decisions and recommendations proposed by the regional operational centres.

#### *Article 35*

##### *Cooperation within regional operational centres*

1. The day-to-day operation of regional operational centres shall be managed through cooperative decision-making. 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;
  - (b) a procedure for consulting 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 and recommendations adopted by regional operational centres in accordance with Article 39.

#### *Article 36*

##### *Working arrangements*

1. Regional operational centres 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 1.
2. Regional operational centres shall ensure that the working arrangements contain rules for the notification of parties concerned.

#### *Article 37*

##### *Consultation procedure*

Regional operational centres shall develop a procedure to organise, in the exercise of their daily operational duties and tasks, the appropriate and regular consultation of transmission system operators 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 and recommendations*

1. Regional operational centres shall develop a procedure for the adoption of decisions and recommendations.
2. Regional operational centres shall adopt binding decisions addressed to the transmission system operators in respect of the functions referred to in points (a), (b), (g) and (q) of Article 34(1). Transmission system operators shall implement the binding decisions issued by the regional operational centres except in cases when the safety of the system will be negatively affected.
3. Regional operational centres shall adopt recommendations addressed to the transmission system operators for the functions referred to in points (c) to (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 for one or more of the functions provided for in points (c) to (f) and (h) to (l) of Article 34(1).

## Article 39

### *Revision of decisions and recommendations*

1. Regional operational centres shall develop a procedure for the revision of decisions and recommendations.
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 decision or recommendation, regional operational centres shall confirm or modify the measure.
3. Where the measure subject to revision is a binding decision in accordance with Article 38(2), the request for revision shall not suspend the decision except in cases when the safety of the system will be negatively affected.
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 centre and to the other transmission system operators of the system operation region.

## Article 40

### *Management board of regional operational centres*

1. In order to adopt measures related to their governance and to monitor their performance, the regional operational centres 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 centre;
  - (b) deciding upon and implementing the organisational structure;
  - (c) preparing and endorsing the annual budget;
  - (d) 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 and the performance of its functions.

#### *Article 41*

##### *Organisational structure*

1. Regional operational centres shall set up and manage their organisation according to a structure that supports the safety of their 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 may set up regional desks to address local specificities or back-up operational centres for the efficient and reliable exercise of their functions.

#### *Article 42*

##### *Equipment and staff*

Regional operational centres 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 shall establish a process for the continuous monitoring of at least:
  - (a) their operational performance;
  - (b) the decisions and recommendations issued and the outcome achieved;
  - (c) the effectiveness and efficiency of each of the functions 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 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 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>41</sup>.
5. Regional operational centres shall report shortcomings identified in the monitoring process under paragraph 1 to ENTSO for electricity, the regulatory authorities of the system operation region, the Agency and the competent authorities of Member States responsible for the prevention and management of crisis situations.

#### *Article 44*

#### *Liability*

Regional operational centres shall take the necessary steps to cover liability related to the execution of their tasks, in particular, where it adopts decisions binding on transmission system operators concerning the functions of coordinated capacity calculation and operational planning security analysis. The method employed to provide the cover shall take into account the legal status of the regional operational centre and the level of commercial insurance cover available.

↓ 714/2009 (adapted)

#### *Article 45~~8~~*

#### *~~10.~~ Ten-year network development plan ~~10.~~*

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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<sup>41</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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↓ 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>42</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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↓ 714/2009 (adapted)

- (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] ~~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 ~~4613~~

##### *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.

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<sup>42</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).



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>48</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.

↓ 714/2009 ⇨ new
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#### *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 has 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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↓ new

7. TSOs shall exchange regularly a set of sufficiently accurate network and load flow data in order to enable load flow calculations for each TSO in their relevant area. The same set of data shall be made available to the regulatory authorities and to the Commission upon request. The regulatory authorities and the Commission shall ensure the confidential treatment of that set of data, by themselves and by any consultant carrying out analytical work for them on the basis of those data.

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↓ 714/2009

*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 ~~52~~40(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 5240(2) or Article 5344, 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 an additional 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(~~940~~) 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.

↓ new

## Chapter VI

### Distribution system operation

#### Article 49

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

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, 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 and the financing rules, of the EU DSO entity to be established.
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 pursuant to Article 56.

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 56, 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 shall cooperate with 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 development and operation and the secure and reliable operation of their networks.

2. Transmission and distribution system operators shall cooperate 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 paragraph 2 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 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 trade.

↓ 714/2009 (adapted)  
⇒ new

#### Article ~~55~~

##### *Establishment of network codes*

~~61.~~ ⇒ 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 ⇒ 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, including aggregation, energy storage, and demand curtailment rules;
- (o) cyber security rules; and
- (p) rules concerning regional operational centres.

↓ 714/2009  
⇒ new

~~12.~~ The Commission shall, after consulting the Agency, the ENTSO for Electricity 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 less relevant for the transmission system, the Commission may require the EU DSO entity for electricity instead of the ENTSO for Electricity to convene a drafting committee and submit a proposal for a network code to the agency. ⇐

~~23.~~ 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 ~~3.2~~ or ~~6.4~~, 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 ⇨ , 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

~~1.9.~~ ⇨ 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, 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, ⇨ shall elaborate ⇨ proposals for ⇨ network codes in the areas referred to in ~~paragraph 4.6 of this paragraph 1~~ upon a request addressed to it by the Commission in accordance with ~~paragraph 8 Article 6(6)~~.



~~9.10.~~ When the Agency  $\Rightarrow$  shall revise the network code and ensure  $\Leftarrow$  ~~is satisfied~~ that the network code is in line with the relevant framework guideline  $\Rightarrow$  and contributes to market integration, non-discrimination, effective competition, and the efficient functioning of the market and  $\Leftarrow$ , ~~the Agency shall~~ submit the  $\Rightarrow$  revised  $\Leftarrow$  network code to the Commission and may recommend that it be adopted within  $\Rightarrow$  six months of the day of the receipt of the proposal  $\Leftarrow$  ~~a reasonable time period. The Commission shall provide reasons in the event that it does not adopt that network code.~~  $\Rightarrow$  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.  $\Leftarrow$

~~10.11.~~ Where the ENTSO for Electricity  $\Rightarrow$  or the EU DSO entity  $\Leftarrow$  ~~have~~ 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 ~~567~~

### *Amendments of network codes*

$\Downarrow$  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

~~2.2.~~ 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.

~~2.3.~~ ~~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, 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 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 ~~65~~ ~~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~~~~18~~

#### 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 ~~46~~~~13~~ and ~~16~~~~14~~:

- (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 ~~4613~~.

~~2.4.~~ Guidelines may also determine appropriate rules ~~leading to a progressive harmonisation of the underlying principles for the setting of~~  $\Rightarrow$  relating to  $\Leftarrow$  charges applied to producers,  $\Rightarrow$  energy storage  $\Leftarrow$  and  $\boxtimes$  customers  $\boxtimes$  consumers (load) under national  $\Rightarrow$  distribution and transmission  $\Leftarrow$  tariff systems  $\Rightarrow$  and connection regimes  $\Leftarrow$ , 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 ~~1614~~.

The ~~g~~Guidelines  $\Rightarrow$  may  $\Leftarrow$  ~~shall~~ make provision for appropriate and efficient harmonised locational signals at  $\boxtimes$  Union  ~~$\boxtimes$  Community~~ level.

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

~~3.5.~~ Where appropriate, ~~g~~Guidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation ~~shall~~  $\Rightarrow$  may  $\Leftarrow$  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

~~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 ~~55~~ of this Regulation and build upon the adopted specifications and the Agency opinion referred to in Article ~~27(1)(g) & (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~~Guidelines, the Commission shall ~~z~~ ⇒ 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~~71

##### *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 ~~g~~Guidelines referred to in Article ~~57~~48 ⇒ or in the network codes referred to in Article 56, provided those measures do not endanger the effectiveness of the Union acts ⇐.

## Chapter VIII

### ⊠ Final provisions ⊠

#### *Article ~~5917~~*

##### *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)16(6)~~ of this Regulation and Articles ~~69, 4332~~ and Article ~~5937(6)~~ and ~~Article 60(1)(10)~~ 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>43</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

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<sup>43</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).

advisory opinion to those regulatory authorities which could provide a basis for their decision.

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 ⇒, on the basis of a reasoned request by the notifying bodies, ⇐ that any delay is due to major obstacles beyond the control of the person to whom the exemption has been granted.

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↓ 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.

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↓ 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 60

#### *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 ⇒ enforcing the provisions of this Regulation ⇐ ~~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 ⇒ enforcing the provisions of this Regulation ⇐ ~~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 ~~61(2)~~ (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~~  $\Rightarrow$  enforcing the provisions of this Regulation  $\Leftarrow$ .

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 ~~6122~~*

### *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  $\Rightarrow$ , the network codes adopted pursuant to Article 55, and the guidelines adopted pursuant to Article 57  $\Leftarrow$  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 ~~6020~~(3) or fail to supply information within the time-limit fixed by a decision adopted pursuant to the first subparagraph of Article ~~6020~~(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>44</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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↓ 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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<sup>44</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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↓ 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 ~~6425~~

#### *Repeal*

Regulation (EC) No ~~1228/2003~~  714/2009  is  repealed ~~from 3 March 2014~~. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article ~~6526~~*

*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~~ ☒ 1 January 2020 ☒.

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*