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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules for the internal market in electricity (recast) - Outcome of the European Parliament's first reading, (Strasbourg, 25 to 28 March 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Jerzy BUZEK (EPP, PL), presented one compromise amendment (amendment 200) to the proposal for a Directive on behalf of the Committee on Industry, Research and Energy. The Committee also tabled one amendment (amendment 201) to take note of the Commission statements annexed to the legislative resolution. These amendments had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 26 March 2019, the plenary adopted the compromise amendment (amendment number 200) to the proposal for a Directive, as well as the amendment 201. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Common rules for the internal market for electricity *I**

European Parliament legislative resolution of 26 March 2019 on the proposal for a directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast) (COM(2016)0864 – C8-0495/2016 – 2016/0380(COD))

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0864),
- having regard to Article 294(2) and Article 194(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0495/2016),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Hungarian Parliament, the Austrian Federal Council and the Polish Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 31 May 2017³;
- having regard to the opinion of the Committee of the Regions of 13 July 2017⁴;
- having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts⁵,
- having regard to the letter of 7 September 2017 sent by the Committee on Legal Affairs to the Committee on Industry, Research and Energy in accordance with Rule 104(3) of its Rules of Procedure,
- having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 18 January 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rules 104 and 59 of its Rules of Procedure,
- having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on the Environment, Public Health and Food Safety (A8-

³ OJ C 288, 31.8.2017, p. 91.

⁴ OJ C 342, 12.10.2017, p. 79.

⁵ OJ C 77, 28.3.2002, p. 1.

0044/2018),

- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
 2. Takes note of the Commission statements annexed to this resolution;
 3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 26 March 2019 with a view to the adoption of Directive (EU) 2019/... of the European Parliament and of the Council on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the ordinary legislative procedure⁸,

⁶ OJ C 288, 31.8.2017, p. 91.

⁷ OJ C 342, 12.10.2017, p. 79.

⁸ Position of the European Parliament of 26 March 2019.

Whereas:

- (1) A number of amendments are to be made to Directive 2009/72/EC of the European Parliament and of the Council⁹. In the interests of clarity, that Directive should be recast.
- (2) The internal market for electricity, which has been progressively implemented throughout the Union since 1999, aims, by organising competitive electricity markets across country borders, to deliver real choice for all Union final customers, be they citizens or businesses, new business opportunities, competitive prices, efficient investment signals and higher standards of service, and to contribute to security of supply and sustainability.
- (3) Directive 2003/54/EC of the European Parliament and of the Council¹⁰ and Directive 2009/72/EC have made a significant contribution towards the creation of the internal market for electricity. However, the Union's energy system is in the middle of a profound change. The common goal of decarbonising the energy system creates new opportunities and challenges for market participants. At the same time, technological developments allow for new forms of consumer participation and cross-border cooperation. There is a need to adapt the Union market rules to a new market reality.

⁹ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

¹⁰ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ L 176, 15.7.2003, p. 37), repealed and replaced, with effect from 2 March 2011, by Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

- (4) The Commission Communication of 25 February 2015, entitled ‘A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy’, sets out a vision of an Energy Union with citizens at its core, where citizens take ownership of the energy transition, benefit from new technologies to reduce their bills and participate actively in the market, and where vulnerable consumers are protected.
- (5) The Commission Communication of 15 July 2015, entitled 'Delivering a New Deal for Energy Consumers', put forward the Commission's vision for a retail market that better serves energy consumers, including by better linking wholesale and retail markets. By taking advantage of new technology, new and innovative energy service companies should enable all consumers to fully participate in the energy transition, managing their consumption to deliver energy efficient solutions which save them money and contribute to the overall reduction of energy consumption.

- (6) The Commission Communication of 15 July 2015, entitled 'Launching the public consultation process on a new energy market design', highlighted that the move away from generation in large central generating installations towards decentralised production of electricity from renewable sources and towards decarbonised markets requires adapting the current rules of electricity trading and changing the existing market roles. The Communication underlined the need to organise electricity markets in a more flexible manner and to fully integrate all market players – including producers of renewable energy, new energy service providers, energy storage and flexible demand. ***It is equally important for the Union to invest urgently in interconnection at Union level for the transfer of energy through high-voltage electricity transmission systems.***
- (7) ***With a view to creating an internal market for electricity, Member States should foster the integration of their national markets and cooperation among system operators at Union and regional level, and incorporate isolated systems that form electricity islands that persist in the Union.***

- (8) In addition to addressing new challenges, this Directive seeks to address the persisting obstacles to the completion of the internal market for electricity. The refined regulatory framework needs to contribute to overcoming the current problems of fragmented national markets which are still often determined by a high degree of regulatory interventions. Such interventions have led to obstacles to the supply of electricity on equal terms as well as higher costs in comparison to solutions based on cross-border cooperation and market-based principles.
- (9) *The Union would most effectively meet its renewable energy targets through the creation of a market framework that rewards flexibility and innovation. A well-functioning electricity market design is the key factor enabling the uptake of renewable energy.*

- (10) Consumers have an essential role to play in achieving the flexibility necessary to adapt the electricity system to variable **and** distributed renewable electricity generation.

Technological progress in grid management and the generation of renewable electricity has unlocked many opportunities for consumers. **Healthy** competition in retail markets is essential to ensuring the market-driven deployment of innovative new services that **address** consumers' changing needs and abilities, while increasing system flexibility. **However, the lack of real-time or near real-time information provided to consumers about their energy consumption has prevented them from being active participants in the energy market and the energy transition.** By empowering consumers **and providing them with the tools** to participate more in the energy market, including participating in new ways, it is intended that citizens in the Union benefit from the internal market for electricity and that the Union's renewable energy targets are attained.

- (11) The freedoms which the Treaty on the Functioning of the European Union (TFEU) guarantees the citizens of the Union — inter alia, the free movement of goods, the freedom of establishment and the freedom to provide services — are achievable only in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.
- (12) Promoting fair competition and easy access for different suppliers is of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market for electricity. *Nonetheless, it is possible that market failure persists in peripheral small electricity systems and in systems not connected with other Member States, where electricity prices fail to provide the right signal to drive investment, and therefore requires specific solutions to ensure an adequate level of security of supply.*

- (13) In order to foster competition and ensure the supply of electricity at the most competitive price, Member States and regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of generation, energy storage and demand response.
- (14) *Member States should ensure that no undue barriers exist within the internal market for electricity as regards market entry, operation and exit. At the same time, it should be clarified that that obligation is without prejudice to the competence that Member States retain in relation to third countries. That clarification should not be interpreted as enabling a Member State to exercise the exclusive competence of the Union. It should also be clarified that market participants from third countries who operate within the internal market are to comply with the applicable Union and national law in the same manner as other market participants.*

- (15) *Market rules allow for the entry and exit of producers and suppliers based on their assessment of the economic and financial viability of their operations. That principle is not incompatible with the possibility for Member States to impose on undertakings operating in the electricity sector public service obligations in the general economic interest in accordance with the Treaties, in particular with Article 106 TFEU, and with this Directive and Regulation (EU) 2019/... of the European Parliament and of the Council¹¹⁺.*
- (16) *The European Council of 23 and 24 October 2014 stated in its conclusions that the Commission, supported by the Member States, is to take urgent measures in order to ensure the achievement of a minimum target of 10 % of existing electricity interconnections, as a matter of urgency, and no later than 2020, at least for Member States which have not yet attained a minimum level of integration in the internal energy market, which are the Baltic States, Portugal and Spain, and for Member States which constitute their main point of access to the internal energy market. It further stated that the Commission is also to report regularly to the European Council with the objective of arriving at a 15 % target by 2030.*

¹¹ Regulation (EU) 2019/... of the European Parliament and of the Council of (OJ ...).

⁺ OJ: please insert the number of the Regulation in the text and the number, date, full title and the OJ publication details in footnote for document 2016/0379(COD) - PE-CONS 9/19.

- (17) *Sufficient physical interconnection with neighbouring countries is important to enable Member States and neighbouring countries to benefit from the positive effects of the internal market as stressed in the Commission Communication of 23 November 2017, entitled 'Communication on strengthening Europe's energy networks', and as reflected in Member States' integrated national energy and climate plans under Regulation (EU) 2018/1999 of the European Parliament and of the Council¹².*
- (18) *Electricity markets differ from other markets such as those for natural gas, for example because they involve the trading in a commodity which cannot currently be easily stored and which is produced using a large variety of generating installations, including through distributed generation. This has been reflected in the different approaches to the regulatory treatment of interconnectors in the electricity and gas sectors. The integration of electricity markets requires a high degree of cooperation among system operators, market participants and regulatory authorities, in particular where electricity is traded via market coupling.*

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

- (19) Securing common rules for a true internal market and a broad supply of electricity that is accessible to all should also be one of the main goals of this Directive. To that end, undistorted market prices would provide incentives for cross-border interconnections and for investments in new electricity generation while leading to price convergence in the long term.
- (20) Market prices should give the right incentives for the development of the network and for investing in new electricity generation.
- (21) Different types of market organisation exist in the internal market for electricity. The measures that Member States could take in order to ensure a level playing field should be based on overriding requirements of general interest. The Commission should be consulted on the compatibility of those measures with the TFEU and with other Union law.

- (22) Member States should maintain wide discretion to impose public service obligations on electricity undertakings in pursuing objectives of general economic interest. Member States should ensure that household customers and, where Member States consider it to be appropriate, small enterprises, enjoy the right to be supplied with electricity of a specified quality at clearly comparable, transparent and competitive prices. Nevertheless, public service obligations in the form of price setting for the supply of electricity constitute a fundamentally distortive measure that often leads to the accumulation of tariff deficits, the limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, lower levels of consumer engagement and satisfaction, and the restriction of competition, as well as to there being fewer innovative products and services on the market. Consequently, Member States should apply other policy tools, in particular targeted social policy measures, to safeguard the affordability of electricity supply to their citizens. Public interventions in price setting for the supply of electricity should be carried out only ***as public service obligations and should be subject to specific conditions set out in this Directive.*** A fully liberalised, ***well-functioning*** retail electricity market would stimulate price and non-price competition among existing suppliers and provide incentives to new market entrants, thereby improving consumer choice and satisfaction.

- (23) *Public service obligations in the form of price setting for the supply of electricity should be used without overriding the principle of open markets in clearly defined circumstances and beneficiaries and should be limited in duration. Such circumstances might occur for example where supply is severely constrained, causing significantly higher electricity prices than normal, or in the event of a market failure where interventions by regulatory authorities and competition authorities have proven to be ineffective. This would disproportionately affect households and, in particular, vulnerable customers who typically expend a higher share of their disposable income on energy bills compared to high-income consumers. In order to mitigate the distortive effects of public service obligations in price setting for the supply of electricity, Member States applying such interventions should put in place additional measures, including measures to prevent distortions of price setting in the wholesale market. Member States should ensure that all beneficiaries of regulated prices are able to benefit fully from the offers available on the competitive market when they choose to do so. To that end, those beneficiaries need to be equipped with smart metering systems and have access to dynamic electricity price contracts. In addition, they should be directly and regularly informed of the offers and savings available on the competitive market, in particular relating to dynamic electricity price contracts, and should be provided with assistance to respond to and benefit from market-based offers.*

- (24) *The entitlement of beneficiaries of regulated prices to receive individual smart meters without extra costs should not prevent Member States from modifying the functionality of smart metering systems where smart meter infrastructure does not exist because the cost-benefit assessment regarding the deployment of smart metering systems was negative.*
- (25) *Public interventions in price setting for the supply of electricity should not lead to direct cross-subsidisation between different categories of customer. According to that principle, price systems must not explicitly make certain categories of customer bear the cost of price interventions that affect other categories of customer. For example, a price system, in which the cost is borne by suppliers or other operators in a non-discriminatory manner, should not be considered to be direct cross-subsidisation.*

- (26) In order to ensure the maintenance of the high standards of public service in the Union, all measures taken by Member States to achieve the objective of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high standards of public service.
- (27) It should be possible for Member States to appoint a supplier of last resort. That supplier might be the sales division of a vertically integrated undertaking which also performs distribution functions, provided that it meets the unbundling requirements of this Directive.
- (28) It should be possible for measures implemented by Member States for the purpose of achieving the objectives of social and economic cohesion to include, in particular, the provision of adequate economic incentives, using, where appropriate, any existing national and Union tools. Such tools may include liability mechanisms to guarantee the necessary investment.

- (29) To the extent that measures taken by Member States to fulfil public service obligations constitute State aid under Article 107(1) TFEU, there is an obligation under Article 108(3) TFEU to notify them to the Commission.
- (30) ***Cross-sectorial law provides a strong basis for consumer protection for a wide range of energy services that exist, and is likely to evolve. Nevertheless, certain basic contractual rights of customers should be clearly established.***
- (31) Plain and unambiguous information should be made available to consumers concerning their rights in relation to the energy sector. The Commission has established, after consulting relevant stakeholders, including Member States, regulatory authorities, consumer organisations and electricity undertakings, an energy consumer checklist that provides consumers with practical information about their rights. That checklist should be kept up to date, provided to all consumers and made publicly available.

- (32) Several factors impede consumers from accessing, understanding and acting upon the various sources of market information available to them. It follows that the comparability of offers should be improved and barriers to switching should be minimised to the greatest practicable extent without unduly limiting consumer choice.
- (33) ***Smaller*** customers are still being charged a broad range of fees directly or indirectly as a result of switching supplier. Such fees make it more difficult to identify the best product or service and diminish the immediate financial advantage of switching. Although removing such fees might limit consumer choice by eliminating products based on rewarding consumer loyalty, restricting their use further should improve consumer welfare, consumer engagement and competition in the market.

- (34) *Shorter switching times are likely to encourage consumers to search for better energy deals and switch supplier. With the increased deployment of information technology, by the year 2026, the technical switching process of registering a new supplier in a metering point at the market operator should typically be possible to complete within 24 hours on any working day. Notwithstanding other steps in the switching process that are to be completed before the technical process of switching is initiated, ensuring that it is possible by that date for the technical process of switching to take place within 24 hours would minimise switching times, helping to increase consumer engagement and retail competition. In any event, the total duration of the switching process should not exceed three weeks from the date of the customer's request.*

- (35) Independent comparison tools, including websites, are an effective means for *smaller* customers to assess the merits of the different energy offers that are available on the market. Such tools lower search costs as customers no longer need to collect information from individual suppliers and service providers. Such tools can provide the right balance between the need for information to be clear and concise and the need for it to be complete and comprehensive. They should aim to include the broadest possible range of available offers, and to cover the market as completely as is feasible so as to give the customer a representative overview. It is crucial that *smaller customers have access to at least one comparison tool and that* the information given on such tools be trustworthy, impartial and transparent. *To that end, Member States could provide for a comparison tool that is operated by a national authority or a private company.*
- (36) Greater consumer protection is guaranteed by the availability of effective, *independent* out-of-court dispute settlement *mechanisms* for all consumers, *such as an energy ombudsman, a consumer body or a regulatory authority*. Member States should introduce speedy and effective complaint-handling procedures.

- (37) All consumers should be able to benefit from directly participating in the market, in particular by adjusting their consumption according to market signals and, in return, benefiting from lower electricity prices or other incentive payments. The benefits of such active participation are likely to increase over time, as ***the awareness of otherwise passive consumers is raised about their possibilities as active customers and as the information on the possibilities of active participation becomes more accessible and better known.*** Consumers should have the possibility of participating in all forms of demand response. They should therefore have the possibility of ***benefiting from the full deployment of smart metering systems and, where such deployment has been negatively assessed, of*** choosing to have a smart metering system and a dynamic electricity price contract. This should allow them to adjust their consumption according to real-time price signals that reflect the value and cost of electricity or transportation in different time periods, while Member States should ensure the reasonable exposure of consumers to wholesale price risk. ***Consumers should be informed about benefits and potential price risks of dynamic electricity price contracts.*** Member States should also ensure that those consumers who choose not to actively engage in the market are not penalised. Instead, their ability to make informed decisions on the options available to them should be facilitated in the manner that is the most suited to domestic market conditions.

- (38) *In order to maximise the benefits and effectiveness of dynamic electricity pricing, Member States should assess the potential for making more dynamic or reducing the share of fixed components in electricity bills, and where such potential exists, should take appropriate action.*

- (39) All customer groups (industrial, commercial and households) should have access to the electricity markets to trade their flexibility and self-generated electricity. Customers should be allowed to make full use of the advantages of aggregation of production and supply over larger regions and benefit from cross-border competition. ***Market participants engaged in aggregation*** are likely to play an important role as intermediaries between customer groups and the market. ***Member States should be free to choose the appropriate implementation model and approach to governance for independent aggregation while respecting the general principles set out in this Directive. Such a model or approach could include choosing market-based or regulatory principles which provide solutions to comply with this Directive, such as models where imbalances are settled or where perimeter corrections are introduced. The chosen model should contain*** transparent and fair rules ■ ***to allow independent aggregators to fulfil their roles as intermediaries and to ensure that the final customer adequately benefits from their activities.*** Products should be defined on all ■ electricity markets, including ancillary services and capacity markets, so as to encourage the participation of demand response.

- (40) The Commission Communication of 20 July 2016, entitled 'European Strategy for Low-Emission Mobility', stresses the need for the decarbonisation of the transport sector and the reduction of its emissions, especially in urban areas, and highlights the important role that electromobility can play in contributing to those objectives. Moreover, the deployment of electromobility constitutes an important element of the energy transition. Market rules set out in this Directive should therefore contribute to creating favourable conditions for electric vehicles of all kinds. In particular, they should ensure the effective deployment of publicly accessible and private recharging points for electric vehicles and should ensure the efficient integration of vehicle charging into the system.
- (41) Demand response is pivotal to enabling the smart charging of electric vehicles and thereby enabling the efficient integration of electric vehicles into the electricity grid which will be crucial for the *process of* decarbonising transport.

- (42) Consumers should be able to consume, to store and to sell self-generated electricity to the market *and to participate in all electricity markets by providing flexibility to the system, for instance through energy storage, such as storage using electric vehicles, through demand response or through energy efficiency schemes.* New technology developments will facilitate those activities in the future. However, legal and commercial barriers exist, including, for example, disproportionate fees for internally consumed electricity, obligations to feed self-generated electricity to the energy system, and administrative burdens, such as the need for consumers who self- generate electricity and sell it to the system to comply with the requirements for suppliers, etc. Such obstacles, which prevent consumers from self-generating electricity and from consuming, storing or selling self-generated electricity to the market, should be removed while it should be ensured that such consumers contribute adequately to system costs. *Member States should be able to have different provisions in their national law with respect to taxes and levies for individual and jointly-acting active customers, as well as for household and other final customers.*

- (43) Distributed energy technologies and consumer empowerment have made community energy ■ an effective and cost-efficient way to meet citizens' needs and expectations regarding energy sources, services and local participation. Community energy offers an inclusive option for all consumers to have a direct stake in producing, consuming or sharing energy. Community energy initiatives focus primarily on providing affordable energy of a specific kind, such as renewable energy, for their members or shareholders rather than on prioritising profit-making like a traditional electricity undertaking. By directly engaging with consumers, community energy initiatives demonstrate their potential to facilitate the uptake of new technologies and consumption patterns, including smart distribution grids and demand response, in an integrated manner. Community energy can also advance energy efficiency at household level and help fight energy poverty through reduced consumption and lower supply tariffs. Community energy also enables certain groups of household customers to participate in the electricity markets, who otherwise might not have been able to do so. Where they have been successfully operated such initiatives have delivered economic, social and environmental benefits to the community that go beyond the mere benefits derived from the provision of energy services. ***This Directive aims to recognise certain categories of citizen energy initiatives at the Union level as ‘citizen energy communities’, in order to provide them with an enabling framework, fair treatment, a level playing field and a well-defined catalogue of rights and obligations.*** Household customers should be allowed to participate voluntarily in community energy initiatives as well as to leave them, without losing access to the network operated by the community energy initiative or losing their rights as consumers. Access to a ■ citizen energy community's network should be granted on fair and cost-reflective terms.

- (44) *Membership of citizen energy communities should be open to all categories of entities. However, the decision-making powers within a citizen energy community should be limited to those members or shareholders that are not engaged in large-scale commercial activity and for which the energy sector does not constitute a primary area of economic activity. Citizen energy communities are considered to be a category of cooperation of citizens or local actors that should be subject to recognition and protection under Union law. The provisions on citizen energy communities do not preclude the existence of other citizen initiatives such as those stemming from private law agreements. It should therefore be possible for Member States to provide that citizen energy communities take any form of entity, for example that of an association, a cooperative, a partnership, a non-profit organisation or a small or medium-sized enterprise, provided that the entity is entitled to exercise rights and be subject to obligations in its own name.*
- (45) *The provisions of this Directive on citizen energy communities provide for rights and obligations, which are possible to deduce from other, existing rights and obligations, such as the freedom of contract, the right to switch supplier, the responsibilities of the distribution system operator, the rules on network charges, and balancing obligations.*

- (46) *Citizen energy communities constitute a new type of entity due to their membership structure, governance requirements and purpose. They should be allowed to operate on the market on a level playing field without distorting competition, and the rights and obligations applicable to the other electricity undertakings on the market should be applied to citizen energy communities in a non-discriminatory and proportionate manner. Those rights and obligations should apply in accordance with the roles that they undertake, such as the roles of final customers, producers, suppliers or distribution system operators. Citizen energy communities should not face regulatory restrictions when they apply existing or future information and communications technologies to share electricity produced using generation assets within the citizen energy community among their members or shareholders based on market principles, for example by offsetting the energy component of members or shareholders using the generation available within the community, even over the public network, provided that both metering points belong to the community. Electricity sharing enables members or shareholders to be supplied with electricity from generating installations within the community without being in direct physical proximity to the generating installation and without being behind a single metering point. Where electricity is shared, the sharing should not affect the collection of network charges, tariffs and levies related to electricity flows. The sharing should be facilitated in accordance with the obligations and correct timeframes for balancing, metering and settlement. The provisions of this Directive on citizen energy communities do not interfere with the competence of Member States to design and implement policies relating to the energy sector in relation to network charges and tariffs, or to design and implement energy policy financing systems and cost sharing, provided that those policies are non-discriminatory and lawful.*

- (47) *This Directive empowers Member States to allow citizen energy communities to become distribution system operators either under the general regime or as "closed distribution system operators". Once a citizen energy community is granted the status of a distribution system operator, it should be treated as, and be subject to the same obligations as, a distribution system operator. The provisions of this Directive on citizen energy communities only clarify aspects of distribution system operation that are likely to be relevant for citizen energy communities, while other aspects of distribution system operation apply in accordance with the rules relating to distribution system operators.*

- (48) Electricity bills ■ are an important means by which final customers are informed. As well as providing data on consumption and costs, they can also convey other information that helps consumers to compare their current arrangements with other offers. However, ■ disputes over bills are a very common source of consumer complaints, a factor which contributes to the persistently low levels of consumer satisfaction and engagement in the electricity sector. *It is therefore* necessary to make bills ■ clearer and easier to understand, as well as to ensure that bills *and billing information prominently display a limited number of important items of* information *that are* necessary to enable consumers to regulate their energy consumption, compare offers and switch supplier. *Other items of information should be made available to final customers in, with or signposted to within their bills. Such items should be displayed on the bill or be in a separate document attached to the bill, or the bill should contain a reference to where the final customer is easily able to find the information on a website, through a mobile application or by other means.*

- (49) *The regular provision of accurate billing information based on actual electricity consumption, facilitated by smart metering, is important for helping customers to control their electricity consumption and costs. Nevertheless, customers, in particular household customers, should have access to flexible arrangements for the actual payment of their bills. For example, it could be possible for customers to be provided with frequent billing information, while paying only on a quarterly basis, or there could be products for which the customer pays the same amount every month, independently of the actual consumption.*
- (50) *The provisions on billing in Directive 2012/27/EU of the European Parliament and of the Council¹³ should be updated, streamlined and moved to this Directive, where they fit more coherently.*
- (51) Member States should encourage the modernisation of distribution networks, such as through the introduction of smart grids, which should be built in a way that encourages decentralised generation and energy efficiency.

¹³ 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).

- (52) Engaging consumers requires appropriate incentives and technologies such as smart metering systems. Smart metering systems empower consumers because they allow them to receive accurate and near real-time feedback on their energy consumption or generation, and to manage their consumption better, to participate in and reap benefits from demand response programmes and other services, and to lower their electricity bills. Smart metering systems also enable distribution system operators to have better visibility of their networks, and as a consequence, to reduce their operation and maintenance costs and to pass those savings on to the consumers in the form of lower distribution tariffs.

- (53) When it comes to deciding at national level on the deployment of smart metering systems, it should be possible to base this decision on an economic assessment. ***That economic assessment should take into account the long-term benefits of the deployment of smart metering systems to consumers and the whole value chain, such as better network management, more precise planning and identification of network losses.*** Should that assessment conclude that the introduction of such metering systems is **■** cost-effective only for consumers with a certain amount of electricity consumption, Member States should be able to take that conclusion into account when proceeding with the deployment of smart metering systems. ***However, such assessments should be reviewed regularly in response to significant changes in the underlying assumptions, or at least every four years, given the fast pace of technological developments.***

- (54) Member States that do not systematically deploy smart metering systems should allow consumers to benefit from the installation of a smart meter, upon request and under fair and reasonable conditions, and should provide them with all the relevant information. Where consumers do not have smart meters, they should be entitled to meters that fulfil the minimum requirements necessary to provide them with the billing information specified in this Directive.

- (55) In order to assist consumers' active participation in the electricity markets, the smart metering systems to be deployed by Member States in their territory should be interoperable, *and should be able to provide data required for consumer energy management systems. To that end, Member States should have due regard to the use of relevant available standards, including standards that enable interoperability on the level of the data model and the application layer, to best practices and the importance of the development of data exchange, to future and innovative energy services, to the deployment of smart grids and to the internal market for electricity. Moreover, the smart metering systems that are deployed should* not represent a barrier to switching supplier, and should be equipped with fit-for-purpose functionalities that allow consumers to have near real-time access to their consumption data, to modulate their energy consumption and, to the extent that the supporting infrastructure permits, to offer their flexibility to the network and to electricity undertakings and to be rewarded for it, and to obtain savings in their electricity bills.

- (56) A key aspect of supplying customers is providing access to objective and transparent consumption data. Thus, consumers should have access to their consumption data and to the prices and service costs associated with their consumption, so that they can invite competitors to make offers based on that information. Consumers should also have the right to be properly informed about their energy consumption. Prepayments should not place a disproportionate disadvantage on their users, while different payment systems should be non-discriminatory. The information on energy costs that is provided to consumers sufficiently frequently would create incentives for energy savings because it would give customers direct feedback on the effects of investment in energy efficiency and on changes of behaviour. In that respect, the full implementation of Directive 2012/27/EU will help consumers to reduce their energy costs.

- (57) Currently, different models for the management of data have been developed or are under development in Member States following deployment of smart metering systems. Independently of the data management model it is important that Member States put in place transparent rules under which data can be accessed under non-discriminatory conditions and ensure the highest level of cybersecurity and data protection as well as the impartiality of the entities which process data.
- (58) Member States should take the necessary measures to protect vulnerable and energy poor customers in the context of the internal market for electricity. Such measures may differ according to the particular circumstances in the Member States in question and may include social or energy policy measures relating to the payment of electricity bills, to investment in the energy efficiency of residential buildings, or to consumer protection such as disconnection safeguards. Where universal service is also provided to small enterprises, measures to ensure universal service provision may differ according to whether those measures are aimed at household customers or small enterprises.

- (59) Energy services are fundamental to safeguarding the well-being of the Union citizens. Adequate warmth, cooling and lighting, and energy to power appliances are essential services to guarantee a decent standard of living and citizens' health. Furthermore, access to those energy services enables Union citizens to fulfil their potential and enhances social inclusion. Energy poor households are unable to afford those energy services due to a combination of low income, high expenditure on energy and poor energy efficiency of their homes. Member States should collect the right information to monitor the number of households in energy poverty. Accurate measurement should assist Member States in identifying households that are affected by energy poverty in order to provide targeted support. The Commission should actively support the implementation of the provisions of this Directive on energy poverty by facilitating the sharing of good practices between Member States.

- (60) Where Member States are affected by energy poverty and have not developed national action plans or other appropriate frameworks to tackle *energy poverty*, *they should do so, with the* aim of decreasing the number of *energy poor customers*. Low income, high expenditure on energy, and poor energy efficiency of homes are relevant factors in establishing criteria for the measurement of energy poverty. In any event, Member States should ensure the necessary supply for vulnerable and energy poor customers. In doing so, an integrated approach, such as in the framework of energy and social policy, could be used and measures could include social policies or energy efficiency improvements for housing. ■ This Directive should *enhance* national policies in favour of vulnerable and energy poor customers.

- (61) Distribution system operators have to cost-efficiently integrate new electricity generation, especially installations generating electricity from renewable sources, and new loads such as loads that result from heat pumps and electric vehicles. For that purpose, distribution system operators should be enabled, and provided with incentives, to use services from distributed energy resources such as demand response and energy storage, based on market procedures, in order to efficiently operate their networks and to avoid costly network expansions. Member States should put in place appropriate measures such as national network codes and market rules, and should provide incentives to distribution system operators through network tariffs which do not create obstacles to flexibility or to the improvement of energy efficiency in the grid. Member States should also introduce network development plans for distribution systems in order to support the integration of installations generating electricity from renewable energy sources, facilitate the development of energy storage facilities and the electrification of the transport sector, and provide to system users adequate information regarding the anticipated expansions or upgrades of the network, as currently such procedures do not exist in the majority of Member States.

- (62) *System operators should not own, develop, manage or operate energy storage facilities. In the new electricity market design, energy storage services should be market-based and competitive. Consequently, cross-subsidisation between energy storage and the regulated functions of distribution or transmission should be avoided. Such restrictions on the ownership of energy storage facilities is to prevent distortion of competition, to eliminate the risk of discrimination, to ensure fair access to energy storage services to all market participants and to foster the effective and efficient use of energy storage facilities, beyond the operation of the distribution or transmission system. That requirement should be interpreted and applied in accordance with the rights and principles established under the Charter of Fundamental Rights of the European Union (the ‘Charter’), in particular the freedom to conduct a business and the right to property guaranteed by Articles 16 and 17 of the Charter.*

- (63) *Where energy storage facilities are fully integrated network components that are not used for balancing or for congestion management, they should not, subject to approval by the regulatory authority, be required to comply with the same strict limitations for system operators to own, develop, manage or operate those facilities. Such fully integrated network components can include energy storage facilities such as capacitors or flywheels which provide important services for network security and reliability, and contribute to the synchronisation of different parts of the system.*
- (64) *With the objective of progress towards a completely decarbonised electricity sector that is fully free of emissions, it is necessary to make progress in seasonal energy storage. Such energy storage is an element that would serve as a tool for the operation of the electricity system to allow for short-term and seasonal adjustment, in order to cope with variability in the production of electricity from renewable sources and the associated contingencies in those horizons.*

- (65) Non-discriminatory access to the distribution network determines downstream access to customers at retail level. To create a level playing field at retail level, the activities of distribution system operators should therefore be monitored so that distribution system operators are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to household customers and small non-household customers.
- (66) Where a closed distribution system is used to ensure the optimal efficiency of an integrated supply that requires specific operational standards, or where a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the system users. Industrial sites, commercial sites or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities, and chemical industry sites can include closed distribution systems because of the specialised nature of their operations.

- (67) Without the effective separation of networks from activities of generation and supply (effective unbundling), there is an inherent risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated undertakings to invest adequately in their networks.

- (68) Only the removal of the incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the appointment of the network owner as the system operator and its independence from any supply and production interests, is clearly an effective and stable way to solve the inherent conflict of interests and to ensure security of supply. For that reason, the European Parliament, in its resolution of 10 July 2007 on prospects for the internal gas and electricity market, referred to ownership unbundling at transmission level as the most effective tool for promoting investments in infrastructure in a non-discriminatory way, fair access to the network for new entrants and transparency in the market. Under ownership unbundling, Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control over a producer or supplier and, at the same time, exercise control or any right over a transmission system operator or transmission system. Conversely, control over a transmission system operator or transmission system should preclude the possibility of exercising control or any right over a producer or supplier. Within those limits, a producer or supplier should be able to have a minority shareholding in a transmission system operator or transmission system.

- (69) Any system for unbundling should be effective in removing any conflict of interests between producers, suppliers and transmission system operators, in order to create incentives for the necessary investments and to guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for regulatory authorities.
- (70) Since ownership unbundling requires the restructuring of undertakings in some instances, Member States that decide to implement ownership unbundling should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should apply across the two sectors.

- (71) Under ownership unbundling, to ensure full independence of network operation from supply and generation interests, and to prevent exchanges of any confidential information, the same person should not be a member of the managing board of both a transmission system operator or a transmission system and an undertaking performing any of the functions of generation or supply. For the same reason, the same person should not be entitled to appoint members of the managing boards of a transmission system operator or a transmission system and to exercise control or any right over a producer or supplier.
- (72) The setting up of a system operator or transmission operator that is independent from supply and generation interests should enable a vertically integrated undertaking to maintain its ownership of network assets while ensuring the effective separation of interests, provided that such independent system operator or independent transmission operator performs all of the functions of a system operator, and provided that detailed regulation and extensive regulatory control mechanisms are put in place.

- (73) Where, on 3 September 2009, an undertaking owning a transmission system was part of a vertically integrated undertaking, Member States should be given a choice between ownership unbundling and setting up a system operator or transmission operator which is independent from supply and generation interests.
- (74) To preserve fully the interests of the shareholders of vertically integrated undertakings, Member States should have the choice of implementing ownership unbundling either by direct divestments or by splitting the shares of the integrated undertaking into shares of a network undertaking and shares of a remaining supply and generation undertaking, provided that the requirements resulting from ownership unbundling are complied with.

- (75) The full effectiveness of the independent system operator or independent transmission operator solutions should be ensured by way of specific additional rules. The rules on independent transmission operators provide an appropriate regulatory framework to guarantee fair competition, sufficient investment, access for new market entrants and integration of electricity markets. Effective unbundling through provisions on independent transmission operators should be based on a pillar of organisational measures and measures relating to the governance of transmission system operators and on a pillar of measures relating to investment, to connecting new production capacities to the network and to market integration through regional cooperation. The independence of transmission operators should also be ensured, inter alia, through certain ‘cooling-off’ periods during which no management or other relevant activity giving access to the same information that could have been obtained in a managerial position is exercised in the vertically integrated undertaking.

- (76) Member States have the right to opt for full ownership unbundling in their territory. Where a Member State has exercised that right, an undertaking does not have the right to set up an independent system operator or an independent transmission operator. Furthermore, an undertaking performing any of the functions of generation or supply cannot directly or indirectly exercise control or any right over a transmission system operator from a Member State that has opted for full ownership unbundling.
- (77) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To that end, the same person should not be able to exercise control or any right, in violation of the rules of ownership unbundling or the independent system operator option, solely or jointly, over the composition, voting or decisions of both the bodies of the transmission system operators or the transmission systems and the bodies of the producer or supplier. With regard to ownership unbundling and the independent system operator solution, provided that the relevant Member State is able to demonstrate that the relevant requirements have been complied with, two separate public bodies should be able to control generation and supply activities, on the one hand, and transmission activities, on the other.

- (78) Fully effective separation of network activities from supply and generation activities should apply throughout the Union to both Union and non- Union undertakings. To ensure that network activities and supply and generation activities throughout the Union remain independent from each other, regulatory authorities should be empowered to refuse to certify transmission system operators that do not comply with the unbundling rules. To ensure the consistent application of those rules across the Union, the regulatory authorities should take the utmost account of Commission opinions when they take decisions on certification. In addition, to ensure respect for the international obligations of the Union, and to ensure solidarity and energy security within the Union, the Commission should have the right to give an opinion on certification in relation to a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries.
- (79) Authorisation procedures should not lead to administrative burdens that are disproportionate to the size and potential impact of the producers. Unduly lengthy authorisation procedures may constitute a barrier to access for new market entrants.

- (80) Regulatory authorities need to be able to take decisions in relation to all relevant regulatory issues if the internal market for electricity is to function properly, and need to be fully independent from any other public or private interests. This precludes neither judicial review nor parliamentary supervision in accordance with the constitutional laws of the Member States. In addition, the approval of the budget of the regulatory authority by the national legislator does not constitute an obstacle to budgetary autonomy. The provisions relating to the autonomy in the implementation of the allocated budget of the regulatory authority should be implemented in the framework defined by national budgetary law and rules. While contributing to the regulatory authorities' independence from any political or economic interest through an appropriate rotation scheme, it should be possible for Member States to take due account of the availability of human resources and of the size of the board.

- (81) Regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operators, or on the basis of a proposal agreed between those operators and the users of the network. In carrying out those tasks, regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from distributed generation and demand-side management measures.
- (82) *Regulatory authorities should fix or approve individual grid tariffs for transmission and distribution networks or a methodology, or both. In either case, the independence of the regulatory authorities in setting network tariffs pursuant to point (b)(ii) of Article 57(4) should be preserved.*
- (83) *Regulatory authorities should ensure that transmission system operators and distribution system operators take appropriate measures to make their network more resilient and flexible. To that end, they should monitor those operators' performance based on indicators such as the capability of transmission system operators and distribution system operators to operate lines under dynamic line rating, the development of remote monitoring and real-time control of substations, the reduction of grid losses and the frequency and duration of power interruptions.*

- (84) Regulatory authorities should have the power to issue binding decisions in relation to electricity undertakings and to impose effective, proportionate and dissuasive penalties on electricity undertakings which fail to comply with their obligations or to propose that a competent court impose such penalties on them. To that end, regulatory authorities should be able to request relevant information from electricity undertakings, to conduct appropriate and sufficient investigations, and to settle disputes. Regulatory authorities should also be granted the power to decide, irrespective of the application of competition rules, on appropriate measures that ensure customer benefits through the promotion of effective competition necessary for the proper functioning of the internal market for electricity.

- (85) *Regulatory authorities should coordinate among themselves when carrying out their tasks to ensure that the European Network of Transmission System Operators for Electricity (the ‘ENTSO for Electricity’), the European Entity for Distribution System Operators (the ‘EU DSO entity’), and the regional coordination centres comply with their obligations under the regulatory framework of the internal market for electricity, and with decisions of the Agency for the Cooperation of Energy Regulators (ACER), established by Regulation (EU) 2019/... of the European Parliament and of the Council¹⁴⁺. With the expansion of the operational responsibilities of the ENTSO for Electricity, the EU DSO entity and the regional coordination centres, it is necessary to enhance oversight with regard to entities that operate at Union or regional level. Regulatory authorities should consult each other and should coordinate their oversight to jointly identify situations where the ENTSO for Electricity, the EU DSO entity or the regional coordination centres do not comply with their respective obligations.*

¹⁴ Regulation (EU) 2019/... of the European Parliament and of the Council of (OJ ...).

⁺ OJ: please insert the number of the Regulation in the text and the number, date, full title and the OJ publication details in footnote for document 2016/0378(COD) - PE-CONS 83/19.

- (86) Regulatory authorities should also be granted the power to contribute to ensuring high standards of universal and public service obligations in accordance with market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules, including the examination of mergers with a Union dimension, and the rules on the internal market, such as the rules on the free movement of capital. The independent body to which a party affected by the decision of a regulatory authority has a right to appeal could be a court or another tribunal that is empowered to conduct a judicial review.
- (87) *This Directive and Directive 2009/73/EC of the European Parliament and of the Council¹⁵ do not deprive Member States of the possibility of establishing and issuing their national energy policy. It follows that, depending on a Member State's constitutional arrangements, it might be within Member State's competence to determine the policy framework in which the regulatory authorities are to operate, for example concerning security of supply. However, the general energy policy guidelines issued by the Member State should not impinge on the independence or autonomy of the regulatory authorities.*

¹⁵ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

- (88) Regulation (EU) 2019/...⁺ provides for the Commission to adopt guidelines or network codes to achieve the necessary degree of harmonisation. Such guidelines and network codes constitute binding implementing measures and, with regard to certain provisions of this Directive, are a useful tool that can be adapted quickly where necessary.
- (89) Member States and the Contracting Parties to the Treaty establishing the Energy Community¹⁶ should cooperate closely on all matters concerning the development of an integrated electricity trading region and should take no measures that endanger the further integration of electricity markets or the security of supply of Member States and Contracting Parties.
- (90) This Directive should be read together with Regulation (EU) 2019/...⁺, which lays down the key principles of the new market design for electricity which will enable better rewards for flexibility, provide adequate price signals, and ensure the development of functioning integrated short-term markets. Regulation (EU) 2019/...⁺ also sets out new rules in various areas, including on capacity mechanisms and cooperation between transmission system operators.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

¹⁶ OJ L 198, 20.7.2006, p.18.

- (91) *This Directive respects the fundamental rights and observes the principles recognised in the Charter. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles, in particular the right to the protection of personal data guaranteed by Article 8 of the Charter. It is essential that any processing of personal data under this Directive comply with Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁷.*

¹⁷ *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

- (92) In order to provide the minimum degree of harmonisation required to achieve the aim of this Directive, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to establish rules on the extent of the duties of the regulatory authorities to cooperate with each other and with ACER and setting out the details of the procedure for compliance with the network codes and guidelines. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹⁸. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of the delegated acts.

¹⁸ OJ L 123, 12.5.2016, p. 1.

- (93) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to determine ***interoperability requirements*** and non-discriminatory and transparent procedures for access to metering data, consumption data, as well as data required for customer switching, ***demand response and other services***. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁹.
- (94) ***Where a derogation applies pursuant to Article 66(3), (4) or (5), that derogation should also cover any provisions in this Directive that are ancillary to, or that require the prior application of, any of the provisions from which it has been granted a derogation.***

¹⁹ 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).

- (95) *The provisions of Directive 2012/27/EU related to electricity markets, such as the provisions on metering and billing of electricity, demand response, priority dispatch and grid access for high-efficiency cogeneration, are updated by the provisions laid down in this Directive and in Regulation (EU) 2019/....⁺. Directive 2012/27/EU should therefore be amended accordingly.*
- (96) Since the objective of this Directive, namely the creation of a fully operational internal market for electricity, cannot be sufficiently achieved by the Member States but can rather, by the reasons of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

- (97) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents²⁰, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (98) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to Directive 2009/72/EC. The obligation to transpose the provisions which are unchanged arises under Directive 2009/72/EC.
- (99) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the date of application of Directive 2009/72/EC set out in Annex III,

HAVE ADOPTED THIS DIRECTIVE:

²⁰ OJ C 369, 17.12.2011, p. 14.

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject-matter

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

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

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

Article 2

Definitions

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

- (1) ‘customer’ means a wholesale or final customer of electricity;
- (2) ‘wholesale customer’ means a natural or legal person who purchases electricity for the purpose of resale inside or outside the system where that person is established;
- (3) ‘final customer’ means a customer who purchases electricity for own use;
- (4) ‘household customer’ means a customer who purchases electricity for the customer’s own household consumption, excluding commercial or professional activities;
- (5) ‘non-household customer’ means a natural or legal person who purchases electricity that is not for own household use, including producers, industrial customers, small and medium-sized enterprises, businesses and wholesale customers;
- (6) ***‘microenterprise’ means an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million;***

- (7) *‘small enterprise’ means an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million;*
- (8) *‘active customer’ means a **final** customer, or a group of jointly acting **final** customers, who consumes **or** stores **■** electricity generated **within its premises located within confined boundaries or, where permitted by a Member State, within other premises, or who sells self-generated electricity or participates in flexibility or energy efficiency schemes,** provided that those activities do not constitute its primary commercial or professional activity;*
- (9) *‘electricity markets’ means markets for electricity, including over-the-counter markets and electricity exchanges, markets for the trading of energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intraday markets;*
- (10) *‘market participant’ means market participant as defined in point 25 of Article 2 of Regulation 2019/...⁺ ;*

⁺ OJ: please insert the OJ publication details in footnote for document 2016/0379(COD) - PE-CONS 9/19.

- (11) ‘***citizen*** energy community’ means ***a*** legal entity that:
- (a) is ***based on voluntary and open participation and is*** effectively controlled by **■** members or shareholders that ***are natural persons, local authorities, including municipalities, or small enterprises;***
 - (b) ***has for its primary purpose to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits; and***
 - (c) ***may engage in generation, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders;***
- (12) ‘supply’ means the sale, including the resale, of electricity to customers;
- (13) ‘electricity supply contract’ means a contract for the supply of electricity, but does not include electricity derivatives;
- (14) ‘electricity derivative’ means a financial instrument specified in point 5, 6 or 7 of Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council²¹, where that instrument relates to electricity;

²¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

- (15) ‘dynamic electricity price contract’ means an electricity supply contract between a supplier and a final customer that reflects the price **variation** in the spot **markets**, including ■ in the day-ahead **and intraday markets**, at intervals at least equal to the market settlement frequency;
- (16) ‘contract termination fee’ means a charge or penalty imposed on customers by suppliers or **market participants engaged in aggregation**, for terminating an electricity supply or service contract;
- (17) ‘switching-related fee’ means a charge or penalty for changing suppliers **or market participants engaged in aggregation**, including contract termination fees, that is directly or indirectly imposed on customers by suppliers, **market participants engaged in aggregation** or system operators;
- (18) ‘**aggregation**’ means a **function performed by a natural or legal person who** combines multiple customer loads or generated electricity for sale, purchase or auction in any **electricity** market;
- (19) ‘independent aggregator’ means **a market participant engaged in aggregation** who is not affiliated to the **customer's** supplier ■ ;

- (20) ‘demand response’ means the change of electricity load by final customers from their normal or current consumption patterns in response to market signals, including in response to time-variable electricity prices or incentive payments, or in response to the acceptance of the final customer's bid to sell demand reduction or increase at a price in an organised market as defined in point (4) of Article 2 of Commission Implementing Regulation (EU) No 1348/2014²², whether alone or through aggregation;
- (21) ***‘billing information’ means the information provided on a final customer’s bill, apart from a request for payment;***
- (22) ‘conventional meter’ means an analogue or electronic meter with no capability to both transmit and receive data;
- (23) ‘smart metering system’ means an electronic system that is capable of measuring ***electricity fed into the grid*** or electricity consumed from the grid, providing more information than a conventional meter, and that is capable of transmitting and receiving data for information, monitoring and control purposes, using a form of electronic communication;

²² Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency (OJ L 363, 18.12.2014, p. 121).

- (24) ‘interoperability’ means, in the context of smart metering, the ability of two or more energy or communication networks, systems, devices, applications or components to interwork to exchange and use information in order to perform required functions;
- (25) ‘imbalance settlement period’ means imbalance settlement period as defined in point (15) of Article 2 of Regulation (EU) 2019/...⁺;
- (26) ‘near real-time’ means, in the context of smart metering, *a short time period*, usually down to seconds *or up to the imbalance settlement period in the national market*;
- (27) ‘best available techniques’ means, in the context of data protection and security in a smart metering environment, the most effective, advanced and practically suitable techniques for providing, in principle, the basis for complying with the Union data protection and security rules;
- (28) ‘distribution’ means the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

- (29) ‘distribution system operator’ means a natural or legal person who is responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity;
- (30) ‘energy efficiency’ means the ratio of output of performance, service, goods or energy, to input of energy;
- (31) ‘energy from renewable sources’ *or ‘renewable energy’* means energy from renewable non-fossil sources, *namely* wind, solar (solar thermal and solar photovoltaic) *and* geothermal energy, ambient *energy, tide, wave and other ocean energy*, hydropower, *biomass, landfill gas, sewage treatment plant gas, and* biogas ■ ;
- (32) ‘distributed generation’ means generating installations connected to the distribution system;

- (33) 'recharging point' means an interface that is capable of charging one electric vehicle at a time or exchanging the battery of one electric vehicle at a time;
- (34) 'transmission' means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply;
- (35) 'transmission system operator' means a natural or legal person who is responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;
- (36) 'system user' means a natural or legal person who supplies to, or is supplied by, a transmission system or a distribution system;
- (37) 'generation' means the production of electricity;
- (38) 'producer' means a natural or legal person who generates electricity;

- (39) ‘interconnector’ means *equipment used to link electricity systems*;
- (40) ‘interconnected system’ means a number of transmission and distribution systems linked together by means of one or more interconnectors;
- (41) ‘direct line’ means either an electricity line linking an isolated generation site with an isolated customer or an electricity line linking a producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and customers;
- (42) ‘small isolated system’ means any system that had consumption of less than 3 000 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems;
- (43) *‘small connected system’ means any system that had consumption of less than 3 000 GWh in the year 1996, where more than 5 % of annual consumption is obtained through interconnection with other systems;*
- (44) *‘congestion’ means congestion as defined in point (4) of Article 2 of Regulation (EU) 2019/...⁺;*
- (45) *‘balancing’ means balancing as defined in point (10) of Article 2 of Regulation (EU) 2019/...⁺;*
- (46) *‘balancing energy’ means balancing energy as defined in point (11) of Article 2 of Regulation (EU) 2019/...⁺;*
- (47) *‘balance responsible party’ means balance responsible party as defined in point (14) of Article 2 of Regulation (EU) 2019/...⁺;*
- (48) ‘ancillary service’ means a service necessary for the operation of a transmission or distribution system, including balancing and non-frequency ancillary services, but not including congestion management;

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

- (49) ‘non-frequency ancillary service’ means a service used by a transmission system operator *or distribution* system operator for steady state voltage control, fast reactive current injections, inertia *for local grid stability, short-circuit current*, black start capability *and island operation capability*;
- (50) ‘regional *coordination* centre’ means a regional *coordination* centre *established pursuant to* Article 35 of *Regulation (EU) 2019/...*⁺;
- (51) ‘*fully integrated network components*’ means *network components that are integrated in the transmission or distribution system, including storage facilities, and that are used for the sole purpose of ensuring a secure and reliable operation of the transmission or distribution system, and not for balancing or congestion management*;
- (52) ‘integrated electricity undertaking’ means a vertically integrated undertaking or a horizontally integrated undertaking;

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS9/19.

- (53) ‘vertically integrated undertaking’ means an electricity undertaking or a group of electricity undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings performs at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply;
- (54) ‘horizontally integrated undertaking’ means an electricity undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply, and another non-electricity activity;
- (55) ‘related undertaking’ means affiliated undertakings as defined in point 12 of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council²³, and undertakings which belong to the same shareholders;
- (56) ‘control’ means rights, contracts or other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
- (a) ownership or the right to use all or part of the assets of an undertaking;
 - (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking;

²³ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (57) ‘electricity undertaking’ means a natural or legal person who carries out at least one of the following functions: generation, transmission, distribution, ***aggregation, demand response, energy storage***, supply or purchase of electricity, and who is responsible for the commercial, technical or maintenance tasks related to those functions, but does not include final customers;
- (58) ‘security’ means both security of supply and provision of electricity, and technical safety;
- (59) ‘energy storage’ means, in the electricity system, deferring ***the final use of*** electricity to a moment ***later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical*** energy or ***use as*** another energy carrier;
- (60) ‘energy storage facility’ means, in the electricity system, a facility where energy storage occurs.

CHAPTER II
GENERAL RULES FOR THE ORGANISATION OF THE ELECTRICITY SECTOR

Article 3

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

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

5. *Member States shall ensure that market participants from third countries , when operating within the internal market for electricity, comply with applicable Union and national law, including that concerning environmental and safety policy.*

Article 4

Free choice of supplier

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

Article 5

Market-based supply prices

1. Suppliers shall be free to determine the price at which they supply electricity to customers. Member States shall take appropriate actions to ensure effective competition between suppliers.
2. Member States shall ensure the protection of energy poor and vulnerable *household* customers *pursuant to Articles 28 and 29* by *social policy or by* other means than public interventions in the price setting for the supply of electricity.

3. By way of derogation from paragraphs 1 and 2, Member States ***may*** apply public interventions in the price setting for the supply of electricity to energy poor or vulnerable household customers. ***Such public interventions shall be subject to the conditions set out in paragraphs 4 and 5.***
4. ***Public interventions in the price setting for the supply of electricity shall:***
- (a) pursue a general economic interest and not go beyond what is necessary to achieve that general economic interest;***
 - (b) be clearly defined, transparent, non-discriminatory and verifiable;***
 - (c) guarantee equal access for Union electricity undertakings to customers;***
 - (d) be limited in time and proportionate as regards their beneficiaries;***
 - (e) not result in additional costs for market participants in a discriminatory way.***

5. *Any Member State applying public interventions in the price setting for the supply of electricity in accordance with paragraph 3 of this Article shall also comply with point (d) of Article 3(3) and with Article 24 of Regulation (EU) 2018/1999, regardless of whether the Member State concerned has a significant number of households in energy poverty.*
6. *For the purpose of a transition period to establish effective competition for electricity supply contracts between suppliers, and to achieve fully effective market-based retail pricing of electricity in accordance with paragraph 1, Member States may ■ apply public interventions in the price setting for the supply of electricity to ■ household customers **and** to microenterprises that do not benefit from public interventions pursuant to paragraph 3.*
7. *Public interventions pursuant to paragraph 6 shall comply with the criteria set out in paragraph 4 and shall:*
 - (a) *be accompanied by a set of measures to achieve effective competition and a methodology for assessing progress with regard to those measures;*

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

8. Member States shall notify the measures taken in accordance with *paragraphs 3 and 6* to the Commission within one month after their adoption and may apply them immediately. The notification shall be accompanied by an explanation of why other instruments were not sufficient to *achieve the objective pursued*, of how the *requirements set out in paragraphs 4 and 7 are fulfilled and of the effects of the notified measures on competition. The notification shall describe the scope of the beneficiaries, the duration of the measures and the number of household customers affected by the measures, and shall explain how the regulated prices have been determined.*
9. *By 1 January 2022 and 1 January 2025, Member States shall submit reports to the Commission on the implementation of this Article, the necessity and proportionality of public interventions under this Article, and an assessment of the progress towards achieving effective competition between suppliers and the transition to market-based prices. Member States that apply regulated prices in accordance with paragraph 6 shall report on the compliance with the conditions set out in paragraph 7, including on compliance by suppliers that are required to apply such interventions, as well as on the impact of regulated prices on the finances of those suppliers.*

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

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Article 6

Third-party access

1. Member States shall ensure the implementation of a system of third-party access to the transmission and distribution systems based on published tariffs, applicable to all customers and applied objectively and without discrimination between system users. Member States shall ensure that those tariffs, or the methodologies underlying their calculation, are approved in accordance with Article 59 prior to their entry into force and that those tariffs, and the methodologies — where only methodologies are approved — are published prior to their entry into force.

2. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons shall be given for such refusal, in particular having regard to Article 9, and based on objective and technically and economically justified criteria. Member States or, where Member States have so provided, the regulatory authorities of those Member States, shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure. The regulatory authorities shall also ensure, where appropriate and when refusal of access takes place, that the transmission system operator or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. Such information shall be provided in all cases when access for recharging points has been denied. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.
3. ***This Article shall also apply to citizen energy communities that manage distribution networks.***

Article 7
Direct lines

1. Member States shall take the measures necessary to enable:
 - (a) all producers and electricity supply undertakings established within their territory to supply their own premises, subsidiaries and customers through a direct line, ***without being subject to disproportionate administrative procedures or costs***;
 - (b) all customers within their territory, ***individually or jointly***, to be supplied through a direct line by producers and electricity supply undertakings.
2. Member States shall lay down the criteria for the grant of authorisations for the construction of direct lines in their territory. Those criteria shall be objective and non-discriminatory.
3. The possibility of supplying electricity through a direct line as referred to in paragraph 1 of this Article shall not affect the possibility of contracting electricity in accordance with Article 6.

4. Member States may issue authorisations to construct a direct line, subject either to the refusal of system access on the basis, as appropriate, of Article 6 or to the opening of a dispute settlement procedure under Article 60.
5. Member States may refuse to authorise a direct line if the granting of such an authorisation would obstruct the application of the provisions on public service obligations in Article 9. Duly substantiated reasons shall be given for such a refusal.

Article 8

Authorisation procedure for new capacity

1. For the construction of new generating capacity, Member States shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.

2. Member States shall lay down the criteria for the grant of authorisations for the construction of generating capacity in their territory. In determining appropriate criteria, Member States shall consider:
- (a) the safety and security of the electricity system, installations and associated equipment;
 - (b) the protection of public health and safety;
 - (c) the protection of the environment;
 - (d) land use and siting;
 - (e) the use of public ground;
 - (f) energy efficiency;
 - (g) the nature of the primary sources;
 - (h) the characteristics particular to the applicant, such as technical, economic and financial capabilities;
 - (i) compliance with measures adopted pursuant to Article 9;

- (j) the contribution of generating capacity to meeting the overall Union target of at least a 32 % share of energy from renewable sources in the Union's gross final consumption of energy in 2030 referred to in Article 3(1) of Directive (EU) 2018/2001 of the European Parliament and of the Council²⁴;
- (k) the contribution of generating capacity to reducing emissions; and
- (l) ***the alternatives to the construction of new generating capacity, such as demand response solutions and energy storage.***

3. Member States shall ensure that specific, ***simplified and streamlined*** authorisation procedures exist for small decentralised and/or distributed generation, which take into account their limited size and potential impact.

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

²⁴ Directive (EU) 2018/2001 of the European Parliament and the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

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

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

Article 9

Public service obligations

1. Without prejudice to paragraph 2, Member States shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that electricity undertakings operate in accordance with the principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market for electricity, and shall not discriminate between those undertakings as regards either rights or obligations.

2. Having full regard to the relevant provisions of the TFEU, in particular Article 106 thereof, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including the security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable, and shall guarantee equality of access for electricity undertakings of the Union to national consumers. Public service obligations which concern the price setting for the supply of electricity shall comply with the requirements set out in Article 5 of this Directive.
3. Where financial compensation, other forms of compensation and exclusive rights which a Member State grants for the fulfilment of the obligations set out in paragraph 2 of this Article or for the provision of universal service as set out in Article 27 are provided, this shall be done in a non-discriminatory and transparent way.

4. Member States shall, upon implementation of this Directive, inform the Commission of all measures adopted to fulfil universal service and public service obligations, including consumer protection and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from this Directive. They shall subsequently inform the Commission every two years of any changes to those measures, whether or not they require a derogation from this Directive.
5. Member States may decide not to apply Articles 6, 7 and 8 of this Directive insofar as their application would obstruct, in law or in fact, the performance of the obligations imposed on electricity undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Union. The interests of the Union include, inter alia, competition with regard to customers in accordance with Article 106 TFEU and this Directive.

CHAPTER III

CONSUMER EMPOWERMENT AND PROTECTION

Article 10

Basic contractual rights

1. Member States shall ensure that all final customers are entitled to have their electricity provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, provided that the supplier follows the applicable trading **and balancing** rules. In that regard, Member States shall take all measures necessary to ensure that administrative procedures do not discriminate against suppliers already registered in another Member State.
2. Without prejudice to Union rules on consumer protection, in particular Directive 2011/83/EU of the European Parliament and of the Council²⁵ and Council Directive 93/13/EEC²⁶, Member States shall ensure that final customers have the rights provided for in paragraphs 3 to 12 of this Article.
3. **Final customers** shall have the right to a contract with their **supplier** that specifies:
 - (a) the identity and address of the supplier;

²⁵ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

²⁶ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

- (b) the services provided, the service quality levels offered, as well as the time for the initial connection;
- (c) the types of maintenance service offered;
- (d) the means by which up-to-date information on all applicable tariffs, maintenance charges *and bundled products or services* may be obtained;
- (e) the duration of the contract, the conditions for renewal and termination of the contract and services, *including products or services that are bundled with those services, and whether terminating the contract without charge is permitted;*
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate or delayed billing;
- (g) the method of initiating an out-of-court dispute settlement procedure in accordance with Article 26;

- (h) information relating to consumer rights, including information on complaint handling and all of the information referred to in this paragraph, that is clearly communicated on the bill or the electricity undertaking's web site.

Conditions shall be fair and well known in advance. In any case, this information shall be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the information relating to the matters set out in this paragraph shall also be provided prior to the conclusion of the contract.

Final customers shall be provided with a summary of the key contractual conditions in a prominent manner and in concise and simple language.

4. Final **customers** shall be given adequate notice of any intention to modify contractual conditions and shall be informed about their right to terminate the contract when the notice is given. Suppliers shall notify their final customers, in a transparent and comprehensible manner, directly of any adjustment in the supply price and of the reasons and preconditions for the adjustment and its scope, at an appropriate time no later than ***two weeks, or no later than one month in the case of household customers***, before the adjustment comes into effect. Member States shall ensure that final customers are free to terminate contracts if they do not accept the new contractual conditions or adjustments in the supply price notified to them by their supplier.

5. Suppliers shall provide final *customers* with transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services.
6. Suppliers shall offer final customers a wide choice of payment methods. Such payment methods shall not unduly discriminate between customers. Any difference in charges related to payment methods or prepayment systems shall ***be objective, non-discriminatory and proportionate and shall not exceed the direct costs borne by the payee for the use of a specific payment method or a prepayment system, in line with Article 62 of Directive (EU) 2015/2366 of the European Parliament and of the Council²⁷.***
7. ***Pursuant to paragraph 6, household customers who have access to prepayment systems shall*** not be placed at a disadvantage ■ by the prepayment systems.
8. ***Suppliers shall offer final customers*** fair and transparent general terms and conditions, which shall be provided in plain and unambiguous language and shall not include non-contractual barriers to the exercise of customers' rights, such as excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods.

²⁷ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

9. Final *customers* shall have the right to a good standard of service and complaint handling by their *suppliers*. *Suppliers* shall handle complaints in a simple, fair and prompt manner.
10. When accessing universal service under the provisions adopted by Member States pursuant to Article 27, final customers shall be informed about their rights regarding universal service.
11. Suppliers shall provide *household customers* with adequate information on alternative measures to disconnection sufficiently in advance of any planned disconnection. Such alternative measures may refer to sources of support to avoid disconnection, *prepayment systems, energy audits, energy consultancy services*, alternative payment plans, debt management advice or disconnection *moratoria* and not constitute an extra cost to *the* customers *facing disconnection*.
12. Suppliers shall provide final *customers* with a final closure account after any switch of  supplier no later than six weeks after such a switch has taken place.

Article 11

Entitlement to a dynamic *electricity* price contract

1. Member States shall ensure that *the national regulatory framework enables suppliers to offer* dynamic electricity price contracts. *Member States shall ensure that final customers who have a smart meter installed can request to conclude a dynamic electricity price contract with at least one supplier and with every supplier that has more than 200 000 final customers.*
2. Member States shall ensure that final customers are fully informed by the suppliers of the opportunities, *costs* and risks of such dynamic electricity price contracts, *and shall ensure that suppliers are required to provide information to the final customers accordingly, including with regard to the need to have an adequate electricity meter installed. Regulatory authorities shall monitor the market developments and assess the risks that the new products and services may entail and deal with abusive practices.*
3. *Suppliers shall obtain each final customer's consent before that customer is switched to a dynamic electricity price contract.*

4. For at least a ten-year period after *dynamic electricity price* contracts become available, Member States *or* their regulatory authorities shall monitor, and shall *publish an annual* report on ■ the main developments of such contracts, including market offers *and* the impact on consumers' bills, and specifically the level of price volatility ■ .

Article 12

Right to switch ■ and rules on switching-related fees

1. *Switching supplier or market participant engaged in aggregation shall be carried out within the shortest possible time.* Member States shall ensure that a customer wishing to switch *suppliers or market participants engaged in aggregation*, while respecting contractual conditions, is entitled to such *a switch* within *a maximum of* three weeks *from the date of the request. By no later than 2026, the technical process of switching supplier shall take no longer than 24 hours and shall be possible on any working day.*
2. Member States shall ensure that *at least household* customers and *small enterprises* are not charged any switching-related fees.

3. By way of derogation from paragraph 2, Member States may permit suppliers *or market participants engaged in aggregation* to charge customers contract termination fees where those customers voluntarily terminate fixed-term, *fixed-price* electricity supply contracts before their maturity, *provided that such fees are part of a contract that the customer has voluntarily entered into and that such fees are clearly communicated to the customer before the contract is entered into*. Such fees shall *be proportionate and shall* not exceed the direct economic loss to the supplier *or the market participant engaged in aggregation* resulting from the customer's termination of the contract, including the *costs* of any bundled investments or services that have already been provided to the customer as part of the contract. *The burden of proving the direct economic loss shall be on the supplier or market participant engaged in aggregation, and the permissibility of contract termination fees shall be monitored by the regulatory authority, or by an other competent national authority.*
4. Member States shall ensure that the right to switch supplier *or market participants engaged in aggregation* is granted to customers in a non-discriminatory manner as regards cost, effort and time.

5. *Household customers shall be entitled to participate in collective switching schemes. Member States shall remove all regulatory or administrative barriers for collective switching, while providing a framework that ensures the utmost consumer protection to avoid any abusive practices.*

Article 13

Aggregation contract

1. *Member States shall ensure that all customers are free to purchase and sell electricity services, including aggregation, other than supply , independently from their electricity supply contract and from an electricity undertaking of their choice.*
2. Member States shall ensure that, where a final customer wishes to conclude *an aggregation* contract, *the final customer is entitled to do so without* the consent of the final customer's *electricity undertakings*.

Member States shall ensure that market participants engaged in aggregation fully inform customers of the terms and conditions of the contracts that they offer to them.

3. Member States shall ensure that final customers are entitled to receive all relevant demand response data or data on supplied and sold electricity *free of charge* at least once *every billing period if requested by the customer*.
4. Member States shall ensure that the rights referred to in paragraphs 2 and 3 are granted to final customers in a non-discriminatory manner as regards cost, effort or time. *In particular, Member States shall ensure that customers are not subject to discriminatory technical and administrative requirements, procedures or charges by their supplier on the basis of whether they have a contract with a market participant engaged in aggregation.*

Article 14
Comparison tools

1. Member States shall ensure that ***at least household*** customers, ***and microenterprises with an expected yearly consumption of below 100 000 kWh***, have access, free of charge, to at least one tool comparing the offers of suppliers, ***including offers for dynamic electricity price contracts***. ***Customers shall be informed of the availability of such tools in or together with their bills or by other means. The tools shall meet at least the following requirements:***
 - (a) they shall be independent from market participants and ensure that electricity undertakings are given equal treatment in search results;***
 - (b) they shall clearly disclose their owners and the natural or legal person operating and controlling the tools, as well as information on how the tools are financed;***
 - (c) they shall set out clear and objective criteria on which the comparison is to be based, including services, and disclose them;***
 - (d) they shall use plain and unambiguous language;***

- (e) they shall provide accurate and up-to-date information and state the time of the last update;*
- (f) they shall be accessible to persons with disabilities, by being perceivable, operable, understandable and robust;*
- (g) they shall provide an effective procedure for reporting incorrect information on published offers; and*
- (h) they shall perform comparisons, while limiting the personal data requested to that strictly necessary for the comparison.*

Member States shall ensure that at least one tool covers the entire market. Where multiple tools cover the market, those tools shall include, as complete as practicable, a range of electricity offers covering a significant part of the market and, where those tools do not completely cover the market, a clear statement to that effect, before displaying results.

2. *The tools referred to in paragraph 1 may be operated by any entity, including private companies and public authorities or bodies.*
3. Member States shall appoint *a* competent authority *to be* responsible for *issuing trust marks* for comparison tools *that meet the requirements set out in paragraph 1, and for ensuring that comparison tools bearing a trust mark* continue to meet the requirements set out in *paragraph 1. That authority shall be independent of any market participants and comparison tool operators.*
4. Member States may require comparison tools referred to in paragraph 1 to include comparative criteria relating to the nature of the services offered by the suppliers.
5. Any tool comparing the offers of *market participants* shall be eligible to apply for *a trust mark* in accordance with this Article on a voluntary and non-discriminatory basis.
6. *By way of derogation from paragraphs 3 and 5, Member States may choose not to provide for the issuance of trust marks to comparison tools if a public authority or body provides a comparison tool that meets the requirements set out in paragraph 1.*

Article 15

Active customers

1. Member States shall ensure that final customers are entitled *to act as active customers* without being subject to *disproportionate or discriminatory technical requirements, administrative requirements*, procedures and charges, *and to network charges that are not cost-reflective*.
2. *Member States shall ensure that active customers are:*
 - (a) *entitled to operate either directly or through aggregation;*
 - (b) *entitled to sell self-generated electricity, including through power purchase agreements;*
 - (c) *entitled to participate in flexibility schemes and energy efficiency schemes;*
 - (d) *entitled to delegate to a third party the management of the installations required for their activities, including installation, operation, data handling and maintenance, without that third party being considered to be an active customer;*

- (e) subject to cost-reflective, transparent and non-discriminatory network charges that account separately for the electricity fed into the grid and the electricity consumed from the grid, in accordance with Article 59(9) of this Directive and Article 18 of Regulation (EU) 2019/...⁺, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the system;*
- (f) financially responsible for the imbalances they cause in the electricity system; to that extent they shall be balance responsible parties or shall delegate their balancing responsibility in accordance with Article 5 of Regulation (EU) 2019/...⁺.*

3. Member States may have different provisions applicable to individual and jointly-acting active customers in their national law, provided that all rights and obligations under this Article apply to all active customers. Any difference in the treatment of jointly- acting active customers shall be proportionate and duly justified.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

4. *Member States that have existing schemes that do not account separately for the electricity fed into the grid and the electricity consumed from the grid, shall not grant new rights under such schemes after 31 December 2023. In any event, customers subject to existing schemes shall have the possibility at any time to opt for a new scheme that accounts separately for the electricity fed into the grid and the electricity consumed from the grid as the basis for calculating network charges.*

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5. *Member States shall ensure that active customers that own an energy storage facility:*
- (a) have the right to a grid connection within a reasonable time after the request, provided that all necessary conditions, such as balancing responsibility and adequate metering, are fulfilled;*
 - (b) are not subject to any double charges, including network charges, for stored electricity remaining within their premises or when providing flexibility services to system operators;*
 - (c) are not subject to disproportionate licensing requirements or fees;*
 - (d) are allowed to provide several services simultaneously, if technically feasible.*

Article 16

Citizen energy communities

1. Member States shall *provide an enabling regulatory framework for citizen* energy communities *ensuring that*:

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- (a) *participation in a citizen energy community is open and voluntary;*
- (b) *members or shareholders of a citizen energy community are entitled to leave the community, in which case Article 12 applies;*
- (c) *members or shareholders of a citizen energy community do not lose their rights and obligations as household customers or active customers;*
- (d) *subject to fair compensation as assessed by the regulatory authority, relevant distribution system operators cooperate with citizen energy communities to facilitate electricity transfers within citizen energy communities;*

(e) *citizen energy communities are subject to non-discriminatory, fair, proportionate and transparent procedures and charges, including with respect to registration and licensing, and to transparent, non-discriminatory and cost-reflective network charges in accordance with Article 18 of Regulation (EU) 2019/...⁺, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the system.*

2. Member States *may* provide *in the* enabling regulatory framework that *citizen energy communities*:

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- (a) *are open to cross-border participation;*
 - (b) *are entitled to own, establish, purchase or lease distribution networks and to autonomously manage them subject to conditions set out in paragraph 4 of this Article;*
 - (c) *are subject to the exemptions provided for in Article 38(2).*

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

3. *Member States shall ensure that citizen energy communities:*

- (a) are able to access all electricity markets, either directly or through aggregation, in a non-discriminatory manner;*
- (b) are treated in a non-discriminatory and proportionate manner with regard to their activities, rights and obligations as final customers, producers, suppliers, distribution system operators or market participants engaged in aggregation;*
- (c) are financially responsible for the imbalances they cause in the electricity system; to that extent they shall be balance responsible parties or shall delegate their balancing responsibility in accordance with Article 5 of Regulation (EU) 2019/...⁺;*
- (d) with regard to consumption of self-generated electricity, citizen energy communities are treated like active customers in accordance with point (e) of Article 15(2);*

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

- (e) are entitled to arrange within the citizen energy community the sharing of electricity that is produced by the production units owned by the community, subject to other requirements laid down in this Article and subject to the community members retaining their rights and obligations as final customers.*

For the purposes of point (e) of the first subparagraph, where electricity is shared, this shall be without prejudice to applicable network charges, tariffs and levies, in accordance with a transparent cost-benefit analysis of distributed energy resources developed by the competent national authority.

- 4. Member States may decide to grant citizen energy communities the right to manage distribution networks in their area of operation and establish the relevant procedures, without prejudice to Chapter IV or to other rules and regulations applying to distribution system operators. If such a right is granted, Member States shall ensure that citizen energy communities:*

- (a) are entitled to conclude an agreement on the operation of their network with the relevant distribution system operator or transmission system operator to which their network is connected;*

- (b) *are subject to appropriate network charges at the connection points between their network and the distribution network outside the citizen energy community and that such network charges account separately for the electricity fed into the distribution network and the electricity consumed from the distribution network outside the citizen energy community in accordance with Article 59(7);*
- (c) *do not discriminate or harm customers who remain connected to the distribution system.*

Article 17

Demand response *through aggregation*

1. *Member States shall allow and foster participation of demand response through aggregation.* Member States shall **allow** final customers, including those offering demand response through **aggregation**, to participate alongside producers in a non-discriminatory manner in all **electricity** markets.
2. Member States shall ensure that transmission system operators and distribution system operators, when procuring ancillary services, treat **market participants engaged in the aggregation of demand response** in a non-discriminatory manner **alongside producers** on the basis of their technical capabilities.

3. Member States shall ensure that their **relevant** regulatory framework **I** contains at least the following elements:

- (a) the right for each **market participant engaged in aggregation, including independent aggregators**, to enter **electricity markets** without the consent of other market participants;
- (b) **non-discriminatory and** transparent rules that clearly assign roles and responsibilities to all **electricity undertakings and customers**;
- (c) **non-discriminatory and** transparent rules and procedures for the exchange of data between **market participants engaged in aggregation and other electricity undertakings** that ensure easy access to data on equal and non-discriminatory terms while fully protecting commercially sensitive information **and customers' personal data**;

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- (d) **an obligation on market participants engaged in aggregation to be financially responsible for the imbalances that they cause in the electricity system; to that extent they shall be balance responsible parties or shall delegate their balancing responsibility in accordance with Article 5 of Regulation (EU) 2019/...⁺**;
- (e) **provision for final customers who have a contract with independent aggregators not to be subject to undue payments, penalties or other undue contractual restrictions by their suppliers**;
- (f) a conflict resolution mechanism between **market participants engaged in aggregation and other** market participants, **including responsibility for imbalances**.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

4. *Member States may require electricity undertakings or participating final customers to pay financial compensation to other market participants or to the market participants' balance responsible parties, if those market participants or balance responsible parties are directly affected by demand response activation. Such financial compensation shall not create a barrier to market entry for market participants engaged in aggregation or a barrier to flexibility. In such cases, the financial compensation shall be strictly limited to covering the resulting costs incurred by the suppliers of participating customers or the suppliers' balance responsible parties during the activation of demand response. The method for calculating compensation may take account of the benefits brought about by the independent aggregators to other market participants and, where it does so, the aggregators or participating customers may be required to contribute to such compensation but only where and to the extent that the benefits to all suppliers, customers and their balance responsible parties do not exceed the direct costs incurred. The calculation method shall be subject to approval by the regulatory authority or by another competent national authority.*

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5. Member States shall ensure that regulatory authorities or, where their national legal system so requires, transmission system operators and distribution system operators, acting in close cooperation with *market participants* and final customers, establish the technical *requirements* for participation of demand response in *all electricity* markets on the basis of the technical characteristics of those markets and the capabilities of demand response. Such *requirements* shall cover participation involving *aggregated loads*.

Article 18

Bills and billing information

1. Member States shall ensure that bills ■ and billing information *are accurate, easy to understand*, clear, concise, *user-friendly* and presented in a manner that facilitates comparison by final customers. *On request, final customers shall receive a clear and understandable explanation of how their bill was derived, especially where bills are not based on actual consumption.*
2. Member States *shall* ensure that final customers receive all their bills and billing information ■ free of charge ■ .
■
3. Member States shall ensure that final customers are offered the option of electronic *bills and* billing information and are offered *flexible arrangements for the actual payment of the bills.*
■
4. *If the contract provides for a future change of the product or price, or a discount, this shall be indicated on the bill together with the date on which the change takes place.*

5. *Member States shall consult consumer organisations when they consider changes to the requirements for the content of bills.*
6. *Member States shall ensure that bills and billing information fulfil the minimum requirements set out in Annex I.*

Article 19

Smart metering systems

1. In order to promote energy efficiency and to empower *final* customers, Member States or, where a Member State has so provided, the regulatory authority shall strongly recommend that electricity undertakings and *other market participants* optimise the use of electricity, inter alia, by providing energy management services, developing innovative pricing formulas, *and* introducing smart metering systems that are interoperable, *in particular with consumer energy management systems and with* smart grids, *in accordance with the applicable Union data protection rules.*

2. Member States shall ensure the deployment in their territories of smart metering systems that assist the active participation of customers in the electricity market. Such deployment may be subject to a cost-benefit assessment which shall be undertaken in accordance with the principles laid down in Annex II.
3. Member States that proceed with the deployment of **smart metering** systems shall adopt and publish the minimum functional and technical requirements for the smart metering systems to be deployed in their territories, in accordance with Article 20 and Annex II. Member States shall ensure the interoperability of those smart metering systems, as well as their **ability to provide output for** consumer energy management **systems**. In that respect, Member States shall have due regard to the use of the relevant available standards, including those enabling interoperability, to best practices and to the importance of the development of **smart grids and the development of** the internal market for electricity.

4. Member States that proceed with the deployment of smart metering systems shall ensure that final customers contribute to the associated costs of the deployment in a transparent and non-discriminatory manner, ***while taking into account the long-term benefits to the whole value chain***. Member States ***or, where a Member State has so provided, the designated competent authorities***, shall regularly monitor such deployment in their territories to track the ■ delivery of ■ benefits to consumers.
5. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in paragraph 2, Member States shall ensure that this assessment is revised ***at least every four years, or more frequently***, in response to ***significant*** changes in the underlying assumptions and in response to technological and market developments. Member States shall notify to the Commission the outcome of their updated cost-benefit assessment as it becomes available.

6. *The provisions in this Directive concerning smart metering systems shall apply to future installations and to installations that replace older smart meters. Smart metering systems that have already been installed, or for which the ‘start of works’ began, before ... [the date of entry into force of this Directive], may remain in operation over their lifetime but, in the case of smart metering systems that do not meet the requirements of Article 20 and Annex II, shall not remain in operation after ... [12 years after the entry into force of this Directive].*

For the purpose of this paragraph, 'start of works' means either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment.

Article 20

Functionalities of smart metering systems

Where the deployment of smart metering systems is positively assessed as a result of the cost-benefit assessment referred to in Article 19(2), or where smart metering systems are systematically deployed *after ... [date of entry into force of this Directive]*, Member States shall deploy smart metering systems in accordance with European standards, Annex II and the following requirements:

- (a) the smart metering systems shall accurately measure actual electricity consumption and *shall be capable of* providing to final customers information on actual time of use. *Validated historical consumption data* shall be made easily *and securely* available and visualised to final customers *on request and* at no additional cost. *Non-validated* near real-time *consumption data shall also be made easily and securely available to final customers at no additional cost, through a standardised interface or through remote access*, in order to support automated energy efficiency programmes, demand response and other services;
- (b) the security of the smart metering systems and data communication shall comply with relevant Union security rules, having due regard of the best available techniques for ensuring the highest level of cybersecurity protection *while bearing in mind the costs and the principle of proportionality*;

- (c) the privacy of final customers and the protection of their data shall comply with relevant Union data protection and privacy rules;
- (d) meter operators shall ensure that the meters of active customers who feed electricity into the grid can account for electricity fed into the grid from the active customers' premises;
- (e) if final customers request it, data on the electricity they fed into the grid and their electricity consumption data shall be made available to them, in accordance with the implementing acts adopted pursuant to Article 24, through a ■ standardised communication interface or through remote access, or to a third party acting on their behalf, in an easily understandable format allowing them to compare offers on a like-for-like basis;

- (f) appropriate advice and information shall be given to final customers ***prior to or*** at the time of installation of smart meters, in particular concerning their full potential with regard to the management of meter reading and the monitoring of energy consumption, and concerning the collection and processing of personal data in accordance with the applicable Union data protection rules;
- (g) smart metering systems shall enable final customers to be metered and settled at the same time resolution as the imbalance settlement period in the national market.

For the purposes of point (e) of the first subparagraph, ***it shall be possible for final customers to retrieve their metering data or transmit them to another party at no additional cost and in accordance with their right to data portability under Union data protection rules.***

Article 21

Entitlement to a smart meter

1. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in Article 19(2) and where smart metering systems are not systematically deployed, Member States shall ensure that every final customer is entitled on request, ***while bearing the associated costs***, to have installed or, where applicable, to have upgraded, under fair, reasonable ***and cost-effective*** conditions, a smart meter that:
 - (a) is equipped, where technically feasible, with the functionalities referred to in Article 20, or with a minimum set of functionalities to be defined and published by Member States at national level in accordance with Annex II,

- (b) is interoperable and able to deliver the desired connectivity of the metering infrastructure with consumer energy management systems in near real-time.

2. In the context of a customer request for a smart meter pursuant to paragraph 1, Member States or, where a Member State has so provided, the designated competent authorities shall:

- (a) ensure that the offer to the final customer requesting the installation of a smart meter explicitly states and clearly describes:
 - (i) the functions and interoperability that can be supported by the smart meter and the services that are feasible as well as the benefits that can be realistically attained by having that smart meter at that moment in time;
 - (ii) any associated costs to be borne by the final customer;
- (b) ensure that it is installed within a reasonable time, no later than *four* months after the customer's request;
- (c) regularly, and at least every two years, review and make publicly available the associated costs, and trace the evolution of those costs as a result of technology developments and potential metering system upgrades.

Article 22
Conventional meters

1. Where final customers do not have smart meters, Member States shall ensure that final customers are provided with individual conventional meters that accurately measure their actual consumption.
2. Member States shall ensure that final customers are able to easily read their conventional meters, either directly or indirectly through an online interface or through another appropriate interface.

Article 23

Data management

1. When laying down the rules regarding the management and exchange of data, Member States or, where a Member State has so provided, the designated competent authorities shall specify the ***rules on the*** access to data of the final customer ***by eligible parties in accordance with this Article and the applicable Union legal framework***. For the purpose of this Directive, data shall be understood to include metering and consumption data as well as data required for customer switching, ***demand response and other services***.

2. Member States shall organise the management of data in order to ensure efficient *and secure* data access and exchange, *as well as data protection and data security*.

Independently of the data management model applied in each Member State, the parties responsible for data management shall provide **■** access to the data of the final customer to any eligible party, *in accordance with paragraph 1*. Eligible parties shall have the requested data at their disposal in a non-discriminatory manner and simultaneously. Access to data shall be easy and the relevant procedures for obtaining access to data shall be made publicly available.

3. *The rules on access to data and data storage for the purpose of this Directive shall comply with the relevant Union law.*

The processing of personal data within the framework of this Directive shall be carried out in accordance with Regulation (EU) 2016/679.

4. Member States or, where a Member State has so provided, the designated competent authorities, shall authorise and certify *or, where applicable, supervise* the parties responsible for the data management, in order to ensure that they comply with the requirements of this Directive.

Without prejudice to the tasks of the data protection officers under Regulation (EU) 2016/679, Member States may decide to require that parties responsible for the data management appoint compliance officers who are to be responsible for monitoring the implementation of measures taken by those parties to ensure non-discriminatory access to data and compliance with the requirements of this Directive.

Member States may appoint compliance officers or bodies referred to in point (d) of Article 35(2) of this Directive to fulfil the obligations under this paragraph.

5. No additional costs shall be charged to final customers for access to their *data or for a request to make their data available*.

Member States shall be responsible for setting the relevant charges for access to data by eligible parties.■

Member States or, where a Member State has so provided, the designated competent authorities shall ensure that any charges imposed by regulated entities that provide data services are reasonable and duly justified.

Article 24

Interoperability requirements and procedures for access to data

1. *In order to promote competition in the retail market and to avoid excessive administrative costs for the eligible parties, Member States shall facilitate the full interoperability of energy services within the Union.*
2. *The Commission shall adopt, by means of implementing acts, interoperability requirements and non-discriminatory and transparent procedures for access to data referred to in Article 23(1). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 68(2).*
3. *Member States shall ensure that electricity undertakings apply the interoperability requirements and procedures for access to data referred to in paragraph 2. Those requirements and procedures shall be based on existing national practices.*

Article 25

Single points of contact

Member States shall ensure the provision of single points of contact, to provide customers with all necessary information concerning their rights, the applicable law and dispute settlement mechanisms available to them in the event of a dispute. Such single points of contact may be part of general consumer information points.

Article 26

Right to out-of-court dispute settlement

1. Member States shall ensure that ***final*** customers have access to simple, fair, transparent, independent, effective and efficient out-of-court mechanisms for the settlement of disputes concerning rights and obligations established under this Directive, ***through an independent mechanism such as an energy ombudsman or a consumer body, or through a regulatory authority***. Where the ***final*** customer is a consumer within the meaning of Directive 2013/11/EU of the European Parliament and of the Council²⁸, such out-of-court dispute settlement mechanisms shall comply with the quality requirements of Directive 2013/11/EU and shall provide, where warranted, for systems of reimbursement and compensation.
2. ***Where necessary, Member States shall ensure that alternative dispute resolution entities cooperate to provide simple, fair, transparent, independent, effective and efficient out-of-court dispute settlement mechanisms for any dispute that arises from products or services that are tied to, or bundled with, any product or service falling under the scope of this Directive.***

²⁸ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).

3. *The participation of electricity undertakings in out-of-court dispute settlement mechanisms for household customers shall be mandatory unless the Member State demonstrates to the Commission that other mechanisms are equally effective.*

Article 27

Universal service

1. Member States shall ensure that all household customers, and, where Member States deem it to be appropriate, small enterprises, enjoy universal service, namely the right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort. Member States shall impose on distribution system operators an obligation to connect customers to their network under terms, conditions and tariffs set in accordance with the procedure laid down in Article 59(7). This Directive does not prevent Member States from strengthening the market position of the household customers and small and medium-sized non-household customers by promoting the possibilities for the voluntary aggregation of representation for that class of customers.

2. Paragraph 1 shall be implemented in a transparent and non-discriminatory way, and shall not impede the free choice of supplier provided for in Article 4.

Article 28

Vulnerable customers

1. Member States shall take appropriate measures to protect customers and shall ensure, in particular, that there are adequate safeguards to protect vulnerable customers. In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of electricity to such customers in critical times. ***The concept of vulnerable customers may include income levels, the share of energy expenditure of disposable income, the energy efficiency of homes, critical dependence on electrical equipment for health reasons, age or other criteria.*** Member States shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take measures to protect customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms.

2. Member States shall take appropriate measures, such as ■ providing benefits by means of their social security systems to ensure the necessary supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified *pursuant to point (d) of Article 3(3) of Regulation (EU) 2018/1999*, including in the broader context of poverty. Such measures shall not impede the effective opening of the market set out in Article 4 or market functioning and shall be notified to the Commission, where relevant, in accordance with Article 9(4). Such *notifications* may also include measures taken within the general social security system.

Article 29

Energy poverty

When assessing the number of households in energy poverty pursuant to point (d) of Article 3(3) of Regulation (EU) 2018/1999 Member States shall establish and publish a set of criteria, which may include low income, high expenditure of disposable income on energy and poor energy efficiency.

The Commission shall provide guidance on the definition of ‘significant number of households in energy poverty’ in this context and in the context of Article 5(5), starting from the premise that any proportion of households in energy poverty can be considered to be significant.

CHAPTER IV

DISTRIBUTION SYSTEM OPERATION

Article 30

Designation of distribution system operators

Member States shall designate or shall require undertakings that own or are responsible for distribution systems to designate one or more distribution system operators for a period of time to be determined by the Member States, having regard to considerations of efficiency and economic balance.

Article 31

Tasks of distribution system operators

1. The distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity, for operating, maintaining and developing under economic conditions a secure, reliable and efficient electricity distribution system in its area with due regard for the environment and energy efficiency.
2. In any event, the distribution system operator shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.
3. The distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system.
4. A Member State may require the distribution system operator, when dispatching generating installations, to give priority to generating installations using renewable sources or using high-efficiency cogeneration, in accordance with Article 12 of Regulation (EU) 2019/...⁺.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

5. Each distribution system operator shall *act as a neutral market facilitator in procuring* the energy it uses to cover energy losses ■ in its system in accordance with transparent, non-discriminatory and market-based procedures, where it has such a function. ■
6. *Where a distribution system operator is responsible for the procurement of products and services necessary for the efficient, reliable and secure operation of the distribution system, rules adopted by the distribution system operator for that purpose shall be objective, transparent and non-discriminatory, and shall be developed in coordination with transmission system operators and other relevant market participants. The terms and conditions, including rules and tariffs, where applicable, for the provision of such products and services to distribution system operators shall be established in accordance with Article 59(7) in a non-discriminatory and cost-reflective way and shall be published.*

7. *In performing the tasks referred to in paragraph 6, the distribution system operator shall procure the non-frequency ancillary services needed for its system in accordance with transparent, non-discriminatory and market-based procedures, unless the regulatory authority has assessed that the market-based provision of non-frequency ancillary services is economically not efficient and has granted a derogation. The obligation to procure non-frequency ancillary services does not apply to fully integrated network components.*
8. *The procurement of the products and services referred to in paragraph 6 shall ensure the effective participation of all qualified market participants including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation, in particular by requiring regulatory authorities and distribution system operators in close cooperation with all market participants, as well as transmission system operators, to establish the technical requirements for participation in those markets on the basis of the technical characteristics of those markets and the capabilities of all market participants.*

9. *Distribution system operators shall cooperate with transmission system operators for the effective participation of market participants connected to their grid in retail, wholesale and balancing markets. Delivery of balancing services stemming from resources located in the distribution system shall be agreed with the relevant transmission system operator in accordance with Article 57 of Regulation (EU) 2019/...⁺ and Article 182 of Commission Regulation (EU) 2017/1485²⁹.*
10. *Member States or their designated competent authorities may allow distribution system operators to perform activities other than those provided for in this Directive and in Regulation (EU) 2019/...⁺, where such activities are necessary for the distribution system operators to fulfil their obligations under this Directive or Regulation (EU) 2019/...⁺, provided that the regulatory authority has assessed the necessity of such a derogation. This paragraph shall be without prejudice to the right of the distribution system operators to own, develop, manage or operate networks other than electricity networks where the Member State or the designated competent authority has granted such a right.*

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

²⁹ Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ L 220, 25.8.2017, p. 1).

Article 32

Incentives for the use of flexibility in distribution networks

1. Member States shall provide the necessary regulatory framework to allow and provide incentives to distribution system operators to procure ***flexibility*** services, ***including congestion management in their areas***, in order to improve efficiencies in the operation and development of the distribution system ■ . In particular, the regulatory framework shall ***ensure that*** distribution system operators are able to procure such services from providers of distributed generation, demand response or energy storage and ***shall promote the uptake of*** energy efficiency measures, ***where such services cost-effectively*** alleviate the need to upgrade or replace electricity capacity and support the efficient and secure operation of the distribution system. ***Distribution system operators shall procure such services in accordance with transparent, non-discriminatory and market-based procedures unless the regulatory authorities have established that the procurement of such services is not economically efficient or that such procurement would lead to severe market distortions or to higher congestion.***

2. Distribution system operators, *subject to approval by the regulatory authority, or the regulatory authority itself*, shall, *in a transparent and participatory process that includes all relevant system users and transmission system operators, establish the specifications for the flexibility services procured and, where appropriate, standardised market products for such services at least at national level. The specifications shall ensure the effective and non-discriminatory* participation of all market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, *operators of energy storage facilities* and *market participants engaged in aggregation*. Distribution system operators shall exchange all necessary information and shall coordinate with transmission system operators in order to ensure the optimal utilisation of resources, to ensure the secure and efficient operation of the system and to facilitate market development. Distribution system operators shall be adequately remunerated for the procurement of such services to allow them to recover at least their *reasonable* corresponding *costs*, including the necessary information and communication technology expenses ■ and ■ infrastructure *costs*.

3. The development of a distribution system shall be based on a transparent network development plan that the distribution system operator shall ***publish at least*** every two years ***and shall submit*** to the regulatory authority. The network development plan shall ***provide transparency on the medium and long-term flexibility services needed***, and shall set out the planned investments for the next five- to- ten years, with particular emphasis on the main distribution infrastructure which is required in order to connect new generation capacity and new loads, including recharging points for electric vehicles. The network development plan shall also ***include*** the use of demand response, energy efficiency, energy storage facilities or other resources that the distribution system operator is to use as an alternative to system expansion.
4. The ***distribution system operator*** shall consult all ***relevant*** system users ***and the relevant transmission system operators*** on the network development plan. The ***distribution system operator*** shall publish the ***results*** of the consultation process ***along with the network development plan, and submit the results of the consultation and the network development plan to the regulatory authority. The regulatory authority may request amendments to the plan.***

5. Member States may decide not to apply *the* obligation set out in *paragraph 3* to integrated electricity undertakings which serve less than 100 000 connected customers or which serve *small* isolated systems.

Article 33

Integration of electromobility into the electricity network

1. ***Without prejudice to Directive 2014/94/EU of the European Parliament and of the Council³⁰***, Member States shall provide the necessary regulatory framework to facilitate the connection of publicly accessible and private recharging points to the distribution networks. Member States shall ensure that distribution system operators cooperate on a non-discriminatory basis with any undertaking that owns, develops, operates or manages recharging points for electric vehicles, including with regard to connection to the grid.
2. ***Distribution system operators shall not own, develop, manage or operate recharging points for electric vehicles, except where distribution system operators own private recharging points solely for their own use.***

³⁰ ***Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p.1).***

3. ***By way of derogation from paragraph 2***, Member States may allow distribution system operators to own, develop, manage or operate recharging points for electric vehicles, provided that ***all of*** the following conditions are fulfilled:
- (a) other parties, following an open, transparent ***and non-discriminatory*** tendering procedure that is ***subject to review and approval by the regulatory authority***, ***have not been awarded a right*** to own, develop, manage or operate recharging points for electric vehicles, ***or could not deliver those services at a reasonable cost and in a timely manner***;
 - (b) the regulatory authority has ***carried out an ex-ante review of the conditions of the tendering procedure under point (a) and has*** granted its approval;
 - (c) ***the distribution system operator operates the recharging points on the basis of third-party access in accordance with Article 6 and does not discriminate between system users or classes of system users, and in particular in favour of its related undertakings.***
- ***The regulatory authority may draw up guidelines or procurement clauses to help distribution system operators ensure a fair tendering procedure.***

4. *Where Member States have implemented the conditions set out in paragraph 3, Member States or their designated competent authorities shall perform, at regular intervals or at least every five years, a public consultation in order to re-assess the potential interest of other parties in owning, developing, operating or managing recharging points for electric vehicles. Where the public consultation indicates that other parties are able to own, develop, operate or manage such points, Member States shall ensure that distribution system operators' activities in this regard are phased-out, **subject to the successful completion of the tendering procedure referred to in point (a) of paragraph (3). As part of the conditions of that procedure, regulatory authorities may allow the distribution system operator to recover the residual value of its investment in recharging infrastructure.***

Article 34

Tasks of distribution system operators in data management

Member States shall ensure that all eligible parties have non-discriminatory access to data under clear and equal terms, ***in accordance with the relevant data protection rules***. In Member States where smart metering systems have been deployed in accordance with Article 19 and where distribution system operators are involved in data management, the compliance programmes referred to in point (d) of Article 35(2) shall include specific measures in order to exclude discriminatory access to data from eligible parties as provided for in Article 23. Where distribution system operators are not subject to Article 35(1), (2) or (3), Member States shall take all necessary measures to ensure that vertically integrated undertakings do not have privileged access to data for the conduct of their supply activities.

Article 35

Unbundling of distribution system operators

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system operator from the vertically integrated undertaking.

2. In addition to the requirements under paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:
- (a) the persons responsible for the management of the distribution system operator must not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, transmission or supply of electricity;
 - (b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;

- (c) the distribution system operator must have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network. In order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, physical and financial resources. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 59(7), in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument; and

- (d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet that objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator, to the regulatory authority referred to in Article 57(1) and shall be published. The compliance officer of the distribution system operator shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfil its task.

3. Where the distribution system operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion with respect to the separate identity of the supply branch of the vertically integrated undertaking.
4. Member States may decide not to apply paragraphs 1, 2 and 3 to integrated electricity undertakings which serve less than 100 000 connected customers, or serving small isolated systems.

Article 36

Ownership of *energy* storage facilities *by distribution system operators*

1. Distribution system operators shall not own, develop, manage or operate energy storage facilities.
2. By way of derogation from paragraph 1, Member States may allow distribution system operators to own, develop, manage or operate *energy* storage facilities, where *they are fully integrated network components and the regulatory authority has granted its approval, or where all of* the following conditions are fulfilled:
 - (a) other parties, following an open, transparent *and non-discriminatory* tendering procedure that is *subject to review and approval by the regulatory authority*, have *not been awarded a right* to own, develop, manage or operate *such facilities, or could not deliver those services at a reasonable cost and in a timely manner*;

- (b) such facilities are necessary for the distribution system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the distribution system ***and the facilities are not used to buy or sell electricity in the electricity markets;*** and
- (c) the regulatory authority has assessed the necessity of such a derogation ***and has carried out an assessment of the tendering procedure, including the conditions of the tendering procedure,*** and has granted its approval.

The regulatory authority may draw up guidelines or procurement clauses to help distribution system operators ensure a fair tendering procedure.

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- 3. The regulatory authorities shall perform, at regular intervals or at least every five years, a public consultation on ***the existing energy storage facilities*** in order to ***assess*** the potential ***availability and*** interest in investing ***in such*** facilities. ***Where*** the public consultation, ***as assessed by the regulatory authority,*** indicates that third parties are able to own, develop, operate or manage such facilities ***in a cost-effective manner, the regulatory authority shall*** ensure that the distribution system operators' activities in this regard are phased out ***within 18 months. As part of the conditions of that procedure, regulatory authorities may allow the distribution system operators to receive reasonable compensation, in particular to recover the residual value of their investment in the energy storage facilities.***

4. *Paragraph 3 shall not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until ... [the date of entry into force of this Directive], provided that such battery storage facilities are:*
- (a) connected to the grid at the latest two years thereafter;*
 - (b) integrated into the distribution system;*
 - (c) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and*
 - (d) not used to buy or sell electricity in the electricity markets, including balancing.*

Article 37

Confidentiality obligation of distribution system operators

Without prejudice to Article 55 or another legal requirement to disclose information, the distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner.

Article 38

Closed distribution systems

1. Member States may provide for regulatory authorities or other competent authorities to classify a system which distributes electricity within a geographically confined industrial, commercial or shared services site and does not, without prejudice to paragraph 4, supply household customers, as a closed distribution system if:
 - (a) for specific technical or safety reasons, the operations or the production process of the users of that system are integrated; or
 - (b) that system distributes electricity primarily to the owner or operator of the system or their related undertakings.
2. ***Closed distribution systems shall be considered to be distribution systems for the purposes of the Directive.*** Member States may provide for regulatory authorities to exempt the operator of a closed distribution system from:
 - (a) the requirement under Article 31(5) and (7) to procure the energy it uses to cover energy losses and the non-frequency ancillary services in its system in accordance with transparent, non-discriminatory and market-based procedures;

- (b) the requirement under Article 6(1) that tariffs, or the methodologies underlying their calculation, are approved in accordance with Article 59(1) prior to their entry into force;
- (c) *the requirements under Article 32(1) to procure flexibility services and under Article 32(3) to develop the operator's system on the basis of network development plans;*
- (d) *the requirement under Article 33(2) not to own, develop, manage or operate recharging points for electric vehicles; and*
- (e) *the requirement under Article 36(1) not to own, develop, manage or operate energy storage facilities.*

3. Where an exemption is granted under paragraph 2, the applicable tariffs, or the methodologies underlying their calculation, shall be reviewed and approved in accordance with Article 59(1) upon request by a user of the closed distribution system.

4. Incidental use by a small number of households with employment or similar associations with the owner of the distribution system and located within the area served by a closed distribution system shall not preclude an exemption under paragraph 2 being granted.

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Article 39

Combined operator

Article 35(1) shall not prevent the operation of a combined transmission and distribution system operator, provided that the operator complies with Article 43(1), Articles 44 and 45, or Section 3 of Chapter VI, or that the operator falls under Article 66(3).

Chapter V

GENERAL RULES APPLICABLE TO TRANSMISSION SYSTEM OPERATORS

Article 40

Tasks of transmission system operators

1. Each transmission system operator shall be responsible for:
 - (a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission system with due regard to the environment, in close cooperation with neighbouring transmission system operators and distribution system operators;
 - (b) ensuring adequate means to meet its obligations;
 - (c) contributing to security of supply through adequate transmission capacity and system reliability;

- (d) managing electricity flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services, including those provided by demand response and energy storage facilities, insofar as such availability is independent from any other transmission systems with which its system is interconnected;
- (e) providing to the operator of other systems with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system;
- (f) ensuring non-discrimination as between system users or classes of system users, particularly in favour of its related undertakings;
- (g) providing system users with the information they need for efficient access to the system; ■

- (h) collecting congestion rents and payments under the inter-transmission system operator compensation mechanism, in accordance with Article 49 of Regulation (EU) 2019/...⁺, granting and managing third-party access and giving reasoned explanations when it denies such access, which shall be monitored by the regulatory authorities; in carrying out their tasks under this Article transmission system operators shall primarily facilitate market integration;
- (i) procuring ancillary services ■ to ensure operational security;
- (j) adopting a framework for cooperation and coordination between the *regional coordination centres*;
- (k) *participating in the establishment of the European and national resource adequacy assessments pursuant to Chapter IV of Regulation (EU) 2019/...⁺ ;*
- (l) *the digitalisation of transmission systems*;
- (m) *data management, including the development of data management systems, cybersecurity and data protection, subject to the applicable rules, and without prejudice to the competence of other authorities.*

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

2. Member States may provide that one or several responsibilities listed in paragraph 1 of this Article be assigned to a transmission system operator other than the one which owns the transmission system to which the responsibilities concerned would otherwise be applicable. The transmission system operator to which the tasks are assigned shall be certified under the ownership unbundling, ***the independent system operator or the independent transmission system operator model***, and fulfil the requirements provided for in Article 43, but shall not be required to own the transmission system it is responsible for.

The transmission system operator which owns the transmission system shall fulfil the requirements provided for in Chapter VI and be certified in accordance with Article 43.

This shall be without prejudice to the possibility for transmission system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model to delegate, on their own initiative and under their supervision, certain tasks to other transmission system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model where that delegation of tasks does not endanger the effective and independent decision-making rights of the delegating transmission system operator.

3. In performing the tasks referred to in paragraph 1, transmission system operators shall take into account the *recommendations issued* by the regional *coordination* centres ■ .
4. In performing the task referred to in point (i) of paragraph 1, transmission system *operators* shall *procure* balancing services subject to the following:
- (a) transparent, non-discriminatory and market-based *procedures*;
 - (b) ■ the participation of all *qualified electricity undertakings and* market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and *market participants engaged in aggregation*.

For the purpose of point (b) of the first subparagraph, regulatory authorities *and* transmission system operators *shall*, in close cooperation with all market participants, ■ establish technical requirements for participation in those markets, on the basis of the technical characteristics of those markets ■ .

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5. *Paragraph 4 shall apply to the provision of non-frequency ancillary services by transmission system operators, unless the regulatory authority has assessed that the market-based provision of non-frequency ancillary services is economically not efficient and has granted a derogation. In particular, the regulatory framework shall ensure that transmission system operators are able to procure such services from providers of demand response or energy storage and shall promote the uptake of energy efficiency measures, where such services cost-effectively alleviate the need to upgrade or replace electricity capacity and support the efficient and secure operation of the transmission system.*

6. *Transmission system operators, subject to approval by the regulatory authority, or the regulatory authority itself, shall, in a transparent and participatory process that includes all relevant system users and the distribution system operators, establish the specifications for the non-frequency ancillary services procured and, where appropriate, standardised market products for such services at least at national level. The specifications shall ensure the effective and non-discriminatory participation of all market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation. Transmission system operators shall exchange all necessary information and shall coordinate with distribution system operators in order to ensure the optimal utilisation of resources, to ensure the secure and efficient operation of the system and to facilitate market development. Transmission system operators shall be adequately remunerated for the procurement of such services to allow them to recover at least the reasonable corresponding costs, including the necessary information and communication technology expenses and infrastructure costs.*
7. *The obligation to procure non-frequency ancillary services referred to in paragraph 5 does not apply to fully integrated network components.*

8. *Member States or their designated competent authorities may allow transmission system operators to perform activities other than those provided for in this Directive and in Regulation (EU) 2019/...⁺ where such activities are necessary for the transmission system operators to fulfil their obligations under this Directive or Regulation (EU) 2019/...⁺, provided that the regulatory authority has assessed the necessity of such a derogation. This paragraph shall be without prejudice to the right of the transmission system operators to own, develop, manage or operate networks other than electricity networks where the Member State or the designated competent authority has granted such a right.*

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

Article 41

Confidentiality and transparency requirements for transmission system operators and transmission system owners

1. Without prejudice to Article 55 or another legal duty to disclose information, each transmission system operator and each transmission system owner shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. In particular it shall not disclose any commercially sensitive information to the remaining parts of the undertaking, unless such disclosure is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information unbundling, Member States shall ensure that the transmission system owner and the remaining part of the undertaking do not use joint services, such as joint legal services, apart from purely administrative or IT functions.
2. Transmission system operators shall not, in the context of sales or purchases of electricity by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

3. Information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to preserving the confidentiality of commercially sensitive information.

Article 42

Decision-making powers regarding the connection of new generating installations and energy storage facilities to the transmission system

1. The transmission system operator shall establish and publish transparent and efficient procedures for non-discriminatory connection of new generating installations and energy storage facilities to the transmission system. Those procedures shall be subject to approval by the regulatory authorities.

2. The transmission system operator shall not be entitled to refuse the connection of a new generating installation or energy storage facility on the grounds of possible future limitations to available network capacities, such as congestion in distant parts of the transmission system. The transmission system operator shall supply necessary information.

The first subparagraph shall be without prejudice to the possibility for transmission system operators to limit the guaranteed connection capacity or to offer connections subject to operational limitations, in order to ensure economic efficiency regarding new generating installations or energy storage facilities, provided that such limitations have been approved by the regulatory authority. The regulatory authority shall ensure that any limitations in guaranteed connection capacity or operational limitations are introduced on the basis of transparent and non-discriminatory procedures and do not create undue barriers to market entry. Where the generating installation or energy storage facility bears the costs related to ensuring unlimited connection, no limitation shall apply.

3. The transmission system operator shall not be entitled to refuse a new connection point, on the ground that it would lead to additional costs resulting from the necessary capacity increase of system elements in the close-up range to the connection point.

Chapter VI
UNBUNDLING OF TRANSMISSION SYSTEM OPERATORS

Section 1
Ownership Unbundling

Article 43

Ownership unbundling of transmission systems and transmission system operators

1. Member States shall ensure that:
 - (a) each undertaking which owns a transmission system acts as a transmission system operator;
 - (b) the same person or persons are not entitled either:
 - (i) directly or indirectly to exercise control over an undertaking performing any of the functions of generation or supply, and directly or indirectly to exercise control or exercise any right over a transmission system operator or over a transmission system; or

- (ii) directly or indirectly to exercise control over a transmission system operator or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of generation or supply;
- (c) the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of generation or supply; and
- (d) the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of generation or supply and a transmission system operator or a transmission system.

2. The rights referred to in points (b) and (c) of paragraph 1 shall include, in particular:
 - (a) the power to exercise voting rights;
 - (b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking; or
 - (c) the holding of a majority share.
3. For the purpose of point (b) of paragraph 1, the notion ‘undertaking performing any of the functions of generation or supply’ shall include ‘undertaking performing any of the functions of production and supply’ within the meaning of Directive 2009/73/EC, and the terms ‘transmission system operator’ and ‘transmission system’ shall include ‘transmission system operator’ and ‘transmission system’ within the meaning of that Directive.

4. The obligation set out in point (a) of paragraph 1 shall be deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in two or more Member States for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 44 as an independent system operator or as an independent transmission operator for the purposes of Section 3.
5. For the implementation of this Article, where the person referred to in points (b), (c) and (d) of paragraph 1 is the Member State or another public body, two separate public bodies exercising control over a transmission system operator or over a transmission system on the one hand, and over an undertaking performing any of the functions of generation or supply on the other, shall be deemed not to be the same person or persons.

6. Member States shall ensure that neither commercially sensitive information referred to in Article 41 held by a transmission system operator which was part of a vertically integrated undertaking, nor the staff of such a transmission system operator, is transferred to undertakings performing any of the functions of generation and supply.
7. Where on 3 September 2009, the transmission system belongs to a vertically integrated undertaking a Member State may decide not to apply paragraph 1.

In such case, the Member State concerned shall either:

- (a) designate an independent system operator in accordance with Article 44; or
 - (b) comply with Section 3.
8. Where, on 3 September 2009, the transmission system belongs to a vertically integrated undertaking and there are arrangements in place which guarantee more effective independence of the transmission system operator than Section 3, a Member State may decide not to apply paragraph 1.

9. Before an undertaking is approved and designated as a transmission system operator under paragraph 8 of this Article, it shall be certified in accordance with the procedures laid down in Article 52(4), (5), and (6) of this Directive and in Article 51 of Regulation (EU) 2019/...⁺, pursuant to which the Commission shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than Section 3 of this Chapter.
10. Vertically integrated undertakings which own a transmission system shall not in any event be prevented from taking steps to comply with paragraph 1.
11. Undertakings performing any of the functions of generation or supply shall not in any event be able to directly or indirectly take control over or exercise any right over unbundled transmission system operators in Member States which apply paragraph 1.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

Section 2
Independent System Operator

Article 44
Independent system operator

1. Where the transmission system belongs to a vertically integrated undertaking on 3 September 2009, Member States may decide not to apply Article 43(1) and designate an independent system operator upon a proposal from the transmission system owner. Such designation shall be subject to approval by the Commission.
2. The Member State may approve and designate an independent system operator provided that:
 - (a) the candidate operator has demonstrated that it complies with the requirements laid down in points (b), (c) and (d) of Article 43(1);
 - (b) the candidate operator has demonstrated that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks under Article 40;
 - (c) the candidate operator has undertaken to comply with a ten-year network development plan monitored by the regulatory authority;

- (d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 5. To that end, it shall provide all the draft contractual arrangements with the candidate operator and any other relevant entity; and
- (e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EU) 2019/...⁺, including the cooperation of transmission system operators at European and regional level.

3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 53 and paragraph 2 of this Article shall be approved and designated as independent system operators by Member States. The certification procedure in either Article 52 of this Directive and Article 51 of Regulation (EU) 2019/...⁺ or in Article 53 of this Directive shall be applicable.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

4. Each independent system operator shall be responsible for granting and managing third-party access, including the collection of access charges, congestion charges, and payments under the inter-transmission system operator compensation mechanism in accordance with Article 49 of Regulation (EU) 2019/...⁺, as well as for operating, maintaining and developing the transmission system, and for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system, the independent system operator shall be responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, the independent system operator shall act as a transmission system operator in accordance with this Section. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS9/19.

5. Where an independent system operator has been designated, the transmission system owner shall:
- (a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;
 - (b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority. Prior to such approval, the regulatory authority shall consult the transmission system owner together with the other interested parties;
 - (c) provide for the coverage of liability relating to the network assets, excluding the liability relating to the tasks of the independent system operator; and
 - (d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to point (b), it has given its agreement to financing by any interested party including the independent system operator.

6. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 5.

Article 45

Unbundling of transmission system owners

1. A transmission system owner, where an independent system operator has been appointed, which is part of a vertically integrated undertaking shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to transmission.
2. In order to ensure the independence of the transmission system owner referred to in paragraph 1, the following minimum criteria shall apply:
 - (a) persons responsible for the management of the transmission system owner shall not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;

- (b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner are taken into account in a manner that ensures that they are capable of acting independently; and
- (c) the transmission system owner shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

Section 3
INDEPENDENT TRANSMISSION OPERATORS

Article 46

Assets, equipment, staff and identity

1. Transmission system operators shall be equipped with all human, technical, physical and financial resources necessary for fulfilling their obligations under this Directive and carrying out the activity of electricity transmission, in particular:
 - (a) assets that are necessary for the activity of electricity transmission, including the transmission system, shall be owned by the transmission system operator;
 - (b) personnel, necessary for the activity of electricity transmission, including the performance of all corporate tasks, shall be employed by the transmission system operator;

- (c) leasing of personnel and rendering of services, to and from other parts of the vertically integrated undertaking shall be prohibited. A transmission system operator may, however, render services to the vertically integrated undertaking, provided that:
 - (i) the provision of those services does not discriminate between system users, is available to all system users on the same terms and conditions and does not restrict, distort or prevent competition in generation or supply; and
 - (ii) the terms and conditions of the provision of those services are approved by the regulatory authority;
- (d) without prejudice to the decisions of the Supervisory Body under Article 49, appropriate financial resources for future investment projects and/or for the replacement of existing assets shall be made available to the transmission system operator in due time by the vertically integrated undertaking after an appropriate request from the transmission system operator.

2. The activity of electricity transmission shall include at least the following tasks in addition to those listed in Article 40:
- (a) the representation of the transmission system operator and contacts to third parties and the regulatory authorities;
 - (b) the representation of the transmission system operator within the ENTSO for Electricity;
 - (c) granting and managing third-party access on a non-discriminatory basis between system users or classes of system users;
 - (d) the collection of all the transmission system related charges including access charges, *energy for losses* and ancillary services charges;
 - (e) the operation, maintenance and development of a secure, efficient and economic transmission system;
 - (f) investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;

- (g) the setting up of appropriate joint ventures, including with one or more transmission system operators, power exchanges, and the other relevant actors pursuing the objectives to develop the creation of regional markets or to facilitate the liberalisation process; and
 - (h) all corporate services, including legal services, accountancy and IT services.
3. Transmission system operators shall be organised in a legal form as referred to in Annex I to Directive (EU) 2017/1132 of the European Parliament and of the Council³¹.
 4. The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion with respect to the separate identity of the vertically integrated undertaking or any part thereof.
 5. The transmission system operator shall not share IT systems or equipment, physical premises and security access systems with any part of the vertically integrated undertaking nor use the same consultants or external contractors for IT systems or equipment, and security access systems.
 6. The accounts of transmission system operators shall be audited by an auditor other than the one auditing the vertically integrated undertaking or any part thereof.

³¹ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

Article 47

Independence of the transmission system operator

1. Without prejudice to the decisions of the Supervisory Body under Article 49, the transmission system operator shall have:
 - (a) effective decision-making rights, independent from the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the transmission system; and
 - (b) the power to raise money on the capital market in particular through borrowing and capital increase.
2. The transmission system operator shall at all times act so as to ensure it has the resources it needs in order to carry out the activity of transmission properly and efficiently and develop and maintain an efficient, secure and economic transmission system.

3. ***Subsidiaries of the*** vertically integrated undertaking ■ performing functions of generation or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated undertaking performing functions of generation or supply, nor receive dividends or other financial benefits from that subsidiary.
4. The overall management structure and the corporate statutes of the transmission system operator shall ensure effective independence of the transmission system operator in accordance with this Section. The vertically integrated undertaking shall not determine, directly or indirectly, the competitive behaviour of the transmission system operator in relation to the day-to-day activities of the transmission system operator and management of the network, or in relation to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 51.

5. In fulfilling their tasks in Article 40 and Article 46(2) of this Directive, and in complying with obligations set out in Articles 16, 18, 19 and 50 of Regulation (EU) 2019/...⁺, transmission system operators shall not discriminate against different persons or entities and shall not restrict, distort or prevent competition in generation or supply.
6. Any commercial and financial relations between the vertically integrated undertaking and the transmission system operator, including loans from the transmission system operator to the vertically integrated undertaking, shall comply with market conditions. The transmission system operator shall keep detailed records of such commercial and financial relations and make them available to the regulatory authority upon request.
7. The transmission system operator shall submit for approval by the regulatory authority all commercial and financial agreements with the vertically integrated undertaking.
8. The transmission system operator shall inform the regulatory authority of the financial resources, referred to in point (d) of Article 46(1), available for future investment projects and/or for the replacement of existing assets.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

9. The vertically integrated undertaking shall refrain from any action impeding or prejudicing the transmission system operator from complying with its obligations in this Chapter and shall not require the transmission system operator to seek permission from the vertically integrated undertaking in fulfilling those obligations.
10. An undertaking which has been certified by the regulatory authority as being in accordance with the requirements of this Chapter shall be approved and designated as a transmission system operator by the Member State concerned. The certification procedure in either Article 52 of this Directive and Article 51 of Regulation (EU) 2019/...⁺ or in Article 53 of this Directive shall apply.

Article 48

Independence of the staff and the management of the transmission system operator

1. Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the term of office of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator shall be taken by the Supervisory Body of the transmission system operator appointed in accordance with Article 49.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

2. The identity and the conditions governing the term, the duration and the termination of office of the persons nominated by the Supervisory Body for appointment or renewal as persons responsible for the executive management and/or as members of the administrative bodies of the transmission system operator, and the reasons for any proposed decision terminating such term of office, shall be notified to the regulatory authority. Those conditions and the decisions referred to in paragraph 1 shall become binding only if the regulatory authority has raised no objections within three weeks of notification.

The regulatory authority may object to the decisions referred to in paragraph 1 where:

- (a) doubts arise as to the professional independence of a nominated person responsible for the management and/or member of the administrative bodies; or
- (b) in the case of premature termination of a term of office, doubts exist regarding the justification of such premature termination.

3. No professional position or responsibility, interest or business relationship, directly or indirectly, with the vertically integrated undertaking or any part of it or its controlling shareholders other than the transmission system operator shall be exercised for a period of three years before the appointment of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator who are subject to this paragraph.
4. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall have no other professional position or responsibility, interest or business relationship, directly or indirectly, with another part of the vertically integrated undertaking or with its controlling shareholders.
5. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall hold no interest in or receive any financial benefit, directly or indirectly, from any part of the vertically integrated undertaking other than the transmission system operator. Their remuneration shall not depend on activities or results of the vertically integrated undertaking other than those of the transmission system operator.

6. Effective rights of appeal to the regulatory authority shall be guaranteed for any complaints by the persons responsible for the management and/or members of the administrative bodies of the transmission system operator against premature terminations of their term of office.
7. After termination of their term of office in the transmission system operator, the persons responsible for its management and/or members of its administrative bodies shall have no professional position or responsibility, interest or business relationship with any part of the vertically integrated undertaking other than the transmission system operator, or with its controlling shareholders for a period of not less than four years.
8. Paragraph 3 shall apply to the majority of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator.

The persons responsible for the management and/or members of the administrative bodies of the transmission system operator who are not subject to paragraph 3 shall have exercised no management or other relevant activity in the vertically integrated undertaking for a period of at least six months before their appointment.

The first subparagraph of this paragraph and paragraphs 4 to 7 shall be applicable to all the persons belonging to the executive management and to those directly reporting to them on matters related to the operation, maintenance or development of the network.

Article 49

Supervisory Body

1. The transmission system operator shall have a Supervisory Body which shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the transmission system operator, in particular decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of the transmission system operator and the amount of dividends distributed to shareholders. The decisions falling under the remit of the Supervisory Body shall exclude those that are related to the day-to-day activities of the transmission system operator and management of the network, and to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 51.

2. The Supervisory Body shall be composed of members representing the vertically integrated undertaking, members representing third-party shareholders and, where the relevant national law so provides, members representing other interested parties such as employees of the transmission system operator.
3. The first subparagraph of Article 48(2) and Article 48(3) to (7) shall apply to at least half of the members of the Supervisory Body minus one.

Point (b) of the second subparagraph of Article 48(2) shall apply to all the members of the Supervisory Body.

Article 50

Compliance programme and compliance officer

1. Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that the compliance with that programme is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. It shall be subject to approval by the regulatory authority. Without prejudice to the powers of the regulatory authority, compliance with the programme shall be independently monitored by a compliance officer.
2. The compliance officer shall be appointed by the Supervisory Body, subject to approval by the regulatory authority. The regulatory authority may refuse the approval of the compliance officer only for reasons of lack of independence or professional capacity. The compliance officer may be a natural or legal person. Article 48(2) to (8) shall apply to the compliance officer.
3. The compliance officer shall be in charge of:
 - (a) monitoring the implementation of the compliance programme;

- (b) elaborating an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority;
 - (c) reporting to the Supervisory Body and issuing recommendations on the compliance programme and its implementation;
 - (d) notifying the regulatory authority on any substantial breaches with regard to the implementation of the compliance programme; and
 - (e) reporting to the regulatory authority on any commercial and financial relations between the vertically integrated undertaking and the transmission system operator.
4. The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the network to the regulatory authority. This shall occur at the latest when the management and/or the competent administrative body of the transmission system operator submits them to the Supervisory Body.

5. Where the vertically integrated undertaking, in the general assembly or through the vote of the members of the Supervisory Body it has appointed, has prevented the adoption of a decision with the effect of preventing or delaying investments, which under the ten-year network development plan was to be executed in the following three years, the compliance officer shall report this to the regulatory authority, which then shall act in accordance with Article 51.
6. The conditions governing the mandate or the employment conditions of the compliance officer, including the duration of its mandate, shall be subject to approval by the regulatory authority. Those conditions shall ensure the independence of the compliance officer, including by providing all the resources necessary for fulfilling the compliance officer's duties. During his or her mandate, the compliance officer shall have no other professional position, responsibility or interest, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.
7. The compliance officer shall report regularly, either orally or in writing, to the regulatory authority and shall have the right to report regularly, either orally or in writing, to the Supervisory Body of the transmission system operator.

8. The compliance officer may attend all meetings of the management or administrative bodies of the transmission system operator, and those of the Supervisory Body and the general assembly. The compliance officer shall attend all meetings that address the following matters:
- (a) conditions for access to the network, as laid down in Regulation (EU) 2019/...⁺, in particular regarding tariffs, third- party access services, capacity allocation and congestion management, transparency, ancillary services and secondary markets;
 - (b) projects undertaken in order to operate, maintain and develop the transmission system, including interconnection and connection investments;
 - (c) energy purchases or sales necessary for the operation of the transmission system.
9. The compliance officer shall monitor the compliance of the transmission system operator with Article 41.
10. The compliance officer shall have access to all relevant data and to the offices of the transmission system operator and to all the information necessary for the fulfilment of his task.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

11. The compliance officer shall have access to the offices of the transmission system operator without prior announcement.
12. After prior approval by the regulatory authority, the Supervisory Body may dismiss the compliance officer. It shall dismiss the compliance officer for reasons of lack of independence or professional capacity upon request of the regulatory authority.

Article 51

Network development and powers to make investment decisions

1. At least every two years, transmission system operators shall submit to the regulatory authority a ten-year network development plan based on existing and forecast supply and demand after having consulted all the relevant stakeholders. That network development plan shall contain efficient measures in order to guarantee the adequacy of the system and the security of supply. ***The transmission system operator shall publish the ten-year network development plan on its website.***
2. The ten-year network development plan shall in particular:
 - (a) indicate to market participants the main transmission infrastructure that needs to be built or upgraded over the next ten years;

- (b) contain all the investments already decided and identify new investments which have to be executed in the next three years; and
 - (c) provide for a time frame for all investment projects.
3. When elaborating the ten-year network development plan, the transmission system operator shall ***fully take into account*** the ***potential*** for the ***use of demand response***, energy storage ***facilities or other resources as alternatives to system expansion, as well as expected*** consumption, ***trade*** with other countries ***and*** investment plans for Union-wide and regional networks.
4. The regulatory authority shall consult all actual or potential system users on the ten-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential system users may be required to substantiate such claims. The regulatory authority shall publish the result of the consultation process, in particular possible needs for investments.

5. The regulatory authority shall examine whether the ten-year network development plan covers all investment needs identified during the consultation process, and whether it is consistent with the non-binding Union-wide ten-year network development plan ('Union-wide network development plan') referred to in point (b) of Article 30(1) of Regulation (EU) 2019/...⁺. If any doubt arises as to the consistency with the Union -wide network development plan, the regulatory authority shall consult ACER. The regulatory authority may require the transmission system operator to amend its ten-year network development plan.

The competent national authorities shall examine the consistency of the ten-year network development plan with the national energy and climate plan submitted in accordance with Regulation (EU) 2018/1999.

6. The regulatory authority shall monitor and evaluate the implementation of the ten-year network development plan.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

7. In circumstances where the transmission system operator, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten-year network development plan, was to be executed in the following three years, Member States shall ensure that the regulatory authority is required to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten-year network development plan:
- (a) to require the transmission system operator to execute the investments in question;
 - (b) to organise a tender procedure open to any investors for the investment in question;
or
 - (c) to oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.

8. Where the regulatory authority has made use of its powers under point (b) of paragraph 7, it may oblige the transmission system operator to agree to one or more of the following:

- (a) financing by any third party;
- (b) construction by any third party;
- (c) building the new assets concerned itself;
- (d) operating the new asset concerned itself.

The transmission system operator shall provide the investors with all information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment project.

The relevant financial arrangements shall be subject to approval by the regulatory authority.

9. Where the regulatory authority has made use of its powers under paragraph 7, the relevant tariff regulations shall cover the costs of the investments in question.

Section 4

Designation and certification of transmission system operators

Article 52

Designation and certification of transmission system operators

1. Before an undertaking is approved and designated as transmission system operator, it shall be certified in accordance with the procedures laid down in paragraphs 4, 5 and 6 of this Article and in Article 51 of Regulation (EU) 2019/...⁺.
2. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 43 pursuant to the certification procedure below, shall be approved and designated as transmission system operators by Member States. The designation of transmission system operators shall be notified to the Commission and published in the *Official Journal of the European Union*.
3. Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 43.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

4. Regulatory authorities shall monitor the continuing compliance of transmission system operators with the requirements of Article 43. They shall open a certification procedure to ensure such compliance:
- (a) upon notification by the transmission system operator pursuant to paragraph 3;
 - (b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Article 43, or where they have reason to believe that such an infringement may have occurred; or
 - (c) upon a reasoned request from the Commission.
5. The regulatory authorities shall adopt a decision on the certification of a transmission system operator within four months of the date of the notification by the transmission system operator or from the date of the Commission request. After expiry of that period, the certification shall be deemed to be granted. The explicit or tacit decision of the regulatory authority shall become effective only after conclusion of the procedure set out in paragraph 6.

6. The explicit or tacit decision on the certification of a transmission system operator shall be notified without delay to the Commission by the regulatory authority, together with all the relevant information with respect to that decision. The Commission shall act in accordance with the procedure laid down in Article 51 of Regulation (EU) 2019/...⁺.
7. The regulatory authorities and the Commission may request from transmission system operators and undertakings performing any of the functions of generation or supply any information relevant for the fulfilment of their tasks under this Article.
8. Regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

Article 53

Certification in relation to third countries

1. Where certification is requested by a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries, the regulatory authority shall notify the Commission.

The regulatory authority shall also notify to the Commission without delay any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system or a transmission system operator.

2. The transmission system operator shall notify to the regulatory authority any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator.

3. The regulatory authority shall adopt a draft decision on the certification of a transmission system operator within four months of the date of notification by the transmission system operator. It shall refuse the certification if it has not been demonstrated:
- (a) that the entity concerned complies with the requirements of Article 43; and
 - (b) to the regulatory authority or to another competent national authority designated by the Member State that granting certification will not put at risk the security of energy supply of the Member State and the Union. In considering that question the regulatory authority or other competent national authority shall take into account:
 - (i) the rights and obligations of the Union with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the Union is a party and which addresses the issues of security of energy supply;
 - (ii) the rights and obligations of the Member State with respect to that third country arising under agreements concluded with it, insofar as they comply with Union law; and

(iii) other specific facts and circumstances of the case and the third country concerned.

4. The regulatory authority shall notify the decision to the Commission without delay, together with all the relevant information with respect to that decision.
5. Member States shall provide for the regulatory authority or the designated competent authority referred to in point (b) of paragraph 3, before the regulatory authority adopts a decision on the certification, to request an opinion from the Commission on whether:
 - (a) the entity concerned complies with the requirements of Article 43; and
 - (b) granting certification will not put at risk the security of energy supply to the Union.
6. The Commission shall examine the request referred to in paragraph 5 as soon as it is received. Within two months of receiving the request, it shall deliver its opinion to the regulatory authority or, if the request was made by the designated competent authority, to that authority.

In preparing the opinion, the Commission may request the views of ACER, the Member State concerned, and interested parties. In the event that the Commission makes such a request, the two-month period shall be extended by two months.

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

7. When assessing whether the control by a person or persons from a third country or third countries will put at risk the security of energy supply to the Union, the Commission shall take into account:
 - (a) the specific facts of the case and the third country or third countries concerned; and
 - (b) the rights and obligations of the Union with respect to that third country or third countries arising under international law, including an agreement concluded with one or more third countries to which the Union is a party and which addresses the issues of security of supply.

8. The [] regulatory authority shall, within two months of the expiry of the period referred to in paragraph 6, adopt its final decision on the certification. In adopting its final decision the [] regulatory authority shall take utmost account of the Commission's opinion. In any event Member States shall have the right to refuse certification where granting certification puts at risk the Member State's security of energy supply or the security of energy supply of another Member State. Where the Member State has designated another competent national authority to make the assessment referred to in point (b) of paragraph 3, it may require the [] regulatory authority to adopt its final decision in accordance with the assessment of that competent national authority. The [] regulatory authority's final decision and the Commission's opinion shall be published together. Where the final decision diverges from the Commission's opinion, the Member State concerned shall provide and publish, together with that decision, the reasoning underlying such decision.
9. Nothing in this Article shall affect the right of Member States to exercise, in accordance with Union law, national legal controls to protect legitimate public security interests.

10. This Article, with exception of point (a) of paragraph 3 thereof, shall also apply to Member States which are subject to a derogation under Article 66.

Article 54

Ownership of **energy** storage **facilities** by transmission system operators

1. Transmission system operators shall not own, **develop**, manage or operate energy storage facilities ■ .
2. By way of derogation from paragraph 1, Member States may allow transmission system operators to own, **develop**, manage or operate **energy** storage facilities, where **they are fully integrated network components and the regulatory authority has granted its approval**, or where **all of** the following conditions are fulfilled:
 - (a) other parties, following an open, transparent **and non-discriminatory** tendering procedure that is **subject to review and approval by the regulatory authority, have not been awarded a right** to own, **develop**, manage or operate such facilities, **or could not deliver those services at a reasonable cost and in a timely manner**;

- (b) such facilities or non-frequency ancillary services are necessary for the transmission system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the transmission system and they are not used to **buy or sell electricity *in the electricity markets***; and
- (c) the regulatory authority has assessed the necessity of such a derogation, ***has carried out an ex-ante review of the applicability of a tendering procedure, including the conditions of the tendering procedure***, and has granted its approval.

The regulatory authority may draw up guidelines or procurement clauses to help transmission system operators ensure a fair tendering procedure.

3. The decision to grant a derogation shall be notified to the Commission and ACER together with relevant information about the request and the reasons for granting the derogation.

4. The *regulatory authorities* shall perform, at regular intervals or at least every five years, a public consultation on the *existing energy storage facilities* in order to assess the potential *availability and* interest of other parties in investing in such facilities. *Where the public consultation, as assessed by the regulatory authority, indicates that other parties are able to own, develop, operate or manage such facilities* in a cost-effective manner, *the regulatory authority shall ensure that transmission system operators' activities in this regard are phased-out within 18 months. As part of the conditions of that procedure, regulatory authorities may allow the transmission system operators to receive reasonable compensation, in particular to recover the residual value of their investment in the energy storage facilities.*

5. *Paragraph 4 shall not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until 2024, provided that such battery storage facilities are:*
- (a) connected to the grid at the latest two years thereafter;*
 - (b) integrated into the transmission system;*
 - (c) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and*
 - (d) not used to buy or sell electricity in the electricity markets, including balancing.*

Section 5
Unbundling and transparency of accounts

Article 55
Right of access to accounts

1. Member States or any competent authority that they designate, including the regulatory authorities referred to in Article 57, shall, insofar as necessary to carry out their functions, have right of access to the accounts of electricity undertakings as set out in Article 56.
2. Member States and any designated competent authority, including the regulatory authorities, shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where such disclosure is necessary in order for the competent authorities to carry out their functions.

Article 56

Unbundling of accounts

1. Member States shall take the necessary steps to ensure that the accounts of electricity undertakings are kept in accordance with paragraphs 2 and 3.
2. Electricity undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to Directive 2013/34/EU.

Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public in their head office.

3. Electricity undertakings shall, in their internal accounting, keep separate accounts for each of their transmission and distribution activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution. Revenue from ownership of the transmission or distribution system shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-electricity activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.
4. The audit referred to in paragraph 2 shall, in particular, verify that the obligation to avoid discrimination and cross-subsidisation referred to in paragraph 3 is respected.

CHAPTER VII

REGULATORY AUTHORITIES

Article 57

Designation and independence of regulatory authorities

1. Each Member State shall designate a single regulatory authority at national level.
2. Paragraph 1 shall be without prejudice to the designation of other regulatory authorities at regional level within Member States, provided that there is one senior representative for representation and contact purposes at Union level within ACER's Board of Regulators in accordance with Article 21(1) of Regulation (EU) 2019/... ⁺.
3. By way of derogation from paragraph 1, a Member State may designate regulatory authorities for small systems in a geographically separate region whose consumption, in 2008, accounted for less than 3 % of the total consumption of the Member State of which it is part. That derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at Union level within ACER's Board of Regulators of in accordance with Article 21(1) of Regulation (EU) 2019/...⁺.

⁺ OJ: please insert the number of the Regulation from the document 2016/0378(COD) - PE-CONS 83/19.

4. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For that purpose, Member States shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:
- (a) is legally distinct and functionally independent from other public or private entities;
 - (b) ensures that its staff and the persons responsible for its management:
 - (i) act independently from any market interest; and
 - (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. That requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 59.

5. In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:
- (a) the regulatory authority can take autonomous decisions, independently from any political body ■ ;
 - (b) *the regulatory authority has all the necessary human and financial resources it needs to carry out its duties and exercise its powers in an effective and efficient manner;*
 - (c) *the regulatory authority has a separate annual budget allocation and autonomy in the implementation of the allocated budget; and*
 - (d) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once;

- (e) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed based on objective, transparent and published criteria, in an independent and impartial procedure, which ensures that the candidates have the necessary skills and experience for the relevant position in the regulatory authority ;
- (f) conflict of interest provisions are in place and confidentiality obligations extend beyond the end of the mandate of the members of the board of the regulatory authority or, in the absence of a board, the end of the mandate of the regulatory authority's top management;
- (g) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management can be dismissed only based on transparent criteria in place.

In regard to point (d) of the first subparagraph, Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

6. Member States may provide for the ex-post control of the regulatory authorities' annual accounts by an independent auditor.

7. *By ... [three years after the date of entry into force of this Directive] and every four years thereafter, the Commission shall submit a report to the European Parliament and the Council on the compliance of national authorities with the principle of independence set out in this Article.*

Article 58

General objectives of the regulatory authority

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures in pursuit of the following objectives within the framework of its duties and powers as laid down in Article 59, in close consultation with other relevant national authorities, including competition authorities, as well as authorities, ***including regulatory authorities***, from neighbouring Member States and neighbouring third countries, as appropriate, and without prejudice to their competence:

- (a) promoting, in close cooperation with regulatory authorities of other Member States, the Commission and ACER, a competitive, flexible, secure and environmentally sustainable internal market for electricity within the Union, and effective market opening for all customers and suppliers in the Union, and ensuring appropriate conditions for the effective and reliable operation of electricity networks, taking into account long-term objectives;

- (b) developing competitive and properly functioning regional cross-border markets within the Union with a view to achieving the objectives referred to in point (a);
- (c) eliminating restrictions on trade in electricity between Member States, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate electricity flows across the Union;
- (d) helping to achieve, in the most cost-effective way, the development of secure, reliable and efficient non-discriminatory systems that are consumer-oriented, and promoting system adequacy and, in accordance with general energy policy objectives, energy efficiency, as well as the integration of large and small-scale production of electricity from renewable sources and distributed generation in both transmission and distribution networks, and facilitating their operation in relation to other energy networks of gas or heat;
- (e) facilitating access to the network for new generation capacity and energy storage facilities, in particular removing barriers that could prevent access for new market entrants and of electricity from renewable sources;

- (f) ensuring that system operators and system users are granted appropriate incentives, in both the short and the long term, to increase efficiencies, especially energy efficiency, in system performance and to foster market integration;
- (g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure ***a high level of*** consumer protection, ***in close cooperation with relevant consumer protection authorities***;
- (h) helping to achieve high standards of universal service and of public service in electricity supply, contributing to the protection of vulnerable customers and contributing to the compatibility of necessary data exchange processes for customer switching.

Article 59

Duties and powers of the regulatory authorities

1. The regulatory authority shall have the following duties:
 - (a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs *or* their methodologies, *or both*;
 - (b) ensuring the compliance of transmission system operators and distribution system operators and, where relevant, system owners, as well as the compliance of any electricity undertakings and other market participants, with their obligations under this Directive, Regulation (EU) 2019/...⁺, the network codes and the guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/...⁺, and other relevant Union law, including as regards cross-border issues, *as well as with ACER's decisions*;

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

- (c) *in close coordination with the other regulatory authorities, ensuring the compliance of the ENTSO for Electricity and the EU DSO entity with their obligations under this Directive, Regulation (EU) 2019/...⁺, the network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/...⁺, and other relevant Union law, including as regards cross-border issues, as well as with ACER's decisions, and jointly identifying non-compliance of the ENTSO for Electricity and the EU DSO entity with their respective obligations; where the regulatory authorities have not been able to reach an agreement within a period of four months after the start of consultations for the purpose of jointly identifying non-compliance, the matter shall be referred to the ACER for a decision, pursuant to Article 6(10) of Regulation (EU) 2019/...⁺⁺;*
- (d) approving products and procurement process for non-frequency ancillary services;

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

⁺⁺ ***OJ: please insert the number of the Regulation from the document 2016/0378(COD) - PE-CONS 83/19.***

- (e) implementing the network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/...⁺ through national measures or, where so required, coordinated regional or Union-wide measures;
- (f) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with ACER, in particular through participation in the work of ACER's Board of Regulators pursuant to Article 21 of Regulation (EU) 2019/...⁺⁺;
- (g) complying with, and implementing, any relevant legally binding decisions of the Commission and of ACER;
- (h) ensuring that *transmission system operators make available* interconnector capacities ■ to the utmost extent pursuant to Article 16 of Regulation (EU) 2019/...⁺;

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

⁺⁺ OJ: please insert the number of the Regulation from the document 2016/0378(COD) - PE-CONS 83/19.

- (i) reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Commission and ACER, including on the steps taken and the results obtained as regards each of the tasks listed in this Article;
- (j) ensuring that there is no cross-subsidisation between transmission, distribution, and supply activities *or other electricity or non-electricity activities*;
- (k) monitoring investment plans of the transmission system operators and providing in its annual report an assessment of the investment plans of the transmission system operators as regards their consistency with the Union-wide network development plan; such assessment may include recommendations to amend those investment plans;
- (l) ***monitoring and assessing*** the performance of transmission system operators and distribution system operators in relation to the development of a smart grid that promotes energy efficiency and the integration of energy from renewable sources, based on a limited set of ■ indicators, and publish a national report every ***two*** years, including recommendations ■ ;

- (m) setting or approving standards and requirements for quality of service and quality of supply or contributing thereto together with other competent authorities and monitoring compliance with and reviewing the past performance of network security and reliability rules;
- (n) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of electricity undertakings with transparency obligations;
- (o) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on electricity exchanges, prices for household customers including prepayment systems, the ***impact of dynamic electricity price contracts and of the use of smart metering systems***, switching rates, disconnection rates, charges for maintenance services, the execution of maintenance services, ***the relationship between household and wholesale prices, the evolution of grid tariffs and levies***, and complaints by household customers, as well as any distortion or restriction of competition, including by providing any relevant information, and bringing any relevant cases to the relevant competition authorities;

- (p) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent ■ customers from contracting simultaneously with more than one supplier or restrict their choice to do so, and, where appropriate, informing the national competition authorities of such practices;
- (q) monitoring the time taken by transmission system operators and distribution system operators to make connections and repairs;
- (r) helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced;
- (s) publishing recommendations, at least annually, in relation to compliance of supply prices with Article 5, and providing those recommendations to the competition authorities, where appropriate;
- (t) ensuring ***non-discriminatory*** access to customer consumption data, the provision, for optional use, of an easily understandable harmonised format at national level for consumption data, and prompt access for all customers to such data pursuant to Articles 23 and 24;

- (u) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers, customers and other market participants pursuant to Regulation (EU) 2019/...⁺;
- (v) monitoring investment in generation and storage capacities in relation to security of supply;
- (w) monitoring technical cooperation between Union and third-country transmission system operators;
- (x) contributing to the compatibility of data exchange processes for the most important market processes at regional level;
- (y) monitoring the availability of ■ comparison tools that meet the requirements set out in Article 14 ■ ;
- (z) *monitoring the removal of unjustified obstacles to and restrictions on the development of consumption of self-generated electricity and citizen energy communities.*

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

2. Where a Member State has so provided, the monitoring duties set out in paragraph 1 may be carried out by other authorities than the regulatory authority. In such a case, the information resulting from such monitoring shall be made available to the regulatory authority as soon as possible.

While preserving their independence, without prejudice to their own specific competence and consistent with the principles of better regulation, the regulatory authority shall, as appropriate, consult transmission system operators and, as appropriate, closely cooperate with other relevant national authorities when carrying out the duties set out in paragraph 1.

Any approvals given by a regulatory authority or ACER under this Directive are without prejudice to any duly justified future use of its powers by the regulatory authority under this Article or to any penalties imposed by other relevant authorities or the Commission.

3. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in this Article in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:
- (a) to issue binding decisions on electricity undertakings;
 - (b) to carry out investigations into the functioning of the electricity markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the Commission in conducting an investigation relating to competition law;
 - (c) to require any information from electricity undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access, and any information on measures necessary to reinforce the network;

- (d) to impose effective, proportionate and dissuasive penalties on electricity undertakings not complying with their obligations under this Directive, ***Regulation (EU) 2019/...***⁺ or any relevant legally binding decisions of the regulatory authority or of ACER, or to propose that a competent court impose such penalties, including the power to impose or propose the imposition of penalties of up to 10 % of the annual turnover of the transmission system operator on the transmission system operator or of up to 10 % of the annual turnover of the vertically integrated undertaking on the vertically integrated undertaking, as the case may be, for non-compliance with their respective obligations pursuant to this Directive; and
- (e) appropriate rights of investigation and relevant powers of instruction for dispute settlement under Article 60(2) and (3).

4. ***The regulatory authority located in the Member State in which the ENTSO for Electricity or the EU DSO entity has its seat shall have the power to impose effective, proportionate and dissuasive penalties on those entities where they do not comply with their obligations under this Directive, Regulation (EU) 2019/...⁺ or any relevant legally binding decisions of the regulatory authority or of ACER, or to propose that a competent court impose such penalties.***

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

5. In addition to the duties conferred upon it under paragraphs 1 and 3 of this Article, when an independent system operator has been designated under Article 44, the regulatory authority shall:
- (a) monitor the transmission system owner's and the independent system operator's compliance with their obligations under this Article, and issue penalties for non-compliance in accordance with point (d) of paragraph 3;
 - (b) monitor the relations and communications between the independent system operator and the transmission system owner so as to ensure compliance of the independent system operator with its obligations, and in particular approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner with respect to any complaint submitted by either party pursuant to Article 60(2);
 - (c) without prejudice to the procedure under point (c) of Article 44(2), for the first ten-year network development plan, approve the investments planning and the multi-annual network development plan submitted at least every two years by the independent system operator;

- (d) ensure that network access tariffs collected by the independent system operator include remuneration for the network owner or network owners, which provides for adequate remuneration of the network assets and of any new investments made therein, provided they are economically and efficiently incurred;
- (e) have the powers to carry out inspections, including unannounced inspections, at the premises of transmission system owner and independent system operator; and
- (f) monitor the use of congestion charges collected by the independent system operator in accordance with Article 19(2) of Regulation (EU) 2019/...⁺.

6. In addition to the duties and powers conferred on it under paragraphs 1 and 3 of this Article, when a transmission system operator has been designated in accordance with Section 3 of Chapter VI, the regulatory authority shall be granted at least the following duties and powers:

- (a) to impose penalties in accordance with point (d) of paragraph 3 for discriminatory behaviour in favour of the vertically integrated undertaking;

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

- (b) to monitor communications between the transmission system operator and the vertically integrated undertaking so as to ensure compliance of the transmission system operator with its obligations;
- (c) to act as dispute settlement authority between the vertically integrated undertaking and the transmission system operator with respect to any complaint submitted pursuant to Article 60(2);
- (d) to monitor commercial and financial relations including loans between the vertically integrated undertaking and the transmission system operator;
- (e) to approve all commercial and financial agreements between the vertically integrated undertaking and the transmission system operator on the condition that they comply with market conditions;

- (f) to request a justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article 50(4), such justification including, in particular, evidence demonstrating that no discriminatory behaviour to the advantage of the vertically integrated undertaking has occurred;
- (g) to carry out inspections, including unannounced ones, on the premises of the vertically integrated undertaking and the transmission system operator; and
- (h) to assign all or specific tasks of the transmission system operator to an independent system operator appointed in accordance with Article 44 in the case of a persistent breach by the transmission system operator of its obligations under this Directive, in particular in the case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking.

7. The regulatory authorities, except where ACER is competent to fix and approve the terms and conditions or methodologies for the implementation of network codes and guidelines under Chapter VII of Regulation (EU) 2019/...⁺ pursuant to Article 5(2) of Regulation (EU) 2019/...⁺⁺ because of their coordinated nature, shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the national methodologies used to calculate or establish the terms and conditions for:
- (a) connection and access to national networks, including transmission and distribution tariffs or their methodologies, those tariffs or methodologies shall allow the necessary investments in the networks to be carried out in a manner allowing those investments to ensure the viability of the networks;
 - (b) the provision of ancillary services which shall be performed in the most economic manner possible and provide appropriate incentives for network users to balance their input and off-takes, such ancillary services shall be provided in a fair and non-discriminatory manner and be based on objective criteria; and

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

⁺⁺ OJ: please insert the number of the Regulation from the document 2016/0378(COD) - PE-CONS83/19.

(c) access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.

8. The methodologies or the terms and conditions referred to in paragraph 7 shall be published.
9. With a view to increasing transparency in the market and providing all interested parties with all necessary information and decisions or proposals for decisions concerning transmission and distribution tariffs as referred in Article 60(3), regulatory authorities shall make publicly available the detailed methodology and underlying costs used for the calculation of the relevant network tariffs, *while preserving the confidentiality of commercially sensitive information*.
10. The regulatory authorities shall monitor congestion management of national electricity systems including interconnectors, and the implementation of congestion management rules. To that end, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the regulatory authorities. Regulatory authorities may request amendments to those rules.

Article 60

Decisions and complaints

1. Regulatory authorities shall have the authority to require transmission system operators and distribution system operators, if necessary, to modify the terms and conditions, including tariffs or methodologies referred to Article 59 of this Directive, to ensure that they are proportionate and applied in a non-discriminatory manner, in accordance with Article 18 of Regulation (EU) 2019/...⁺. In the event of delay in the fixing of transmission and distribution tariffs, regulatory authorities shall have the power to fix or approve provisional transmission and distribution tariffs or methodologies and to decide on the appropriate compensatory measures if the final transmission and distribution tariffs or methodologies deviate from those provisional tariffs or methodologies.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

2. Any party having a complaint against a transmission or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months of receipt of the complaint. That period may be extended by two months where additional information is sought by the regulatory authority. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal.
3. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to Article 59 or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, may, within two months, or within a shorter period as provided for by Member States, after publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

4. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. Those mechanisms shall take account of the provisions of the TFEU, and in particular Article 102 thereof.
5. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.
6. Complaints referred to in paragraphs 2 and 3 shall be without prejudice to the exercise of rights of appeal under Union or national law.
7. Decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information.

8. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 61

Regional cooperation between regulatory authorities on cross-border issues

1. Regulatory authorities shall closely consult and cooperate with each other, in particular within ACER, and shall provide each other and ACER with any information necessary for the fulfilment of their tasks under this Directive. With respect to the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.
2. Regulatory authorities shall cooperate at least at a regional level to:
 - (a) foster the creation of operational arrangements in order to enable an optimal management of the network, promote joint electricity exchanges and the allocation of cross-border capacity, and to enable an adequate level of interconnection capacity, including through new interconnection, within the region and between regions to allow for development of effective competition and improvement of security of supply, without discriminating between suppliers in different Member States;

- (b) coordinate the joint oversight of entities performing functions at regional level;
 - (c) coordinate, in cooperation with other involved authorities, the joint oversight of national, regional and European resource adequacy assessments;
 - (d) coordinate the development of all network codes and guidelines for the relevant transmission system operators and other market actors; and
 - (e) coordinate the development of the rules governing the management of congestion.
3. Regulatory authorities shall have the right to enter into cooperative arrangements with each other to foster regulatory cooperation.
4. The actions referred to in paragraph 2 shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competence.
5. The Commission is empowered to adopt delegated acts in accordance with Article 67 in order to supplement this Directive by establishing guidelines on the extent of the duties of regulatory authorities to cooperate with each other and with ACER.

Article 62

Duties and powers of regulatory authorities with respect to *regional coordination centres*

1. The regional regulatory authorities of the *system operation region* in which a *regional coordination centre* is established shall, in close coordination with each other:
 - (a) approve the *proposal for the establishment of regional coordination centres in accordance with Article 35(1) of Regulation (EU) 2019/...*⁺;
 - (b) *approve the costs related to the activities of the regional coordination centres, which are to be borne by the transmission system operators and to be taken into account in the calculation of tariffs, provided that they are reasonable and appropriate;*
 - (c) approve the cooperative decision-making process;
 - (d) *ensure that the regional coordination centres are equipped with all the necessary human, technical, physical and financial resources for fulfilling their obligations under this Directive and carrying out their tasks independently and impartially;*

⁺ *OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.*

- (e) *propose jointly with other regulatory authorities of a system operation region possible additional tasks and additional powers to be assigned to the regional coordination centres by the Member States of the system operation region;*
- (f) ensure █ compliance with the obligations under this Directive and other relevant Union law, in particular as regards cross-border issues, *and jointly identify non-compliance of the regional coordination centres with their respective obligations; where the regulatory authorities have not been able to reach an agreement within a period of four months after the start of consultations for the purpose of jointly identifying non-compliance, the matter shall be referred to ACER for a decision, pursuant to Article 6(10) of Regulation (EU) 2019/...⁺⁺;*
- (g) monitor the performance of *system coordination* and report annually to ACER in this respect *in accordance with Article 46 of Regulation (EU) 2019/...⁺.*

⁺⁺ *OJ: please insert the number of the Regulation from the document 2016/0378(COD) - PE-CONS 83/19.*

⁺ *OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.*

2. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1 in an efficient and expeditious manner. For this purpose, the regulatory authorities shall have at least the following powers:
- (a) to request information from the *regional coordination centres*;
 - (b) to carry out inspections, including unannounced inspections, at the premises of the *regional coordination centres*;
 - (c) to issue joint binding decisions on the regional *coordination* centres.
3. *The regulatory authority located in the Member State in which a regional coordination centre has its seat shall have the power to impose effective, proportionate and dissuasive penalties on the regional coordination centre where it does not comply with its obligations under this Directive, Regulation (EU) 2019/...⁺ or any relevant legally binding decisions of the regulatory authority or of ACER, or shall have the power to propose that a competent court impose such penalties.*

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

Article 63

Compliance with the network codes and guidelines

1. Any regulatory authority and the Commission may request the opinion of ACER on the compliance of a decision taken by a regulatory authority with the network codes and guidelines referred to in this Directive or in Chapter VII of Regulation (EU) 2019/...⁺.
2. ACER shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within three months of the date of receipt of the request.
3. Where the regulatory authority which has taken the decision does not comply with ACER's opinion within four months of the date of receipt of that opinion, ACER shall inform the Commission accordingly.
4. Any regulatory authority may inform the Commission where it considers that a decision relevant for cross-border trade taken by another regulatory authority does not comply with the network codes and guidelines referred to in this Directive or in Chapter VII of Regulation (EU) 2019/...⁺ within two months of the date of that decision.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

5. Where the Commission, within two months of having been informed by ACER in accordance with paragraph 3, or by a regulatory authority in accordance with paragraph 4, or, on its own initiative, within three months of the date of the decision, finds that the decision of a regulatory authority raises serious doubts as to its compatibility with the network codes and guidelines referred to in this Directive or in Chapter VII of Regulation (EU) 2019/...⁺, the Commission may decide to examine the case further. In such a case, it shall invite the regulatory authority and the parties to the proceedings before the regulatory authority to submit observations.
6. Where the Commission takes a decision to examine the case further, it shall, within four months of the date of such decision, issue a final decision:
- (a) not to raise objections against the decision of the regulatory authority; or
 - (b) to require the regulatory authority concerned to withdraw its decision on the basis that network codes and guidelines have not been complied with.

⁺ OJ: please insert the number of the Regulation from the document 2016/0379(COD) - PE-CONS 9/19.

7. Where the Commission has not taken a decision to examine the case further or a final decision within the time-limits set in paragraphs 5 and 6 respectively, it shall be deemed not to have raised objections to the decision of the regulatory authority.
8. The regulatory authority shall comply with the Commission decision requiring it to withdraw its decision within two months and shall inform the Commission accordingly.
9. The Commission is empowered to adopt delegated acts in accordance with Article 67 supplementing this Directive by establishing guidelines setting out the details of the procedure to be followed for the application of this Article.

Article 64

Record keeping

1. Member States shall require suppliers to keep at the disposal of the national authorities, including the **■** regulatory authority, the national competition authorities and the Commission, for the fulfilment of their tasks, for at least five years, the relevant data relating to all transactions in electricity supply contracts and electricity derivatives with wholesale customers and transmission system operators.
2. The data shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled electricity supply contracts and electricity derivatives.

3. The regulatory authority may decide to make available to market participants elements of that information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2014/65/EU.
4. This Article shall not create additional obligations towards the authorities referred to in paragraph 1 for entities falling within the scope of Directive 2014/65/EU.
5. In the event that the authorities referred to in paragraph 1 need access to data kept by entities falling within the scope of Directive 2014/65/EU, the authorities responsible under that Directive shall provide them with the required data.

CHAPTER VIII

FINAL PROVISIONS

Article 65

Level playing field

1. Measures that the Member States may take pursuant to this Directive in order to ensure a level playing field shall be compatible with the TFEU, in particular Article 36 thereof, and with Union law.
2. The measures referred to in paragraph 1 shall be proportionate, non-discriminatory and transparent. Those measures may be put into effect only following the notification to and approval by the Commission.
3. The Commission shall act on the notification referred to in paragraph 2 within two months of the receipt of the notification. That period shall begin on the day after receipt of the complete information. In the event that the Commission has not acted within that two-month period, it shall be deemed not to have raised objections to the notified measures.

Article 66
Derogations

1. Member States which can demonstrate that there are substantial problems for the operation of their small ***connected systems and small*** isolated systems, may apply to the Commission for derogations from the relevant provisions of Articles 7 and 8 and of Chapters IV, V and VI.

Small isolated systems and France, for the purpose of Corsica, may also apply for a derogation from Articles 4, 5 and 6.

The Commission shall inform the Member States of such applications before taking a decision, taking into account respect for confidentiality ■ .

2. ***Derogations granted by the Commission as referred to in paragraph 1 shall be limited in time and subject to conditions that aim to increase competition in and the integration of the internal market and to ensure that the derogations do not hamper the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response.***

For outermost regions within the meaning of Article 349 TFEU, that cannot be interconnected with the Union electricity markets, the derogation shall not be limited in time and shall be subject to conditions aimed to ensure that the derogation does not hamper the transition towards renewable energy.

Decisions to grant derogations shall be published in the Official Journal of the European Union.

3. Article 43 shall not apply to Cyprus, ***Luxembourg*** and Malta. In addition, Articles 6 and 35 shall not apply to Malta ***and Articles 44, 45, 46, 47, 48, 49, 50 and 52 shall not apply to Cyprus.***

For the purposes of point (b) of Article 43(1), the notion ‘undertaking performing any of the functions of generation or supply’ shall not include final customers who perform any of the functions of generation and/or supply of electricity, either directly or via undertakings over which they exercise control, either individually or jointly, provided that the final customers including their shares of the electricity produced in controlled undertakings are, on an annual average, net consumers of electricity and provided that the economic value of the electricity they sell to third parties is insignificant in proportion to their other business operations.

4. ***Until 1 January 2025, or until a later date set out in a decision pursuant to paragraph 1 of this Article, Article 5 shall not apply to Cyprus and Corsica.***
5. ***Article 4 shall not apply to Malta until ... [8 years after the entry into force of this Directive]. That period may be extended for a further additional period, not exceeding eight years. The extension for a further additional period shall be made by means of a decision pursuant to paragraph 1.***

Article 67

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 61(5) and Article 63(9) shall be conferred on the Commission for an indeterminate period of time from ... [date of entry into force of this Directive].
3. The delegation of power referred to in Article 61(5) and Article 63(9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated act already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 61(5) and Article 63(9) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 68

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 69

Commission monitoring, reviewing and reporting

- 1. The Commission shall monitor and review the implementation of this Directive and shall submit a progress report to the European Parliament and the Council as an annex to the State of the Energy Union Report referred to in Article 35 of Regulation (EU) 2018/1999.***
- 2. By 31 December 2025, the Commission shall review the implementation of this Directive and shall submit a report to the European Parliament and to the Council. If appropriate, the Commission shall submit a legislative proposal together with or after submitting the report.***

The Commission's review shall, in particular, assess whether customers, especially those who are vulnerable or in energy poverty, are adequately protected under this Directive.

Article 70
Amendments to Directive 2012/27/EU

Directive 2012/27/EU is amended as follows:

(1) Article 9 is amended as follows:

(a) the title is replaced by the following:

‘Metering for natural gas’;

(b) *in paragraph 1, the first subparagraph is replaced by the following:*

‘1. Member States shall ensure that, in so far as it is technically possible, financially reasonable, and proportionate to the potential energy savings, for natural gas final customers are provided with competitively priced individual meters that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use.’;

(c) *paragraph 2 is amended as follows:*

(i) *the introductory part is replaced by the following:*

‘2. Where, and to the extent that, Member States implement intelligent metering systems and roll out smart meters for natural gas in accordance with Directive 2009/73/EC.’;

(ii) *points (c) and (d) are deleted;*

(2) *Article 10 is amended as follows:*

(a) *the title is replaced by the following:*

‘Billing information for natural gas’;

(b) in paragraph 1, the first subparagraph is replaced by the following:

‘1. Where final customers do not have smart meters as referred to in Directive 2009/73/EC, Member States shall ensure, by 31 December 2014, that billing information for natural gas is reliable, accurate and based on actual consumption, in accordance with point 1.1 of Annex VII, where that is technically possible and economically justified.’;

(c) in paragraph 2, the first subparagraph is replaced by the following:

‘2. Meters installed in accordance with Directive 2009/73/EC shall enable the provision of accurate billing information based on actual consumption. Member States shall ensure that final customers have the possibility of easy access to complementary information on historical consumption allowing detailed self-checks.’;

(3) in Article 11, the title is replaced by the following:

‘Cost of access to metering and billing information for natural gas’;

(4) *in Article 13, the words ‘Articles 7 to 11’ are replaced by the words ‘Articles 7 to 11a’;*

(5) *Article 15 is amended as follows:*

(a) *paragraph 5 is amended as follows:*

(i) *the first and second subparagraphs are deleted;*

(ii) *the third subparagraph is replaced by the following:*

‘Transmission system operators and distribution system operators shall comply with the requirements set out in Annex XII.’;

(b) *paragraph 8 is deleted;*

(6) *in Annex VII, the title is replaced by the following:*

‘Minimum requirements for billing and billing information based on actual consumption of natural gas’.

Article 71
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 2 to 5, Article 6(2) and (3), Article 7(1), point (j) and (l) of Article 8(2), Article 9(2), Article 10(2) to (12), Articles 11 to 24, Articles 26, 28 and 29, Articles 31 to 34 and 36, Article 38(2), Articles 40 and 42, point (d) of Article 46(2), Articles 51 and 54, Articles 57 to 59, Articles 61 to 63, points 1 to 3, 5(b) and 6 of Article 70 and Annexes I and II by **31 December 2020**. They shall immediately communicate the text of those provisions to the Commission.



However, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with:

- (a) point (5)(a) of Article 70 by 31 December 2019;***
- (b) point 4 of Article 70 by 25 October 2020.***

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 72

Repeal

Directive 2009/72/EC is repealed with effect from **1 January 2021**, without prejudice to the obligations of Member States relating to the time-limit for the transposition into national law and the date of application of the Directive set out in Annex III.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex IV.

Article 73

Entry into force

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

Article 6(1), Article 7 (2) to (5), Article 8(1), points (a) to (i) and (k) of Article 8(2) and Article 8(3) and (4), Article 9(1), (3), (4) and (5), Article 10(2) to (10), Articles 25, 27, 30, 35 and 37, Article 38(1), (3) and (4), Articles 39, 41, 43, 44 and 45, Article 46(1), points (a), (b) and (c) and (e) to (h) of Article 46(2), Article 46(3) to (6), Article 47 to 50, Articles 52, 53, 55, 56, 60, 64 and 65 shall apply from 1 January 2021.

Points (1) to (3), (5)(b) and (6) of Article 70 shall apply from 1 January 2021.

Point (5)(a) of Article 70 shall apply from 1 January 2020.

Point (4) of Article 70 shall apply from 26 October 2020.

Article 74

Addressees

This Directive is addressed to the Member States.

Done at...,

For the European Parliament

For the Council

The President

The President

ANNEX I

MINIMUM REQUIREMENTS FOR BILLING AND BILLING INFORMATION

1. Minimum information to be contained on the bill *and in the billing information*
 - 1.1. The following **key** information shall be prominently displayed to final customers in their bills, *distinctly separate from other parts of the bill*:
 - (a) the price to be paid and a breakdown of the price where possible, together with *a clear statement that all energy sources may also benefit from incentives that were not financed through the levies indicated in the breakdown of the price*;
 - (b) *the date on which payment is due.*
 - 1.2 The following key information shall be prominently displayed to final customers in their bills and billing information, distinctly separate from other parts of the bill and billing information:
 - (a) electricity consumption for the billing period;
 - (b) the name *and contact details of the supplier including a consumer support hotline and email address*;

- (c) the tariff name;
- (d) *the end date of the contract, if applicable;*
- (e) *the information on the availability and benefits of switching;*
- (f) the final customer's switching code or unique identification code for the final customer's supply point;
- (g) *information on final customers' rights as regards out-of-court dispute settlement, including the contact details of the entity responsible* pursuant to Article 26;
- (h) *the single point of contact referred to in Article 25;*
- (i) *a link or reference to where comparison tools referred to in Article 14 can be found.*

1.3. Where *bills are based on actual consumption or remote reading by the operator*, the following information shall be *made available* to final customers in, with *or signposted to within* their bills and periodic settlement bills:

■

- (a) comparisons of the final customer's current electricity consumption with the final customer's consumption for the same period in the previous year in graphic form;
- (b) contact information for consumer organisations, energy agencies or similar bodies, including website addresses, from which information may be obtained on available energy efficiency improvement measures ■ for energy-using equipment;
- (c) *comparisons with an average normalised or benchmarked final customer in the same user category.*

■

2. *Frequency of billing and the provision of billing information:*

- (a) *billing on the basis of actual consumption shall take place at least once a year;*

- (b) where the final customer does not have a meter that allows remote reading by the operator, or where the final customer has actively chosen to disable remote reading in accordance with national law, accurate billing information based on actual consumption shall be made available to the final customer at least every six months, or once every three months, if requested or where the final customer has opted to receive electronic billing;*
- (c) where the final customer does not have a meter that allows remote reading by the operator, or where the final customer has actively chosen to disable remote reading in accordance with national law, the obligations in points (a) and (b) may be fulfilled by means of a system of regular self-reading by the final customer, whereby the final customer communicates readings from the meter to the operator; billing or billing information may be based on estimated consumption or a flat rate only where the final customer has not provided a meter reading for a given billing interval;*
- (d) where the final customer has a meter that allows remote reading by the operator, accurate billing information based on actual consumption shall be provided at least every month; such information may also be made available via the internet, and shall be updated as frequently as allowed by the measurement devices and systems used.*

3. Breakdown of the final customer's price

The customer's price is the sum of the following three components: the energy and supply component, the network component (transmission and distribution) and the component comprising taxes, levies, fees and charges.

Where a breakdown of the final customer's price is presented in bills, the common definitions of the three components in that breakdown established under Regulation (EU) 2016/1952 of the European Parliament and of the Council³² shall be used throughout the Union.

4. Access to complementary information on historical consumption

Member States shall require that, to the extent that complementary information on historical consumption is available, such information is made available, at the request of the final customer, to the supplier or service provider designated by the final customer.

Where the final customer has a meter that allows remote reading by the operator installed, the final customer shall have easy access to complementary information on historical consumption allowing detailed self-checks.

³² Regulation (EU) 2016/1952 of the European Parliament and of the Council of 26 October 2016 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC (OJ L 311, 17.11.2016, p. 1).

Complementary information on historical consumption shall include:

- (a) cumulative data for at least the three previous years or the period since the start of the electricity supply contract, if that period is shorter. The data shall correspond to the intervals for which frequent billing information has been produced; and
- (b) detailed data according to the time of use for any day, week, month and year, which is made available to the final customer without undue delay via the internet or the meter interface, covering the period of at least the previous 24 months or the period since the start of the electricity supply contract if that period is shorter.

5. Disclosure of energy sources

Suppliers shall specify in bills ***the contribution of each energy source to the electricity purchased by the final customer in accordance with the electricity supply contract (product level disclosure).***

The following information shall be made available to final customers in, with, or signposted to within their bills and billing information:

- (a) the contribution of each energy source to the overall energy mix of the supplier (at national level, namely in the Member State in which the electricity supply contract has been concluded, as well as at the level of the supplier if the supplier is active in several Member States) over the preceding year in a comprehensible and clearly comparable manner;

■

- (b) ■ information on the environmental impact, in at least terms of CO₂ emissions and the radioactive waste resulting from the electricity produced by the overall energy mix of the supplier over the preceding year■ .

As regards point (a) ■ of the *second* subparagraph, with respect to electricity obtained via an electricity exchange or imported from an undertaking situated outside the Union, aggregate figures provided by the exchange or the undertaking in question over the preceding year may be used.

For *the* disclosure of electricity from■ high efficiency cogeneration, guarantees of origin issued under Article ■ 14(10) of Directive 2012/27/EU *may be used. The disclosure of electricity from renewable sources shall be done by using guarantees of origin, except in the cases referred to in points (a) and (b) of Article 19(8) of Directive (EU) 2018/2001.*

The regulatory authority or another competent national authority shall take the necessary steps to ensure that the information provided by suppliers to final customers pursuant to this point is reliable and is provided at a national level in a clearly comparable manner.

ANNEX II

SMART METERING SYSTEMS

1. Member States shall ensure the deployment of smart metering systems in their territories that may be subject to an economic assessment of all of the long-term costs and benefits to the market and the individual consumer or which form of smart metering is economically reasonable and cost-effective and which time frame is feasible for their distribution.
2. Such assessment shall take into consideration the methodology for the cost-benefit analysis and the minimum functionalities for smart metering systems provided for in Commission Recommendation 2012/148/EU³³ as well as the best available techniques for ensuring the highest level of cybersecurity and data protection.
3. Subject to that assessment, Member States or, where a Member State has so provided, the designated competent authority, shall prepare a timetable with a target of up to ten years for the deployment of smart metering systems. Where the deployment of smart metering systems is assessed positively, at least 80 % of final customers shall be equipped with smart meters either within seven years of the date of the positive assessment or by **2024** for those Member States that have initiated *the systematic* deployment of smart metering systems before ... *[date of entry into force of this Directive]*.

³³ Commission Recommendation 2012/148/EU of 9 March 2012 on preparations for the roll-out of smart metering systems (OJ L 73, 13.3.2012, p. 9).

ANNEX III

Time-limit for transposition into national law and date of application
(referred to in Article 72)

Directive	Time-limit for transposition	Date of application
Directive 2009/72/EC of the European Parliament and of the Council (OJ L 211, 14.8.2009, p. 55)	3 March 2011	3 September 2009

ANNEX IV
CORRELATION TABLE

Directive 2009/72/EC	This Directive
Article 1	Article 1
Article 2	Article 2
—	Article 3
Article 33	Article 4
—	Article 5
Article 32	Article 6
Article 34	Article 7
Article 7	Article 8
Article 3(1)	Article 9(1)
Article 3(2)	Article 9(2)
Article 3(6)	Article 9(3)
Article 3(15)	Article 9(4)
Article 3(14)	Article 9(5)

Article 3(4)	Article 10(1)
Annex I. 1	Article 10
—	Article 11
Article 3(5)(a) and Annex I. 1(e)	Article 12
—	Article 13
—	Article 14
—	Article 15
—	Article 16
—	Article 17
—	Article 18
Article 3(11)	Article 19
—	Article 20
—	Article 21
—	Article 22

—	Article 23
—	Article 24
Article 3(12)	Article 25
Article 3(13)	Article 26
Article 3(3)	Article 27
Article 3(7)	Article 28(1)
Article 3(8)	Article 28(2)
—	Article 29
Article 24	Article 30
Article 25	Article 31
—	Article 32
—	Article 33
—	Article 34
Article 26	Article 35

—	Article 36
Article 27	Article 37
Article 28	Article 38
Article 29	Article 39
Article 12	Article 40
Article 16	Article 41
Article 23	Article 42
Article 9	Article 43
Article 13	Article 44
Article 14	Article 45
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Article 18	Article 47
Article 19	Article 48
Article 20	Article 49

Article 21	Article 50
Article 22	Article 51
Article 10	Article 52
Article 11	Article 53
—	Article 54
Article 30	Article 55
Article 31	Article 56
Article 35	Article 57
Article 36	Article 58
Article 37(1)	Article 59(1)
Article 37(2)	Article 59(2)
Article 37(4)	Article 59(3)
—	Article 59(4)
Article 37(3)	Article 59(5)
Article 37(5)	Article 59(6)

Article 37(6)	Article 59(7)
Article 37(8)	—
Article 37(7)	Article 59(8)
—	Article 59(9)
Article 37(9)	Article 59(10)
Article 37(10)	Article 60(1)
Article 37(11)	Article 60(2)
Article 37(12)	Article 60(3)
Article 37(13)	Article 60(4)
Article 37(14)	Article 60(5)
Article 37(15)	Article 60(6)
Article 37(16)	Article 60(7)
Article 37(17)	Article 60(8)
Article 38	Article 61
—	Article 62
Article 39	Article 63

Article 40	Article 64
Article 43	Article 65
Article 44	Article 66
—	Article 67
—	Article 68
Article 47	Article 69
—	Article 70
Article 49	Article 71
Article 48	Article 72
Article 50	Article 73
Article 51	Article 74
Article 3(9)	Annex I.5
Annex I.2	Annex II.3
Article 3(10)	—
Article 3(16)	—
Article 4	—

Article 5	—
Article 6	—
Article 8	—
Article 41	—
Article 42	—
Article 45	—
Article 46	—

COMMISSION STATEMENT ON THE INTERCONNECTOR DEFINITION

The Commission notes the agreement of the co-legislators relating to the recast Electricity Directive and Recast Electricity Regulation, reverting back to the definition of “interconnector” used in Directive 2009/72/EC and Regulation (EC) 714/2009. The Commission agrees that electricity markets differ from other markets such as natural gas, e.g. by trading products which can currently not be easily stored and are produced by a large variety of generating installations, including installations at distribution level. As a consequence, the role of connections to third countries differs significantly between the electricity and gas sectors and different regulatory approaches can be chosen.

The Commission will further examine the impact of this agreement and provide guidance on applying the legislation where needed.

For the sake of legal clarity, the Commission wishes to highlight the following:

The agreed definition of interconnector in the Electricity Directive refers to equipment linking electricity systems. This wording does not distinguish different regulatory frameworks or technical situations and thus, a priori, includes all electric connections to third countries in the scope of application. As regards the agreed definition of interconnector in the Electricity Regulation, the Commission underlines that the integration of electricity markets requires a high degree of cooperation between system operators, market participants and regulators. While the scope of applicable rules may vary depending on the degree of integration with the internal electricity market, close integration of third countries into the internal electricity market, such as participation in market coupling projects, should be based on agreements requiring the application of relevant Union law.

COMMISSION STATEMENT ON ALTERNATIVE DISPUTE RESOLUTION

The Commission notes the agreement of the co-legislators relating to Article 26 to regulate at EU level that energy service providers' participation in Alternative Dispute Resolution shall be mandatory. The Commission regrets this decision since its proposal had left this choice to Member States in line with the approach adopted in Directive 2013/11/EU on Alternative Resolution for consumer Disputes (the ADR Directive) and bearing in mind the principles of subsidiarity and proportionality.

It is not the Commission's role to undertake comparative assessments of the individual alternative dispute resolution models put in place by the Member States. The Commission will therefore consider the overall effectiveness of the national alternative dispute resolution landscapes in the context of its general obligation to monitor the transposition and effective application of Union law.
