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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL on common rules for the internal market in electricity  
(recast)  
- General approach

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**I. INTRODUCTION**

On 30 November 2016, the Commission adopted and transmitted to the Council and to the European Parliament the above-mentioned recast proposal which focuses especially on consumers' rights and the importance of a well-functioning internal market, including general principles Member States will have to apply to ensure that the EU electricity market is competitive, consumer-centred, flexible and non-discriminatory.

The 'Clean Energy for All Europeans' package was presented at the meeting of the TTE (Energy) Council in December 2016. At the meeting of the TTE (Energy) Council in February 2017, a first exchange of views on the package was held.

After the examination of the Impact Assessments of all eight legislative proposals was completed and the detailed examination of the proposals had started, the TTE (Energy) Council in June 2017 took note of a progress report <sup>1</sup>.

The European Parliament's ITRE Committee appointed Arturs Krisjanis KARINS (EPP) as rapporteur and is expected to adopt its opinion in December 2017.

## II. WORK WITHIN THE COUNCIL PREPARATORY BODIES

Following the above progress report on the state of play, presented by the Maltese Presidency, the Working Party has under the Estonian Presidency continued to examine the proposal on several occasions throughout the months of July - November 2017. The discussion at the level of the Working Party was intense and revealed different views and priorities among Member States on several aspects of the proposal. Accordingly, the Presidency worked intensively to find compromise solutions to accommodate various concerns raised by delegations in order to strike a proper balance in the text, with the view to reaching a general approach at the TTE (Energy) Council on 18 December 2017.

Revised versions of the draft electricity Directive were issued in September (doc.10691/17) and October (doc.10691/1/17 REV 1).

All delegations hold general reservations/scrutiny reservations and continue to analyse in detail various provisions contained in the draft Directive. The new Presidency compromise text, which reflects the outcome of the examination by the Working Party on 13 November 2017 and the subsequent written comments received, appears in the Annex to this Note.

The latest changes are marked in **bold underline** and deletions are marked with **[ ]**. Changes compared to the Commission proposal are marked **in bold** and deletions with **[ ]**.

The recitals have been adapted to reflect the changes in the substantive provisions.

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<sup>1</sup> ST 9578/17

The Presidency believes that the compromise text, as set out in the Annex, constitutes a well balanced compromise which, in most of the parts, could be broadly accepted by delegations. However, the main issue described below still needs to be further examined and confirmed before an agreement can be reached. The Presidency is well aware that there might be other issues of concern to individual delegations and, thus, the above issue is presented without prejudice to these particular points of concern or other provisions revised in the compromise text which have not yet been fully addressed.

**Main outstanding issue and Presidency compromise proposals:**

***Article 5 - Market based supply prices***

The Presidency's compromise text proposes to delete the explicit limit for the duration of the public intervention and for the scope of the beneficiaries, reverting for these issues to the general conditions stemming from the rights of the Member States to establish public service obligations enumerated under paragraph 3a. This would mean that for the duration and the scope of the beneficiaries Member States would rely on the jurisprudence of the Court. The additional criteria in paragraph 3b are kept to ensure the coherence of the public service obligations with the aims of the Directive and to prevent a situation where applying public service obligations in price regulation would de facto make the Directive inapplicable. However, the criteria in Article 3a have been adapted to take account of the comments received by the Member States.

### III. CONCLUSION

In light of the above, the Permanent Representatives Committee is invited to examine the Presidency compromise text as set out in the Annex to this Note, discuss all outstanding issues raised by the delegations and reach agreement on them in preparation for the TTE (Energy) Council upcoming agreement on the general approach at its meeting on 18 December 2017.

The general approach would establish the Council's provisional position on this proposal, and form the basis for the preparations for the negotiations with the European Parliament.

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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on common rules for the internal market in electricity**

**(recast)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure ,

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<sup>2</sup> OJ C 211, 19.8.2008, p. 23.

<sup>3</sup> OJ C 172, 5.7.2008, p. 55.

Whereas:

- (1) A number of amendments are to be made to Directive 2009/72/EC of the European Parliament and of the Council<sup>4</sup>. In the interests of clarity, that Directive should be recast.
- (2) The internal market in 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 consumers of the European Union, be they citizens or businesses, new business opportunities, competitive prices, efficient investment signals, higher standards of service, and to contribute to security of supply and sustainability.
- (3) Directive 2003/54/EC of the European Parliament and of the Council and Directive 2009/72/EC of the European Parliament and of the Council have made a significant contribution towards the creation of such an internal market in electricity. However, Europe's energy system is in the middle of a profound change. The common goal to **lower the emission of** the energy system creates new opportunities and challenges for market participants. At the same time, technological developments allow for new forms of consumer participation and cross-border cooperation. There is a need to adapt the Union market rules to a new market reality.
- (4) The Energy Union Framework Strategy sets out the 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, participate actively in the market, and where vulnerable consumers are protected.

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

- (5) The Communication from the Commission of 15 July 2015 'Delivering a new deal for energy consumers'<sup>5</sup> put forward the Commission's vision for a retail market that better serves energy consumers, including by better linking wholesale and retail markets. 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 overall reduction of energy consumption.
- (6) The Communication from the Commission of 15 July 2015 'Launching the public consultation process on a new energy market design'<sup>6</sup> highlighted that the move away from generation in large central power plants towards de-centralized production from renewable energy sources ¶ requires an adaptation of the current rules of electricity trading and changes to the existing market roles. It underlined needs to organise electricity markets in a more flexible manner and to fully integrate all market players – including renewable energy producers, new energy service providers, energy storage and flexible demand.
- (7) Apart from the new challenges, the Directive seeks also to address the persisting obstacles to the completion of the internal market in electricity. 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 sale of electricity on equal terms as well as higher costs in comparison to solutions based on cross-border cooperation and market-based principles.

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<sup>5</sup> COM (2015) 339 final of 15.7.2015.

<sup>6</sup> COM (2015) 340 final of 15.7.2015.

(8) Consumers are essential to achieving the flexibility necessary to adapt the electricity system to variable, distributed renewable generation. Technological progress in grid management and renewable generation has unlocked many opportunities for consumers, and healthy competition on retail markets will be essential to ensuring the market-driven deployment of innovative new services that cater to the consumers' changing needs and abilities, while increasing system flexibility. By empowering consumers to participate in the energy market more, and participate in new ways, citizens should benefit from the internal market in electricity and the Union's renewable targets should be attained.

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

(9) The freedoms which the Treaty 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.

(10) Promoting fair competition and easy access for different suppliers should be of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market in electricity. **Nonetheless, market failure may still persist in peripheral small electricity systems and systems not connected with other EU Member States, where electricity prices fail to provide the right signal to drive investment, and may therefore require specific solutions to ensure an adequate level of security of electricity supply.**



(11) In order to secure competition and the supply of electricity at the most competitive price, Member States and national regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of power generation, storage and demand response.

**(11a) This Directive should ensure that no undue barriers exist for market entry, operation and exit. Moreover, it should be clarified that electricity market participants from third countries may have access to the internal electricity market pursuant to Union law, including applicable international obligations. At the same time, Member States retain competence to take measures in areas not harmonised by this Directive and the rest of the relevant Union energy acquis. Member States may exercise such competence in accordance with the Treaties and the applicable international obligations.**

(12) Securing common rules for a true internal market and a broad supply of electricity accessible to all should also be one of the main goals of this Directive. To that end, undistorted market prices would provide an incentive for cross-border interconnections and for investments in new power generation while leading, in the long term, to price convergence.

(13) Market prices should give the right incentives for the development of the network and for investing in new electricity generation.

(14) Different types of market organisation exist in the internal market in 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 the measures with the Treaty and Union law.

(15) Member States should maintain a 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 deem it 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 supply price regulation constitute a fundamentally distortive measure that often leads to the accumulation of tariff deficits, limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, lower levels of consumer engagement and satisfaction, restriction of competition as well as fewer innovative products and services on the market. Consequently, Member States should apply other policy tools, and in particular targeted social policy measures, to safeguard the affordability of electricity supply to their citizens. Interventions in price setting should only be applied **as public service obligations and subject to specific conditions specified in this Directive**. A fully liberalised retail electricity market would stimulate price and non-price competition among existing suppliers and incentivise new market entries therefore improving consumers' choice and satisfaction.

- (15a) Public service obligations in the form of electricity supply price regulation should be used without overriding the principle of open markets in clearly defined circumstances and beneficiaries and be limited in duration. Such circumstances could occur for example when the supply of electricity is severely constrained, causing significantly higher electricity prices than normal, or in the event of market failure where interventions by national regulatory authorities and competition authorities have proven ineffective. This would disproportionately affect households, and in particular, vulnerable consumers who typically use 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 the price-setting for supply of electricity, Member States applying such interventions should put in place additional measures, including measures preventing distortions to wholesale market price setting. Member States should ensure that all beneficiaries of regulated prices are able to fully benefit from the offers of the competitive market when they choose so. To this effect they need to be equipped with smart meters and have access to dynamic electricity price contracts, they should be directly and regularly informed of the offers and savings available on the competitive market, in particular dynamic electricity price contracts, and be provided with assistance to engage with and benefit from market based offers.**
- (16) 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 public service standards.

- (17) It should be possible for Member States to appoint a supplier of last resort. That supplier may be the sales division of a vertically integrated undertaking, which also performs the functions of distribution, provided that it meets the unbundling requirements of this Directive.
- (18) It should be possible for measures implemented by Member States to achieve the objectives of social and economic cohesion to include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Union tools. Such tools may include liability mechanisms to guarantee the necessary investment.
- (19) To the extent to which measures taken by Member States to fulfil public service obligations constitute State aid under Article 107(1) of the Treaty, there is an obligation under Article 108(3) of the Treaty to notify them to the Commission.
- (19a) Cross-sectorial legislation provides a strong basis for consumer protection for a wide range of energy services that exist, and may develop in the future. Nevertheless, certain basic contractual rights of customers should be clearly defined.**
- (20) Clear and comprehensible 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, national regulatory authorities, consumer organisations and electricity undertakings an energy consumer checklist providing consumers with practical information about their rights. That checklist should be **maintained up to date** provided to all consumers and made publicly available.

(21) At present, several factors impede consumers from accessing, understanding and acting upon the various sources of market information available to them. To that end, the comparability of offers should be improved and barriers to switching minimised to the greatest practicable extent without unduly limiting consumer choice.

(22) **Smaller** customers are still being charged a broad range of fees directly or indirectly as a result of switching energy supplier. Such fees make calculating the best product or service more difficult and diminish the immediate financial advantage of switching. Although removing such fees may 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.

**(22a) Shorter expected switching times can encourage consumers to search for better energy deals and switch suppliers. The increased deployment of information technology will mean that technical switching should typically be able to be completed within 24 hours on a working day by the year 2025. Notwithstanding other steps in the switching process that must be completed before the technical process of switching is initiated, ensuring the technical process of switching can take place within 24 hours by this date will minimise switching times, helping to increase consumer engagement and retail competition. In any case, the total duration of the switching process should not exceed three weeks from the date of the customer notification.**

- (23) Independent comparison tools including websites are an effective means for smaller customers to assess the merits of different energy offers available on the market. Search costs are lower as they 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 at including the broadest possible range of available offers, and at covering the market as completely as is feasible so as to give the customer a representative overview. It is crucial that **consumers have access to at least one comparison tool and that** the information given on such tools be trustworthy, impartial and transparent. **Member States may provide for this through a comparison tool that is operated by a national authority or a verified comparison tool that is operated by a private company.**
- (24) Greater consumer protection is guaranteed by the availability of effective means of dispute settlement for all consumers. Member States should introduce speedy and effective complaint handling procedures.
- (25) 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 benefit from lower electricity prices or other incentive payments. The benefits of this active participation are likely to increase over time when electric vehicles, heat pumps and other flexible loads become more competitive. Consumers should be enabled to participate in all forms of demand response and therefore should have the possibility to opt for having a smart metering system and a dynamic electricity pricing 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 a reasonable exposure of consumers to the wholesale price risk. Member States should also ensure that those consumers who choose not to actively engage in the market are not penalised but instead their informed decision making on the options available to them should be facilitated in the manner that is the most suitable for domestic market conditions.

- (26) All customer groups (industrial, commercial and households) should have access to the energy 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 as laid out in this Directive. This could include market-based or regulatory principles which provide solutions which achieve the provisions set out in this Directive, including models where imbalances are corrected. The chosen model should contain** transparent and fair rules **to allow independent aggregators to fulfil this role and to ensure, that the final customer adequately benefits from their activity.** Products should be defined on all energy markets, including ancillary services and capacity markets so as to encourage the participation of demand response.
- (27) The 'European Strategy for Low Emission Mobility'<sup>7</sup> 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 electro-mobility can play in contributing to these objectives. Moreover, the deployment of electro-mobility 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 safeguard the effective deployment of publicly accessible and private recharging points for electric vehicles and ensure the efficient integration of vehicle charging into system operation.

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<sup>7</sup> SWD(2016) 244 final

- (28) Demand response will be pivotal to enable smart charging of electric vehicles and thereby enable the efficient integration of electric vehicles into the electricity grid which will be crucial for the **process of** decarbonisation of transport.
- (29) Consumers should be able to consume, store and/or sell self-generated electricity to the market. New technology developments will facilitate these 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, administrative burdens such as for self-generators who sell electricity to the system to comply with the requirements for suppliers, etc. All these obstacles that prevent consumers from self-generating and from consuming, storing or selling self-generated electricity to the market should be removed while it should be ensured that self-generating consumers contribute adequately to system costs. **Member States may have different governing provisions with respect to taxes and levies for individual and jointly acting final customers as well as for household and other final customers in their national legislation.**



(30) 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 between each other**. Community energy initiatives focus primarily on providing affordable energy of a specific kind, such as renewable energy, for their members or shareholders rather than prioritising profit-making like a traditional energy company. By directly engaging with consumers community energy initiatives are demonstrating their potential in facilitating the up-take 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 consumers to participate in the energy market who otherwise might not have been able to do so. Where they have been successfully operated such initiatives have delivered economic, social and environmental value to the community that goes beyond the mere benefits derived from the provision of energy services. **The Directive aims at recognizing certain categories of citizen energy initiatives at the European level as "energy communities" to provide them with an enabling framework, fair treatment, a level playing field and a well-defined catalogue of rights and obligations.** Household consumers should be allowed to voluntarily participate in a community energy initiative as well as to leave it, without losing access to the network operated by the community energy initiative or their rights as consumers. Access to a **energy community's network should be granted on fair and cost-reflective terms.**

**(30a) Energy community membership is open to all categories of entities, however the decision-making powers within an 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. Energy communities, as defined in the Directive, are deemed a category of citizens' initiatives that should be subject to recognition and protection under the Union law. The definition of energy communities does not prevent the existence of other citizen initiatives such as those stemming from private law agreements.**

**(30b) The provisions on energy communities contain a catalogue of applicable rights and obligations, which could be deduced from other, already existing rules, such as the freedom of contracting, supplier switching rules, distribution system operator responsibilities, network charges, balancing obligation.**

**(30c) 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 subject to the same rights and obligations as the other electricity undertakings. The rights and obligations should apply according to the roles undertaken such as the roles of final customers, generators, suppliers, distribution system operators. Energy communities should not face regulatory restrictions if they apply existing or future ICT technologies to share electricity from generation assets within the community between its members or shareholders based on market principles, for example by offsetting the energy component of members using the generation available within the community, even over the public network, provided that both metering points belong to the community. Virtual sharing enables members to be supplied with electricity from the generation plants within the community without being in direct physical proximity or behind a single metering point. Where electricity is shared over the public network it should not affect the collection of network charges, tariffs, taxes and levies related to electricity flows. The sharing should be facilitated according the obligations and correct timeframes for balancing, metering and settlement. The provisions on energy communities do not interfere with the Member States' competence to design and implement their policies for the energy sector related to taxation, network charges and tariffs or energy policy financing systems and cost sharing as long as those policies are non-discriminatory and lawful.**

**(30d) The Directive foresees a possibility for Member States to allow an energy community to become a distribution system operator either under the general regime or in accordance with Art. 38 as the so-called "Closed Distribution System Operator". Once an energy community is granted the status as a distribution system operator, it should be treated and be subject to the same obligations as distribution system operators. The provisions on energy communities only clarifies aspects of distribution system operation that are likely to be relevant for energy communities, while other aspects on distribution system operation apply according to the provisions on distribution system operators.**

(31) Energy bills [] are an important means through which customers are informed. As well as data on consumption and costs, they can also convey other information that helps consumers to compare their current deal with other offers. However, [] bill-related disputes are a very common source of consumer complaints, a factor which contributes to persistently low levels of consumer satisfaction and engagement in the energy 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 information items that are** necessary to enable consumers to regulate their energy consumption, compare offers and switch suppliers. **Other information items should be available to final customers in, with or signposted to within their bills. These can be displayed in the bill, be in a separate document attached to the bill, or the bill can contain a reference to where the customer can easily find the information on a website, app or through other means.**

**(31a) The regular provision of accurate billing information based on actual consumption, facilitated by smart meters, is important for helping consumers to control their electricity consumption and costs. Nevertheless, consumers, in particular household consumers, should have access to flexible arrangements for actual payment. This enables, for example, consumers to be provided frequent billing information whilst only paying on a quarterly basis, or products where the consumer pays the same amount every month independent of the actual consumption.**

- (31b) The provisions on billing provided for in Directive 2012/27/EU of the European Parliament and of the Council<sup>8</sup> should be updated, streamlined and moved to Directive 2009/72/EC, where they fit more coherently.**
- (32) 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.
- (33) Engaging consumers requires appropriate incentives and technologies such as smart metering. Smart metering systems empower consumers as they allow them to receive accurate and near-real time feedback on their energy consumption or generation allowing them to manage it better, participate in and reap benefits from demand side response programmes and other services, and lower their electricity bill. Smart metering also enables distribution system operators to have better visibility of their networks, and consequently reduce their operation and maintenance costs and pass those savings to the distribution tariffs which are ultimately borne by consumers.
- (34) When it comes to deciding at national level on the smart metering deployment, it should be possible to base this on an economic assessment. Should that assessment conclude that the introduction of such metering systems is economically reasonable and cost-effective only for consumers with a certain amount of electricity consumption, Member States should be able to take that into account when proceeding with implementation.

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

- (35) Member States that are not systematically rolling out smart metering should give the possibility to consumers to benefit, upon request and under fair and reasonable conditions, and by providing them with all the relevant information, from the installation of an electricity smart meter. 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.
- (36) In order to assist consumers' active participation in the electricity market, the smart metering systems to be deployed by Member States in their territory should be interoperable, not represent a barrier to switching of supplier, and should be equipped with fit-for-purpose functionalities that allow consumers to have near-real time access to their consumption data, modulate their energy consumption and, to the extent that the supporting infrastructure permits, offer their flexibility to the network and to energy services companies, be rewarded for it, and achieve savings in their electricity bill.
- (37) A key aspect of supplying customers is access to objective and transparent consumption data. Thus, consumers should have access to their consumption data and associated prices and services costs so that they can invite competitors to make an offer based on those data. Consumers should also have the right to be properly informed about their energy consumption. Prepayments should not place a disproportionate disadvantage at their users, while different payment systems should be non-discriminatory. Information on energy costs provided to consumers frequently enough will create incentives for energy savings because it will give customers direct feedback on the effects of investment in energy efficiency and change of behaviour. In this respect, full implementation of Directive 2012/27/EU of the European Parliament and of the Council<sup>9</sup> will help consumers to reduce their energy costs.

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<sup>9</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

- (38) Currently different models for the management of data have been developed or are under development in the Member States following the 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 handle data.
- (39) Member States should take the necessary measures to protect vulnerable and energy poor customers in the context of the internal market in 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, investment in residential energy efficiency or consumer protection such as disconnection safeguards ↺. Where universal service is also provided to small enterprises, measures to ensure that such universal service is provided may differ according to whether they are aimed at household customers or small enterprises.
- (40) Energy services are fundamental to safeguard the well-being of the Union citizens. Adequate warmth, cooling, lighting and the energy to power appliances are essential services to guarantee a decent standard of living and citizens' health. Furthermore, access to these energy services empowers European citizens to fulfil their potential and it enhances social inclusion. Energy poor households are unable to afford these energy services due to a combination of low income, high energy expenditure 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 to identify those households affected by energy poverty in order to provide targeted support. The Commission should actively support the implementation of the provisions on energy poverty by facilitating the sharing of good practices between Member States.

- (41) Member States which are affected by energy poverty and which have not yet done so should therefore develop national action plans or other appropriate frameworks to tackle this problem, aiming at decreasing the number of people suffering such situation. Low income, high energy expenditure, and poor energy efficiency of homes are, **among others**, relevant factors in designing indicators for the measurement of energy poverty. In any event, Member States should ensure the necessary energy 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. At the very least, this Directive should allow national policies in favour of vulnerable and energy poor customers.
- (42) Distribution system operators have to cost-efficiently integrate new electricity generation especially generating installations using renewable energy sources and new loads such as heat pumps and electric vehicles. For this purpose distribution system operators should be enabled and incentivised 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 avoid costly network expansions. Member States should put in place appropriate measures such as national network codes and market rules, and incentivise 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 generating installations using renewable energy sources, facilitate the development of storage facilities and the electrification of the transport sector, and provide to system users adequate information regarding the foreseen expansions or upgrades of the network, as currently such procedure does not exist in the majority of Member States.



**(42a) Network operators should not own, develop, manage or operate energy storage facilities. In the new electricity market design storage services should be market-based and competitive. Consequently, cross-subsidization between storage and the regulated function of distribution or transmission of electricity should be avoided. Such restriction on storage facilities ownership is to prevent distortion of competition, eliminate the risk of discrimination, safeguard fair access to storage services to all market participants and to foster effective and efficient use of storage facilities, beyond the operation of the distribution or transmission system. This should be interpreted and applied in accordance with the rights and principles established under the Charter of Fundamental Rights of the European Union, in particular the freedom to conduct a business and the right to property guaranteed by Articles 16 and 17 of the Charter.**

(43) 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 they are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to household and small non-household customers.

(44) Where a closed distribution system is used to ensure the optimal efficiency of an integrated energy supply requiring specific operational standards, or 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 users of the system. Industrial, commercial or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities or chemical industry sites can include closed distribution systems because of the specialised nature of their operations.

- (45) In order to secure competition and the supply of electricity at the most competitive price, Member States and national regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of power generation.
- (46) Without 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.
- (47) 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<sup>10</sup> referred to ownership unbundling at transmission level as the most effective tool to promote 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 generation or supply undertaking and, at the same time, exercise control or any right over a transmission system operator or transmission system. Conversely, control over a transmission system or transmission system operator should preclude the possibility of exercising control or any right over a generation or supply undertaking. Within those limits, a generation or supply undertaking should be able to have a minority shareholding in a transmission system operator or transmission system.

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<sup>10</sup> OJ C 175 E, 10.7.2008, p.206.

- (48) 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 guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for national regulatory authorities.
- (49) Since ownership unbundling requires, in some instances, the restructuring of undertakings, 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.
- (50) 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 boards 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 generation or supply undertaking.
- (51) The setting up of a system operator or a transmission operator that is independent from supply and generation interests should enable a vertically integrated undertaking to maintain its ownership of network assets whilst ensuring effective separation of interests, provided that such independent system operator or such independent transmission operator performs all the functions of a system operator and detailed regulation and extensive regulatory control mechanisms are put in place.
- (52) Where, on 3 September 2009, an undertaking owning a transmission system was part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling and setting up a system operator or transmission operator which is independent from supply and generation interests.

- (53) 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 divestiture or by splitting the shares of the integrated undertaking into shares of the network undertaking and shares of the remaining supply and generation undertaking, provided that the requirements resulting from ownership unbundling are complied with.
- (54) 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 the independent transmission operator provide an appropriate regulatory framework to guarantee fair competition, sufficient investment, access for new market entrants and the integration of electricity markets. Effective unbundling through the independent transmission operator provisions 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, connecting new production capacities to the network and market integration through regional cooperation. The independence of the transmission operator should also, inter alia, be ensured through certain ‘cooling-off’ periods during which no management or other relevant activity giving access to the same information as could have been obtained in a managerial position is exercised in the vertically integrated undertaking.
- (55) A Member State has the right to opt for full ownership unbundling in its 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.

- (56) 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 decision of the bodies of both the transmission system operators or the transmission systems and the generation or supply undertakings. With regard to ownership unbundling and the independent system operator solution, provided that the Member State in question is able to demonstrate that the requirement is 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.
- (57) 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 certification to 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 utmost account of the Commission's opinion when the former take decisions on certification. To ensure, in addition, respect for the international obligations of the Union, and 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.
- (58) Authorisation procedures should not lead to an administrative burden disproportionate to the size and potential impact of electricity producers. Unduly lengthy authorisation procedures may constitute a barrier to access for new market entrants.

- (59) Energy regulators need to be able to take decisions in relation to all relevant regulatory issues if the internal market in electricity is to function properly, and 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, approval of the budget of the regulator 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 independence of the national regulatory authority 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.
- (60) National 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 operator(s), or on the basis of a proposal agreed between those operator(s) and the users of the network. In carrying out those tasks, national 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.
- (61) Energy regulators 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 this end, regulatory authorities should be able to request relevant information from electricity undertakings, make appropriate and sufficient investigations and settle disputes. Energy regulators should also be granted the power to decide, irrespective of the application of competition rules, on appropriate measures ensuring customer benefits through the promotion of effective competition necessary for the proper functioning of the internal market in electricity.

(62) Energy regulators should also be granted the power to contribute to ensuring high standards of universal and public service in compliance 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 free movement of capital. The independent body to which a party affected by the decision of a national regulator has a right to appeal could be a court or other tribunal empowered to conduct a judicial review.

**(62a) The Electricity and Gas Directives do not deprive the government of the possibility of establishing and issuing its national energy policy. This means that, depending on the national constitution, it could be the government's competency to determine the policy framework within which the regulatory authorities must operate, for instance concerning security of supply. However, general energy policy guidelines issued by the government must not impinge on the regulatory authority independence and autonomy.**

(63) Under [recast of Regulation 714/2009 as proposed by COM(2016)861/2], the Commission may adopt guidelines or network codes to achieve the necessary degree of harmonisation. Such guidelines or network codes, which constitute binding implementing measures, are, also with regard to certain provisions of this Directive, a useful tool which can be adapted quickly where necessary.

(64) Member States and the Energy Community Contracting Parties should closely cooperate on all matters concerning the development of an integrated electricity trading region and should take no measures that endanger the further integration of electricity markets or security of supply of Member States and Contracting Parties.

- (65) This Directive should be read together with [recast of Regulation 714/2009 as proposed by COM(2016)861/2] which lays down key principles of the new market design for electricity which will enable better reward for flexibility, provide adequate price signals and ensure the development of functioning integrated short-term markets. [recast of Regulation 714/2009 as proposed by COM(2016)861/2] also sets out new rules in various areas including capacity mechanisms and cooperation between transmission system operators.
- (66) Since the objective of this Directive, namely the creation of a fully operational internal electricity market, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on 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.
- (67) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.
- (68) II



- (69) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission in order to determine **interoperability for a common European data format and non-discriminatory and transparent procedures for accessing the data on metering, consumption data as well as data required for consumer switching**. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>11</sup>.
- (70) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (71) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>12</sup>, 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.
- (72) This Directive should be without prejudice to the obligations of the 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 IV.

HAVE ADOPTED THIS DIRECTIVE:

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<sup>11</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>12</sup> 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, storage and supply of electricity, together with consumer protection provisions, with a view to creating truly integrated competitive, consumer-centred and flexible, **fair and transparent** electricity markets in the Union. Using the advantages of an integrated market, the Directive aims at ensuring affordable energy prices for consumers, a high degree of security of supply and a smooth transition towards a **low-carbon** energy system. It lays down key rules relating to the organisation and functioning of the European 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 rules, and on independent national energy regulators.

### *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 purchasing electricity for the purpose of resale inside or outside the system where he is established;
3. 'final customer' means a customer purchasing electricity for his own use;

4. 'household customer' means a customer purchasing electricity for his own household consumption, excluding commercial or professional activities;

5. 'non-household customer' means a natural or legal person purchasing electricity which is not for their own household use and includes producers industrial customers, small and medium sized enterprises, businesses and wholesale customers;

**5a. '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;**

**5b. '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;**

6. 'active customer' means a final customer or a group of jointly acting final customers who consume or store [] electricity generated on the same site or sells self-generated electricity [], provided that these activities do not constitute their primary commercial or professional activity;

**6a. 'electricity markets' shall include over-the-counter markets and electricity exchanges for trading energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intra-day markets;**

**6b 'market participant' means a natural or legal person buying, selling or generating electricity, engaging in aggregation or storage services, including the placing of orders to trade, in one or more electricity markets including balancing energy markets;**

7. 'energy community' means: a legal entity which is based on voluntary and open participation, effectively controlled by shareholders or members who are natural persons, local authorities, including municipalities, or small enterprises and microenterprises. The primary purpose of an energy community is to provide environmental, economic or social community benefits for its members or the local areas where it operates rather than financial profits. An energy community can be engaged in electricity generation, distribution and supply, consumption, aggregation, storage or energy efficiency services, generation of renewable electricity or provide other energy services to its shareholders or members;

8. 'supply' means the sale, including resale, of electricity to customers;

9. 'electricity supply contract' means a contract for the supply of electricity, but does not include an electricity derivative;

10. 'electricity derivative' means a financial instrument specified in points 5, 6 or 7 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council<sup>13</sup>, where that instrument relates to electricity;

11. 'dynamic electricity price contract' means an electricity supply contract between a supplier and a final customer that reflects the price variation at the spot markets including day ahead and intraday markets, at intervals at least equal to the market settlement frequency;

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<sup>13</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004, p. 1).

12. 'contract termination fee' means any charge or penalty imposed on customers by suppliers or **market participants engaged in aggregation** for withdrawing from an electricity supply or service contract;

13. 'switching related fee' means any charge or penalty imposed on customers by suppliers or **market participants engaged in aggregation** or system operators directly or indirectly for changing suppliers or **market participants engaged in aggregation**, including contract termination fees;

14. **aggregation** means a function taken by a natural or legal person that combines multiple customer loads or generated electricity for sale, for purchase or auction in any **electricity market**;

15. 'independent aggregator' means **a market participant that performs aggregation** that is not affiliated to **its customer's** supplier;

16. 'demand response' means the change of electricity load by final customers from their normal or current consumption patterns in response to market signals, including time-variable electricity prices or incentive payments, or in response to acceptance of the final customer's bid, alone or through aggregation, to sell demand reduction or increase at a price in organised markets as defined in Commission Implementing Regulation (EU) No 1348/2014<sup>14</sup>;

**16a. 'billing information' means all the information provided in final customers' bills, apart from a request for payment;**

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<sup>14</sup> 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).

17. 'conventional meter' means an analogue meter or an electronic meter with no capability to both transmit and receive data;

18. 'smart metering system' means an electronic system that can measure energy consumption **or the amount of electricity put into the grid**, providing more information than a conventional meter, and can transmit and receive data for information, monitoring and control purposes, using a form of electronic communication;

19. '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;

20. 'near-real time' means, in the context of smart metering, **[] a short time period**, usually down to seconds **or up to the imbalance settlement timeframe in the national market []**;

21. 'best available techniques' means, in the context of data protection and security in a smart metering environment, the most effective and advanced stage in the development of activities and their methods of operation, which indicates the practical suitability of particular techniques, designed to prevent or mitigate risks on privacy, personal data and security, for providing in principle the basis for complying with the Union data protection framework;

22. '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;

23. 'distribution system operator' means a natural or legal person 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;

24. 'energy efficiency' means the ratio of output of performance, service, goods or energy, to input of energy;
25. 'energy from renewable sources' means energy from renewable non-fossil sources, in particular wind, solar (solar thermal and solar photovoltaic), geothermal energy, ambient heat, hydropower and tide, ocean, wave, **and other ocean energy, hydropower** and combustible renewables: biofuels, bioliquids, biogas, solid biofuels and combustible wastes of renewable origin;
26. 'distributed generation' means generation plants connected to the distribution system;
27. 'recharging point' means an interface that is capable of charging one electric vehicle at a time or exchanging a battery of one electric vehicle at a time;
28. '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;
29. 'transmission system operator' means a natural or legal person 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;
30. 'system user' means a natural or legal person supplying to, or being supplied by, a transmission or distribution system;
31. 'generation' means the production of electricity;
32. 'producer' means a natural or legal person generating electricity;

33. 'interconnector' means a transmission **or distribution** line which crosses or spans a border between bidding zones **or** between Member States or, up to the border of **[ ] Union territorial jurisdiction, between Member States and third countries;**

34. 'interconnected system' means a number of transmission and distribution systems linked together by means of one or more interconnectors;

35. 'direct line' means either an electricity line linking an isolated generation site with an isolated customer or an electricity line linking an electricity producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and customers;

36. 'small isolated system' means any system with 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;

**36a. 'small connected system' means any system with 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;**

37. 'ancillary service' means a service necessary for the operation of a transmission or distribution system **including balancing and non-frequency ancillary services but not congestion management;**

38. 'non-frequency ancillary service' means a service used by a transmission **[ ] system operator for steady state voltage control, fast reactive current injections, inertia for grid stability, short circuit current, [ ] black start capability and island operation capability or a service used by a distribution system operator, including storage facility, for steady state voltage control, fast reactive current injections and short circuit current;**



39. [] **Regional Security Coordinators** means the [] **Regional Security Coordinators pursuant to [] Article 32 of the [recast of Regulation 714/2009 as proposed by COM(2016)861/2];**

**39a. ‘fully integrated network components’ means static network components that are integrated in the transmission or distribution system, including storage facility, and are used for the only purpose of ensuring a secure and reliable operation of the transmission or distribution system but not for balancing nor congestion management;**

40. 'integrated electricity undertaking' means a vertically or horizontally integrated undertaking;

41. '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 perform at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply of electricity;

42. 'related undertaking' means affiliated undertakings, within the meaning of Article 2(12) of Directive 2013/34/EU of the European Parliament and of the Council<sup>15</sup> and undertakings which belong to the same shareholders;

43. 'horizontally integrated undertaking' means an undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply of electricity, and another non-electricity activity;

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<sup>15</sup> 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).

44. 'control' means rights, contracts or any 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;

45. 'electricity undertaking' means any natural or legal person carrying out at least one of the following functions: generation, transmission, distribution, **aggregation, demand response, storage**, supply, or purchase of electricity, which is responsible for the commercial, technical or maintenance tasks related to those functions, but does not include final customers;

46. 'security' means both security of supply and provision of electricity, and technical safety;

47. 'energy storage' means, in the electricity system, **the conversion of an amount of the electricity that was generated into a form of energy which can be stored, the storing of that energy, and the subsequent direct use or reversion of that energy back into electrical energy or into another energy carrier and use of that reconverted energy at a later moment than it was generated**;

**47a. 'energy storage facility' in the electricity system means a facility where energy storage occurs.**

## CHAPTER II

### GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

#### *Article 3*

#### **Competitive, consumer-centred, flexible and non-discriminatory electricity market**

1. Member States shall ensure that their national legislation does not unduly hamper cross-border **trade** of electricity, consumer participation including through demand-side response, investments into energy generation, energy storage, the deployment of electromobility or new interconnectors **between Member States**, and that electricity prices reflect actual demand and supply. **Any public intervention in electricity prices shall be subject to conditions in Article 5.**
2. Member States shall ensure that no undue barriers exist for market entry, operation and exit. **Electricity market participants from third countries may have access to the internal electricity market pursuant to Union law, including applicable international obligations.**
- 2a. Member States shall ensure that **electricity undertakings** are subject to transparent, proportionate and non-discriminatory rules, fees and treatment, in particular in the fields of licencing, balancing responsibility, access to wholesale markets, access to data, customer switching and billing.

*Article 4*

**Free choice of electricity supplier**

Member States shall ensure that all customers are free to purchase electricity from the supplier of their choice.

*Article 5*

**Market based supply prices**

1. Electricity 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 electricity suppliers.
2. Member States shall ensure the protection of energy poor or vulnerable customers pursuant to Article 28 [] 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 price setting for the supply of electricity **subject to the conditions in paragraphs 3a and 3b []**.

3a. **Public interventions pursuant to paragraph 3 shall:**

(a) pursue a general economic interest;

(b) be clearly defined, transparent, non-discriminatory and verifiable [];

(c) guarantee equal access for Union electricity companies to customers. The interventions shall not go beyond what is necessary to achieve the general economic interest which they pursue,

(d) be limited in time and proportionate as regards their beneficiaries.

3b. **Public interventions pursuant to paragraph 3 shall:**

(a) not result in additional costs for market participants in a discriminatory way;

(b) not lead to cross-subsidies between customers supplied at free market prices and those supplied at regulated supply prices;

(c) ensure that all beneficiaries of such public intervention have the possibility to choose competitive market offers and are directly informed of the availability of offers and savings on the competitive market, in particular dynamic electricity price contracts, at least every quarter and that they are provided with assistance to switch to a market based offer;

(d) ensure that all beneficiaries of such public interventions are entitled to and are offered to have smart meters being installed at no extra costs for these customers from [OP: insert the date of the entry into force of this Directive] and are directly informed of the possibility to install smart meters and are provided with necessary assistance.

**3c. By way of derogation from paragraph 3b, Member States which apply public interventions in price setting for the supply of electricity to households as part of the support programme [*under the European Stability Mechanism*], may continue to apply such public interventions subject to the terms stipulated in that support programme and the implementing documents.**

4. [] Member States shall notify the measures taken in accordance with **paragraph 3 []** to the Commission within one month after adoption and may apply them immediately. The notification shall be accompanied by an explanation why [] other instruments could not sufficiently address the situation and how the beneficiaries and the duration of the measure have been determined. []

#### *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 prior to their entry into force in accordance with Article 59 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 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 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 was denied. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.

#### *Article 7*

#### **Direct lines**

1. Member States shall take the measures necessary to enable:
  - (a) all electricity producers and electricity supply undertakings established within their territory to supply their own premises, subsidiaries and customers through a direct line;
  - (b) all customers within their territory to be supplied through a direct line by a producer and 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 shall not affect the possibility of contracting electricity in accordance with Article 6.
4. Member States may issue an authorisation 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 application of the provisions on public service obligations pursuant to Article 9. Duly substantiated reasons shall be given for such 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 the generating capacity to meeting the overall Union target of at least a 20 % share of energy from renewable sources in the Union's gross final consumption of energy in 2020 referred to in Article 3(1) of Directive 2009/28/EC of the European Parliament and of the Council<sup>16</sup>; and
  - (k) the contribution of generating capacity to reducing emissions.
3. Member States shall ensure that specific 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. National regulatory authorities or other competent national authorities including planning authorities shall review those guidelines and may recommend amendments thereto.

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<sup>16</sup> Directive 2009/28/EC of the European Parliament and the Council of 23 April 2009 on the promotion of the use of energy sources (OJ L 140, 5.6.2009, p. 16).

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 the applicant.

#### *Article 9*

#### **Public service obligations**

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

2. Having full regard to the relevant provisions of the Treaty, 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 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, 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.** ⇐
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 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 inform the Commission subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.
5. Member States may decide not to apply the provisions of Articles 6, 7 and 8 insofar as their application would obstruct the performance, in law or in fact, 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 this Directive and Article 106 of the Treaty.

## CHAPTER III

### CONSUMER EMPOWERMENT AND PROTECTION

#### *Article 10*

#### **Basic contractual rights**

1. Member States shall ensure that all 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, as long as the supplier follows the applicable trading **and balancing** rules. In this regard, Member States shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Member State.
2. Without prejudice to Union rules on consumer protection, in particular **Directive 2011/83/EU of the European Parliament and of the Council<sup>17</sup>** and Council Directive 93/13/EEC <sup>(18)</sup>, **Member States shall ensure that []:**

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<sup>17</sup> OJ L 304, 22.11.2011, p. 64–88

<sup>18</sup> OJ L 95, 21.4.1993, p. 29–34

- (a) **customers** have a right to a contract with their [] **supplier** that specifies:
- the identity and address of the supplier,
  - the services provided, the service quality levels offered, as well as the time for the initial connection,
  - the types of maintenance service offered,
  - the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained,
  - the duration of the contract, the conditions for renewal and termination of services and of the contract ,
  - any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing,
  - the method of initiating procedures for settlement of disputes in accordance with Article 26,
  - information relating to consumer rights, including on the complaint handling and all of the information referred to in this point, clearly communicated through billing or the electricity undertaking's web site.

Conditions shall be fair and well-known in advance. In any case, this information should 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 point shall also be provided prior to the conclusion of the contract;

- (b) **customers** are given adequate notice of any intention to modify contractual conditions and are informed about their right to dissolve the contract when the notice is given. Suppliers shall notify their customers directly of any adjustment in the supply price as well as of the reasons and preconditions for the adjustment and its scope, at an appropriate time no later than  two weeks, and as far as household consumers are considered, one month before the adjustment comes into effect in a transparent and comprehensible manner. Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new contractual conditions or adjustments in the supply price notified to them by their electricity supplier;
- (c) **customers** receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services;
- (d) **customers** are offered a wide choice of payment methods, which do not unduly discriminate between customers. Any difference in charges related to payment methods shall be objective, non-discriminatory and proportionate and shall not exceed the direct costs borne by the payee for the use of the specific payment method .
- (e) Pursuant to subparagraph (d), household customers, who have access to prepayment systems, are not placed at a  disadvantage  by the prepayment systems;
- (f) **customers** are offered fair and transparent general terms and conditions. The general terms and conditions shall be given in clear and comprehensible language and shall not include non-contractual barriers to the exercise of customers' rights, for example excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods;

- (g) 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;
- (h) **customers** when having access to universal service under the provisions adopted by Member States pursuant to Article 27 , are informed about their rights regarding universal service;
- (i) **household costumers** are given adequate information on alternatives to disconnection sufficiently in advance before the planned disconnection. These alternatives 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**. **The information on the available alternatives** [] should not constitute an extra cost to **the customers facing disconnection**;
- (j) **customers** receive a final closure account following any change of [] supplier no later than six weeks after the change of supplier has taken place.

## Article 11

### Entitlement to a dynamic electricity price contract

1. Member States shall ensure that the national regulatory framework enables electricity suppliers to offer a dynamic electricity price contract. Member States shall ensure that  final customers who have a smart meter installed can  request to conclude a dynamic electricity price contract from at least one  supplier.
2. Member States shall ensure that final customers are  well informed by the suppliers of the opportunities, costs and risks of such dynamic electricity price contract and that suppliers are required to assess the risk that the new products and services present to household customers and to tailor their residential offers accordingly. National regulatory authorities shall monitor the market developments and modify protections as required.
3. Where dynamic electricity price contracts account for less than 80% of the electricity consumed by households, Member States  or their National Regulatory Authorities, shall monitor and publish an annual report , for at least a ten-year period after such contracts become available, on the main developments of such contracts including market offers.

## Article 12

### Right to switch and rules on switching-related fees

1. Member States shall ensure that a customer wishing to change suppliers or market participant engaged in aggregation, while respecting contractual conditions, is entitled to such a change within a maximum of three weeks. **By no later than 2025, the technical process of switching supplier shall take no longer than 24 hours and shall be possible on any working day, unless a Member State concludes there is a negative cost-benefit analysis.**



2. Member States shall ensure that **at least household customers, microenterprises and small enterprises** are not charged any switching-related fees.
3. By way of derogation from paragraph 2, Member States may choose to permit suppliers or market participants engaged in aggregation to charge contract termination fees to customers, willingly terminating fixed term, **fixed price supply** [] contracts before their maturity, as long as such fees are part of a contract that the customer has willingly entered into **and such fees are clearly communicated to the customer before the contract is entered into**. Such fees [] shall [] be proportionate and not exceed the direct economic loss to the supplier or market participant engaged in aggregation of the customer terminating the contract, including the costs of any bundled investments or services already provided to the customer as part of the contract.
4. Member States shall ensure that the right to switch suppliers or market participant engaged in aggregation is granted to customers in a non-discriminatory manner as regards cost, effort or time.

### *Article 13*

#### **[] Aggregation contract**

**-1. Member States shall ensure that all customers are free to purchase and sell electricity services, other than electricity supply, including aggregation, independently from their supply contract and from an electricity undertaking of their choice.**

1. Member States shall ensure that, where a final customer wishes to conclude an aggregation contract [], **this** shall not require the consent of the final customer's [] **electricity undertaking unless the need for the supplier's consent is clearly specified in the contract between the customer and the energy service provider supplying electricity to the customer. Such contractual terms and conditions should be subject to monitoring and approval by the regulatory authorities.**

2. []

3. []

4. 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.**

5. Member States shall ensure that the rights referred to in paragraphs 1 [] and 4 are granted to final customers in a non-discriminatory manner as regards cost, effort or time.

#### *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 that meets [] **at least the following criteria:**

**The tools shall:**

**(a) be operationally independent and ensure that electricity undertakings are given equal treatment in search results;**

**(b) clearly disclose their owners and the natural or legal person operating the tool;**

**(c) set out clear, objective criteria on which the comparison will be based and disclose them;**

**(d) use plain and unambiguous language;**

**(e) provide accurate and up-to-date information and state the time of the last update;**

**(f) where multiple tools cover the market, include, as complete as practicable, a range of electricity offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results. In such cases the Member State shall ensure that at least one tool provides an overview of the whole of the market; and**

**(g) provide an effective procedure to report incorrect information on published offers.**

- 1a The tools referred to in paragraph 1 may be operated by any entity, including private companies and public authorities or bodies.**
- 1b Household customers and microenterprises with an expected yearly consumption of below 100,000 kWh shall be informed of the availability of the tools referred to in paragraph 1.**
- 2. Member States shall appoint a  competent authority to be responsible for  verifying comparison tools and ensuring that  verified comparison tools continue to meet the criteria set out in paragraph 1 . This authority shall be independent from any market participants and comparison tool operators.**
- 3.**
- 4. Any tool comparing the offers of  market participants shall be eligible to apply for  verification in accordance with this Article on a voluntary and non-discriminatory basis.**
- 4a. By way of derogation from paragraphs 2 and 4, Member States may choose not to provide for verification of comparison tools should a public authority or body provide a comparison tool fulfilling the obligation set out in paragraph 1.**

Article 15

**Active customers**

1. Member States shall ensure that final customers:

(a) are entitled to act as active customers, without being subject to discriminatory technical and administrative requirements, procedures and charges;

(b) to

1a. Member States shall ensure that active consumers:

(a) are entitled to operate either directly or through aggregation;

(b) are entitled to sell self-generated electricity including through power purchase agreements;

(c) are entitled to participate in demand response and energy efficiency schemes;

(d) are entitled to delegate the management of the installations required for their activities to a third party, including installation, operation, data handling and maintenance;

(e) are subject to cost reflective, transparent and non-discriminatory network charges, accounting separately for the electricity fed into the grid and the electricity consumed from the grid, in line with Article 59(8) ensuring they contribute in an adequate and balanced way to the overall cost sharing of system of producing, distributing and consuming electricity;

(f) are financially responsible for the imbalances they cause in the electricity system. To this extent they shall be balance responsible parties or shall delegate their balance responsibility in accordance with Article 4 of the [Electricity Regulation].

*Article 16*

¶ **Energy communities**

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

- (a) **participation in an energy community is open and voluntary;**
- (b) **shareholders or members are allowed to leave an energy community; in such cases Article 12 shall apply;**
- (c) **shareholders or members of an energy community shall not lose their rights and obligations as household customers or active customers;**
- (d) **energy communities that supply electricity, provide aggregation or other commercial electricity services are subject to the provisions relevant for such activities;**
- (e) **relevant distribution system operator shall, subject to fair compensation as assessed by the regulatory authority, cooperate with energy communities to facilitate electricity transfers within energy communities;**
- (f) **energy communities are subject to non-discriminatory fair, proportionate and transparent procedure, including registration and licensing, and cost reflective network charges ensuring they contribute in an adequate and balanced way to the overall cost sharing of the system.**

(a) ¶

(b)

(c)

(d)

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

(a) are open to cross-border participation;

(b) are entitled to own, establish, purchase or lease distribution networks and to autonomously manage them subject to conditions set out in Article 16 (2b);

(c) are subject to exemptions foreseen by Article 38(2);

**(d) are entitled to establish and operate virtual sharing of electricity supply within the community subject to the provisions of this article.**

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

- 2a. Member States shall ensure that energy communities:**
- (a) can access all electricity markets either directly or through aggregation in a non-discriminatory manner;**
  - (b) are treated in a non-discriminatory manner with regard to their activities, and are subject to the same rights and obligations when acting as final customers, generators, suppliers, distribution system operators, or other market participants;**
  - (c) shall be financially responsible for the imbalances they cause in the electricity system. To this extent they shall be balance responsible parties or shall delegate their balance responsibility in accordance with Article 4 of the [*Electricity Regulation*];**
  - (d) with regard to self-consumption, energy communities shall be treated like active customers in accordance with Article 15(1)b;**
  - (e) are subject to Article 8 (3) in relation to generating capacity installed by energy communities as long as such capacity can be considered small decentralised or distributed generation.**
- 2b. Member States may decide, to grant energy communities with a right to manage distribution network in their area of operation and define the relevant procedures, without prejudice to the provisions of Chapter IV and other rules and regulations applying to distribution system operators. If such right is granted, Member States shall ensure that:**
- (a) energy communities may conclude an agreement with a relevant distribution system operator or transmission system operator to which their network is connected on the operation of the energy community's network;**

- (b) energy communities are subject to appropriate network charges at the connection points between the community network and the distribution network outside the energy community. Such network charges shall account separately for the electricity fed into distribution network and the electricity consumed from the distribution network outside the energy community in line with Article 59 (8);
- (c) energy communities do not discriminate or harm customers remaining 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 electricity generators 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 engaging in demand response aggregation**, in a non-discriminatory manner, on the basis of their technical capabilities.
3. Member States shall ensure that their **relevant** regulatory framework  contains at least the following elements:
  - (a) the right for each **market participant engaged in aggregation, including independent aggregators**, to enter  **electricity** markets without consent from other  **market participants**;
  - (b) **non-discriminatory and** transparent rules clearly assigning roles and responsibilities to all  **electricity undertakings engaged in aggregation or affected by the participation of demand response through aggregation**;



- (c) **non-discriminatory and transparent rules and procedures for data exchange 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 commercial data;**
- (d) **||**
- (da) **market participants engaged in aggregation shall be financially responsible for the imbalances they cause in the electricity system. To this extent they shall be balance responsible parties or shall delegate their balance responsibility in accordance with Art 4 of the electricity Regulation;**
- (db) **Member States may require undertakings, including independent aggregators to pay compensation to other market participants or their balancing responsible party if they directly induce imbalances to these market participants including situations where a parameter correction is introduced without creating a barrier for market entry of aggregators or a barrier for flexibility. In such cases the compensation payment shall be strictly limited to cover the resulting costs. The calculation method for such compensation may take account of the benefits induced by the independent aggregators to other market participants and be subject to approval by the national regulatory authority;**
- (dc) **final customers who have a contract with independent aggregators shall not face undue payments, penalties or other undue contractual restriction from their suppliers;**
- (e) **a conflict resolution mechanism between market participants engaged in aggregation and other market participants, including responsibility for imbalance.**

4. []

5. Member States shall ensure that national regulatory authorities or, where their national legal system so requires, transmission system operators and distribution system operators in close cooperation with [] **market participants** and final customers define technical [] **characteristics** for participation of demand response in [] **all electricity** markets on the basis of the technical requirements of these markets and the capabilities of demand response. Such specifications shall include the participation of [] **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 and presented in a manner that facilitates comparison by consumers. **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. []

4. []

5. []

6. Member States shall ensure that final customers are offered the option of electronic **bills and billing information, and flexible arrangements for actual payment** [].

7. []

8. []

**8a. Member States shall ensure that bills and billing information fulfil the minimum requirements set out in Annex II.**

*Article 19*

**Smart metering**

1. In order to promote energy efficiency and 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, or introducing interoperable smart metering systems or smart grids, where appropriate.
2. Member States shall ensure the implementation of smart metering systems in their territories that shall assist the active participation of customers in the electricity market. Such implementation may be subject to a cost-benefit assessment which shall be undertaken according to the principles laid down in Annex III.
3. Member States that proceed with deployment shall adopt and publish the minimum functional and technical requirements for the smart metering systems to be rolled out in their territories in line with the provisions laid down in Article 20 and Annex III. Member States shall ensure the interoperability of these smart metering systems as well as their [] **ability to connect** with consumer energy management [] **systems**. To this respect, Member States shall have due regard to the use of relevant available standards including those enabling interoperability, best practices and the importance of the development of the internal market in electricity.

4. Member States that proceed with smart metering deployment shall ensure that final customers contribute to the associated costs of the roll-out in a transparent and non-discriminatory manner. Member States **or, where a Member State has so provided, the designated competent authorities**, shall regularly monitor this deployment in their territories to track the **delivery** of benefits to consumers.
5. When the deployment of smart metering is negatively assessed as a result of cost-benefit assessment referred to in paragraph 2, Member States shall ensure that this assessment is revised periodically **or** in response to **significant** changes in the underlying assumptions and to technology and market developments. Member States shall notify to the responsible Commission services the outcome of their updated economic assessment as it becomes available.
- 5a. **The smart metering provisions in this Directive shall apply to future installations and to installations replacing older smart meters. Smart metering systems that are already installed, or for which the “start of work” as defined in Communication 2014/C 200/01 1.3. 19 (44) has started before the date of entry into force of this Directive, may remain in operation over their lifetime.**

#### *Article 20*

#### **Smart metering functionalities**

Where smart metering is positively assessed as a result of cost-benefit assessment referred to in Article 19(2), or systematically rolled out, Member States shall implement smart metering systems in accordance with European standards, the provisions in Annex III, and in line with the following principles:

- (a) the metering systems accurately measure actual electricity consumption and **are able to provide 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 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 is ensured in compliance with relevant Union security legislation having due regard of the best available techniques for ensuring the highest level of cybersecurity protection **whilst bearing in mind the costs and principles of proportionality;**
- (c) the privacy and data protection of final customers is ensured in compliance with relevant Union data protection and privacy legislation;
- (d) meter operators shall ensure that the meter or meters of active customers who self-generate electricity can account for electricity put into the grid from the active customers' premises;
- (e) if final customers request it, metering data on their electricity input and off-take shall be made available to them, via a  standardised communication interface and/or remote access, or to a third party acting on their behalf, in an easily understandable format as provided for in Article 24, allowing them to compare deals on a like-for-like basis;
- (f) appropriate advice and information shall be given to final customers **prior to and/or** at the time of installation of smart meters, in particular about their full potential with regard to meter reading management and the monitoring of energy consumption, and on the collection and processing of personal data in accordance with the applicable Union data protection legislation;
- (g) smart metering systems shall enable final customers to be metered and settled at the same time resolution as the imbalance period in the national market.

## Article 21

### Entitlement to a smart meter

1. Where smart metering is negatively assessed as a result of cost-benefit assessment referred to in Article 19(2), nor systematically rolled out, Member States shall ensure that every final customer is entitled, **while bearing associated costs**, to have installed or, where applicable, to have upgraded, on request and under fair and reasonable conditions, a smart meter that complies with the following requirements:
  - (a) is equipped where technically feasible with functionalities referred to in Article 20, or with a minimum set of functionalities to be defined and published by Member States at national level and in line with the provisions in Annex III,
  - (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 and 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 their evolution as a result of technology developments and potential metering system upgrades.

## *Article 22*

### **Conventional metering**

1. Where final customers do not have smart meters, Member States shall ensure that they 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 on-line interface or through another appropriate interface.

## Article 23

### Data management

1. When setting up 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 on the basis of the consent of the final customer or other basis foreseen by** in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>19</sup>. For the purpose of this Directive, data shall include metering and consumption data as well as data required for consumer switching. Eligible parties **may** include at least customers, **electricity undertakings**, transmission and distribution system operators, and other parties which provide energy or other services to customers.
2. Member States shall organise the management of data in order to ensure efficient **and secure** data access and exchange. Independently of the data management model applied in each Member State, the party or parties responsible for data management shall provide to any eligible party **access to the data of the final customer on the basis of the explicit consent of the final customer or other basis foreseen by Regulation (EU) 2016/679**. Eligible parties should have at their disposal in a non-discriminatory manner and simultaneously the requested data. Access to data shall be easy, while relevant procedures shall be made publicly available.
- 2a. The processing of personal data carried out within the framework of this Directive including access to data and data storage shall be carried out in compliance with Regulation (EU) 2016/679.**

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<sup>19</sup> 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).



3. Member States or, where a Member State has so provided, the designated competent authorities shall authorise and certify **or, where applicable, supervise** the parties which are managing data in order to ensure that these parties 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 from parties managing data the appointment of compliance officers who shall be responsible for monitoring the implementation of measures taken by the relevant parties for ensuring non-discriminatory access to data and compliance with the requirements of this Directive. Compliance officers or bodies designated pursuant to Article 35(2)(d) may be required to fulfil the obligations of this paragraph.
4. No additional costs shall be charged to final customers for access to their data. Member States shall be responsible for setting the relevant costs for access to data by eligible parties. []

#### *Article 24*

### **[] Interoperability requirements and procedures for access to data**

1. []
2. **In order to facilitate the full interoperability of cross-border energy services within the EU, the Commission**, by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 68 shall determine, **interoperability requirements []** and non-discriminatory and transparent procedures for accessing the data, listed under Article 23 (1). **These requirements and procedures [] will build upon existing national practices []** adopted by Member States. []

*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, current legislation and the means of dispute settlement available to them in the event of a dispute. Such contact points may be part of general consumer information points.

*Article 26*

**Right to out-of-court dispute settlement**

Member States shall ensure that **final** customers have access to simple, fair, transparent, independent, effective and efficient out-of-court dispute resolution mechanisms for the settlement of disputes concerning rights and obligations established under this Directive. Where the **final** customer is a consumer within the meaning of Directive 2013/11/EU of the European Parliament and of the Council<sup>20</sup>, such out-of-court mechanisms shall comply with the quality requirements established in Directive 2013/11/EU and provide, where warranted, for a system of reimbursement and/or compensation.

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<sup>20</sup> OJ L 165, 18.6.2013, p. 63–79

*Article 27*

**Universal service**

1. Member States shall ensure that all household customers, and, where Member States deem it appropriate, small enterprises **II**, enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at competitive **reasonable** 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 companies an obligation to connect customers to their network under terms, conditions and tariffs set in accordance with the procedure laid down in Article 59(6). This Directive shall not prevent Member States from strengthening the market position of the household, small and medium-sized consumers by promoting the possibilities of voluntary aggregation of representation for that class of consumers.
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 and energy poverty**

1. Member States shall take appropriate measures to protect customers and shall, in particular, ensure 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. 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.
  - 1a. **Where Member States identified energy poverty among household customers they shall publish the parameters and criteria used to identify, measure and to monitor energy poverty.**
2. Member States shall take appropriate measures, such as formulating national energy action plans, providing benefits in social security systems to ensure the necessary electricity supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified, 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 the provisions of Article 9(4). Such notifications may also include measures taken within the general social security system.

## 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, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more distribution system operators.

#### *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, it must 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 energy sources or producing combined heat and power, in accordance with Article 11 [recast of Regulation 714/2009 as proposed by COM(2016)861/2].
5. Each distribution system operator shall procure the energy it uses to cover energy losses [] in its system according to transparent, non-discriminatory and market based procedures, whenever it has such a function.
- 5a. 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 elaborated in coordination with transmission system operators and other relevant market parties. Terms and conditions, including rules and tariffs where applicable, for the provision of such products and services by distribution system operators shall be established in accordance with Article 59(6) in a non-discriminatory and cost-reflective way and shall be published.**
- 5b. In performing the tasks described in paragraph 5a, the distribution system operator shall procure the non-frequency ancillary services needed for its system according to 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. This obligation to procure non-frequency ancillary services does not apply to fully integrated network components.**

- 5c. The procurement of such products and services shall ensure the effective participation of all qualified market participants including renewable energy sources, demand response, energy storage facilities and electricity undertakings engaged in aggregation, in particular by requiring regulatory authorities and distribution system operators in close cooperation with all market participants, including transmission system operators, to define technical modalities for participation in these markets on the basis of the technical requirements of these markets and the capabilities of all market participants.**
- 5d. Distribution system operators shall cooperate with transmission system operators for the effective participation of market participants connected to their grid to the retail, wholesale and balancing markets. Delivery of balancing services stemming from resources located in the distribution system shall be agreed with the respective transmission system operator in line with Article 182 of the Commission Regulation 2017/1485 establishing a guideline on electricity transmission system operation and Article 53 of the recast Electricity Regulation.**

*Article 32*

**1. Incentives for the use of flexibility in distribution networks**

1. Member States shall provide the necessary regulatory framework to allow and incentivise distribution system operators to procure **flexibility services, including congestion management in their service area**, in order to improve efficiencies in the operation and development of the distribution system [ ]. In particular, regulatory frameworks shall enable distribution system operators to procure services from resources such as distributed generation, demand response or storage and consider energy efficiency measures, which may supplant the need to upgrade or replace electricity capacity and which support the efficient and secure operation of the distribution system.
  - 1a. Distribution system operators shall define [ ] **the specifications** for the **flexibility services** procured **in close cooperation with the national regulatory authority and transmission system operators. The specifications shall ensure an [ ] effective and non-discriminatory** participation of all market participants including renewable energy sources, demand response, **energy storage facilities** and [ ] **market participants engaged in aggregation**. Distribution system operators shall exchange all necessary information and coordinate with transmission system operators in order to ensure the optimal utilisation of resources, ensure the secure and efficient operation of the system and facilitate market development. Distribution system operators shall be adequately remunerated for the procurement of such services in order to recover at least the corresponding **reasonable costs** [ ], including the necessary information and communication technologies expenses and [ ] **infrastructure costs**.



2. The development of a distribution system shall be based on a transparent network development plan that distribution system operators shall  **publish at least every two years and submit** to the regulatory authority **and the transmission system operator. The regulatory authority may request amendments to the plans.** The network development plan shall **provide transparency on the medium and long-term flexibility services needed.** contain 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 re-charging 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 distribution system operator is using as an alternative to system expansion.
- 2a. The  **distribution system operators** shall consult **all**  **relevant** system users on the network development plan. The  **distribution system operators** shall publish the results of the consultation process **along with**  **the network development plan and submit to the regulatory authority.**
- 2b. Member States may decide not to apply this obligation to integrated undertakings serving less than 100 000 connected consumers, or serving isolated systems.

**Integration of electro-mobility into the electricity network**

1. 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.
  - 1a. **Distribution system operators shall not be allowed to own, develop, manage or operate recharging points for electric vehicles, with the exception of those cases where distribution system operators own private recharging points solely for their own use.**
2. **By way of derogation from paragraph 1a,** Member States may allow distribution system operators to own, develop, manage or operate recharging points for electric vehicles only if the following conditions are fulfilled:
  - (a) other parties, following an open and transparent tendering procedure, **[] could not be awarded with a right** to own, develop, manage or operate recharging points for electric vehicles;
  - (b) the regulatory authority has **carried out an ex-ante review of the conditions of the tendering procedure under subparagraph (a) and has granted its approval;**
  - (c) **in operation of the recharging points the distribution system operator must not discriminate between system users or classes of system users, particularly in favour of its related undertakings.**
3. []

4. **Where Member States have implemented the conditions set out in paragraph 2, 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 market parties to own, develop, operate or manage recharging points for electric vehicles on the basis of third party access. In case the public consultation indicates that third 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 a successful completion of a procedure referred to in paragraph (2)a. As part of the conditions for this procedure regulatory authorities may allow the distribution system operators to recover the residual value of the investment made into recharging infrastructure.**

#### *Article 34*

#### **Tasks of distribution system operators in data management**

**In compliance with applicable data provisions regulations, Member States shall ensure that all eligible parties have non-discriminatory access to data under clear and equal terms. In Member States where smart metering systems have been implemented according to Article 19 and distribution system operators are involved in data management, compliance programmes as set in Article 35(2)(d) 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) and (3), Member States shall take all necessary measures to ensure that the vertically integrated undertaking do not have privileged access to data for the conduct of its supply activity.**

*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) those 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(6), 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 his 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 in respect of 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 serving less than 100000 connected customers, or serving small isolated systems.

#### *Article 36*

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

1. Distribution system operators shall not be allowed to 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 **which are fully integrated network components and the regulatory authority has granted its approval or [] if all of the following conditions are fulfilled:**
  - (-a) **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 they are not used to buy or sell electricity to the wholesale market, including balancing markets;**

(a) other parties, following an open, [] transparent and non-discriminatory tendering procedure, subject to review and approval by the regulatory authority [] have not been awarded with a right to own, develop, manage [] or operate such [] facilities. Regulatory authorities may draw up guidelines or procurement clauses to help distribution system operators ensure a fair tendering procedure; and

(b) []

(c) the regulatory authority has assessed the necessity of such derogation **and has carried out an assessment of the tendering procedure, including the conditions, [] and has granted its approval.**

3. []

4. [] **The distribution system operators shall perform at regular intervals or at least every five years a public consultation for the required energy storage facilities in order to assess the potential availability and interest of market parties to invest [] 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, [] regulatory authorities shall ensure that distribution system operators' activities in this regard are phased-out within 24 months. As part of the conditions for this procedure, regulatory authorities may allow the distribution system operators to receive reasonable compensation, in particular to recover the residual value of the investment they made into energy storage facilities.**

*Article 37*

**Confidentiality obligation of distribution system operators**

Without prejudice to Article 55 or any other legal duty to disclose information, the distribution system operator must 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 being disclosed in a discriminatory manner.

*Article 38*

**Closed distribution systems**

1. Member States may provide for national 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. Member States may provide for national regulatory authorities to exempt the operator of a closed distribution system from:
  - (a) the requirement under Article 31(5) to procure the energy it uses to cover energy losses and the non-frequency ancillary services in its system according to transparent, non-discriminatory and market based procedures;
  - (b) the requirement under Article 6 (1) that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 59 (1) .
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.
5. Closed distribution systems shall be considered as distribution systems for the purpose of the Directive.

### *Article 39*

#### **Combined operator**

Article 35(1) shall not prevent the operation of a combined transmission and distribution system operator provided that operator complies with Articles 43(1), or 44 and 45, or Section 3 of Chapter VI or falls under Article 66(2).

## Chapter V

# GENERAL RULES APPLICABLE TO THE TRANSMISSION SYSTEM OPERATOR

### *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 systems 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, insofar as such availability is independent from any other transmission system with which its system is interconnected;

- (e) providing to the operator of any other system 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 compliance with Article 46 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2], granting and managing third-party access and giving reasoned explanations when it denies such access, which shall be monitored by the national 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 the cooperation and coordination between ¶ **Regional Security Coordinators;**
- (ja) participate in establishing of the European and national adequacy assessments pursuant to Chapter IV of [recast of Regulation 714/2009 as proposed by COM(2016)861/2];**
- (jb) digitalisation of transmission systems;**
- (jb) data management, cyber security and data protection subject to applicable provisions and rules;**
- (jc) participation in development of demand response.**

2. Member States may provide that one or several responsibilities listed under points (a) to (j) of paragraph 1 be assigned to a transmission system operator other than the one which owns the transmission system to which the concerned responsibilities would otherwise be applicable. The transmission system operator to which the tasks are assigned shall be certified as ownership unbundled and fulfil the requirements provided for in Article 43, but does not have 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 is without prejudice to the possibility for transmission system operators which are certified as ownership unbundled, independent system operator or independent transmission operator to delegate on their own initiative and under their supervision certain tasks to other transmission system operators which are certified as ownership unbundled, independent system operator or independent transmission operator where this delegation of tasks does not endanger the effective and independent decision-making rights of the delegating transmission system operator.**

3. []

4. In performing the task described in point (i) of paragraph 1, the transmission system operators shall [] **procure** balancing services [] **according to:**

(a) transparent, non-discriminatory and market-based **procedures;**

(b) ensures effective participation of all **qualified electricity undertakings and market participants** including renewable energy sources, demand response, energy storage facilities and [] **market participants engaged in aggregation. For that purpose, [] regulatory authorities [] and transmission system operators shall, in close cooperation with all market participants, [] define technical modalities for participation in these markets on the basis of the technical requirements of these markets in accordance with the Commission Regulation 2017/1485 establishing a guideline on electricity transmission system operation [].**

- 5a. The requirements of paragraph 4 shall apply to the provision of those 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.
- 5b. This obligation to procure non-frequency ancillary services does not apply to fully integrated network components.**

*Article 41*

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

1. Without prejudice to Article 55 or any other 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 this 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 power plant to the transmission system**

1. The transmission system operator shall establish and publish transparent and efficient procedures for non-discriminatory connection of new power plants and energy storage facilities to the transmission system. Those procedures shall be subject to the approval of national regulatory authorities.
2. The transmission system operator shall not be entitled to refuse the connection of a new power plant 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. **This shall be without prejudice to the possibility for transmission system operators to limit the guaranteed connection capacity or offer connections subject to operational limitations to ensure economic efficiency regarding new power plants or energy storage facilities where such limitations have been approved by the national regulatory authority. The national 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 power plant 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 will lead to additional costs linked with 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 entitled neither:
    - 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; nor
    - 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 paragraph 1(b), 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 of the European Parliament and of the Council <sup>21</sup>, 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 paragraph 1(a) 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.

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<sup>21</sup> 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 (OJ L 211, 14.8.2009, p. 94)



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 the provisions of 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 the provisions of 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 , it shall be certified according to the procedures laid down in Article 52(4), (5), and (6), of this Directive and in Article 48 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2], pursuant to which the Commission shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than the provisions of Section 3 .

10. Vertically integrated undertakings which own a transmission system shall not in any event be prevented from taking steps to comply with paragraph 1.
11. Undertakings performing any of the functions of generation or supply shall not in any event be able to directly or indirectly take control over or exercise any right over unbundled transmission system operators in Member States which apply paragraph 1.

## **SECTION 2**

### **INDEPENDENT SYSTEM OPERATOR**

#### *Article 44*

#### **Independent system operator**

1. Where the transmission system belongs to a vertically integrated undertaking on 3 September 2009, Member States may decide not to apply Article 43 (1) and designate an independent system operator upon a proposal from the transmission system owner. Such designation shall be subject to approval by the Commission.
2. The Member State may approve and designate an independent system operator only where:
  - (a) the candidate operator has demonstrated that it complies with the requirements of Article 43 (1)(b), (c) and (d);
  - (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 undertaking and any other relevant entity; and
  - (e) the candidate operator has demonstrated its ability to comply with its obligations under [recast of Regulation 714/2009 as proposed by COM(2016)861/2] 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 48 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2] or in Article 53 of this Directive shall be applicable.
4. Each independent system operator shall be responsible for granting and managing third-party access, including the collection of access charges, congestion charges, and payments under the inter-transmission system operator compensation mechanism in compliance with Article 46 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2], as well as for operating, maintaining and developing the transmission system, and for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system, the independent system operator shall be responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, the independent system operator shall act as a transmission system operator in accordance with this Section . The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.

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

*Article 45*

**Unbundling of transmission system owners**

1. A transmission system owner, where an independent system operator has been appointed, which is part of a vertically integrated undertaking shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission.
2. In order to ensure the independence of the transmission system owner referred to in paragraph 1, the following minimum criteria shall apply:
  - (a) persons responsible for the management of the transmission system owner shall not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;
  - (b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner are taken into account in a manner that ensures that they are capable of acting independently; and
  - (c) the transmission system owner shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

## Section 3

# INDEPENDENT TRANSMISSION OPERATOR

### *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 any other parts of the vertically integrated undertaking shall be prohibited. A transmission system operator may, however, render services to the vertically integrated undertaking as long as:

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

- 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 following 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 European Network of Transmission System Operators for Electricity (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 Article 1 of Directive 2009/101/EC of the European Parliament and of the Council <sup>22</sup>.
  4. The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion in respect of 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.

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<sup>22</sup> Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).



6. The accounts of transmission system operators shall be audited by an auditor other than the one auditing the vertically integrated undertaking or any part thereof.

*Article 47*

**Independence of the transmission system operator**

1. Without prejudice to the decisions of the Supervisory Body under Article 49 , the transmission system operator shall have:
  - (a) effective decision-making rights, independent from the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the transmission system; and
  - (b) the power to raise money on the capital market in particular through borrowing and capital increase.
2. The transmission system operator shall at all times act so as to ensure it has the resources it needs in order to carry out the activity of transmission properly and efficiently and develop and maintain an efficient, secure and economic transmission system.
3. **Subsidiaries of the vertically integrated undertaking** [] [] performing functions of generation or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated undertaking performing functions of generation or supply, nor receive dividends or any other financial benefit 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 compliance 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 14, 16, 17 and 47 of [of recast of Regulation 714/2009 as proposed by COM(2016)861/2], 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 Article 46 (1)(d), available for future investment projects and/or for the replacement of existing assets.

9. The vertically integrated undertaking shall refrain from any action impeding or prejudicing the transmission system operator from complying with its obligations in this Chapter and shall not require the transmission system operator to seek permission from the vertically integrated undertaking in fulfilling those obligations.
10. An undertaking which has been certified by the regulatory authority as being in compliance 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 48 of Regulation 714/2009 as proposed by COM(2016)861/2] or in Article 53 of this Directive shall apply.

#### *Article 48*

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

1. Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the term of office of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator shall be taken by the Supervisory Body of the transmission system operator appointed in accordance with Article 49.
2. The identity and the conditions governing the term, the duration and the termination of office of the persons nominated by the Supervisory Body for appointment or renewal as persons responsible for the executive management and/or as members of the administrative bodies of the transmission system operator, and the reasons for any proposed decision terminating such term of office, shall be notified to the regulatory authority. Those conditions and the decisions referred to in paragraph 1 shall become binding only if the regulatory authority has raised no objections within three weeks of notification.

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

- (a) doubts arise as to the professional independence of a nominated person responsible for the management and/or member of the administrative bodies; or
  - (b) in the case of premature termination of a term of office, doubts exist regarding the justification of such premature termination.
3. No professional position or responsibility, interest or business relationship, directly or indirectly, with the vertically integrated undertaking or any part of it or its controlling shareholders other than the transmission system operator shall be exercised for a period of three years before the appointment of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator who are subject to this paragraph.
  4. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall have no other professional position or responsibility, interest or business relationship, directly or indirectly, with any other 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 legislation of a Member State 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 national regulator, compliance with the program shall be independently monitored by a compliance officer.
2. The compliance officer shall be appointed by the Supervisory Body, subject to the 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 him with all the resources necessary for fulfilling his duties. During his 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 defined in [recast of Regulation 714/2009 as proposed by COM(2016)861/2], in particular regarding tariffs, third party access services, capacity allocation and congestion management, transparency, ancillary services and secondary markets;
  - (b) projects undertaken in order to operate, maintain and develop the transmission system, including interconnection and connection investments;
  - (c) energy purchases or sales necessary for the operation of the transmission system.
9. The compliance officer shall monitor the compliance of the transmission system operator with Article 41.
10. The compliance officer shall have access to all relevant data and to the offices of the transmission system operator and to all the information necessary for the fulfilment of his task.

11. 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.
12. The compliance officer shall have access to the offices of the transmission system operator without prior announcement.

### *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.
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 make reasonable assumptions about the evolution of the generation, supply, energy storage, consumption and exchanges with other countries, taking into account investment plans for regional and Union -wide 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 [Article 27(1)(b) of recast of Regulation 714/2009 as proposed by COM(2016)861/2]. If any doubt arises as to the consistency with the Union -wide network development plan, the regulatory authority shall consult the Agency. The regulatory authority may require the transmission system operator to amend its ten-year network development plan.
6. The regulatory authority shall monitor and evaluate the implementation of the ten-year network development plan.
7. In circumstances where the transmission system operator, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten-year network development plan, was to be executed in the following three years, Member States shall ensure that the regulatory authority is required to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten-year network development plan:

- (a) to require the transmission system operator to execute the investments in question;
- (b) to organise a tender procedure open to any investors for the investment in question; or
- (c) to oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.

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

- financing by any third party;
- construction by any third party;
- building the new assets concerned itself;
- 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.

8. Where the regulatory authority has made use of its powers under the first subparagraph of 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 according to the procedures laid down in paragraphs 4, 5, 6 of this Article and in Article 48 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2].
2. Undertakings which have been certified by the national regulatory authority as having complied with the requirements of Article 43 , pursuant to the certification procedure below, shall be approved and designated as transmission system operators by Member States. The designation of transmission system operators shall be notified to the Commission and published in the *Official Journal of the European Union*.
3. Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 43.
4. Regulatory authorities shall monitor the continuing compliance of transmission system operators with the requirements of Article 43. They shall open a certification procedure to ensure such compliance:
  - (a) upon notification by the transmission system operator pursuant to paragraph 3;

- (b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Article 43, or where they have reason to believe that such an infringement may have occurred; or
  - (c) upon a reasoned request from the Commission.
5. The regulatory authorities shall adopt a decision on the certification of a transmission system operator within a period of four months from 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 the 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 48 of recast of Regulation 714/2009 as proposed by COM(2016)861/2].
  7. The regulatory authorities and the Commission may request from transmission system operators and undertakings performing any of the functions of generation or supply any information relevant for the fulfilment of their tasks under this Article.
  8. Regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

*Article 53*

**Certification in relation to third countries**

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

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

2. The transmission system operator shall notify to the regulatory authority any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator.
3. The regulatory authority shall adopt a draft decision on the certification of a transmission system operator within four months from 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 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 authority so designated shall take into account:

- 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;
  - the rights and obligations of the Member State with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with Union law; and
  - 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 paragraph 3(b), 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 a period of two months after receiving the request, it shall deliver its opinion to the national 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 the Agency, 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 European 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 national regulatory authority shall, within a period of two months after the expiry of the period referred to in paragraph 6, adopt its final decision on the certification. In adopting its final decision the national 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 authority to assess paragraph 3(b), it may require the national regulatory authority to adopt its final decision in accordance with the assessment of that competent authority. The national 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 compliance with Union law, national legal controls to protect legitimate public security interests.
10. This Article, with exception of paragraph 3(a), 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 be allowed to 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 which are fully integrated network components and the regulatory authority has granted its approval or [], if all of the following conditions are fulfilled:

(-a) such facilities 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 to the wholesale markets, including balancing markets;

(a) other parties, following an open, [] transparent **and non-discriminatory** tendering procedure, subject to review and approval by the regulatory authority [] have not been awarded with a right to own, develop, control, manage or operate such facilities []  
Regulatory authorities may draw up guidelines or procurement clauses to help transmission system operators in ensuring a fair tendering procedure; and

(b) []

(c) the regulatory authority has assessed the necessity of such derogation, has carried out an ex-ante review of a tendering procedure, including the conditions, [] and has granted its approval.

3. [].

4. **Except for fully integrated network components, the [] regulatory authorities shall perform at regular intervals or at least every five years a public consultation for the required energy storage [] facilities in order to assess the potential interest of market parties to invest 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, regulatory authorities shall ensure that transmission system operators' activities in this regard are phased-out within 24 months. As part of the conditions for this procedure, regulatory authorities may allow the transmission system operators to receive reasonable compensation, in particular the residual value of the investment they made into energy storage facilities.**
- 4a. **The decision to grant derogation shall be notified to the Agency and the Commission along with relevant information about the request and the reasons for granting the derogation.**
- 4b. **Paragraphs 1 and 4 do not apply for the usual depreciation period of new battery storage facilities with a final investment decision until 2023.**

## **Section 5**

### **Unbundling and transparency of accounts**

#### *Article 55*

##### **Right of access to accounts**

1. Member States or any competent authority 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 this 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 of the European Parliament and of the Council<sup>23</sup>.

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-subsidies referred to in paragraph 3 is respected.

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<sup>23</sup> 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)

## CHAPTER VII NATIONAL REGULATORY AUTHORITIES

### *Article 57*

#### **Designation and independence of regulatory authorities**

1. Each Member State shall designate a single national 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 the Board of Regulators of the Agency in accordance with Article 22(1) of [recast of Regulation 713/2009 as proposed by COM(2016)863/2].
3. By way of derogation from paragraph 1 , a Member State may designate regulatory authorities for small systems on 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. This derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at Union level within the Board of Regulators of the Agency in compliance with [Article 22 (1) of recast of Regulation 713/2009 as proposed by COM(2016)863/2].
4. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this 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 any other public or private entity;
  - (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. This 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, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties; and
  - (b) 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;
  - (c) 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 any relevant position in the national regulatory authority [];



- (d) 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 regulatory authority's top management in the national regulatory authority;
- (e) 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 (b) 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.

#### *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 their duties and powers as laid down in Article 59, in close consultation with other relevant national authorities including competition authorities and authorities, **including regulatory authorities, from neighbouring countries, including third countries** as appropriate, and without prejudice to their competencies:

- (a) promoting, in close cooperation with the Agency, regulatory authorities of other Member States and the Commission, a competitive, flexible, ⇐ secure and environmentally sustainable internal market in 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 in view of the achievement of 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 line with general energy policy objectives, energy efficiency as well as the integration of large and small-scale production of electricity from renewable energy sources and distributed generation in both transmission and distribution networks and in 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 energy 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 foster market integration;
- (g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure consumer protection;
- (h) helping to achieve high standards of universal and 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 authority**

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;
  - (b) ensuring compliance of transmission and distribution system operators and, where relevant, system owners, as well as of any electricity undertakings and other market participants, with their obligations under this Directive, the [recast of Regulation 714/2009 as proposed by COM(2016)861/2], the network codes adopted pursuant to Article 54 and Article 55 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2], and the guidelines adopted pursuant to Article 57 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2] and other relevant Union legislation, including as regards cross-border issues;
  - (c) approving products and procurement process for non-frequency ancillary services;
  - (d) implementing the network codes and Guidelines adopted pursuant to Articles 54 to 57 of the [recast of Regulation 714/2009 as proposed by COM(2016)861/2] through national measures or, where so required, coordinated regional or Union-wide measures ;
  - (e) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency, in particular through participation in the work of the Agency's Board of Regulators pursuant to Article 22 of [recast of Regulation 713/2009 as proposed by COM(2016)863/2]↵;
  - (f) complying with, and implementing, any relevant legally binding decisions of the Agency and of the Commission;

- (g) ensuring that **transmission system operators, make available** interconnector capacities **]]** to the utmost extent pursuant to Article 14 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2];
- (h) reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Agency and the Commission. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;
- (i) ensuring that there are no cross-subsidies between transmission, distribution, and supply activities;
- (j) 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 referred to in Article 27(1)(b) of the [recast of Regulation 714/2009 as proposed by COM(2016)861/2]; such assessment may include recommendations to amend those investment plans;
- (k) **]] assessing** the performance of the 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 **]],** and publish a national report every **]] 4** years, including recommendations **]]**;
- (l) **]]**
- (m) setting or approving standards and requirements for quality of service and 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, switching rates, disconnection rates, charges for and the execution of maintenance services, and complaints by household customers, as well as any distortion or restriction of competition, including 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 large non-household 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 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 these to the competition authorities, where appropriate;
- (t) ensuring 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 and customers and other market parties pursuant to [recast of Regulation 714/2009 as proposed by COM(2016)861/2;
  - (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 fulfil the criteria set out in Article 14 [].
  - (ya) monitoring the development of energy communities established in accordance with Article 16.**
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 competencies 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 the Agency 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 or any relevant legally binding decisions of the regulatory authority or of the Agency, or to propose that a competent court impose such penalties. This shall include 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 investigations and relevant powers of instructions for dispute settlement under Article 60 (2) and (3).
4. In addition to the duties conferred upon it under paragraph 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 paragraph 3 (d);
  - (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 in respect of any complaint submitted by either party pursuant to paragraph 11;
  - (c) without prejudice to the procedure under Article 44(2)(c), for the first ten-year network development plan, approve the investments planning and the multi-annual network development plan presented 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 17(2) of recast of Regulation 714/2009 as proposed by COM(2016)861/2].
5. 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 issue penalties in accordance with paragraph 3 (d) for discriminatory behaviour in favour of the vertically integrated undertaking;
  - (b) to monitor communications between the transmission system operator and the vertically integrated undertaking so as to ensure compliance of the transmission system operator with its obligations;
  - (c) to act as dispute settlement authority between the vertically integrated undertaking and the transmission system operator in respect of 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 justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article 50(4). Such justification shall, in particular, include evidence to the end 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 case of a persistent breach by the transmission system operator of its obligations under this Directive, in particular in case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking.
6. The regulatory authorities shall , except in cases where the Agency is competent to fix and approve the terms and conditions or methodologies for the implementation of network codes and guidelines under Chapter VII of [recast of Regulation 714/2009 as proposed by COM(2016)861/2] pursuant to Article 5(2) of [recast of Regulation 713/2009 as proposed by COM(2016)863/2] because of their coordinated nature, 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. The ancillary services shall be provided in a fair and non-discriminatory manner and be based on objective criteria; and
  - (c) access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.
7. The methodologies or the terms and conditions referred to in paragraph 6 shall be published.
8. With a view to increasing transparency in the market and provide to all interested parties all necessary information, decisions or proposals for a decision concerning transmission and distribution tariffs as referred in Article 60(3), regulatory authorities shall make available to market parties the detailed methodology and underlying costs used for the calculation of the relevant network tariffs, **subject to applicable rule on confidentiality**.
9. 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 national regulatory authorities. National regulatory authorities may request amendments to those rules.

## *Article 60*

### **Decisions and complaints**

1. Regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, including tariffs or methodologies referred to Article 59 , to ensure that they are proportionate and applied in a non-discriminatory manner, in line with Article 16 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2]. In the event of delay in the fixing of transmission and distribution tariffs, regulatory authorities shall have the power to fix or approve provisional transmission and distribution tariffs or methodologies and to decide on the appropriate compensatory measures if the final transmission and distribution tariffs or methodologies deviate from those provisional tariffs or methodologies.
2. Any party having a complaint against a transmission or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after 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, at the latest within two months, or a shorter time period as provided by Member States, following 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 Treaty, 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 regulators on cross-border issues**

1. Regulatory authorities shall closely consult and cooperate with each other, in particular within the Agency, and shall provide each other and the Agency with any information necessary for the fulfilment of their tasks under this Directive. In respect of 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 supply undertakings 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-wide 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. National 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 competencies.
5. The Commission is empowered to adopt **II implementing acts** in accordance with Article **II 68** to establish guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency.

**Duties and powers of regulatory authorities with respect to [] Regional Security Coordinators**

1. The regional regulatory authorities of the [] system operation region where a **Regional Security Coordinators** is established shall, in close coordination with each other:
  - (a) approve the [] proposal for the establishment of Regional Security Coordinators in accordance with Article 32(1) of Regulation (EU);
  - (b) []
  - (c) approve the cooperative decision-making process;
  - (d) [] deciding jointly with other regulatory authorities of a system operation region about possible additional tasks and additional decision-making powers to be assigned to the Regional Security Coordinators [];
  - (e) ensure its compliance with the obligations under this Directive and other relevant Union legislation, notably as regards cross-border issues;
  - (f) monitor the performance of [] **system coordination** and report annually to the Agency in this respect.
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 **Regional [] Security Coordinators**;

- (b) to carry out inspections, including unannounced inspections, at the premises of [] **Regional Security Coordinators**;
- (c) to issue joint binding decisions **relevant for the improvement of coordination** on [] **Regional Security Coordinators**.

*Article 63*

**Compliance with the *network codes and guidelines***

1. Any regulatory authority and the Commission may request the opinion of the Agency 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 [recast of Regulation 714/2009 as proposed by COM(2016)861/2] .
2. The Agency 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 from the date of receipt of the request.
3. Where the regulatory authority which has taken the decision does not comply with the Agency's opinion within four months from the date of receipt of that opinion, the Agency 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 [recast of Regulation 714/2009 as proposed by COM(2016)861/2] within two months from the date of that decision.



5. Where the Commission, within two months after having been informed by the Agency in accordance with paragraph 3, or by a regulatory authority in accordance with paragraph 4, or on its own initiative, within three months from 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 [recast of Regulation 714/2009 as proposed by COM(2016)861/2] , 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 the **network codes and** guidelines have not been complied with.
7. Where the Commission has not taken a decision to examine the case further or a final decision within the time-limits set in paragraphs 5 and 6 respectively, it shall be deemed not to have raised objections to the decision of the regulatory authority.
8. The regulatory authority shall comply with the Commission decision to withdraw their decision within a period of two months and shall inform the Commission accordingly.
9. The Commission is empowered to adopt **implementing** acts in accordance with Article **67** to establish 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 supply undertakings to keep at the disposal of the national authorities, including the national 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 2004/39/EC.
4. The provisions of this Article shall not create additional obligations towards the authorities referred to in paragraph 1 for entities falling within the scope of Directive 2004/39/EC.
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 2004/39/EC, 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 Treaty, notably 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 following 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 **II connected** systems, may apply for derogations from the relevant provisions of Chapters IV, V and VI as well as articles **II 7 and 8**; **small isolated systems may also apply for a derogation from articles 4, 5 and 6.** The Commission shall inform the Member States of those applications before taking a decision, taking into account respect for confidentiality. **The derogation shall be limited in time and subject to conditions aiming at increased competition and integration with the internal market and ensuring that they do not hamper the transition towards renewable energies.** That decision shall be published in the *Official Journal of the European Union*.
2. 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 Article 43 (1)(b), 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.

- 2a. Until 1 January 2025 or a later date set out in a decision pursuant to paragraph 1, Article 5 shall not apply to Cyprus.**

- 2b. Article 4 shall not apply to Malta for a period of eight years from the entry into force of this Directive, which may be extended for a further additional period, not exceeding eight years. The extension for a further additional period shall be made pursuant to a decision referred to in paragraph 1.**
- 2c. In respect of interconnectors to and from third countries completed before [PO: date of entry into force of this Directive], Member States may decide to derogate from Articles 9, 10, 11 and 32 and Article 41(6), (8) and (10) for the sections of such interconnectors between the border of Union jurisdiction and the first interconnection point, if and to the extent that in the absence of such derogation the owner of the interconnector would not be able to recover the residual value of the investment or if and to the extent that the derogation is required for reasons of security of electricity supply of a Member State directly linked to the need to continue the implementation of a cross-border regulatory arrangement governing the technical operation of the interconnector and the stability of the electricity systems, and provided that the derogation would not be detrimental to competition on or the effective functioning of the internal market in electricity in the Union, or the security of supply in the Union.**
- 2d. The derogation shall be limited up to the end of the period of recovery of the residual value of the investment or up to the end of the existing cross-border regulatory arrangement breach of which would pose a serious risk to the security of supply in the Member State and may be subject to conditions which contribute to the achievement of the above conditions. Where the interconnector in question is located in the territorial jurisdiction of more than one Member State, the Member State in the territorial jurisdiction of which the first interconnection point is located shall decide on a derogation for the interconnector. Member States shall publish any decision on a derogation in accordance with this paragraph within one year after the entry into force of this Directive.**

**2e. Paragraph 2c and 2d is not applicable to interconnectors completed before [PO: date of entry into force of this Directive] to and from third countries which apply Article 59 of the [recast Electricity Regulation].**

**2f. As regards interconnectors referred to in paragraph 2e, Member States may apply for exemptions pursuant to Article 59 of the [recast Electricity Regulation]**

#### Article 67

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#### 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 **¶ 5** of Regulation (EU) No 182/2011 shall apply.

#### Article 69

### **Reporting**

The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and the Council as an annex to the State of the Energy Union Report referred to in [Article 29 of Governance Regulation as proposed by COM (2016) 549].

*Article 70*

**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 2, 3, 5, 6(2), 9(2), 10(2), 11 to 24, 26, 29, 31 to 34, 36, 38(5), 40 42, 51, 54, 57 to 59, 61 to 63 and Annexes I to III by [ **18** months from entry into force]. They shall immediately communicate the text of those provisions to the Commission .

They shall apply those measures from **18** months from entry into force with the exception of Article 5(3) which they shall apply from [date of entry into force].

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 71*

**Repeal**

Directive 2009/72/EC is repealed with effect from [ 11 18 months from entry into force], without prejudice to the obligations of Member States relating to the time-limits for the transposition into national law and the dates of application of the Directive set out in Annex IV.

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 V.

**Article 71a**

**General Revision of the Directive**

**The Directive shall be subject to a general revision not later than by the end of 2025.**

*Article 72*

**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 73*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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