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LIMITE

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	EMD: IE comments (ST 15049/23)

Delegations will find in the annex the IE comments on the EMD (ST 15049/23).

IE comments on ST 15049/23

14/11/2023

Proposal for a Regulation of the European Parliament and of the council amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design

Preparation for the trilogue

Article 15a: Right to Energy Sharing

IE supports the proposed changes to this article.

IE would like clarity on the reason for change from “netted with” to “injected into the grid deducted from” in 15a.4.a, as it is assumed that the function of this article remains the same.

IE welcomes the revised 15a.6 as a measure which specifically protects vulnerable customers

IE welcomes the additional guidance from the Commission provided for by 15a.7

Article 4: Free choice of supplier

This is a red line issue for IE. IE notes that while it supports the intentions of the provision to ensure that all customers are free to have more than one electricity supply contract, flexibility is desirable in this instance as this has been flagged by the Irish DSO and utility regulator as requiring a large degree of difficult, technical work to implement, which would have to take place over a long period of time, due to the current structure/layout of the Irish energy market.

IE would like clarity on the wording “*Member States shall ensure that all customers are free to have more than one electricity supply contract [or energy sharing agreement]*”, as this line appears unclear in its meaning, and this line should not be used by Energy Suppliers/DSO's to avoid providing more than one supplier contract for customers.

Article 2, first paragraph, point (3)(b), amending provision, numbered paragraph (1)

Line 236: Fixed term fixed price contracts

IE welcomes the derogation in the draft agreement, noting that in relation to the proposed requirement on suppliers to offer fixed term fixed price contracts, IE position is that this should be a competitive matter for suppliers to offer, and be determined by a) consumer desire for such a product, b) and the suppliers ability to deliver a competitive fixed price contract. The availability of these contracts will give certainty to consumers but may also create upward pressure on prices, due to increased costs for suppliers.

Article 2, first paragraph, point (3)(d), amending provision, numbered paragraph (2)

Line 240: Market monitoring/impermissible termination fees

Ireland approves the Draft Agreement.

Article 2, first paragraph, point (4), amending provision, sixth paragraph

Line 258 : Supplier risk management :

IE supports the goal of ensuring NRAs have the legislative remit to effectively regulate the market.

IE notes some concerns arising from the new role of the regulator in monitoring supplier hedging practices, namely that this could lead to :

- Upward pressure on prices
- Barriers to entry in particular for smaller suppliers leading to reduced competition
- The requirement to establish a monitoring system

Performing stress tests on suppliers will require new processes to be developed other than what is currently in place. The Irish utility regulator does not currently have any remit over supplier hedging strategies as this is a commercial decision each individual supplier makes themselves.

IE believes that the inclusion of *(b) take all reasonable steps to limit their risk of supply failure;* is a red-line issue. This line reads as both vague and overly prescriptive, and runs the risk of the regulator encroaching upon decisions of a commercial matter taken by suppliers, as they operate in the liberal, competitive energy market.

Day ahead/intraday and forward markets, including peak shaving (Articles 7, 7a, 8 and 9 of Electricity Regulation 2019/943 on the internal market for electricity)

Article 7.1

The current management of market coupling and the day ahead and intraday markets is not fit for purpose. This has been recognised in all the work that has been done on the reform of CACM, which proposed to change from a system where all NEMOs operating across the EU coordinate with each other to operate the market systems and processes, to a single entity. The single entity is a far more sensible approach from a governance perspective and will ensure that NEMO interests don't come in the way of EU consumer interests, or indeed, national legal obligations (as occurred when the SEM first joined the coupled EU market, and we almost couldn't be accepted due to the market products we wanted to use). **We do not support removal of the single entity by the Parliament.**

Article 8 (1)

Line 113

IE is more comfortable with the longer term derogation but 2 or 3 years are both acceptable on top of the derogation to 2029. up until 2032 (based on the Council proposal) in case an impact assessment concluded that a premature shortening to 30' ahead of real time would have negative effects on system security or CO2 emissions. However, TSOs still would like to highlight that a flexible derogation deadline dependant on the results of the impact assessments would be a better solution for ensuring system security is not put at risk.

Article 9- Forward markets

Lines 117 to 130a

IE support the EP approach here to avoid a mandatory introduction of Virtual Hubs. Instead it is preferable to follow the stepwise approach via the Forward Capacity Allocation Guideline . We don't believe that the final text should pre-empt the outcome of an impact assessment that indicating the Virtual Hubs are a target model. The legislation should not introduce deadlines for the allocation of longer maturities (up to 3 years ahead) as this would contravene the Forward Capacity Allocation Guideline.

Accces tariffs; congestion income (transmission access guarantee, TAG); information and cooperation between Tranmission System Operators (TSOs) and Distribution System Operators (DSOs)

Article 18

Line 131 to 139

IE welcomes further improvements to Article 18 on Tariff Methodologies for Transmission System Operators and Distribution System Operators, in particular a) the reinforced reference to anticipatory network investments and to investment incentives; and b) not strictly mandating performance targets, but leaving their introduction to national regulators, depending on specificities of national regulatory regimes and on policy priorities. However, we consider the EP text on anticipatory investments too restrictive vis-à-vis future needs and use cases: as such, it should be simplified and aligned with the Council text.

Article 19

Line 144

IE support the amendments introduced by both the EP and Council aimed at clarifying the scope of application of compensations to offshore generators in offshore bidding zones connected via hybrid projects. In fact, an unclear or unrestricted application of such compensation would result in a

discriminatory and inefficient use of congestion income, ultimately affecting consumers tariffs and network investments. To ensure clarity on the scope of application, we welcome the inclusion of the references to current capacity calculation rules of Art. 16(8) of Regulation 2019/943; however, we call for the Council to align with the EP text by including in Art. 19(2)(c) also references to Regulation 2019/943 Art. 16(3) and 16(9), as they are an integral part of the whole approach. We also fully support the remaining EP text of paragraph 2(c) which clarifies how to calculate the total compensation on an annual basis and for each market time period.

Flexibility Provisions

Articles 19c to 19f

Lines 168 to 198

To ensure a timely implementation of the Regulation and a consistent definition of national targets, these assessments should align with existing and interrelated system studies and be based on the same input scenarios while building on current expertise and appropriate governance both at European and national level. In fact, the assessment of system flexibility and adequacy are inherently linked. Assessing one without considering the other may lead to an incorrect (over)estimation of needs and requirements to the detriment of consumers. To ensure this coherence, the responsibility for the assessments of Flexibility Needs should be aligned with the existing responsibilities for Adequacy Assessments

Assigning the responsibility for the development of national reports on flexibility needs should be left to the Member States, so that the most competent bodies will be appointed, as recognised in the Council proposal.

Power Purchase Agreements (PPAs) and related aspects.

On PPAs, it would be very useful if we could find a way of ensuring that the text of the final regulation clearly distinguishes between a PPA, and 'support'.

The PPAs text on 19a is ok as long as it stays voluntary.

IE would question the need for an EU wide PPA Platform and note the importance of taking into account wider system costs of PPAs and alignment with national support schemes as well as the importance of transparency and additionality in corporate contracting for renewables

State backed guarantee scheme

Noted that this is described as one of a number of 'may include' options, but we should be watchful that state backed guarantees for offtaker payment default don't become in any way mandatory or expected.

Support schemes for electricity from renewable sources

If 'shall endeavour' means we don't have to do this, then we can let this go. If its in any way mandatory, then what is meant by evaluation criteria? It doesn't seem to be defined anywhere in the Reg. If it means criteria for evaluation of bids (i.e. winner selection criteria), then this should be

consistent with the PRES 4th compromise text of art 20 of NZIA which allows member states discretion on using either pre-qualification criteria or winner selection criteria in applying the common NZIA sustainability and resilience criteria. In other words we don't want to forced to adopt any particular criteria for assessing winner selection, as price is our focus.