Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) (Text with EEA relevance)

REGULATION (EU) 2019/943 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 June 2019

on the internal market for electricity

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty 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[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Regulation (EC) No 714/2009 of the European Parliament and of the Council[(4)] has been substantially amended several times. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

(2) The Energy Union aims to provide final customers – household and business – with safe, secure, sustainable, competitive and affordable energy. Historically, the electricity system was dominated by vertically integrated, often publicly owned, monopolies with large centralised nuclear or fossil fuel power plants. The internal market for electricity, which has been progressively implemented since 1999, aims to deliver a real choice for all consumers in the Union new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices and higher standards of service, and to contribute to security of supply and sustainability. The internal market for electricity has increased competition, in particular at the wholesale level, and cross-zonal trade. It remains the foundation of an efficient energy market.

(3) The Union's energy system is in the middle of its most profound change in decades and the electricity market is at the heart of that change. The common goal of decarbonising the energy system creates new opportunities and challenges for market participants. At the same time, technological developments allow for new forms of consumer participation and cross-border cooperation.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) 2019/943 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) This Regulation establishes rules to ensure the functioning of the internal market for electricity and includes requirements related to the development of renewable forms of energy and environmental policy, in particular specific rules for certain types of renewable power-generating facilities, concerning balancing responsibility, dispatch and redispatching, as well as a threshold for CO_2 emissions of new generation capacity where such capacity is subject to temporary measures to ensure the necessary level of resource adequacy, namely, capacity mechanisms.

(5) Electricity from renewable sources from small power-generating facilities should be granted priority dispatch either via a specific priority order in the dispatching methodology or via legal or regulatory requirements for market operators to provide this electricity on the market. Priority dispatch which has been granted in the system operation services under the same economic conditions should be considered to comply with this Regulation. In any case, priority dispatch should be deemed to be compatible with the participation in the electricity market of power-generating facilities using renewable energy sources.

(6) State interventions, often designed in an uncoordinated manner, have led to increasing distortions of the wholesale electricity market, with negative consequences for investments and cross-border trade.

(7) In the past, electricity customers were purely passive, often buying electricity at regulated prices which had no direct relation to the market. In the future, customers need to be enabled to fully participate in the market on equal footing with other market participants and need to be empowered to manage their energy consumption. To integrate the growing share of renewable energy, the future electricity system should make use of all available sources of flexibility, particularly demand side solutions and energy storage, and should make use of digitalisation through the integration of innovative technologies with the electricity system. To achieve effective decarbonisation at the lowest cost, the future electricity system also needs to encourage energy efficiency. The completion of the internal energy market through the effective integration of renewable energy can drive investments in the long term and can contribute to delivering the objectives of the Energy Union and the 2030 climate and energy framework, as set out in the Commission communication of 22 January 2014 entitled ‘A policy framework for climate and energy in the period from 2020 to 2030’, and endorsed in the conclusions adopted by the European Council at its meeting on 23 and 24 October 2014.

(8) More market integration and the change towards a more volatile electricity production requires increased efforts to coordinate national energy policies with neighbours and to use the opportunities of cross-border electricity trade.

(9) Regulatory frameworks have developed, allowing electricity to be traded across the Union. That development has been supported by the adoption of several network codes and guidelines for the integration of the electricity markets. Those network codes and guidelines contain provisions on market rules, system operation and network connection. To ensure full transparency and increase legal certainty, the main principles of market functioning and capacity allocation in the balancing, intraday, day-ahead and

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forward market timeframes should also be adopted pursuant to the ordinary legislative procedure and incorporated in a Union legislative single act.

(10) Article 13 of Commission Regulation (EU) 2017/2195[(5)] establishes a process whereby transmission system operators are able to delegate all or part of their tasks to a third party. The delegating transmission system operators should remain responsible for ensuring compliance with this Regulation. Moreover, Member States should be able to assign tasks and obligations to a third party. Such assignment should be limited to tasks and obligations carried out at national level, such as imbalance settlement. The limitations on such assignment should not lead to unnecessary changes to existing national arrangements. However, transmission system operators should remain responsible for the tasks entrusted to them under Article 40 of Directive (EU) 2019/944 of the European Parliament and of the Council[(6)].

(11) With regard to balancing markets, efficient and non-distortive price formation in the procurement of balancing capacity and balancing energy requires that balancing capacity contracts do not set the price for balancing energy. This is without prejudice for the dispatching systems using an integrated scheduling process in accordance with Regulation (EU) 2017/2195.

(12) Articles 18, 30 and 32 of Regulation (EU) 2017/2195 establish that the pricing method for both standard and specific products for balancing energy should create positive incentives for market participants in keeping their own balance or helping to restore the system balance in their imbalance price area, thereby reducing system imbalances and costs to society. Such pricing approaches should strive for the economically efficient use of demand response and other balancing resources, subject to operational security limits.

(13) The integration of balancing energy markets should facilitate the efficient functioning of the intraday market in order to provide the possibility for market participants to balance themselves as closely as possible to real time, enabled by the balancing energy gate closure times provided for in Article 24 of Regulation (EU) 2017/2195. Only the imbalances remaining after the end of the intraday market should be balanced by transmission system operators in the balancing market. Article 53 of Regulation (EU) 2017/2195 also provides for the harmonisation of the imbalance settlement period at 15 minutes in the Union. That harmonisation is intended to support intraday trading and foster the development of a number of trading products with the same delivery windows.

(14) In order to enable transmission system operators to procure and use balancing capacity in an efficient, economic and market-based manner, there is a need to foster market integration. In that regard, Title IV of Regulation (EU) 2017/2195 establishes three methodologies through which transmission system operators are entitled to allocate cross-zonal capacity for the exchange of balancing capacity and the sharing of reserves, when supported on the basis of a cost-benefit analysis: the co-optimisation process, the market-based allocation process and the allocation based on an economic efficiency analysis. The co-optimisation allocation process is to be performed on a day-ahead basis. By contrast, it is possible to perform the market-based allocation process where

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the contracting is carried out not more than one week in advance of the provision of the balancing capacity and to perform the allocation based on an economic efficiency analysis where the contracting is done more than one week in advance of the provision of the balancing capacity, provided that the volumes allocated are limited and that an assessment is carried out annually. Once a methodology for the process of allocating cross-zonal capacity is approved by the relevant regulatory authorities, early application of that methodology by two or more transmission system operators could take place to allow them to gain experience and to allow for the smooth application of that methodology by more transmission system operators in the future. The application of such methodologies should nevertheless be harmonised by all transmission system operators in order to foster market integration.

(15) Title V of Regulation (EU) 2017/2195 established that the general objective of imbalance settlement is to ensure that balance responsible parties keep their own balance or help restore the system balance in an efficient way and to provide incentives to market participants for keeping or helping to restore the system balance. To make balancing markets and the overall energy system fit for the integration of the increasing share of variable renewable energy, imbalance prices should reflect the real-time value of energy. All market participants should be financially responsible for the imbalances they cause in the system, representing the difference between the allocated volume and the final position in the market. For demand response aggregators, the allocated volume consists of the volume of energy physically activated by the participating customers' load, based on a defined measurement and baseline methodology.

(16) Commission Regulation (EU) 2015/1222[(7)] sets out detailed guidelines on cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets, including the requirements for the establishment of common methodologies for determining the volumes of capacity simultaneously available between bidding zones, criteria to assess efficiency and a review process for defining bidding zones. Articles 32 and 34 of Regulation (EU) 2015/1222 set out rules on review of bidding zone configuration, Articles 41 and 54 thereof set out harmonised limits on maximum and minimum clearing prices for day-ahead and intraday timeframes, Article 59 thereof sets out rules on intraday cross-zonal gate closure times, whereas Article 74 thereof sets out rules on redispatching and countertrading cost sharing methodologies.

(17) Commission Regulation (EU) 2016/1719[(8)] sets out detailed rules on cross-zonal capacity allocation in the forward markets, on the establishment of a common methodology to determine long-term cross-zonal capacity, on the establishment of a single allocation platform at European level offering long-term transmission rights, and on the possibility to return long-term transmission rights for subsequent forward capacity allocation or to transfer long-term transmission rights between market participants. Article 30 of Regulation (EU) 2016/1719 sets out rules on forward hedging products.

(18) Commission Regulation (EU) 2016/631[(9)] sets out the requirements for grid connection of power-generating facilities to the interconnected system, in particular with respect to synchronous power-generating modules, power park modules and offshore power

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park modules. Those requirements help to ensure fair conditions of competition in the internal electricity market, to ensure system security and the integration of electricity from renewable sources, and to facilitate Union-wide trade in electricity. Articles 66 and 67 of Regulation (EU) 2016/631 set out rules for emerging technologies in electricity generation.

(19) Bidding zones reflecting supply and demand distribution are a cornerstone of market-based electricity trading and are a prerequisite for reaching the full potential of capacity allocation methods including the flow-based approach. Bidding zones therefore should be defined in a manner to ensure market liquidity, efficient congestion management and overall market efficiency. When a review of an existing bidding zone configuration is launched by a single regulatory authority or transmission system operator with the approval of its competent regulatory authority, for the bidding zones inside the transmission system operator's control area, if the bidding zone configuration has negligible impact on neighbouring transmission system operators' control areas, including interconnectors, and the review of bidding zone configuration is necessary to improve efficiency, to maximise cross-border trading opportunities or to maintain operational security, the transmission system operator in the relevant control area and the competent regulatory authority should be, respectively, the only transmission system operator and the only regulatory authority participating in the review. The relevant transmission system operator and the competent regulatory authority should give the neighbouring transmission system operators prior notice of the review and the results of the review should be published. It should be possible to launch a regional bidding zone review following the technical report on congestion in line with Article 14 of this Regulation or in accordance with existing procedures laid down in Regulation (EU) 2015/1222.

(20) When regional coordination centres carry out a capacity calculation, they should maximise capacity considering non-costly remedial actions and respecting the operational security limits of transmission system operators in the Capacity Calculation Region. Where the calculation does not result in capacity equal to or above the minimum capacities set out in this Regulation, regional coordination centres should consider all available costly remedial actions to further increase capacity up to the minimum capacities, including redispatching potential within and between the capacity calculation regions, while respecting the operational security limits of transmission system operators of the Capacity Calculation Regions. Transmission system operators should report accurately and transparently on all aspects of capacity calculation in accordance with this Regulation and should ensure that all information sent to regional coordination centres is accurate and fit for purpose.

(21) When performing capacity calculation, regional coordination centres should calculate cross-zonal capacities using data from transmission system operators which respects the operational security limits of the transmission system operators' respective control areas. Transmission system operators should be able to deviate from coordinated capacity calculation where its implementation would result in a violation of the operational security limits of network elements in their control area. Those deviations should be carefully monitored and transparently reported to prevent abuse and ensure