Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) (Text with EEA relevance)

DIRECTIVE (EU) 2019/944 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 June 2019

on common rules for the internal market for electricity and amending Directive 2012/27/EU

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social 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) A number of amendments are to be made to Directive 2009/72/EC of the European Parliament and of the Council[(4)]. In the interests of clarity, that Directive should be recast.

(2) The internal market for electricity, which has been progressively implemented throughout the Union since 1999, aims, by organising competitive electricity markets across country borders, to deliver real choice for all Union final customers, be they citizens or businesses, new business opportunities, competitive prices, efficient investment signals and higher standards of service, and to contribute to security of supply and sustainability.

(3) Directive 2003/54/EC of the European Parliament and of the Council[(5)] and Directive 2009/72/EC have made a significant contribution towards the creation of the internal market for electricity. However, the Union's energy system is in the middle of a profound change. The common goal of decarbonising the energy system creates new opportunities and challenges for market participants. At the same time, technological developments allow for new forms of consumer participation and cross-

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

border cooperation. There is a need to adapt the Union market rules to a new market reality.

(4) The Commission Communication of 25 February 2015, entitled 'A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy', sets out a vision of an Energy Union with citizens at its core, where citizens take ownership of the energy transition, benefit from new technologies to reduce their bills and participate actively in the market, and where vulnerable consumers are protected.

(5) The Commission Communication of 15 July 2015, entitled 'Delivering a New Deal for Energy Consumers', put forward the Commission's vision for a retail market that better serves energy consumers, including by better linking wholesale and retail markets. By taking advantage of new technology, new and innovative energy service companies should enable all consumers to fully participate in the energy transition, managing their consumption to deliver energy efficient solutions which save them money and contribute to the overall reduction of energy consumption.

(6) The Commission Communication of 15 July 2015, entitled 'Launching the public consultation process on a new energy market design', highlighted that the move away from generation in large central generating installations towards decentralised production of electricity from renewable sources and towards decarbonised markets requires adapting the current rules of electricity trading and changing the existing market roles. The Communication underlined the need to organise electricity markets in a more flexible manner and to fully integrate all market players – including producers of renewable energy, new energy service providers, energy storage and flexible demand. It is equally important for the Union to invest urgently in interconnection at Union level for the transfer of energy through high-voltage electricity transmission systems.

(7) With a view to creating an internal market for electricity, Member States should foster the integration of their national markets and cooperation among system operators at Union and regional level, and incorporate isolated systems that form electricity islands that persist in the Union.

(8) In addition to addressing new challenges, this Directive seeks to address the persisting obstacles to the completion of the internal market for electricity. The refined regulatory framework needs to contribute to overcoming the current problems of fragmented national markets which are still often determined by a high degree of regulatory interventions. Such interventions have led to obstacles to the supply of electricity on equal terms as well as higher costs in comparison to solutions based on cross-border cooperation and market-based principles.

(9) The Union would most effectively meet its renewable energy targets through the creation of a market framework that rewards flexibility and innovation. A well-functioning electricity market design is the key factor enabling the uptake of renewable energy.

(10) Consumers have an essential role to play in achieving the flexibility necessary to adapt the electricity system to variable and distributed renewable electricity generation. Technological progress in grid management and the generation of renewable electricity

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

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

(11) The freedoms which the Treaty on the Functioning of the European Union (TFEU) guarantees the citizens of the Union — inter alia, the free movement of goods, the freedom of establishment and the freedom to provide services — are achievable only in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

(12) Promoting fair competition and easy access for different suppliers is of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market for electricity. Nonetheless, it is possible that market failure persists in peripheral small electricity systems and in systems not connected with other Member States, where electricity prices fail to provide the right signal to drive investment, and therefore requires specific solutions to ensure an adequate level of security of supply.

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

(14) Member States should ensure that no undue barriers exist within the internal market for electricity as regards market entry, operation and exit. At the same time, it should be clarified that that obligation is without prejudice to the competence that Member States retain in relation to third countries. That clarification should not be interpreted as enabling a Member State to exercise the exclusive competence of the Union. It should also be clarified that market participants from third countries who operate within the internal market are to comply with the applicable Union and national law in the same manner as other market participants.

(15) Market rules allow for the entry and exit of producers and suppliers based on their assessment of the economic and financial viability of their operations. That principle is not incompatible with the possibility for Member States to impose on undertakings operating in the electricity sector public service obligations in the general economic interest in accordance with the Treaties, in particular with Article 106 TFEU, and with this Directive and Regulation (EU) 2019/943 of the European Parliament and of the Council[6].

(16) The European Council of 23 and 24 October 2014 stated in its conclusions that the Commission, supported by the Member States, is to take urgent measures in order to ensure the achievement of a minimum target of 10 % of existing electricity

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

interconnections, as a matter of urgency, and no later than 2020, at least for Member States which have not yet attained a minimum level of integration in the internal energy market, which are the Baltic States, Portugal and Spain, and for Member States which constitute their main point of access to the internal energy market. It further stated that the Commission is also to report regularly to the European Council with the objective of arriving at a 15 % target by 2030.

(17) Sufficient physical interconnection with neighbouring countries is important to enable Member States and neighbouring countries to benefit from the positive effects of the internal market as stressed in the Commission Communication of 23 November 2017, entitled ‘Communication on strengthening Europe's energy networks’, and as reflected in Member States' integrated national energy and climate plans under Regulation (EU) 2018/1999 of the European Parliament and of the Council[7].

(18) Electricity markets differ from other markets such as those for natural gas, for example because they involve the trading in a commodity which cannot currently be easily stored and which is produced using a large variety of generating installations, including through distributed generation. This has been reflected in the different approaches to the regulatory treatment of interconnectors in the electricity and gas sectors. The integration of electricity markets requires a high degree of cooperation among system operators, market participants and regulatory authorities, in particular where electricity is traded via market coupling.

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

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

(21) Different types of market organisation exist in the internal market for electricity. The measures that Member States could take in order to ensure a level playing field should be based on overriding requirements of general interest. The Commission should be consulted on the compatibility of those measures with the TFEU and with other Union law.

(22) Member States should maintain wide discretion to impose public service obligations on electricity undertakings in pursuing objectives of general economic interest. Member States should ensure that household customers and, where Member States consider it to be appropriate, small enterprises, enjoy the right to be supplied with electricity of a specified quality at clearly comparable, transparent and competitive prices. Nevertheless, public service obligations in the form of price setting for the supply of electricity constitute a fundamentally distortive measure that often leads to the accumulation of tariff deficits, the limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, lower levels of consumer engagement and satisfaction, and the restriction of competition, as well as to there being fewer innovative products and services on the market.

Consequently, Member States should apply other policy tools, in particular targeted social policy measures, to safeguard the affordability of electricity supply to their citizens. Public interventions in price setting for the supply of electricity should be carried out only as public service obligations and should be subject to specific conditions set out in this Directive. A fully liberalised, well-functioning retail electricity market would stimulate price and non-price competition among existing suppliers and provide incentives to new market entrants, thereby improving consumer choice and satisfaction.

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

(24) The entitlement of beneficiaries of regulated prices to receive individual smart meters without extra costs should not prevent Member States from modifying the functionality of smart metering systems where smart meter infrastructure does not exist because the cost-benefit assessment regarding the deployment of smart metering systems was negative.

(25) Public interventions in price setting for the supply of electricity should not lead to direct cross-subsidisation between different categories of customer. According to that principle, price systems must not explicitly make certain categories of customer bear the cost of price interventions that affect other categories of customer. For example, a price system, in which the cost is borne by suppliers or other operators in a non-discriminatory manner, should not be considered to be direct cross-subsidisation.

(26) In order to ensure the maintenance of the high standards of public service in the Union, all measures taken by Member States to achieve the objective of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives