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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)

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Delegations will find in annex a further revised text of the above draft Directive, amended in light of the discussions in the Energy Working Party and the written comments received.

Changes compared to the previous version (doc.10691/17) are indicated in **bold underlined text**; deletions are marked with [~~strike through text~~]. Re-introduced text from the Commission proposal is marked non-bold underlined.

Changes compared to the Commission proposal are indicated in **bold text**; deletions are marked with [].

All delegations have a general scrutiny reservation on the text.

Proposal for a

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

~~concerning~~  on  common rules for the internal market in electricity ~~and repealing~~  
~~Directive 2003/54/EC~~

(recast)

(Text with EEA relevance)

↓ 2009/72/EC (adapted)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing the European Community~~  on the Functioning of the European Union  , and in particular ~~Article 47(2) and Article 55 and 95~~  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>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with ~~the procedure laid down in Article 251 of the Treaty~~  the ordinary legislative procedure  ,

<sup>1</sup> OJ C 211, 19.8.2008, p. 23.

<sup>2</sup> OJ C 172, 5.7.2008, p. 55.

Whereas:

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↓ new

- (1) A number of amendments are to be made to Directive 2009/72/EC of the European Parliament and of the Council<sup>1</sup>. In the interests of clarity, that Directive should be recast.
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↓ 2009/72/EC (adapted) recital 1

⇒ new

- (2) The internal market in electricity, which has been progressively implemented throughout the ~~Community~~ ☒ 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 ~~and more cross-border trade, so as to achieve efficiency gains,~~ competitive prices, ⇒ efficient investment signals, ⇐ ~~and~~ higher standards of service, and to contribute to security of supply and sustainability.

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<sup>1</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).

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↓ 2009/72/EC (adapted) recital 2

⇒ new

- (3) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 ~~concerning common rules for the internal market in electricity~~<sup>1</sup> ⇒ and Directive 2009/72/EC of the European Parliament and of the Council ⇐ ~~has~~ 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 decarbonise 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 ⇐.

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↓ new

- (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>1</sup> ~~OJ L 176, 15.7.2003, p. 37-56~~

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↓ new

- (5) The Communication from the Commission of 15 July 2015 'Delivering a new deal for energy consumers'<sup>1</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.

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↓ new

- (6) The Communication from the Commission of 15 July 2015 'Launching the public consultation process on a new energy market design'<sup>2</sup> highlighted that the move away from generation in large central power plants towards de-centralized production from renewable energy sources and decarbonized markets 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.

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<sup>1</sup> COM (2015) 339 final of 15.7.2015.

<sup>2</sup> COM (2015) 340 final of 15.7.2015.

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↓ new

- (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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↓ new

- (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.

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↓ 2009/72/EC recital 3

- (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.

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↓ 2009/72/EC recital 57

- (10) Promoting fair competition and easy access for different suppliers ~~and fostering capacity for new electricity generation~~ 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.

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↓ 2009/72/EC recital 8

⇒ new

- (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. ⇐

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↓ 2009/72/EC recital 60

- (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.

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↓ 2009/72/EC recital 56

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

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↓ 2009/72/EC recital 22 (adapted)

- (14) ~~Under this Directive~~ Different types of market organisation ~~will~~ 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 ~~Community~~  Union  law.



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↓ new

(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 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 ~~other competent~~ competition authorities ~~to achieve effective competition~~ have proven ineffective. This would disproportionately affect households, and in particular, vulnerable consumers ~~and energy poor~~ who typically use a higher share of their disposable income on energy bills, compared to higher income consumers. Therefore, ~~these~~ households and in particular vulnerable consumers may be in need of additional temporary protection. ~~Member States applying~~ 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 ~~strive to achieve effective competition, mitigate distortive effects on retail market functioning and prevent~~ 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 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 price contracts, they should be directly and regularly informed of the offers and savings available on the competitive market, in particular dynamic price contracts, and be provided with assistance to engage with and benefit from market based offers.

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↓ 2009/72/EC recital 45 (adapted)

- (16) ~~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 reasonable prices.~~ In order to ensure the maintenance of the high standards of public service in the ~~⊗~~ Union ~~⊗~~ Community, 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. ~~Member States should take the necessary measures to protect vulnerable 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 specific measures relating to the payment of electricity bills, or more general measures taken in the social security system. 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.~~

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↓ 2009/72/EC recital 47

- (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.

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↓ 2009/72/EC recital 48 (adapted)

- (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 ~~Community~~  Union  tools. Such tools may include liability mechanisms to guarantee the necessary investment.

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↓ 2009/72/EC recital 49 (adapted)

- (19) To the extent to which measures taken by Member States to fulfil public service obligations constitute State aid under Article ~~87(1)~~  107(1)  of the Treaty, there is an obligation under Article ~~88(3)~~  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.**

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↓ 2009/72/EC recital 52 (adapted)

⇒ new

- (20) Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. The Commission ~~should establish~~ ☒ has established ☒, after consulting relevant stakeholders including Member States, national regulatory authorities, consumer organisations and electricity undertakings, an ~~accessible, user-friendly~~ energy consumer checklist providing consumers with practical information about their rights. That checklist should be ⇒ maintained up to date ⇐ provided to all consumers and ~~should be~~ made publicly available.
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↓ new

- (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.

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↓ new

- (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.

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↓ new

- (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 the information given on such tools be trustworthy, impartial and transparent.

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↓ 2009/72/EC recital 54

- (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. ~~[] Electricity undertakings~~ **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 for independent aggregation while respecting the general principles as laid out in this Directive.** Transparent and fair rules should be established to also allow independent aggregators to fulfil this role. Products should be defined on all organised 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>1</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.
- (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 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.

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<sup>1</sup> SWD(2016) 244 final



(30) Distributed energy technologies and consumer empowerment have made community energy and energy cooperatives 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. [ ] Energy communities should be allowed to operate on the market on a level-playing field without distorting competition. 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.

(31) Energy bills [~~and annual statements~~] **of billing information** 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, [~~considering that~~] 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 [~~and annual statements~~] billing information clearer and easier to understand, as well as to ensure that bills and billing information [~~contain all the~~] 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 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>x</sup> should be updated, streamlined and moved to Directive 2009/72/EC, where they fit more coherently. ~~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.~~

<sup>x</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).

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↓ 2009/72/EC recital 27

- (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.

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↓ new

- (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.

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↓ 2009/72/EC recital 55

⇒ new

- (34) ⇒ When it comes to deciding at national level on the smart metering deployment ⇐, it should be possible to base ⇒ this ⇐ ~~the introduction of intelligent metering systems~~ 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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↓ new

- (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.

↓ 2009/72/EC recital 50 (adapted)

⇒ new

- (37) ~~The public service requirements, including as regards the universal service, and the common minimum standards that follow from them need to be further strengthened to make sure that all consumers, especially vulnerable ones, are able to benefit from competition and fair prices. The public service requirements should be defined at national level, taking into account national circumstances; Community law should, however, be respected by the Member States. The citizens of the Union and, where Member States deem it appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply, and reasonable prices.~~ 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 ⇐ ~~reflect the likely consumption of electricity and~~ 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 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services<sup>1</sup>~~ ⇨ Directive 2012/27/EU of the European Parliament and of the Council<sup>2</sup> ⇨ will help consumers to reduce their energy costs.

<sup>1</sup> ~~OJ L 114, 27.4.2006, p. 64.~~

<sup>2</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).

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↓ new

- (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.

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↓ 2009/72/EC recital 45 (adapted)

⇒ new

- (39) ~~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 reasonable prices. In order to ensure the maintenance of the high standards of public service in the Community, 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.~~ 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 ⇐ specific policy measures relating to the payment of electricity bills, or more general measures taken in the social security system ⇒ 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.

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↓ new

(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.

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↓ 2009/72/EC recital 53 (adapted)

⇒ new

(41) ~~Energy poverty is a growing problem in the Community.~~ 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 energy poverty ⇒ this problem ⇐, aiming at decreasing the number of people suffering such situation. ⇒ Low income, high energy expenditure, and poor energy efficiency of homes are 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.

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↓ new

(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.



- (43) Non-discriminatory access to the distribution network determines downstream access to customers at retail level. ~~The scope for discrimination as regards third party access and investment, however, is less significant at distribution level than at transmission level where congestion and the influence of generation or supply interests are generally greater than at distribution level. Moreover, legal and functional unbundling of distribution system operators was required, pursuant to Directive 2003/54/EC, only from 1 July 2007 and its effects on the internal market in electricity still need to be evaluated. The rules on legal and functional unbundling currently in place can lead to effective unbundling provided they are more clearly defined, properly implemented and closely monitored.~~ 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.

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↓ 2009/72/EC recital 8

- (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.

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↓ 2009/72/EC recital 9

- (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>1</sup> referred to ownership unbundling at transmission level as the most effective tool ~~by which~~ 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>1</sup> OJ C 175 E, 10.7.2008, p.206.

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↓ 2009/72/EC recital 12

- (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.

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↓ 2009/72/EC recital 14

- (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.

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↓ 2009/72/EC recital 15

- (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.

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↓ 2009/72/EC recital 16

- (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.

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↓ 2009/72/EC (adapted) recital 17

- (52) Where, on 3 September 2009, an undertaking owning a transmission system ~~is~~ was ~~not~~ ~~is~~ 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.

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↓ 2009/72/EC recital 18

- (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. ~~The independent transmission operator model of effective unbundling is in line with the requirements laid down by the European Council at its meeting on 8 and 9 March 2007.~~

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↓ 2009/72/EC recital 21

- (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.

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↓ 2009/72/EC recital 23

- (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.

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↓ 2009/72/EC (adapted) recital 24

- (57) Fully effective separation of network activities from supply and generation activities should apply throughout the ~~Community~~ Union to both ~~Community~~ Union and non-~~Community~~ Union undertakings. To ensure that network activities and supply and generation activities throughout the ~~Community~~ 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 ~~Community~~ 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 ~~Community~~ Union, and solidarity and energy security within the ~~Community~~ 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.

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↓ 2009/72/EC recital 31

- (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.



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↓ 2009/72/EC recital 34

- (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.

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↓ 2009/72/EC recital 36

- (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.

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↓ 2009/72/EC recital 37 (adapted)

→<sub>1</sub> 2009/72/EC recital 38

- (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. →<sub>1</sub> ☒ To this end ☒ ~~Moreover~~, regulatory authorities ☒ should be able to ☒ ~~have the power~~ 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. ~~The establishment of virtual power plants — electricity release programmes whereby electricity undertakings are obliged to sell or to make available a certain volume of electricity or to grant access to part of their generation capacity to interested suppliers for a certain period of time — is one of the possible measures that can be used to promote effective competition and ensure the proper functioning of the market. 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 Community 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.~~

- (62) ~~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. 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. The establishment of virtual power plants — electricity release programmes whereby electricity undertakings are obliged to sell or to make available a certain volume of electricity or to grant access to part of their generation capacity to interested suppliers for a certain period of time — is one of the possible measures that can be used to promote effective competition and ensure the proper functioning of the market. 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 Community  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.~~

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↓ 2009/72/EC recital 63

⇒ new

- (63) Under [recast of Regulation 714/2009 as proposed by COM(2016)861/2] ~~Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity <sup>(40)</sup>~~, 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.
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↓ new

- (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.

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↓ 2009/72/EC recital 62 (adapted)

- (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 ~~Community~~ ☒ Union ☒ level, the ~~Community~~ ☒ 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.

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↓ 2009/72/EC recital 68

- (67) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union<sup>5</sup>.

- (68) In order to provide the minimum degree of harmonisation required to achieve the aim of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to establish guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency for the Cooperation of Energy Regulators (the 'Agency') and setting out the details of the procedure. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>1</sup>. In particular, to ensure equal participation in the preparation of [delegated acts], the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of the [delegated acts].
- (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>2</sup>.

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<sup>1</sup> OJ L 123, 12.5.2016, p. 1.

<sup>2</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).

(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>1</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.

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↓ new

(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.

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<sup>1</sup> OJ C 369, 17.12.2011, p. 14.

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↓ 2009/72/EC recital 67

~~Given the scope of the amendments made to Directive 2003/54/EC herein, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast by bringing them all together in a single text in a new Directive.~~

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↓ 2009/72/EC recital 5

~~A secure supply of electricity is of vital importance for the development of European society, the implementation of a sustainable climate change policy, and the fostering of competitiveness within the internal market. To that end, cross border interconnections should be further developed in order to secure the supply of all energy sources at the most competitive prices to consumers and industry within the Community.~~

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↓ 2009/72/EC recital 59

~~The development of a true internal market in electricity, through a network connected across the Community, should be one of the main goals of this Directive and regulatory issues on cross border interconnections and regional markets should, therefore, be one of the main tasks of the regulatory authorities, in close cooperation with the Agency where relevant.~~



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↓ 2009/72/EC recital 7

~~The Communication of the Commission of 10 January 2007 entitled ‘An Energy Policy for Europe’ highlighted the importance of completing the internal market in electricity and of creating a level playing field for all electricity undertakings established in the Community. The Communications of the Commission of 10 January 2007 entitled ‘Prospects for the internal gas and electricity market’ and ‘Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)’ showed that the present rules and measures do not provide the necessary framework for achieving the objective of a well-functioning internal market.~~

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↓ 2009/72/EC recital 4

~~However, at present, there are obstacles to the sale of electricity on equal terms and without discrimination or disadvantages in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist.~~

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↓ 2009/72/EC recital 41

~~Member States or, where a Member State has so provided, the regulatory authority, should encourage the development of interruptible supply contracts.~~

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↓ 2009/72/EC recital 6

~~A well functioning internal market in electricity should provide producers with the appropriate incentives for investing in new power generation, including in electricity from renewable energy sources, paying special attention to the most isolated countries and regions in the Community's energy market. A well functioning market should also provide consumers with adequate measures to promote the more efficient use of energy for which a secure supply of energy is a precondition.~~

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↓ 2009/72/EC recital 32

~~Further measures should be taken in order to ensure transparent and non-discriminatory tariffs for access to networks. Those tariffs should be applicable to all system users on a non-discriminatory basis.~~

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↓ 2009/72/EC recital 20

~~In order to develop competition in the internal market in electricity, large non-household customers should be able to choose their suppliers and enter into contracts with several suppliers to secure their electricity requirements. Such customers should be protected against exclusivity clauses the effect of which is to exclude competing or complementary offers.~~

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↓ 2009/72/EC recital 51

~~Consumer interests should be at the heart of this Directive and quality of service should be a central responsibility of electricity undertakings. Existing rights of consumers need to be strengthened and guaranteed, and should include greater transparency. Consumer protection should ensure that all consumers in the wider remit of the Community benefit from a competitive market. Consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities.~~

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↓ 2009/72/EC recital 29

~~To avoid imposing a disproportionate financial and administrative burden on small distribution system operators, Member States should be able, where necessary, to exempt the undertakings concerned from the legal distribution unbundling requirements.~~

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↓ 2009/72/EC recital 28

~~In the case of small systems it may be necessary that the provision of ancillary services is ensured by transmission system operators interconnected with small systems.~~

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↓ 2009/72/EC recital 10

~~The rules on legal and functional unbundling as provided for in Directive 2003/54/EC have not, however, led to effective unbundling of the transmission system operators. At its meeting on 8 and 9 March 2007, the European Council therefore invited the Commission to develop legislative proposals for the ‘effective separation of supply and generation activities from network operations’.~~

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↓ 2009/72/EC recital 13

~~The definition of the term ‘control’ is taken from Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)<sup>1</sup>.~~

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↓ 2009/72/EC recital 43

~~Nearly all Member States have chosen to ensure competition in the electricity generation market through a transparent authorisation procedure. However, Member States should ensure the possibility to contribute to security of supply through the launching of a tendering procedure or an equivalent procedure in the event that sufficient electricity generation capacity is not built on the basis of the authorisation procedure. Member States should have the possibility, in the interests of environmental protection and the promotion of new infant technologies, of tendering for new capacity on the basis of published criteria. Such new capacity includes, inter alia, electricity from renewable energy sources and combined heat and power.~~

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1

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↓ 2009/72/EC recital 33

~~Directive 2003/54/EC introduced a requirement for Member States to establish regulators with specific competences. However, experience shows that the effectiveness of regulation is frequently hampered through a lack of independence of regulators from government, and insufficient powers and discretion. For that reason, at its meeting on 8 and 9 March 2007, the European Council invited the Commission to develop legislative proposals providing for further harmonisation of the powers and strengthening of the independence of national energy regulators. It should be possible for those national regulatory authorities to cover both the electricity and the gas sectors.~~

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↓ 2009/72/EC recital 38

~~Any harmonisation of the powers of national regulatory authorities should include the powers to provide incentives to electricity undertakings, and to impose effective, proportionate and dissuasive penalties on electricity undertakings or to propose that a competent court impose such penalties. Moreover, regulatory authorities should have the power to request relevant information from electricity undertakings, make appropriate and sufficient investigations and settle disputes.~~

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↓ 2009/72/EC recital 61

~~Regulatory authorities should also provide information on the market to permit the Commission to exercise its role of observing and monitoring the internal market in electricity and its short, medium and long-term evolution, including aspects such as generation capacity, different sources of electricity generation, transmission and distribution infrastructure, quality of service, cross-border trade, congestion management, investments, wholesale and consumer prices, market liquidity and environmental and efficiency improvements. National regulatory authorities should report to the competition authorities and the Commission those Member States in which prices impair competition and proper functioning of the market.~~

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↓ 2009/72/EC recital 42

~~All Community industry and commerce, including small and medium-sized enterprises, and all citizens of the Union that enjoy the economic benefits of the internal market should also be able to enjoy high levels of consumer protection, and in particular household customers and, where Member States deem it appropriate, small enterprises should also be able to enjoy public service guarantees, in particular with regard to security of supply and reasonable tariffs, for reasons of fairness, competitiveness and, indirectly, to create employment. Those customers should also have access to choice, fairness, representation and dispute settlement mechanisms.~~

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↓ 2009/72/EC recital 45

~~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 reasonable prices. In order to ensure the maintenance of the high standards of public service in the Community, 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. Member States should take the necessary measures to protect vulnerable 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 specific measures relating to the payment of electricity bills, or more general measures taken in the social security system. 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.~~

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↓ 2009/72/EC recital 46

~~Respect for the public service requirements is a fundamental requirement of this Directive, and it is important that common minimum standards, respected by all Member States, are specified in this Directive, which take into account the objectives of consumer protection, security of supply, environmental protection and equivalent levels of competition in all Member States. It is important that the public service requirements can be interpreted on a national basis, taking into account national circumstances and subject to the respect of Community law.~~

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↓ 2009/72/EC recital 50

~~The public service requirements, including as regards the universal service, and the common minimum standards that follow from them need to be further strengthened to make sure that all consumers, especially vulnerable ones, are able to benefit from competition and fair prices. The public service requirements should be defined at national level, taking into account national circumstances; Community law should, however, be respected by the Member States. The citizens of the Union and, where Member States deem it appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply, and reasonable prices. 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 reflect the likely consumption of electricity and 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 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services<sup>1</sup> will help consumers to reduce their energy costs.~~

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↓ 2009/72/EC recital 64 and 65

~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>2</sup>.~~

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<sup>1</sup> OJ L 114, 27.4.2006, p. 64.

<sup>2</sup> OJ L 184, 17.7.1999, p. 23.



~~In particular, the Commission should be empowered to adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aim of this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.~~

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↓ 2009/72/EC recital 66

~~In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>1</sup> Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.~~

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<sup>1</sup> ~~OJ C 321, 31.12.2003, p. 1~~

~~The security of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the internal market in electricity and the integration of the isolated electricity markets of Member States. Electricity can reach the citizens of the Union only through the network. Functioning electricity markets and, in particular, the networks and other assets associated with electricity supply are essential for public security, for the competitiveness of the economy and for the well-being of the citizens of the Union. Persons from third countries should therefore be allowed to control a transmission system or a transmission system operator only if they comply with the requirements of effective separation that apply inside the Community. Without prejudice to the international obligations of the Community, the Community considers that the electricity transmission system sector is of high importance to the Community and therefore additional safeguards are necessary regarding the preservation of the security of supply of energy to the Community to avoid any threats to public order and public security in the Community and the welfare of the citizens of the Union. The security of supply of energy to the Community requires, in particular, an assessment of the independence of network operation, the level of the Community's and individual Member States' dependence on energy supply from third countries, and the treatment of both domestic and foreign trade and investment in energy in a particular third country. Security of supply should therefore be assessed in the light of the factual circumstances of each case as well as the rights and obligations arising under international law, in particular the international agreements between the Community and the third country concerned. Where appropriate the Commission is encouraged to submit recommendations to negotiate relevant agreements with third countries addressing the security of supply of energy to the Community or to include the necessary issues in other negotiations with those third countries.~~

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↓ 2009/72/EC recital 35

~~In order to ensure effective market access for all market players, including new entrants, non-discriminatory and cost-reflective balancing mechanisms are necessary. As soon as the electricity market is sufficiently liquid, this should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of electricity, needed in the framework of balancing requirements. In the absence of such a liquid market, national regulatory authorities should play an active role to ensure that balancing tariffs are non-discriminatory and cost-reflective. At the same time, appropriate incentives should be provided to balance the in-put and off-take of electricity and not to endanger the system. Transmission system operators should facilitate participation of final customers and final customers' aggregators in reserve and balancing markets.~~

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↓ 2009/72/EC recital 39 and 40

~~The internal market in electricity suffers from a lack of liquidity and transparency hindering the efficient allocation of resources, risk hedging and new entry. There is a need for enhancement of competition and security of supply through facilitated integration of new power plants into the electricity network in all Member States, in particular encouraging new market entrants. Trust in the market, its liquidity and the number of market participants needs to increase, and, therefore, regulatory oversight of undertakings active in the supply of electricity needs to be increased. Such requirements should be without prejudice to, and compatible with, existing Community law in relation to the financial markets. Energy regulators and financial market regulators need to cooperate in order to enable each other to have an overview over the markets concerned.~~

~~Prior to the adoption by the Commission of Guidelines defining further the record-keeping requirements, the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators <sup>(1)</sup> (the 'Agency'), and the Committee of European Securities Regulators (the 'CESR'), established by Commission Decision 2009/77/EC <sup>(2)</sup>, should confer and advise the Commission in regard to their content. The Agency and the CESR should also cooperate to investigate further and advise on whether transactions in electricity supply contracts and electricity derivatives should be subject to pre or post-trade transparency requirements and, if so, what the content of those requirements should be.~~

↓ 2009/72/EC recital 44

~~In the interests of security of supply, the balance between supply and demand in individual Member States should be monitored, and such monitoring should be followed by a report on the situation at Community level, taking account of interconnection capacity between areas. Such monitoring should be carried out sufficiently early to enable appropriate measures to be taken if security of supply is compromised. The construction and maintenance of the necessary network infrastructure, including interconnection capacity, should contribute to ensuring a stable electricity supply. The maintenance and construction of the necessary network infrastructure, including interconnection capacity and decentralised electricity generation, are important elements in ensuring a stable electricity supply.~~

<sup>1</sup> ~~OJL 211, 14.8.2009, p.1.~~

<sup>2</sup> ~~OJL 025, 29.1.2009, p.18.~~

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↓ 2009/72/EC recital 58

~~With a view to creating an internal market in electricity, Member States should foster the integration of their national markets and the cooperation of system operators at Community and regional level, also incorporating isolated systems forming electricity islands that persist in the Community.~~

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↓ 2009/72/EC Article 1 (adapted)

⇒ new

HAVE ADOPTED THIS DIRECTIVE:

# CHAPTER I

## SUBJECT MATTER, ~~SCOPE~~ AND DEFINITIONS

### *Article 1*

#### **Subject matter ~~and scope~~**

This Directive establishes common rules for the generation, transmission, distribution ~~⇒~~, storage ~~⇐~~ and supply of electricity, together with consumer protection provisions, with a view to ~~improving and~~ ~~⇒~~ creating truly integrated ~~⇐~~ ~~integrating~~ competitive ~~⇒~~, consumer-centered and flexible, **fair and transparent** ~~⇐~~ electricity markets in the ~~Community~~ ~~⊗~~ 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 [~~decarbonised~~] **low-carbon** energy system ~~⇐~~. It lays down ~~the~~ ~~⇒~~ 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. ~~⇐~~ ~~the criteria and procedures applicable to calls for tenders and the granting of authorisations and the operation of systems. It also lays down universal service obligations and the rights of electricity consumers and clarifies competition requirements.~~

*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;**

~~12. 'eligible customer' means a customer who is free to purchase electricity from the supplier of his choice within the meaning of Article 33;~~

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 electricity** [], including through **[] electricity undertakings market participants engaged in aggregation**, or participate in demand response or energy efficiency schemes provided that these activities do not constitute their primary commercial or professional activity;

6a. '~~organised~~ 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 demand response 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 []. **At least 51% of the shareholders or members with voting rights of the entity are natural persons. The purpose of an energy community is to provide environmental, economic or social community benefits for its members or the local areas where it operates. An** energy community can be engaged [] in [] electricity generation, distribution and supply, self-consumption, aggregation, storage or energy efficiency services, generation of renewable electricity [] or provide other **energy services** to its shareholders or members [];



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↓ 2009/72/EC

~~198~~. 'supply' means the sale, including resale, of electricity to customers;

~~329~~. 'electricity supply contract' means a contract for the supply of electricity, but does not include an electricity derivative;

~~3310~~. '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 ~~of 21 April 2004 on markets in financial instruments~~<sup>1</sup>, where that instrument relates to electricity;

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↓ new

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;

12. 'contract termination fee' means any charge or penalty imposed on customers by suppliers or [] **electricity undertakings 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 electricity undertakings market participants engaged in aggregation** or system operators directly or indirectly for changing suppliers **or electricity undertakings market participants engaged in aggregation**, including contract termination fees;

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<sup>1</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).

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 [organised] electricity market;**

15. 'independent aggregator' means [] **a market participant that performs aggregation that is not affiliated to its customer's [a] 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>1</sup>;

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

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 generation**, 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;

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<sup>1</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).

20. 'near-real time' means, in the context of smart metering, [the] **a short time period**, usually down to **seconds** ~~the timeframe specified in the [Commission Regulation XXX establishing a Guideline on electricity balancing as proposed by the Commission,~~ that elapses between data recording and their automated processing and transmission for use or information purposes;

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;

↓ 2009/72/EC

⇒ new

~~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' ~~/demand-side management'~~ means ⇒ the ratio of output of performance, service, goods or energy, to input of energy ⇐ ~~a global or integrated approach aimed at influencing the amount and timing of electricity consumption in order to reduce primary energy consumption and peak loads by giving precedence to investments in energy efficiency measures, or other measures, such as interruptible supply contracts, over investments to increase generation capacity, if the former are the most effective and economical option, taking into account the positive environmental impact of reduced energy consumption and the security of supply and distribution cost aspects related to it;~~

~~3025~~. 'energy from renewable energy sources' means energy from renewable non-fossil energy 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, ~~tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases~~);

~~3126~~. 'distributed generation' means generation plants connected to the distribution system;

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↓ new

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;

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↓ 2009/72/EC (adapted)

⇒ new

~~328~~. '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;

~~429~~. '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;

~~1830.~~ 'system user' means a natural or legal person supplying to, or being supplied by, a transmission or distribution system;

~~131.~~ 'generation' means the production of electricity;

~~232.~~ 'producer' means a natural or legal person generating electricity;

~~1333.~~ 'interconnector' means  $\Rightarrow$  a transmission line which crosses or spans a border between bidding zones **or** between Member States or, up to the border of EU jurisdiction, between Member States and third countries  $\Leftarrow$  ~~equipment used to link electricity systems;~~

~~1434.~~ 'interconnected system' means a number of transmission and distribution systems linked together by means of one or more interconnectors;

~~1535.~~ '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 **eligible** customers;

~~25.~~ ~~'long term planning' means the planning of the need for investment in generation and transmission and distribution capacity on a long term basis, with a view to meeting the demand of the system for electricity and securing supplies to customers;~~

~~36.26~~ '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;

~~27.~~ ~~'micro isolated system' means any system with consumption less than 500 GWh in the year 1996, where there is no connection with other systems;~~

~~16. 'economic precedence' means the ranking of sources of electricity supply in accordance with economic criteria;~~

~~1737. '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 ⇐ ;~~

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↓ new

38. 'non-frequency ancillary service' means a service used by a transmission ~~[or distribution]~~ 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 for steady state voltage control, fast reactive current injections and short circuit current;**

39. [ ] **Regional Security Coordinators** [ + ] means the [ ] **Regional Security Coordinators** [ + ] as defined in 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 do not use energy and are fully integrated in the transmission or distribution system and which may not have a storage capacity of more than 1 MWh per location such as VSC technology, stateom and automisation;~~

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↓ 2009/72/EC

~~2040. 'integrated electricity undertaking' means a vertically or horizontally integrated undertaking;~~

~~2141. '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;~~

~~2242.~~ '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>1</sup> ~~41 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 44(2)(g) (13) of the Treaty on consolidated accounts (14), and/or associated undertakings, within the meaning of Article 33(1) of that Directive,~~ and/or undertakings which belong to the same shareholders;

~~2343.~~ '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;

~~3444.~~ '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;

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<sup>1</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).

~~3545.~~ '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;

~~24.~~ 'tendering procedure' means the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;

~~2846.~~ 'security' means both security of supply and provision of electricity, and technical safety;

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↓ new

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

~~47a.~~ 'energy storage facility' is a facility connected to the electricity system allowing storage of electricity within relevant time framework and subsequently delivering it back to the electricity system.



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↓ 2009/72/EC

## CHAPTER II

# GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

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↓ new

### *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**, and that electricity prices reflect actual demand and supply. **~~Member States may intervene to regulate electricity prices for supply of electricity to household consumers subject to the provisions of Article 5. 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 [market] exit** and ensure a level playing field for all market participants including those entering the market through interconnectors with third countries **provided where the third country has concluded an agreement with the Union ensuring reciprocal and non-discriminatory market access [ ]**.

- 2a. Member States shall ensure that market participants 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.

↓ 2009/72/EC Article 33

⇒ new

Article ~~433~~

⇒ Free choice of electricity supplier ⇐

~~Market opening and reciprocity~~

1. Member States shall ensure that ~~the eligible customers comprise:~~ ⇒ all customers are free to purchase electricity **supply** from the supplier of their choice. ⇐
2. Member States shall ensure that all customers are free to purchase and sell electricity services, other than electricity supply, independently from their supply contract and from an electricity undertaking of their choice.

~~(a) until 1 July 2004, the eligible customers as specified in Article 19(1) to (3) of Directive 96/92/EC. Member States shall publish by 31 January each year the criteria for the definition of those eligible customers;~~

~~(b) from 1 July 2004, all non-household customers;~~

~~(c) from 1 July 2007, all customers;~~

~~2. To avoid imbalance in the opening of electricity markets:~~

~~(a) contracts for the supply of electricity with an eligible customer in the system of another Member State shall not be prohibited if the customer is considered as eligible in both systems involved; and~~

~~(b) where transactions as described in point (a) are refused because the customer is eligible in only one of the two systems, the Commission may, taking into account the situation in the market and the common interest, oblige the refusing party to execute the requested supply at the request of the Member State where the eligible customer is located.~~

↓ new

#### 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 as well as []** 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 which apply public interventions in price setting for the supply of electricity **at the [OP: insert the date of entry into force of this Directive], for household customers particularly to protect []** energy poor or vulnerable household customers [] may continue to apply such public interventions until [OP: insert the date – [] **ten** years from the entry into force of this Directive] **provided they demonstrate that without the public intervention the electricity supply price would be contestable as a result of a market failure.**

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 or electricity undertakings;
- (b) not lead to cross-subsidies between customers supplied at free market prices and those supplied at regulated supply prices;
- (c) ensure that all ~~supply contracts concluded in accordance with paragraph 3 are dynamic electricity price contracts~~ beneficiaries of such public intervention have the possibility to choose competitive market offers and are directly informed of available offers and savings on the competitive market, in particular dynamic 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 have smart meters installed at no extra costs for these customers within three years from [OP: insert the date of the entry into force of this Directive].

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. []

4a. Member States shall notify the measures taken in accordance with **paragraph 3** [] to the Commission ~~and the Electricity Coordination Group~~ within ~~two weeks~~ 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. []

~~[4b. The Commission may take a decision asking the national authorities to amend or withdraw the measures pursuant to paragraph 3 within two months from receipt of a complete notification where it considers that the requirements set out in this Article [] are not fulfilled. The decision-making period can be extended with the consent of both the Commission and the Member State concerned.]~~

~~4c. The public intervention applied on the basis of [] paragraph 3 shall be deemed valid as long as the Commission has not taken a decision asking the national authorities to amend or withdraw the measure.]~~

↓ 2009/72/EC (adapted)

⇒ new

*Article ~~632~~*

**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 ~~eligible~~ 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~~ ~~37~~ 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 ~~must~~  shall  be given for such refusal, in particular having regard to Article ~~3-9~~, and based on objective and technically and economically justified criteria. ⇒ Member States or, where Member States have so provided, the regulatory authorities  ~~The regulatory authorities where Member States have so provided or Member States~~ shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure. The regulatory authorities shall also ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator ~~or energy communities managed electricity network 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 ~~734~~*

**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 ~~eligible~~ customers through a direct line; ~~and~~
  - (b) all ~~eligible~~ 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 ~~of this Article~~ shall not affect the possibility of contracting electricity in accordance with Article ~~6~~ 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~~ 6 or to the opening of a dispute settlement procedure under Article ~~60~~ 60.
5. Member States may refuse to authorise a direct line if the granting of such an authorisation would obstruct ~~the~~ application of ~~the~~ provisions on public service obligations pursuant to ~~of~~ Article ~~9~~ 9. Duly substantiated reasons shall be given for such refusal.

*Article ~~87~~*

**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 ~~9-3~~;
- (j) the contribution of the generating capacity to meeting the overall ~~Community~~  Union ~~Community~~  target of at least a 20 % share of energy from renewable sources in the ~~Community~~  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 ~~of 23 April 2009 on the promotion of the use of energy from renewable sources~~<sup>1</sup>; and
- (k) ~~4e~~ 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.

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.

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<sup>1</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).

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↓ new

*Article 9*

**Public service obligations**

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↓ 2009/72/EC Article 3(1)

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.
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↓ 2009/72/EC Article 3(2) (adapted)

⇒ new

2. Having full regard to the relevant provisions of the Treaty, in particular Article ~~86~~ ~~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 ~~Community~~ Union to national consumers. ~~In relation to security of supply, energy efficiency/demand side management and for the fulfilment of environmental goals and goals for energy from renewable sources, as referred to in this paragraph, Member States may introduce the implementation of long term planning, taking into account the possibility of third parties seeking access to the system.~~ ⇒ Public service obligations which concern the price setting for the supply of electricity shall comply with the requirements set out in Article 5. ⇐
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↓ 2009/72/EC Article 3(6) (adapted)

3. ~~6.~~ Where financial compensation, other forms of compensation and exclusive rights which a Member State grants for the fulfilment of the obligations set out in paragraphs ~~2~~ ~~and 3~~ 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.

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↓ 2009/72/EC Article 3(15)

4. ~~15~~ 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.

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↓ 2009/72/EC Article 3(14) (adapted)

5. Member States may decide not to apply the provisions of Articles ~~6, 7 and 8~~ ~~7, 8, 32 and/or 34~~ 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  Community. The interests of the  Community  Union  include, inter alia, competition with regard to **eligible** customers in accordance with this Directive and Article ~~86~~  106  of the Treaty.

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↓ 2009/72/EC

## ~~CHAPTER III~~

## ~~GENERATION~~

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↓ 2009/72/EC

### ~~Article 8~~

#### ~~Tendering for new capacity~~

- ~~1. Member States shall ensure the possibility, in the interests of security of supply, of providing for new capacity or energy efficiency/demand-side management measures through a tendering procedure or any procedure equivalent in terms of transparency and non-discrimination, on the basis of published criteria. Those procedures may, however, be launched only where, on the basis of the authorisation procedure, the generating capacity to be built or the energy efficiency/demand-side management measures to be taken are insufficient to ensure security of supply.~~
  
- ~~2. Member States may ensure the possibility, in the interests of environmental protection and the promotion of infant new technologies, of tendering for new capacity on the basis of published criteria. Such tendering may relate to new capacity or to energy efficiency/demand-side management measures. A tendering procedure may, however, be launched only where, on the basis of the authorisation procedure the generating capacity to be built or the measures to be taken, are insufficient to achieve those objectives.~~

~~3. Details of the tendering procedure for means of generating capacity and energy efficiency/demand side management measures shall be published in the Official Journal of the European Union at least six months prior to the closing date for tenders.~~

~~The tender specifications shall be made available to any interested undertaking established in the territory of a Member State so that it has sufficient time in which to submit a tender.~~

~~With a view to ensuring transparency and non-discrimination, the tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract, including incentives, such as subsidies, which are covered by the tender. Those specifications may also relate to the fields referred to in Article 7(2).~~

~~4. In invitations to tender for the requisite generating capacity, consideration must also be given to electricity supply offers with long-term guarantees from existing generating units, provided that additional requirements can be met in this way.~~

~~5. Member States shall designate an authority or a public or private body independent from electricity generation, transmission, distribution and supply activities, which may be a regulatory authority referred to in Article 35(1), to be responsible for the organisation, monitoring and control of the tendering procedure referred to in paragraphs 1 to 4 of this Article. Where a transmission system operator is fully independent from other activities not relating to the transmission system in ownership terms, the transmission system operator may be designated as the body responsible for organising, monitoring and controlling the tendering procedure. That authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.~~

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↓ new

## CHAPTER III

# CONSUMER EMPOWERMENT AND PROTECTION

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↓ 2009/72/EC (adapted)

### Article 10~~3~~

#### ⊗ **Basic contractual rights** ⊗

1. ~~4=~~ 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 **organised electricity market trading and balancing** ~~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.

~~5. Member States shall ensure that:~~

- ~~(a) where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; and~~
- ~~(b) customers are entitled to receive all relevant consumption data.~~

~~Member States shall ensure that the rights referred to in points (a) and (b) are granted to customers in a non-discriminatory manner as regards cost, effort or time.~~

↓ 2009/72/EC Annex I.1 (adapted)

⇒ new

2. ~~1.~~ Without prejudice to  Union  Community rules on consumer protection, in particular ~~Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts~~ ⇒ Directive 2011/83/EU of the European Parliament and of the Council<sup>1</sup> ⇐ and Council Directive 93/13/EEC ~~of 5 April 1993 on unfair terms in consumer contracts~~<sup>(2)</sup>. ⇒ Member States shall ⇐ ensure ~~the measures referred to in Article 3 are to ensure~~ that [customers]:

(a) **customers** have a right to a contract with their [electricity service provider] **supplier** that specifies:

- the identity and address of the **supplier** **electricity undertaking**,
- 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 ~~and whether withdrawal from the contract without charge is permitted~~,

<sup>1</sup> OJ L 304, 22.11.2011, p. 64–88

<sup>2</sup> OJ L 95, 21.4.1993, p. 29–34



- 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 point (f),
- 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 of withdrawal ⇒ to dissolve the contract ⇐ when the notice is given. ~~Service providers~~ ⇒ Suppliers ⇐ shall notify their ~~subscribers~~ ⇒ customers ⇐ directly of any increase ⇒ adjustment ⇐ in charges ⇒ the supply price as well as of the reasons and preconditions for the adjustment and its scope ⇐, at an appropriate time no later than one normal billing period ~~after the increase~~ **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 ⇐ ~~service provider~~;
- (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. ~~Prepayment systems shall be fair and adequately reflect likely consumption.~~ 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** [reflect the relevant costs incurred by the supplier] ⇨ ~~terms and conditions shall reflect the costs to the supplier of the different payment systems.~~
- (e) ~~Prepayment systems shall~~ ⇨ **Pursuant to subparagraph (d), household customers, who have access to prepayment systems,** are not placed at a [n-excessive] disadvantage [] by the prepayment systems; ⇨
- (f) ⇨ ~~of electricity undertakings~~ **customers** are offered fair and transparent ⇨ general terms and conditions ~~shall be fair and transparent.~~ They ⇨ 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;
- ~~(e) are not charged for changing supplier;~~
- (g) ~~(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. In particular, all consumers shall have the right to a good standard of service and complaint handling by their electricity service provider. Such out-of-court dispute settlements procedures shall enable disputes to be settled fairly and promptly, preferably within three months, with provision, where warranted, for a system of reimbursement and/or compensation. They should, wherever possible, be in line with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (3);~~ ⇨ have the right to a good standard of service and complaint handling by their **suppliers**[electricity service provider]. [**Electricity undertakings** ] **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 ~~3(3)~~, are informed about their rights regarding universal service;

~~h) have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any registered supply undertaking access to its metering data. The party responsible for data management shall be obliged to give those data to the undertaking. Member States shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs shall be charged to the consumer for that service;~~

~~(i) are properly informed of actual electricity consumption and costs frequently enough to enable them to regulate their own electricity consumption. That information shall be given by using a sufficient time frame, which takes account of the capability of customer's metering equipment and the electricity product in question. Due account shall be taken of the cost efficiency of such measures. No additional costs shall be charged to the consumer for that service;~~

- (i) ⇒ **household costumers** are given adequate information **by suppliers** 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 [electricity] **supplier undertakings** no later than six weeks after the change of **supplier electricity undertaking** has taken place.

*Article 11***Entitlement to a dynamic 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 ~~may~~ 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 and risks of such dynamic electricity price contract.
3. Member States [~~through~~] or their National Regulatory Authorities, shall monitor and report annually, 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 electricity undertakings~~ market participant engaged in aggregation, while respecting contractual conditions, is entitled to such a change within a maximum of three weeks ~~of notifying their electricity service provider.~~ 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 electricity undertakings market participants engaged in aggregation** to charge contract termination fees to **household** customers, ~~microenterprises and small enterprises~~ willingly terminating fixed term, **or fixed price supply** [] contracts before their maturity, **as long as such fees are clearly communicated to the customer upfront, and such fees are part of a contract that the customer has willingly entered into such contract.** Such fees [] shall ~~[only be charged] where it is demonstrated on average, by the suppliers or electricity undertakings engaged in aggregation, [] that the~~ [customers receive a demonstrable advantage from these contracts. In addition, such fees shall] **be proportionate and** not exceed the **average** direct economic loss **per customer** to the supplier **or electricity undertaking market participant engaged in aggregation** of the customer terminating the contract, including ~~foregone hedging costs and~~ 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 electricity undertakings 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, where a final customer wishes to conclude an **aggregation** contract ~~[with an independent aggregator]~~, such engagement shall not require the consent of the final customer's [] **electricity undertaking.**

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, and small enterprises** have access, free of charge, to at least one tool comparing the offers of suppliers that meets ~~[The comparison tools may be operated by any entity, including private companies and public authorities or bodies.]~~ **Household [customers] microenterprises and small enterprises shall** ~~[be informed of the availability of such tools.]~~ **The comparison tool shall meet at least the following criteria:**

#### **The tools shall:**

- (a) **be operationally independent and ensure that electricity service providers 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) 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; 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  electricity service providers 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 paragraph 2 and 4, Member States may choose not to provide for verification of comparison tools operated by private companies 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 generate, store, consume and to sell, self-generated electricity in all ~~organised~~ electricity markets either individually, or through aggregation  including through power purchase agreements and electricity undertakings, ~~their production of electricity~~ without being subject to ~~disproportionately burdensome~~ **discriminatory technical and administrative requirements**, procedures and charges ;
  - (b) 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);
  - (c) shall be financially responsible for the imbalances they cause in the electricity system. To this extend they shall be balance responsible parties or shall delegate their balance responsibility in accordance with Article 4 of the [Electricity Regulation].**
2. The  installation required for the activities of the active customer may be managed by a third party for installation **and** operation, including  **data handling acquisition and maintenance**.
- 2a. Member States may have different governing provisions for individual and jointly acting final customers in their national legislation.**



**Energy communities**

1. Member States shall  provide an enabling regulatory framework for  energy communities ensuring that:
- (a) participation in an energy community is 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 ~~to third parties~~ are subject to the provisions relevant for such activities;
  - (e) are entitled to determine the rules on electricity sharing and financial settlements between its shareholders or members;
  - (f) 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;
  - (g) energy communities are subject to non-discriminatory fair, proportionate and transparent procedure, including registration and licensing, and cost reflective network charges.

(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).

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

- 2a. Member States shall ensure that energy communities:**
- (a) can access all organised electricity markets either directly or through aggregation in a non-discriminatory manner;**
  - (b) benefit from a non-discriminatory treatment with regard to their activities, rights and obligations 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) applies in relation to generating capacity installed by energy communities as long as such capacity can be considered small decentralised or distributed generation.**
  - (f) are entitled to establish and operate virtual sharing of electricity generation within the community subject to the provisions of this article.**
- 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 distribution 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) ~~in case of paragraph 2(b)~~ energy communities do not discriminate or harm customers remaining connected to the distribution system.

#### *Article 17*

### **Demand response through aggregation**

1. Member States shall ensure access to 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  organised electricity markets.
2. Member States shall ensure that transmission system operators and distribution system operators when procuring ancillary services, treat  those **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  electricity undertakings market participants;
- (aa) **final customers who have a contract with independent aggregators shall not face undue payments, penalties or other undue contractual restriction from their suppliers;**
- (b) non-discriminatory and transparent rules clearly assigning roles and responsibilities to all ~~[market participants]~~ electricity undertakings engaged in aggregation or affected by the participation of demand response through aggregation ~~the right for each independent aggregator~~;
- (c) non-discriminatory and transparent rules and procedures for data exchange between electricity undertakings engaged in aggregation and other market participants that ensure easy access to data on equal and non-discriminatory terms while fully protecting commercial data;
- (d)
- (da) ~~independent aggregators~~ 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) ~~independent aggregators~~ Member States may be require independent aggregators to pay compensation to compensate other market participants or their balancing responsible party if they directly induce imbalances to ~~other~~ these market participants. In such cases the compensation payment shall be strictly limited to cover the resulting ~~imbalance costs and shall account for the benefits induced by the independent aggregators to balance the energy system.~~ The calculation method for such compensation shall take account of the benefits induced by the independent aggregators to balance the energy system and be subject to approval by the national regulatory authority;
- (e) a conflict resolution mechanism between ~~electricity undertakings~~ 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 modalities for participation of demand response in these 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.

↓ 2009/72/EC Article 3(10) (adapted)

~~10. Member States shall implement measures to achieve the objectives of social and economic cohesion and environmental protection, which shall include energy efficiency/demand side management measures and means to combat climate change, and security of supply, where appropriate. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for the maintenance and construction of the necessary network infrastructure, including interconnection capacity.~~

↓ 2009/72/EC (adapted)

⇒ new

Article ~~3~~19

⊗ **Smart metering** ⊗

1. ~~11~~ In order to promote energy efficiency ⇒ and empower [] **consumers final customers** ⇐, Member States or, where a Member State has so provided, the regulatory authority shall strongly recommend that electricity undertakings ⇒ and [] **other electricity undertakings market participants** ⇐ optimise the use of electricity, ~~for example~~ inter alia by providing energy management services, developing innovative pricing formulas, or introducing ⇒ interoperable ⇐ ~~intelligent~~ ⇒ smart ⇐ metering systems or smart grids, where appropriate.



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↓ new

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 economic lifetime.

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↓ new

#### 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.
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↓ new

### *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 ~~three~~ **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 ~~eligible parties which may have~~ **rules on the** access to data of the final customer **on the basis of the** ~~explicit~~ **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>1</sup>. For the purpose of this Directive, data shall include metering and consumption data as well as data required for consumer switching. Eligible parties shall include at least customers,  **electricity undertakings**, transmission and distribution system operators,  and other parties which provide energy or other services to customers.

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<sup>1</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).

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.
3. Member States or, where a Member State has so provided, the designated competent authorities shall authorise and certify 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. [~~Regulated entities which provide data services shall not profit from that activity.~~]

*Article 24*

**[Data format] 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 principles for requirements ~~[a common European data format]~~ and non-discriminatory and transparent procedures for accessing the data, listed under Article 23 (1). **These principles requirements and procedures**  will build upon existing national practices ~~[and national data formats and procedures already]~~ adopted by Member States.

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↓ 2009/72/EC (adapted)

*Article ~~24~~ 25*

**Single points of contact**

~~12~~ Member States shall ensure the provision of single points of contact to provide  customers  ~~consumers~~ 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.

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↓ 2009/72/EC (adapted)

~~16. The Commission shall establish, in consultation with relevant stakeholders including Member States, the national regulatory authorities, consumer organisations, electricity undertakings and, building on the progress achieved to date, social partners, a clear and concise energy consumer checklist of practical information relating to energy consumer rights. Member States shall ensure that electricity suppliers or distribution system operators, in cooperation with the regulatory authority, take the necessary steps to provide their consumers with a copy of the energy consumer checklist and ensure that it is made publicly available.~~

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↓ 2009/72/EC (adapted)

⇒ new

Article 3 26

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

~~13. Member States shall ensure that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out-of-court dispute settlements.~~ ⇒ **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>1</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>1</sup> OJ L 165, 18.6.2013, p. 63–79



Article ~~3~~ 27

Universal service

- ~~3~~ Member States shall ensure that all household customers, and, where Member States deem it appropriate, small enterprises (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at  competitive  ~~reasonable~~, **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) ~~37(6)~~. ~~Nothing in~~ 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.
- ~~The first subp~~ Paragraph 1 shall be implemented in a transparent and non-discriminatory way and shall not impede ~~the opening of the market~~  **the free choice of supplier**  provided for in Article 4 ~~33~~.

Article ~~3~~ 28

⊗ **Vulnerable customers and energy poverty** ⊗

1. ~~7.~~ Member States shall take appropriate measures to protect ~~final~~ 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. ~~Member States shall ensure that the eligible customer is in fact able easily to switch to a new supplier. As regards at least household customers, those measures shall include those set out in Annex I.~~
- 1a. **Where Member States identified energy poverty among the vulnerable household customers they shall publish the parameters and criteria used to identify, measure and to monitor energy poverty.**
2. ~~8.~~ 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 33~~ or market functioning and shall be notified to the Commission, where relevant, in accordance with the provisions of Article 9(4) paragraph 15 of this Article **and shall be reported by Member States as part of the Integrated National Energy and Climate Progress Reports in accordance with [Governance Regulation as proposed by COM(2016)759]**. Such notifications may also include measures taken within the general social security system.

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↓ new

*Article 29*

□

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↓ 2009/72/EC (adapted)

⇒ new

*Article 4*

**Monitoring of security of supply**

~~Member States shall ensure the monitoring of security of supply issues. Where Member States consider it appropriate, they may delegate that task to the regulatory authorities referred to in Article 35. Such monitoring shall, in particular, cover the balance of supply and demand on the national market, the level of expected future demand and envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the networks, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers. The competent authorities shall publish every two years, by 31 July, a report outlining the findings resulting from the monitoring of those issues, as well as any measures taken or envisaged to address them and shall forward that report to the Commission forthwith.~~

## Article 5

### Technical rules

~~The regulatory authorities where Member States have so provided or Member States shall ensure that technical safety criteria are defined and that technical rules establishing the minimum technical design and operational requirements for the connection to the system of generating installations, distribution systems, directly connected consumers' equipment, interconnector circuits and direct lines are developed and made public. Those technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. The Agency may make appropriate recommendations towards achieving compatibility of those rules, where appropriate. Those rules shall be notified to the Commission in accordance with Article 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (+6).~~

## Article 6

### Promotion of regional cooperation

~~1. Member States as well as the regulatory authorities shall cooperate with each other for the purpose of integrating their national markets at one or more regional levels, as a first step towards the creation of a fully liberalised internal market. In particular, the regulatory authorities where Member States have so provided or Member States shall promote and facilitate the cooperation of transmission system operators at a regional level, including on cross-border issues, with the aim of creating a competitive internal market in electricity, foster the consistency of their legal, regulatory and technical framework and facilitate integration of the isolated systems forming electricity islands that persist in the Community. The geographical areas covered by such regional cooperation shall include cooperation in geographical areas defined in accordance with Article 12(3) of Regulation (EC) No 714/2009. Such cooperation may cover other geographical areas.~~

- ~~2. The Agency shall cooperate with national regulatory authorities and transmission system operators to ensure the compatibility of regulatory frameworks between the regions with the aim of creating a competitive internal market in electricity. Where the Agency considers that binding rules on such cooperation are required, it shall make appropriate recommendations.~~
- ~~3. Member States shall ensure, through the implementation of this Directive, that transmission system operators have one or more integrated system(s) at regional level covering two or more Member States for capacity allocation and for checking the security of the network.~~
- ~~4. Where vertically integrated transmission system operators participate in a joint undertaking established for implementing such cooperation, the joint undertaking shall establish and implement a compliance programme which sets out the measures to be taken to ensure that discriminatory and anticompetitive conduct is excluded. That compliance programme shall set out the specific obligations of employees to meet the objective of excluding discriminatory and anticompetitive conduct. It shall be subject to the approval of the Agency. Compliance with the programme shall be independently monitored by the compliance officers of the vertically integrated transmission system operators.~~

## **CHAPTER IV~~VI~~**

### **DISTRIBUTION SYSTEM OPERATION**

#### *Article 30 ~~24~~*

##### **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. ~~Member States shall ensure that distribution system operators act in accordance with Articles 25, 26 and 27.~~

#### *Article 31 ~~25~~*

##### **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 waste~~ 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. **products and services necessary for the efficient and secure operation of the grid, such as electricity it uses to cover electricity losses, non-frequency ancillary, storage or other system services, on the basis of transparent, non-discriminatory and market based procedures unless otherwise provided in this Directive.**~~
- 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. 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 shows that the market-based provision of non-frequency ancillary services is economically not efficient. This obligation 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 ~~or~~ 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. This does not apply to fully integrated network components.

**5d.** Distribution system operators shall ~~not limit~~ 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 ~~active power reserves~~ 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.

~~6. Where a distribution system operator is responsible for balancing the distribution system, rules adopted by it for that purpose shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by distribution system operators shall be established in accordance with Article 37(6) in a non-discriminatory and cost-reflective way and shall be published.~~

~~7. When planning the development of the distribution network, energy efficiency/demand-side management measures or distributed generation that might supplant the need to upgrade or replace electricity capacity shall be considered by the distribution system operator.~~



*Article 32***[ ] 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 [ ] ~~electricity undertakings~~ **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 network development plan shall 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 for approval consultation to the regulatory authority. The regulatory authority may request amendments to the plans.**
- 2b.** Member States may decide not to apply this obligation to integrated undertakings serving less than 100 000 connected consumers, or serving isolated systems.

### *Article 33*

#### **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.**

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 ~~Member States~~ **regulatory authorities** may allow the distribution system operators to recover **the residual value of** the investment costs made into recharging infrastructure.

4a. **Paragraphs 2 and 4 shall not apply in the case where distribution system operators own private recharging points solely for their own use.**

*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.

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↓ 2009/72/EC

*Article 35 ~~26~~*

**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 3759(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 ~~35~~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 ~~only~~ 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, ~~and~~ 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** ~~[storage]~~ facilities. **Regulatory authorities may draw up guidelines or procurement clauses to help distribution system operators in ensuring a fair tendering procedure; and**
  - (b)
  - (c) the regulatory authority has assessed the necessity of such derogation **and has** carried out an ex-ante review of the ~~conditions 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 interest of market parties to invest [~~develop, operate or manage energy storage~~] **in such** facilities. [~~In case~~] **Where** the public consultation, **as assessed by the regulatory authority**, indicates that third parties are able to own, develop, operate or manage such **storage** facilities **in a cost-effective manner**, [~~Member States~~] **regulatory authorities** shall ensure that distribution system operators' activities in this regard are phased-out **within 12 months**. **As part of the conditions for this procedure, regulatory authorities may allow the distribution system operators to recover the residual value of the investment they made into energy storage facilities.**

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↓ 2009/72/EC

⇒ new

*Article 37 ~~27~~*

### **Confidentiality obligation of distribution system operators**

Without prejudice to Article 55 ~~30~~ 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.



### 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~~~~25~~(5) to procure the energy it uses to cover energy losses and ~~reserve capacity~~ ⇒ the non-frequency ancillary services ⇐ in its system according to transparent, non-discriminatory and market based procedures;
  - (b) the requirement under Article ~~63~~~~2~~ (1) that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 59(1) ~~37~~.
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) ~~37~~ upon request by a user of the closed distribution system.

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

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↓ new

5. Closed distribution systems shall be considered as distribution systems for the purpose of the Directive.

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↓ 2009/72/EC (adapted)

⇒ new

*Article ~~39~~ 29*

### **Combined operator**

Article ~~26~~35(1) shall not prevent the operation of a combined transmission and distribution system operator provided that operator complies with Articles ~~9~~43(1), or ~~44~~13 and ~~45~~14, or Section 3 of Chapter VI ~~Chapter V~~ or falls under Article ~~44~~66(2).

## Chapter ~~IV~~ V

### ~~⊗~~ GENERAL RULES APPLICABLE TO THE ~~⊗~~ TRANSMISSION SYSTEM ~~OPERATION~~ ~~⊗~~ OPERATOR ~~⊗~~

#### Article ~~40~~ 42

#### 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 ~~service~~ ⊗ 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; and
  - (h) collecting congestion rents and payments under the inter-transmission system operator compensation mechanism, in compliance with Article ~~46~~ 43 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.
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↓ new

- (i) procuring ancillary services from market participants, **except in cases defined in Article 54**, to ensure operational security.
- (j) adopting a framework for the cooperation and coordination between [] **Regional Security Coordinators** [+].

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, **independent system operator or independent transmission operator** 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.

3. []

4. In performing the task described in point (i) of paragraph 1, the transmission system operators shall ~~[ensure that the procurement of]~~ **procure** balancing services ~~[and, unless duly justified by a cost-benefit analysis, and approved by the competent authority, non-frequency ancillary services, is]~~ **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 [] **electricity undertakings market participants engaged in aggregation. For that purpose, [in particular by requiring] regulatory authorities [or] and transmission system operators shall, in close cooperation with all market participants, [to] 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 [].**

5.

**5a. The requirements of paragraph 4 shall apply to the provision of non-frequency ancillary services by transmission system operators, unless the regulatory authority shows that the market-based provision of non-frequency ancillary services is economically not efficient. This obligation does not apply to fully integrated network components.**

*Article 15*

*Dispatching and balancing*

~~1. Without prejudice to the supply of electricity on the basis of contractual obligations, including those which derive from the tendering specifications, the transmission system operator shall, where it has such a function, be responsible for dispatching the generating installations in its area and for determining the use of interconnectors with other systems.~~

~~2. The dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which shall be approved by national regulatory authorities where competent and which must be objective, published and applied in a non-discriminatory manner, ensuring the proper functioning of the internal market in electricity. The criteria shall take into account the economic precedence of electricity from available generating installations or interconnector transfers and the technical constraints on the system.~~

~~3. A Member State shall require system operators to act in accordance with Article 16 of Directive 2009/28/EC when dispatching generating installations using renewable energy sources. They also may require the system operator to give priority when dispatching generating installations producing combined heat and power.~~

- ~~4. A Member State may, for reasons of security of supply, direct that priority be given to the dispatch of generating installations using indigenous primary energy fuel sources, to an extent not exceeding, in any calendar year, 15 % of the overall primary energy necessary to produce the electricity consumed in the Member State concerned.~~
- ~~5. The regulatory authorities where Member States have so provided or Member States shall require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.~~
- ~~6. Transmission system operators shall procure the energy they use to cover energy losses and reserve capacity in their system according to transparent, non-discriminatory and market-based procedures, whenever they have such a function.~~
- ~~7. Rules adopted by transmission system operators for balancing the electricity system shall be objective, transparent and non-discriminatory, including rules for charging system users of their networks for energy imbalance. The terms and conditions, including the rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 37(6) in a non-discriminatory and cost-reflective way and shall be published.~~
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↓ 2009/72/EC (adapted)

⇒ new

*Article ~~41~~ ~~46~~*

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

1. Without prejudice to Article ~~55~~~~30~~ 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~~~~23~~*

**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.
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 9*

#### ⊠ Ownership ⊠ ~~Un~~bundling of transmission systems and transmission system operators

1. Member States shall ensure that ~~from 3 March 2012:~~
  - (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;

- 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 ~~of 13 July 2009 concerning common rules for the internal market in natural gas~~<sup>1</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. Member States may allow for derogations from points (b) and (c) of paragraph 1 until 3 March 2013, provided that transmission system operators are not part of a vertically integrated undertaking.~~

4. ~~5.~~ 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~~ ~~43~~ as an independent system operator or as an independent transmission operator for the purposes of ~~Section 3~~ ~~Chapter V~~.

5. ~~6.~~ 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. ~~7.~~ Member States shall ensure that neither commercially sensitive information referred to in Article ~~41~~ ~~16~~ 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.

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<sup>1</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)~~-136~~

7. ~~8.~~ 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~~ ~~13~~; or
- (b) comply with the provisions of Section 3 Chapter V.

8. ~~9.~~ 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 Chapter V, a Member State may decide not to apply paragraph 1.

- ~~9.~~ ~~10.~~ Before an undertaking is approved and designated as a transmission system operator under paragraph ~~89 of this Article~~, it shall be certified according to the procedures laid down in Article ~~1052~~(4), (5), and (6), of this Directive and in Article ~~348~~ 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 Chapter V.

10. ~~11.~~ Vertically integrated undertakings which own a transmission system shall not in any event be prevented from taking steps to comply with paragraph 1.

11. ~~12.~~ 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~~3*

**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~~ 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~~ 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~~ 40 ~~12~~;
  - (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~~ ~~44~~ 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~~ ~~40~~ of this Directive and Article ~~48~~ ~~3~~ of [recast of Regulation 714/2009 as proposed by COM(2016)861/2] or in Article ~~53~~ ~~44~~ 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~~ ~~13~~ 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 ~~Chapter~~. 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 ~~44~~*

**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.

~~3. The Commission may adopt Guidelines to ensure full and effective compliance of the transmission system owner with paragraph 2 of this Article. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 46(2).~~

## ~~CHAPTER V~~ **Section 3**

### **INDEPENDENT TRANSMISSION OPERATOR**

#### *Article ~~46~~ 17*

#### **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~~ 20, 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~~ 12:

- (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** ~~balancing charges for ancillary services such as purchasing of services~~ ~~(balancing costs, 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>1</sup> ~~Council Directive 68/151/EEC~~ <sup>(19)</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>1</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) ~~19~~.

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~~ 48*

**Independence of the transmission system operator**

1. Without prejudice to the decisions of the Supervisory Body under Article ~~49~~ 20, 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 ~~[and its]~~  ~~[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 ~~Chapter~~ 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~~ of this Directive, and in complying with obligations set out in Articles 14, ~~15~~, 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~~ ~~17~~(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~~ ~~40~~ of this Directive and [Article ~~3~~ ~~48~~ of Regulation 714/2009 as proposed by COM(2016)861/2] or in Article ~~53~~ ~~44~~ of this Directive shall apply.

*Article ~~48~~ ~~49~~*

**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~~ ~~20~~.
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~~ 20*

**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~~22.
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 ~~4819~~(2) and Article ~~4819~~(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 ~~4819~~(2) shall apply to all the members of the Supervisory Body.

*Article ~~50~~ ~~21~~*

**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 ~~4819~~(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~~22~~.
  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, ~~balancing~~ ⇒ 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 ~~414~~6.
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 ~~22~~*

**Network development and powers to make investment decisions**

1. ~~Every year~~ ⇒ 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 ☒ ~~Community~~-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  ~~Community~~-wide ten-year network development plan ( Union  ~~Community~~-wide network development plan) referred to in [Article ~~27(1)(b)~~ ~~8(3)(b)~~ of recast of Regulation 714/2009 as proposed by COM(2016)861/2]. If any doubt arises as to the consistency with the ~~Community~~  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 ~~40~~*

#### **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 ~~3~~ 48 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2].

2. Undertakings which ~~own a transmission system and which~~ have been certified by the national regulatory authority as having complied with the requirements of Article ~~43 9~~, 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 9~~.
4. Regulatory authorities shall monitor the continuing compliance of transmission system operators with the requirements of Article ~~43 9~~. 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 9~~, 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 ~~3~~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~~44*

**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 439; 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 ~~Community~~ ☒ Union ☒. In considering that question the regulatory authority or other competent authority so designated shall take into account:
- the rights and obligations of the ~~Community~~ ☒ Union ☒ with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the ~~Community~~ ☒ 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 ~~Community~~ ☒ 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 439; and
- (b) granting certification will not put at risk the security of energy supply to the ~~Community~~ ☒ 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 ~~Community~~  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 ~~Community~~  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 ~~Community~~  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 ~~Community~~  Union  law, national legal controls to protect legitimate public security interests.

~~10. The Commission may adopt Guidelines setting out the details of the procedure to be followed for the application of this Article. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 46(2).~~

10. ~~11.~~ This Article, with exception of paragraph 3(a), shall also apply to Member States which are subject to a derogation under Article ~~6644~~.

Article 54

**Ownership of energy storage [~~and provision of ancillary services~~]  
by transmission system operators**

1. Transmission system operators shall not be allowed to own, **develop**, manage or operate energy storage facilities [~~and shall not own directly or indirectly control assets that provide ancillary services~~].
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 assets providing [] ancillary services, excluding balancing~~], 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, [~~and~~] transparent tendering procedure, **subject to review and approval by the regulatory authority** [] ~~could have not been awarded with a right to own, **develop**, control, manage or operate such facilities [offering storage and/or non-frequency ancillary services to the transmission system operator]~~ **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 the conditions of the tendering procedure, including the conditions,** [] and has granted its approval.

3. ~~[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].~~

4. The ~~[transmission system operator]~~ **regulatory authorities** shall perform at regular intervals or at least every five years a public consultation for the required **energy storage [services] facilities** in order to assess the potential interest of market parties to invest in such facilities ~~[and terminate its own storage activities in case third parties can provide the service in a cost-effective manner].~~ **In case Where the public consultation, as assessed by the national regulatory authority, indicates that third parties are able to own, develop, operate or manage such facilities in a cost-effective manner, regulators regulatory authorities shall ensure that transmission system operators' activities in this regard are phased-out within 12 months. As part of the conditions for this procedure, regulatory authorities may allow the transmission system operators to recover 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.**

**CHAPTER VII Section 5**

**Unbundling and transparency of accounts**

*Article 55 ~~30~~*

**Right of access to accounts**

1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article 57~~35~~, 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~~34~~.
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 ~~34~~*

**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>1</sup>  ~~the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 44(2)(g)<sup>2</sup> of the Treaty on the annual accounts of certain types of companies<sup>3</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. ~~Until 1 July 2007, they shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers.~~ 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.

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<sup>1</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)

<sup>2</sup> The title of Directive 78/660/EEC has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g).

<sup>3</sup> OJ L 222, 14.8.1978, p. 11.

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.

## ~~CHAPTER VIII~~

## ~~ORGANISATION OF ACCESS TO THE SYSTEM~~

### CHAPTER VII ~~IX~~

## NATIONAL REGULATORY AUTHORITIES

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↓ 2009/72/EC (adapted)

*Article ~~57~~<sup>35</sup>*

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

1. Each Member State shall designate a single national regulatory authority at national level.
2. Paragraph 1 ~~of this Article~~ 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 ~~Community~~  Union  level within the Board of Regulators of the Agency in accordance with Article ~~22~~<sup>14</sup>(1) of [recast of Regulation 713/2009 as proposed by COM(2016)863/2].

3. By way of derogation from paragraph 1 ~~of this Article~~, 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 ~~Community~~  Union  level within the Board of Regulators of the Agency in compliance with [Article ~~22~~ ~~14~~(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~~ ~~37~~.



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;

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↓ new

- (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.

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↓ 2009/72/EC

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.

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↓ 2009/72/EC (adapted)

⇒ new

*Article ~~5836~~*

**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 ~~5937~~, 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 ~~Community~~ ☒ Union ☒, and effective market opening for all customers and suppliers in the ~~Community~~ ☒ 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  $\Rightarrow$  cross-border,  $\Leftarrow$  markets within the ~~Community~~  $\boxtimes$  Union  $\boxtimes$  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 ~~Community~~  $\boxtimes$  Union  $\boxtimes$ ;
- (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  $\Rightarrow$  and in facilitating their operation in relation to other energy networks of gas or heat  $\Leftarrow$  ;
- (e) facilitating access to the network for new generation capacity  $\Rightarrow$  and energy storage facilities  $\Leftarrow$  , 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  $\Rightarrow$  , especially energy efficiency,  $\Leftarrow$  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~~ 37*

**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~~   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 ~~Community~~  Union  legislation, including as regards cross-border issues;

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↓ new

- (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 ;

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↓ 2009/72/EC

⇒ new

- (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;

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↓ new

- (g) ensuring that **transmission system operators, make available** interconnector capacities [~~are made available~~] to the utmost extent pursuant to Article 14 of [recast of Regulation 714/2009 as proposed by COM(2016)861/2];

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↓ 2009/72/EC (adapted)

- (h) ~~en~~ 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) ~~en~~ ensuring that there are no cross-subsidies between transmission, distribution, and supply activities;
- (j) ~~en~~ 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 ~~Community~~  Union  -wide network development plan referred to in Article ~~8(3(b))~~ 27(1)(b) of the [recast of Regulation 714/2009 as proposed by COM(2016)861/2] ~~Regulation (EC) No 714/2009~~; such assessment may include recommendations to amend those investment plans;

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↓ new

- (k) measuring 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 based on a limited set of Union-wide indicators, and publish a national report every [2] 4 years, including recommendations [];
- (l)

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↓ 2009/72/EC (adapted)

⇒ new

- (m) ~~h)~~ 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 ~~and setting or approving standards and requirements for quality of service and supply or contributing thereto together with other competent authorities;~~
- (n) ~~g)~~ monitoring the level of transparency, including of wholesale prices, and ensuring compliance of electricity undertakings with transparency obligations;
- (o) ~~f)~~ 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) ~~e)~~ 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;
- ~~l) respecting contractual freedom with regard to interruptible supply contracts and with regard to long-term contracts provided that they are compatible with Community law and consistent with Community policies;~~
- (q) ~~m)~~ monitoring the time taken by transmission and distribution system operators to make connections and repairs;

- (r) ~~to~~ helping to ensure, together with other relevant authorities, that the consumer protection measures, ~~including those set out in Annex I,~~ are effective and enforced;
- (s) ~~to~~ publishing recommendations, at least annually, in relation to compliance of supply prices with Article 5 ~~2,~~ and providing these to the competition authorities, where appropriate;
- (t) ~~to~~ 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  ~~under point (h) of Annex I;~~
- (u) ~~to~~ 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] ~~Regulation (EC) No 714/2009;~~
- (v) ~~to~~ monitoring investment in generation  and storage  capacities in relation to security of supply;
- (w) ~~to~~ monitoring technical cooperation between ~~Community~~  Union  and third-country transmission system operators;
- ~~t) monitoring the implementation of safeguards measures as referred to in Article 42; and~~
- (x) contributing to the compatibility of data exchange processes for the most important market processes at regional level.



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↓ new

(y) monitoring the availability of comparison tools [] that fulfil the criteria set out in Article 14 [].

(xa) **monitoring the development of energy communities established in accordance with Article 16.**

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↓ 2009/72/EC

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.

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↓ 2009/72/EC (adapted)

⇒ new

3. ~~4.~~ Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in ~~☒~~ this Article ~~☒~~ paragraphs 1, 3 and 6 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 ~~paragraphs 11 and 12~~ Article 60 (2) and (3).
4. ~~3~~ 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 ~~13~~, 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 ~~4~~(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~~43(2)(c), for the first ten-year network development plan, approve the investments planning and the multi-annual network development plan presented  $\Rightarrow$  at least every two years  $\Leftarrow$  ~~annually~~ 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)16(6)~~ 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~~4 of this Article, when a transmission system operator has been designated in accordance with Section 3 of Chapter VI~~V~~, the regulatory authority shall be granted at least the following duties and powers:
- (a) to issue penalties in accordance with paragraph ~~3~~ ~~4~~(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)~~paragraph 11~~;
- (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~~21(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~~<sup>43</sup> 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  $\Rightarrow$ , 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,  $\Leftarrow$  be responsible for fixing or approving sufficiently in advance of their entry into force at least the  $\Rightarrow$  national  $\Leftarrow$  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 ~~balancing~~  $\Rightarrow$  ancillary  $\Leftarrow$  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 ~~balancing~~  $\Rightarrow$  ancillary  $\Leftarrow$  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. In fixing or approving the tariffs or methodologies and the balancing services, the regulatory authorities shall ensure that transmission and distribution system operators are granted appropriate incentive, over both the short and long term, to increase efficiencies, foster market integration and security of supply and support the related research activities.~~

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↓ new

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.**

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↓ 2009/72/EC

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.

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↓ 2009/72/EC (adapted)

⇒ new

Article 60 ~~37~~

⊗ **Decisions and complaints** ⊗

1. ~~10.~~ 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 ~~in this~~ 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. ~~11.~~ 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. ~~12.~~ Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to ~~this~~ 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. ~~13.~~ 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~~ ~~82~~ thereof.
5. ~~14.~~ 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. ~~15.~~ Complaints referred to in paragraphs ~~11~~ ~~2~~ and ~~31~~ ~~2~~ shall be without prejudice to the exercise of rights of appeal under ~~Community~~ ~~Union~~ or national law.
7. ~~16.~~ 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. ~~17.~~ 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.



⊗ **Regional cooperation between regulators on** ~~⊗ **Regulatory regime for**~~ **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;

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↓ new

- (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;

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↓ 2009/72/EC (adapted)

⇒ new

- (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 ~~may~~ ~~⊗~~ is empowered ~~⊗~~ to adopt ⇒ [delegated acts] in accordance with Article 67 to establish ⇐ ~~⊗~~ guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency. ~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 46(2).~~
- 

↓ new

#### Article 62

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

[+]

1. The regional regulatory authorities of the geographical area where a [] **Regional Security Coordinators** [+] ~~is established shall, in close coordination with each other:~~

- (a) approve the statutes and rules of procedure;
  - (b) approve the annual budget;
  - (c) approve the cooperative decision-making process;
  - (d) assess if the [] **Regional Security Coordinators** [+] has the appropriate competences, resources and impartiality to carry out independently the functions and tasks assigned to it, including security, liability and contingency arrangements;
  - (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 ~~from transmission system operators~~ information from Regional [] **system 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** [+].

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↓ 2009/72/EC (adapted)

⇒ new

Article ~~63~~ ~~39~~

**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] ~~Regulation (EC) No 714/2009~~.
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] ~~Regulation (EC) No 714/2009~~ 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] ~~Regulation (EC)~~ ~~No 714/2009~~, 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 ~~that~~ the ~~⇒ the network codes and ⇐ g~~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 ~~may~~  is empowered to  adopt  [delegated acts] in accordance with Article 67 to establish  ~~g~~Guidelines setting out the details of the procedure to be followed for the application of this Article. ~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 46(2).~~

*Article ~~64~~ 40*

**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. To ensure the uniform application of this Article, the Commission may adopt Guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 46(2).~~

~~5. With respect to transactions in electricity derivatives of supply undertakings with wholesale customers and transmission system operators, this Article shall apply only once the Commission has adopted the Guidelines referred to in paragraph 4.~~

4. ~~6.~~ 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. ~~7.~~ 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.

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↓ 2009/72/EC

## ~~CHAPTER X~~

# ~~RETAIL MARKETS~~

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↓ 2009/72/EC

### ~~Article 41~~

#### ~~Retail markets~~

~~In order to facilitate the emergence of well functioning and transparent retail markets in the Community, Member States shall ensure that the roles and responsibilities of transmission system operators, distribution system operators, supply undertakings and customers and if necessary other market participants are defined with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.~~

~~Those rules shall be made public, be designed with the aim to facilitate customers' and suppliers' access to networks, and they shall be subject to review by the regulatory authorities or other relevant national authorities.~~

~~Large non household customers shall have the right to contract simultaneously with several suppliers.~~



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↓ 2009/72/EC

## CHAPTER ~~VIII~~

### FINAL PROVISIONS

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↓ 2009/72/EC (adapted)

#### ~~Article 42~~

#### ~~Safeguard measures~~

~~In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may temporarily take the necessary safeguard measures.~~

~~Such measures must cause the least possible disturbance in the functioning of the internal market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.~~

~~The Member State concerned shall, without delay, notify those measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.~~

*Article 65~~43~~*

**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~~ ~~39~~ thereof, and with ~~Community~~ ~~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~~44~~*

**Derogations**

1. Member States which can demonstrate, ~~after this Directive has been brought into force,~~ that there are substantial problems for the operation of their small isolated systems, may apply for derogations from the relevant provisions of Chapters IV, V and VI as well as articles 4, 5, 6, 7 and 8, IV, VI, VII, and VIII, as well as Chapter III, in the case of micro isolated systems, as far as refurbishing, upgrading and expanding existing capacity are concerned, which may be granted to them by the Commission. The Commission shall inform the Member States of those applications before taking a decision, taking into account respect for confidentiality. That decision shall be published in the *Official Journal of the European Union*.

2. Article ~~43~~ shall not apply to Cyprus, ~~Luxembourg~~, ~~Luxembourg~~ and ~~or~~ Malta. In addition, Articles ~~6 and 35~~ ~~26, 32 and 33~~ shall not apply to Malta.

For the purposes of Article ~~43~~ ~~9~~(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.

~~Article 45~~

~~Review procedure~~

~~In the event that in the report referred to in Article 47(6) the Commission reaches the conclusion that given the effective manner in which network access has been carried out in a Member State which gives rise to fully effective, non-discriminatory and unhindered network access certain obligations imposed by this Directive on undertakings (including those with respect to legal unbundling for distribution system operators) are not proportionate to the objective pursued, the Member State in question may submit a request to the Commission for exemption from the requirement in question.~~

~~Such request shall be notified, without delay, by the Member State to the Commission, together with all the relevant information necessary to demonstrate that the conclusion reached in the report on effective network access being ensured will be maintained.~~

~~Within three months of its receipt of a notification, the Commission shall adopt an opinion with respect to the request by the Member State concerned, and where appropriate, submit proposals to the European Parliament and to the Council to amend the relevant provisions of this Directive. The Commission may propose, in the proposals to amend this Directive, to exempt the Member State concerned from specific requirements, subject to that Member State implementing equally effective measures as appropriate.~~

#### ~~Article 46~~

#### ~~Committee~~

~~1. The Commission shall be assisted by a committee.~~

~~2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

#### ~~Article 47~~

#### ~~Reporting~~

~~1. The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and the Council for the first time by 4 August 2004, and thereafter on an annual basis. The progress report shall cover at least:~~

~~(a) the experience gained and progress made in creating a complete and fully operational internal market in electricity and the obstacles that remain in this respect, including aspects of market dominance, concentration in the market, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion;~~

~~(b) the extent to which the unbundling and tariffication requirements contained in this Directive have been successful in ensuring fair and non-discriminatory access to the Community's electricity system and equivalent levels of competition, as well as the economic, environmental and social consequences of the opening of the electricity market to customers;~~

- ~~(c) an examination of issues relating to system capacity levels and security of supply of electricity in the Community, and in particular the existing and projected balance between demand and supply, taking into account the physical capacity for exchanges between areas;~~
- ~~(d) special attention will be given to measures taken in Member States to cover peak demand and to deal with shortfalls of one or more suppliers;~~
- ~~(e) the implementation of the derogation provided under Article 26(4) with a view to a possible revision of the threshold;~~
- ~~(f) a general assessment of the progress achieved with regard to bilateral relations with third countries which produce and export or transport electricity, including progress in market integration, the social and environmental consequences of the trade in electricity and access to the networks of such third countries;~~
- ~~(g) the need for possible harmonisation requirements that are not linked to the provisions of this Directive; and~~
- ~~(h) the manner in which Member States have implemented in practice the requirements regarding energy labelling contained in Article 3(9), and the manner in which any Commission recommendations on that issue have been taken into account.~~

~~Where appropriate, the progress report may include recommendations as regards, in particular, the scope and modalities of labelling provisions, including the way in which reference is made to existing reference sources and the content of those sources, and, notably, how information relating to environmental impact, as regards at least CO<sub>2</sub> emissions, and radioactive waste, resulting from electricity generation from different energy sources could be made available in a transparent, easily accessible and comparable manner throughout the Community, how the measures taken by the Member States to control the accuracy of the information provided by suppliers could be streamlined, and which measures could counteract the negative effects of market dominance and market concentration.~~

- ~~2. Every two years, the progress report referred to in paragraph 1 shall also include an analysis of the different measures taken in the Member States to meet public service obligations, together with an examination of the effectiveness of those measures and, in particular, their effects on competition in the electricity market. Where appropriate, the report may include recommendations as to the measures to be taken at national level to achieve high public service standards, or measures intended to prevent market foreclosure.~~
- ~~3. The Commission shall, by 3 March 2013, submit, as part of the general review, to the European Parliament and the Council, a detailed specific report outlining the extent to which the unbundling requirements under Chapter V have been successful in ensuring full and effective independence of transmission system operators, using effective and efficient unbundling as a benchmark.~~
- ~~4. For the purpose of its assessment under paragraph 3, the Commission shall take into account in particular the following criteria: fair and non-discriminatory network access, effective regulation, the development of the network to meet market needs, undistorted incentives to invest, the development of interconnection infrastructure, effective competition in the energy markets of the Community and the security of supply situation in the Community.~~
- ~~5. Where appropriate, and in particular in the event that the detailed specific report referred to in paragraph 3 determines that the conditions referred to in paragraph 4 have not been guaranteed in practice, the Commission shall submit proposals to the European Parliament and the Council to ensure fully effective independence of transmission system operators by 3 March 2014.~~

~~6. The Commission shall, by 1 January 2006, forward to the European Parliament and Council, a detailed report outlining progress in creating the internal electricity market. That report shall, in particular, consider:~~

~~the existence of non-discriminatory network access,~~

~~effective regulation,~~

~~the development of interconnection infrastructure and the security of supply situation in the Community,~~

~~the extent to which the full benefits of the opening of markets are accruing to small enterprises and household customers, notably with respect to public service and universal service standards,~~

~~the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour,~~

~~the extent to which customers are actually switching suppliers and renegotiating tariffs,~~

~~price developments, including supply prices, in relation to the degree of the opening of markets; and,~~

~~the experience gained in the application of this Directive as far as the effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.~~

~~Where appropriate, the Commission shall submit proposals to the European Parliament and the Council, in particular to guarantee high public service standards.~~

~~Where appropriate, the Commission shall submit proposals to the European Parliament and the Council, in particular to ensure full and effective independence of distribution system operators before 1 July 2007. When necessary, those proposals shall, in conformity with competition law, also concern measures to address issues of market dominance, market concentration and predatory or anti-competitive behaviour.~~

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↓ new

### *Article 67*

#### **[Exercise of the delegation]**

1. The power to adopt [delegated acts] is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt [delegated acts] referred to in Article 61 and Article 63 shall be conferred on the Commission for an undetermined period of time from the (OP: please insert the date of entry into force).
3. The delegation of power referred to in Article 61 and 63 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated act already in force.



4. Before adopting a [delegated acts], the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a [delegated acts], the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A [delegated acts] adopted pursuant to Article 61 and 63 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### *Article 68*

#### **Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
  - 2a. **The draft implementing act cannot be accepted if the Committee has not delivered an opinion.**

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.

↓ 2009/72/EC (adapted)

Article ~~49~~ 70

**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive~~  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  [12 months from entry into force]  ~~3 March 2011~~. They shall ~~forthwith inform~~  immediately communicate the text of those provisions to  the Commission ~~thereof~~.

They shall apply those measures from   14 months from entry into force with the exception of Article 5(3) which they shall apply from [date of entry into force]  ~~3 March 2011~~, with the exception of Article 11, which they shall apply from ~~3 March 2013~~.

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.  ~~The methods of making~~  Member States shall determine how  such reference  is to be made and how that statement is to be formulated  ~~shall be laid down by Member States~~.

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~~ ~~48~~*

**Repeal**

Directive ~~2003/54/EC~~  2009/72/EC  is repealed  with effect  from ~~3 March 2011~~  [12 months from entry into force],  without prejudice to the obligations of Member States ~~concerning~~  relating to  the ~~deadlines~~  time-limits  for  the  transposition  into national law  and  the dates of  application of the ~~said~~ 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 ~~II~~  V .

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↓ 2009/72/EC (adapted)

*Article ~~72~~ ~~50~~*

**Entry into force**

This Directive shall enter into force on the ~~20th~~  twentieth  day following  that of  its publication in the *Official Journal of the European Union*.

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↓ 2009/72/EC

Article ~~7354~~

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*