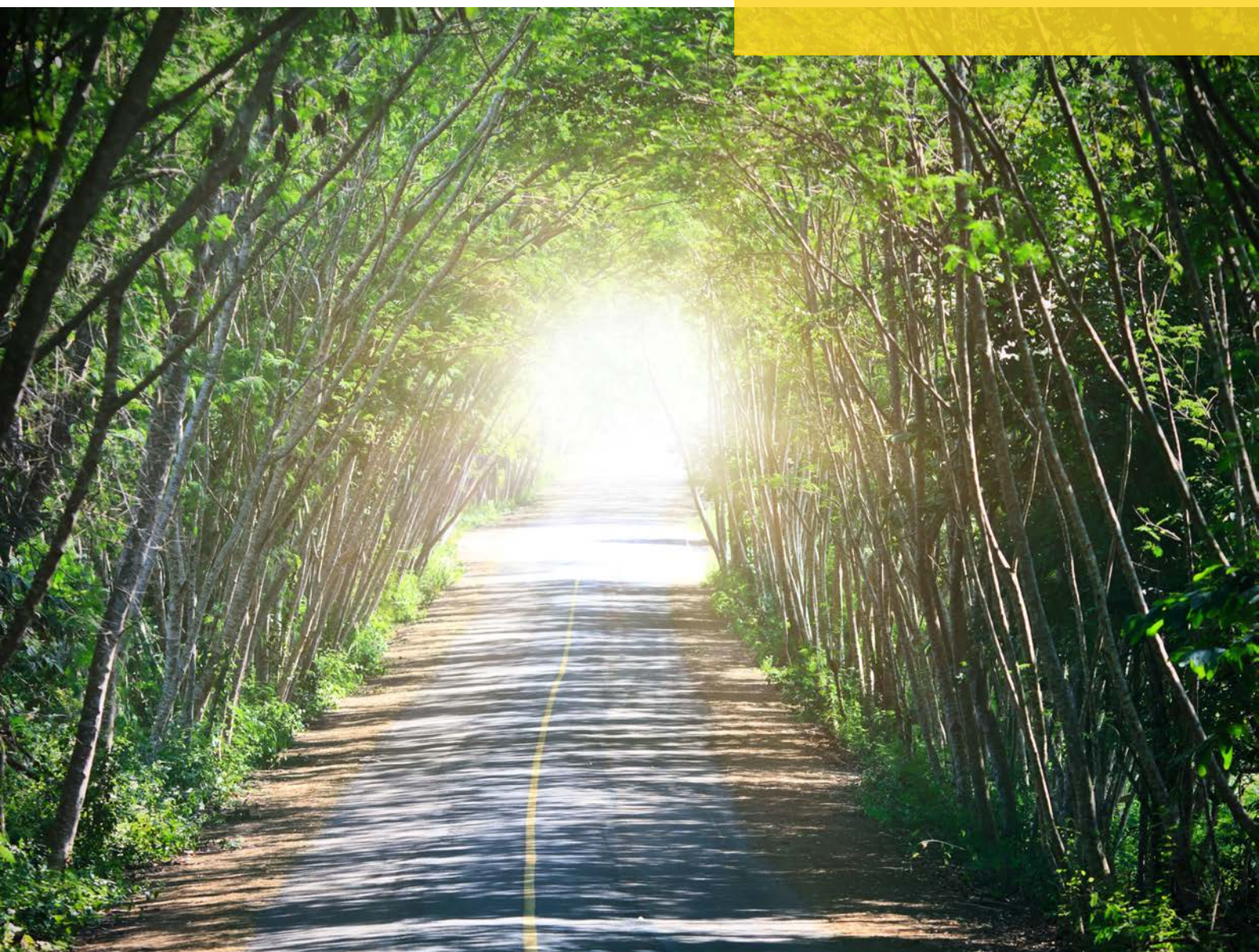




UKRAINE ENERGY MARKET OBSERVATORY



Quarterly Report Q02/2023

by the Energy Community Secretariat

August, 2023

PURPOSE STATEMENT

In January 2023, the Energy Community Secretariat established the Ukraine Energy Market Observatory to streamline and consolidate its monitoring functions under the Energy Community Treaty with regard to Ukraine and its commitments. The current report is summarizing the activities under the UA EM Observatory during the second quarter (Q2) of 2023.

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Ukraine Energy Market Observatory: Quarterly Summary

Quarter 2, 2023

Introduction

In January 2023, the Energy Community Secretariat established the Ukraine Energy Market Observatory which closely follows and reviews all developments related to the energy market(s) and corporate governance in Ukraine. This initiative is meant to support the further integration of the Ukrainian energy sector with Europe and help building trust in a predictable and transparent governance in line with European practices. The assessments of main developments are published and made available to domestic and international stakeholders involved via dedicated page on the Energy Community web-site (<https://www.energy-community.org/Ukraine/observatory.html>).

The assessments made under the Market Observatory will also serve the monitoring of the reform steps which is envisaged under the Clean Energy Partnership, the instrument on which Ukraine and the G7+ agreed to work in order to help instilling trust for the benefit of private investors.

In June 2023, the Secretariat released the first Quarterly Summary of Ukraine Energy Market Observatory¹ summarizing the activities under the UA EM Observatory during the first quarter as well as key legal initiatives and developments related to the Energy Community acquis.

The current report presents the summary of UA Energy Market Observatory assessment during the second quarter (Q2) of 2023. Also, the report provides an updated information on past developments.

Observatory Notes

Under the UA Energy Market Observatory during Q2 2023, the Secretariat assessed compliance with the Energy Community acquis of draft legal and regulatory acts communicated to the Secretariat by Ukrainian authorities and stakeholders. The assessments cover the rules for cross-border capacity calculation and allocation, coupling of the Ukrainian energy market with the market of European Union and green transformation, as well as unauthorized natural gas offtakes. The following assessment notes were prepared by the Secretariat and published on the Energy Community web-site:

- **Assessment Note 05/2023**²: Assessment of the draft amendments to the Methodology for determining the cross-border capacity.

Summary

The assessment follows the request of the National Energy and Utilities Regulatory Commission (hereinafter "NEURC") to the Secretariat to provide a compliance assessment of the draft amendments to the Methodology for determining the available capacity of interstate crossings (interstate electrical networks of Ukraine)³ prepared by the transmission system operator (hereinafter "TSO") of Ukraine, *Ukrenergo*.

¹ https://www.energy-community.org/dam/jcr:a0075c1c-034c-404b-8ca6-366644e676b1/Q012023_Report.pdf

² <https://www.energy-community.org/dam/jcr:0927550b-1194-45bf-ac14-70ed7f956357/Note05.pdf>

³ NEURC Resolution No 893 of 23.08.2018

The proposed changes to the mechanism for the calculation of the available cross-border capacity are based on the combination of two ‘methods’, one being based on the calculation of technical parameters of the network taking into account operational security limits (most importantly the calculation of net transfer capacity; hereinafter “NTC”), the so-called “method of electrical modes” (already defined by a methodology of 2018), and the other one being based on the forecast of the energy balance of the system, the so-called “method of energy regimes/modes”.

As the draft methodology is not intended to transpose Decision 2022/03/MC-EnC incorporating Regulation (EU) 2019/943, Regulation (EU) 2015/1222 (hereinafter “CACM GL”) and Regulation (EU) 2016/1719 (hereinafter “FCA GL”), the compliance of the draft amendments to the capacity calculation methodology was assessed against the obligations stemming from the Third Energy Package, namely Directive 2009/72/EC and Regulation (EC) 714/2009 as well as Directive 2005/89/EC.

In the Secretariat’s assessment, the proposed method of energy regimes does not improve the existing mechanism for calculating the amount of available capacity in relation to security of supply, and is not compliant with the obligation of the TSO stemming from the Energy Community acquis in force. The method of energy regimes potentially undermines the maximization of cross-border capacity which the TSO is obliged to make available for exchange of energy (import/export/transit), complying with safety standards as required by Article 16 of Regulation (EU) 714/2009. The need to maintain the energy balance (generation adequacy) should be addressed by adopting measures in line with Article 5 of Directive 2005/89/EC, and not by means of limiting available cross-border capacity.

The Secretariat also provided recommendations for improvements of the already existing capacity calculation method, in particular, to harmonize the calculation approach across all borders to the extent possible, to clearly define all parameters used in the calculation, also the methodology should take into account netting of flows. In this respect, the Secretariat recommended to focus on the timely transposition and implementation of the newly adopted Electricity Integration Package by 31 December 2023, in particular in terms of implementing the calculation of cross-border capacities via regionally developed methodologies (e.g. Article 10 of FCA GL) and ensuring minimum amounts of cross-border capacity to be made available by TSOs (as required by Article 16 of Regulation 2019/943).

Follow up

At the end, the proposed amendments to the capacity calculation methodology were not approved by NEURC, and the methodology of 2018 remained unchanged. On 31 March 2023, without consultations with the Secretariat, NEURC amended⁴ Resolution No 332 of 25 February 2022.⁵ The amendments provide that the auction office (Ukrenergo at this moment) shall allocate the cross-border capacity for interconnectors Ukraine - Moldova and Ukraine – Poland, determined as the amount of available transfer capacity taking into account the standards of operational security, and for interconnectors Ukraine - Romania, Ukraine - Slovakia and Ukraine – Hungary as the minimum value between the amount of capacity allowed for allocation by the Regional Group of Continental Europe, taking into account the operational security standards, and the amount of available capacity determined by the TSO taking into account the operational security standards. With this decision, NEURC aligned the regulation with the practice of determination of cross-border capacity allowing

⁴ <https://zakon.rada.gov.ua/rada/show/v0597874-23#n5>

⁵ “On ensuring the stable functioning of the electric energy market, including the financial condition of participants in the electric energy market during the period of martial law in Ukraine”

for allocation on borders between Ukraine-Moldova Control Block and ENTSO-E temporarily applied under the emergency synchronization conditions (at this moment, the allowed capacity in import direction to Ukraine-Moldova Control Block is 1200 MW, for export direction from Ukraine-Moldova Control Block 400 MW^{6,7}). However, after the amendments to Resolution No 332, it is not clear if in practice the TSO applies the methodology for cross-border capacity calculation or the principle of operational security standards and proposes export/import cross-border capacity for allocation considering the energy balance of the system as a priority. As was stressed by the Secretariat in its assessment of April 2023, the capacity calculation should correspond to the methodology compliant with the acquis. Also, the capacity calculation approach on the new interconnector between Poland and Ukraine which is in operation since May 2023 should be reflected in the approach applied to the Ukraine-Moldova Control Block and ENTSO-E borders. Further improvements in the splitting of the calculated (defined) capacity among the borders and better transparency of the applied approach will need to be ensured.

- **Assessment Note 06/2023**⁸: Analysis of the draft amendments to the Law “On the Electricity Market” related to the harmonization of the rules for cross-border capacity allocation registered as Law No 5322 in Verkhovna Rada of Ukraine;
- **Assessment Note 07/2023**⁹: Analysis of the draft amendments to the Law “On the Electricity Market” related to the harmonization of the rules for the cross-border capacity allocation published by NEURC for public consultation on 17 April 2023.

Summary

The abovementioned assessments were prepared as a continuation of the process of amending the Law “On the Electricity Market” related to the harmonization of the rules for cross-border capacity allocation (following Assessment Note 04/2023¹⁰). Harmonization is necessary to ensure the start of joint capacity allocations on interconnectors between Ukraine and neighbouring Parties to the Energy Community, namely neighbouring EU Member States and Moldova. Following a publication of draft amendments to the Electricity Market Law on its website for public consultation, NEURC sent a request to the Secretariat asking its assessment of draft amendments to the Electricity Market Law. The draft amendments were pending discussion in the Committee on Energy, Housing and Utilities Services of Verkhovna Rada of Ukraine as part of the draft Law aiming to transpose the REMIT Regulation, registered as Law No 5322¹¹. This draft considered earlier Secretariat comments provided in Assessment Note 04/2023 on congestion revenue sharing under unilateral auctions and on public consultations held by the TSO on allocation rules, allowing participation of foreign market participants as well. Additionally, draft Law No 5322 proposed to amend Section XVII Final and Transitional provisions of the Electricity Market Law to allow flexibility in the usage of congestion management revenue. Under martial law in Ukraine, congestion revenues are to be used for covering the debts of the TSO (for electricity produced by renewables, for the Guaranteed Buyer, for balancing market), except for 10% of revenues to be used to guarantee the actual availability of allocated capacity.

⁶ <https://www.entsoe.eu/news/2023/06/21/press-release-further-increase-in-the-trade-capacity-with-the-ukraine-moldova-power-system/>

⁷ <https://ua.energy/general-news/entso-e-has-increased-the-transmission-capacity-of-interconnectors-for-importing-electricity-to-ukraine-and-moldova-to-1-200-mw/>

⁸ <https://www.energy-community.org/dam/jcr:46ea12c9-6260-41e3-ad12-d229ef6af55e/Note06.pdf>

⁹ <https://www.energy-community.org/dam/jcr:c77b3cf8-d955-4b68-9895-edc9c14f805d/Note07.pdf>

¹⁰ <https://www.energy-community.org/dam/jcr:f004fe99-eea7-429e-9b41-ffa4a070689c/Note04.pdf>

¹¹ Draft Law No 5322 on Amendments to Certain Laws of Ukraine on Prevention of Abuse in Wholesale Energy Markets

As the draft amendments to the Electricity Market Law were not intended to transpose Decision 2022/03/MC-EnC, the assessment was based on the rules of the Third Energy Package, namely Regulation (EC) 714/2009 and its Annex I on Guidelines on the Management and Allocation of Available Transfer Capacity of Interconnections Between National Systems (hereinafter “Congestion Management Guidelines”). The Secretariat found the draft amendments largely compliant with the Energy Community acquis. However, few provisions raised concerns. In particular, the Secretariat recommended to envisage compensation for capacity curtailment in case of force majeure during the temporary period of unilateral auctions and to delete draft amendments on using congestion revenues as proposed in the final and transitional provisions (for covering the debts of the TSO), because the Electricity Market Law in force already provides for flexibility in using congestion revenues subject to approval by the NEURC and upon submitting information to the Secretariat. The draft law also proposed changes in the capacity allocation rules consultations process, introducing a requirement for holding public consultations by the TSO according to the procedure approved by the NEURC. The Secretariat saw a need to clarify that public consultations should be open to every interested party.

The Secretariat also recalled that to ensure complete transposition of the new acquis by the end of this year, further amendments to the primary (and secondary) legislation will be required.

Follow-up

Draft Law No 5322 was adopted by the Verkhovna Rada on 10 June, 2023 and entered into force as Law No 3141-IX.¹² Law No.3141-IX amends provisions of the Electricity Market Law regulating cross-border capacity allocation in terms of procedure of drafting, consulting publicly and consent of the allocation rules, compensation for capacity curtailment in case of force majeure, congestion revenue sharing in case of temporary period of unilateral auctions which were recommended by the Secretariat. At the same time, provisions allowing to use congestion revenues for covering the debts of the TSO were eventually adopted, which remains non-compliant with the Energy Community law. In line with the Law, in July 2023 NEURC adopted the Procedure for holding public consultations by the TSO when developing the rules for the cross-border capacity allocation and determining the structure of the capacity allocation¹³ which was also assessed¹⁴ by the Secretariat.

In accordance with the public consultation procedure, in July 2023 the TSO launched the public consultations on draft Long Term Allocation Rules, draft Daily Allocation Rules and draft Procedure determining the capacity amount at interconnections for allocation at yearly, monthly, and daily auctions (allocation structure) for UA-RO border and on the draft Rules for the daily allocation of cross-border capacity on UA interconnectors with Slovakia, Hungary and Poland (on the JAO platform) developed by TSOs of Ukraine, Slovakia, Hungary and Poland together with JAO. Ukrenergo still needs implement joint cross-border capacity auctions on all borders in compliance with the Energy Community acquis.

Law No 3141 also made possible an agreement between the Ukrainian and Slovakian TSOs (Ukrenergo and SEPS), facilitated by the Secretariat, on the sharing of congestion revenues between the two companies under unilateral capacity auctions on the interconnector connecting their system. The agreement was signed following approval by NEURC and allowed to resume electricity exports from Ukraine to Slovakia.

The developments were supported by changes in the national tax legislation of Ukraine. They concern in particular the place of supply of services of access to cross-border capacity has been

¹² <https://zakon.rada.gov.ua/laws/show/3141-20#Text>

¹³ Resolution #1295 of 13.07.2023

¹⁴ <https://www.energy-community.org/dam/jcr:2c9bbb47-c25b-4953-8966-6f176b692383/Note12.pdf>

changed (for more details see Assessment Note 10/2023). These changes open the possibility for further steps in the implementation of joint capacity allocation (in particular, it is a precondition for capacity allocation by JAO).

- **Assessment Note 08/2023**¹⁵: Analysis of the draft Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding the Restoration and Green Transformation of the Energy System of Ukraine”

Summary

The assessment follows a request of the members of the Committee on Energy, Housing and Utilities Services of Verkhovna Rada of Ukraine to the Secretariat to provide a compliance assessment of the draft Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding the Restoration and Green Transformation of the Energy System of Ukraine”¹⁶ (hereinafter “the draft Law No 9011-d”) with the Energy Community acquis. Draft Law No 9011-d proposed amendments to several laws of Ukraine governing guarantees of origin, self-consumption and support schemes for electricity from renewable sources, most importantly the Law on Alternative Energy Sources and the Electricity Market Law.

In terms of support schemes the draft amendments envisage auctions for a market-based mechanism and limit the application of the existing feed-in (“green”) tariff to small-scale installations. This is in line with State Aid rules. The draft Law also provides for the extension of the green tariff to power plants which need to be reconstructed or restructured following damages or destruction during the period of martial law, at the same level as originally granted. The deadline to finalize renewables projects (except solar PV) after the conclusion of the pre-PPA contracts is extended to four years. These proposals were supported by the Secretariat. To foster renewables self-consumption, the draft amendments introduce a net-billing scheme, while still keeping the possibility to grant a “green” tariff to existing self-consumers. The draft amendments also create a basis for the establishment of an electronic registry for guarantees of origin (hereinafter “GO”) for electricity and biomethane and appoints NEURC as the issuing body for GO for electricity. The draft Law also partially transposes provisions from Directive (EU) 2019/944 on common rules for the internal market for electricity (hereinafter, “Electricity Directive”), in particular with regard to active customers, energy communities and aggregation, etc.

The Secretariat in its assessment focused on whether the draft amendments, within the scope covered by it and if adopted, are compliant with Energy Community Ministerial Council Decision 2021/14/MC-EnC incorporating Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources (hereinafter “REDII”) in the Energy Community acquis. The deadline for the transposition and implementation expired on 31 December 2022. The Secretariat concluded that the draft Law partially transposes the REDII and some other elements of the so-called Clean Energy Package, but it will not be sufficient to ensure full transposition of the REDII.

The Secretariat recalled the importance of establishing an appropriate system to ensure that support granted is timely paid to renewable energy producers and that it is not revised in a way that undermines the economic viability of projects that already benefit from support. This should include a revision of the surcharge system outside the transmission tariff which in turn requires additional amendments to the Electricity Market Law. As regards the timing of the auctions, the Secretariat recommended to ensure that the necessary framework for auctions is timely prepared including secondary legislation. Draft Law No 9011-d is silent with regard to the conversion of feed-in tariffs

¹⁵ <https://www.energy-community.org/dam/jcr:f58f9b75-dc4a-4ee6-b34e-b1d4cc367173/Note08.pdf>

¹⁶ <https://itd.rada.gov.ua/billInfo/Bills/Card/41849>

paid to existing producers (under the “green” tariff scheme) to contracts for difference. Conversion should ensure that the economic conditions and the overall viability of the projects remains unchanged in line with Article 6 of the REDII. The level of the green tariff for small-scale installations and demonstration projects should be calculated by way of secondary (not primary) legislation based on a well-defined methodology and regularly updated and without affecting the economic viability of the projects supported.

Among the positive developments proposed by draft Law No 9011-d is the clarification in the calculation of imbalances caused by renewable producers under support scheme, which releases renewable producers from the responsibility for imbalances caused by the trading activities of the Guaranteed Buyer, as well as for deviations not caused by renewable producers.

Follow-up

Draft Law No 9011-d was adopted by the Verkhovna Rada of Ukraine on 30 June, 2023 and entered into force as Law No 3220-IX.¹⁷ The Secretariat will assess the adopted Law No 3220-IX in the upcoming period.

- **Assessment Note 09/2023**¹⁸: Assessment of the draft amendments to the Law of Ukraine “On the Electricity Market” regarding the Coupling of the Ukrainian Market and the European Union Markets

Summary

The assessment follows a request of the Ministry of Energy of Ukraine (hereinafter “the Ministry”) to the Secretariat to provide a compliance assessment of the draft Law “On amendments to the Law of Ukraine “On the Electricity Market” regarding the coupling of the Ukrainian market and the European Union markets (hereinafter “draft amendments to the EML”), developed in cooperation with NEURC and market participants (in particular, the Market Operator and the electricity TSO, Ukrenergo).

The draft amendments aim at ensuring the necessary conditions to allow for the coupling of the Ukrainian electricity market with the markets of the neighbouring EU Member States and Moldova and mostly include provisions related to the so-called “nominated electricity market operator” (hereinafter “NEMO”), general principles and concepts of market coupling, the tasks of the TSO, the competences of the regulatory authority as well as some provisions on the balancing market in Ukraine.

In the Energy Community, detailed rules related to different market segments and system operation, including those related to short-term markets, are defined by the new Electricity Integration Package (including Network Codes and Guidelines¹⁹) were adopted on 15 December 2022 by Ministerial Council Decision 2022/03/MC-EnC. The Package incorporated the European Union’s electricity market acquis in the Energy Community complemented by Procedural Act 2022/01/MC-EnC on Regional Energy Market Integration. The deadline for transposition and implementation of those acts by Contracting Parties, including Ukraine, is 31 December 2023.

While the draft amendments to the EML aimed at ensuring the coupling of the Ukrainian electricity market with the markets of the Parties to the Energy Community, the Secretariat in its assessment noted that they do not transpose fully the CACM GL, EB GL and FCA GL provisions including the obligation for the application of the pan-EU terms, conditions and methodologies (hereinafter

¹⁷ <https://zakon.rada.gov.ua/laws/show/3220-IX#Text>

¹⁸ <https://www.energy-community.org/dam/jcr:0a51215f-5be6-4c27-ab41-6c8853e08e93/Note09.pdf>

¹⁹ Regulation (EU) 2015/1222, Regulation (EU) 2017/2915 (hereinafter, EB GL), Regulation (EU) 2016/1719, Regulation (EU) 2019/943 (hereinafter, Electricity Regulation) are of relevance for proposed draft Law.

“TCMs”) as required by Article 9(6) of the CACM GL, Article 4(6) of the FCA GL and Article 5(2) of the EB GL; they also do not include the transposition of the ACER Regulation.²⁰ Some of the provisions were transposed in a non-compliant manner. In particular, the draft amendments provide for the designation of the Market Operator as a NEMO directly through the Electricity Market Law, which would amount to a breach of the *acquis*. The CACM GL require that any NEMO is designated based on a separate procedure and criteria defined in Article 6 of CACM GL, thus cannot be designated directly by law. The mandate of NEURC to monitor compliance and revoke the NEMO designation in case of non-compliance are also not transposed as required by Article 4 of the CACM GL. Also, the introduction of a procedure for non-residents to participate in the electricity market raises concerns as foreign market participants must be treated in a non-discriminatory manner, *inter alia* in order to enable market coupling projects.

The Secretariat recommended to extend the scope of the draft amendments to ensure the transposition of the Electricity Regulation, the ACER Regulation, CACM GL, FCA GL and EB GL necessary to ensure Ukraine’s integration in the European electricity markets. The draft needs to transpose the main concepts, tasks and obligations and provide legal basis for the implementation; - as a minimum, transposition of the ACER Regulation, application of the pan-European TCMs and obligation to participate to development of regional TCMs as well as a proper procedure and criteria for a NEMO designation have to be included in primary legislation.

Follow-up

Although the general transposition deadline for the new electricity package is 31 December 2023, some implementation deadlines have already expired. In particular, the NEMO in Ukraine still has not been designated as required by Article 4 of CACM GL²¹ and the legal basis for this is missing. NEMO designation is also a part of Ukraine’s commitments under the Roadmap for further market integration following the synchronisation of the Ukraine’s (and Moldova’s) electricity networks with the Continental European Network.

There were some proposals²² to introduce NEMO designation provisions in draft Law No.9011-d, but they were not supported for final reading. The TSO in parallel also drafted legal amendments to the Electricity Market Law in order to implement the Clean Energy Package and the Electricity Integration Package which preliminary were reviewed by the Secretariat (but not published), with recommendations for further improvement. It is of great importance to align all transposition efforts. The Secretariat is in constant coordination with Ukraine stakeholders as regards all aspects of new *acquis* transposition and will review and support relevant legal developments to ensure their compliance with the Treaty.

- **Assessment Note 10/2023**²³: Assessment of the Draft Law of Ukraine “On Amending the Tax Code of Ukraine on Taxation of Accessing the Interconnectors and other Electricity Export and Import Transactions”

The assessment followed a request of the Ministry to the Secretariat to provide a compliance assessment of the draft Law of Ukraine “On Amending the Tax Code of Ukraine on Taxation of Accessing the Interconnectors and other Electricity Export and Import Transactions”. The amendments proposed by the Ministry are expected to remove obstacles to joint capacity allocation and trading in accordance with the CACM GL. The compliance assessment of the Secretariat was limited to network energy-based transactions and builds on the commitments under the Association

²⁰ https://www.energy-community.org/dam/jcr:d5a1a894-88db-4326-818b-f2c648bd237e/Decision03-2022-MC_newELacquis_15-12-2022.pdf

²¹ The deadline was 15 June 2023;

²² Comparative table with amendments to the second reading of the draft Law #9011-d;

²³ <https://www.energy-community.org/dam/jcr:0bbb9c11-7d16-45bf-8ac4-6b5a3f9ba761/Note10.pdf>

and Accession Agreement with the EU, in particular, to gradually align Ukraine's VAT regime with the EU's. The Secretariat assessed that amendments proposed were not in line with the corresponding provisions of VAT Directive 2006/112/EC, which define the principles and procedure for taxation of the service of providing access to interconnectors in EU.

In order to support the introduction of joint cross-border capacity allocation, the Secretariat recommended to introduce provisions defining the place of supply of services related to provision to access to and use of natural gas and electricity networks as the country in which the recipient is established, and to oblige the recipient of services to calculate, report and pay VAT on received services of access to network, and to deduct input VAT on received services supplied by a service provider established outside Ukraine (relevant when the capacity allocated by the JAO). To ensure market coupling and cross-border trade it is further recommended to extend similar provisions to the energy supplied cross-border, e.g. to introduce the notion of taxable dealer in network energy, define the place of supply of energy as the location of the customer, when the customer is a taxable dealer and if the customer is a final consumer, the place of supply should be defined as the place where the customer effectively uses and consumes the energy. Also, the Tax Code should be aligned with the VAT Directive by exempting energy from VAT at importation.

Follow-up

On 30 June 2023 the Verkhovna Rada adopted the Law of Ukraine No 3219-IX "On amendments to the Tax Code of Ukraine and other laws of Ukraine regarding the peculiarities of taxation during the period of martial law"²⁴ which amends Article 186 of the Tax Code of Ukraine defining the place of supply of services of access to cross-border capacity and ancillary services as the place where the recipient of services is registered as a business entity or - in the absence of such a place - the place of a permanent or primary residence. That corresponds to the Secretariat's recommendations and facilitates the process of joint cross-border capacity allocation rules development and implementation.

- **Assessment Note 11/2023**²⁵: Analysis of NEURC Resolution No. 182 of 31.01.2023 "On adoption of and amendments to some NEURC Resolutions", which aims to address the issue of unauthorized natural gas offtakes

The assessment followed the request of NEURC in the course of adoption of NEURC Resolution No.182 of 31 January 2023 "On the approval and introduction of changes to some resolutions of the NEURC"²⁶ (hereinafter, Resolution 182) and takes into account further developments related to unauthorized offtakes of gas. Namely, amendments were made to the Gas Transmission Code, the Code of Gas Distribution Systems, the Standard Contract for the Transportation of Natural Gas, and the Licensing Conditions for Conducting Economic Activities to allow for recognition of unauthorized offtakes and its definition in the regulatory framework related to balancing.

The issue closely relates to the financial stability of the gas transmission system operator GTSOU. Since the beginning of its operations, GTSOU has been facing unpaid offtakes of natural gas from the gas transmission system. In particular, during 2022, the supplier of the last resort (hereinafter "SoLR"), namely Naftogaz, did not supply gas to cover the DSO's off-takes for technological gas (as was its obligation under the PSO Act²⁷), and did not pay to GTSOU a daily imbalance charge which resulted from not nominating the needed quantities for DSOs nevertheless off-taken and consumed. Thus, the debt of the system users of GTSOU has significantly increased, which in turn has put at risk ability of GTSOU to operate, maintain and develop secure, reliable and efficient transmission as

²⁴ <https://zakon.rada.gov.ua/laws/show/3219-IX#Text>

²⁵ <https://www.energy-community.org/dam/jcr:96e0b918-ba06-4f79-aa88-dc6fd58d110e/Note11.pdf>

²⁶ <https://www.nerc.gov.ua/acts/pro-zatverdzhennya-ta-vnesennya-zmin-do-deyakih-postanov-nkrekp>

²⁷ CMU Resolution No. 222 of 06.03.2022

well as to provide gas for the purpose of balancing and technological consumption as required by Article 13 of Directive 2009/73/EC.

The Secretariat also assessed Resolution 182 against the Network Code on Gas Balancing of Transmission Networks, as adopted for the Energy Community Contracting Parties by Permanent High Level Group Decision 2019/01/PHLG-EnC of 12 December 2019²⁸. In general, Resolution 182 represents a step in the right direction to contribute to a better financial standing of GTSOU in the future. However, it was noted by the Secretariat, that the framework lacks a clear distinction between the imbalances in the transmission network and the nonpayment of gas withdrawn from the network. The Secretariat stressed that the Government should consider actions to eliminate unauthorized offtakes to the maximum extent possible, by proposing necessary legislative changes in cooperation with NEURC, GTSOU and the Secretariat, in particular when redesigning the PSO Act (as required by the Gas Market Law) that the Government has adopted in the course of 2022 and 2023, which led to increase of unauthorized offtakes. Also, the Secretariat recommended revising the distribution tariff to allow for the coverage of costs for the purchase of gas for technological consumption and network losses, making suppliers responsible for booking capacity at the exit from the transmission system and for their balances and imbalances, abandoning the practice of prohibiting cut-offs of consumers as a default; similarly to other un-authorized offtakes (of electricity or water), unauthorized off-takes could be also classified as criminal acts.

Other key developments in the Ukrainian energy market

In the reporting period a number of additional developments (e.g. draft laws and regulatory acts) were introduced falling within the Energy Community acquis, in particular:

- NEURC Resolution No 630 dated 7 April 2023 “On the final decision on the certification of the gas storage operator”²⁹ by which NEURC, complying with the Secretariat’s Opinion No. 1/23 dated 31 March 2023, **certified UKRTRANSGAZ as gas storage operator** according to the newly adopted in Energy Community Regulation (EU) 2022/1032.
- CMU Resolution No 363 of 21.04.2023 “On amendments to the resolution of the Cabinet of Ministers of Ukraine of 5 June 2019 No. 483 by which the **public service obligation of Ukrenergo to finance the cost of ensuring the uninterrupted functioning of the supplier of last resort in electricity** was extended until the end of 2023. The Secretariat was not consulted on the relevant draft decision as envisaged by the Energy Community acquis, namely Article 3 of the Directive 2009/72/EC and Article 62 of the Electricity Market Law.
- CMU Resolution No 395 of 28.04.2023 “On Amendments to the Regulation on Imposition of Special Duties on Natural Gas Market Subjects to Ensure Public Interests in the Process of Natural Gas Market Functioning” and CMU Decree No 394 of 25.04.2023 “On making changes to the resolution of the CMU dated 19 July 2022 No 812”, extending the **public service obligations scheme in the gas sector** until 31 August 2023. The Secretariat was not consulted on the relevant draft decision as envisaged by the Energy Community acquis, namely Article 3 of Directive 2009/73/EC and Gas Market Law (Article 11).

²⁸ https://www.energy-community.org/dam/jcr:0c739eda-a10f-4e0e-bfb6-aa2c0ba7a0b2/Regulation_312_2014_NC_B.pdf

²⁹ <https://www.nerc.gov.ua/acts/pro-prijnyattya-ostatochnogo-rishennya-pro-sertifikaciyu-operatora-gazoshovishcha>

- CMU Resolution No 545 of 30.05.2023 “On amendments to the resolutions of the CMU dated 30 December 2015 No 1147 (“On the prohibition of importation into the customs territory of Ukraine of goods originating from the Russian Federation”), and dated 27 December 2022 No 1466 (“On approval of the lists of goods whose export and import are subject to licensing, and quotas for 2023”). The Resolution impacted gas storage issues (in more details see Assessment Note 15/23 of legislative and regulatory risks related to storing gas in Ukraine by non-Ukrainian operators and measures aimed at their reduction and mitigation³⁰).
- Draft Law No 9311 of 19.05.2023 “On Optimizing the Ownership Structure of the Operator of the Gas Transportation System of Ukraine” aimed to abolish the two-layered structure of **corporate governance of GTSOU** that failed to ensure independence and efficient operation of GTSOU since its unbundling. The draft Law was followed by four alternatives drafts. The Secretariat supported the Committee on Energy, Housing and Utilities Services of Verkhovna Rada of Ukraine in finalising draft Law No 9311-1-d which was finally adopted by the Verkhovna Rada on 28 July 2023. The Law will be assessed by the Secretariat in the upcoming period.
- CMU Resolution No 544 of 30.05.2023 “On amendments to the resolution of the CMU of 5 June 2019 No 483” by which the **CMU increased fixed electricity price for household consumers** and established it at 2,64 UAH/kWh (including VAT) from 1 June to 31 December 2023. Considering the severe conditions of Ukrainian people facing the war this was a significant step towards the way to the full cost-reflective household electricity prices needed to support the energy system and market liquidity. The Resolution will be assessed by the Secretariat in the upcoming period.
- Law No 3141–IX of 10 June, 2023 “On making changes to some laws of Ukraine regarding the prevention of abuse in wholesale energy markets”³¹ **transposing Regulation (EC) 1227/2011 (the REMIT Regulation)** in Ukraine was finally adopted. The Secretariat’s assessment of the Law was published under Assessment Note 14/2023³².
- NEURC Resolution No1126 of 27 June 2023 “On setting price caps on the “day-ahead” market, the intraday market and the balancing market”³³ which **increased the price caps on organised market segments** for all hours (the highest cap during the newly introduced evening peak period), and sets a single minimum price cap (floor) at the near to zero level. The Secretariat’s assessment of the Resolution and its impact on the market was published under Assessment Note 13/2023³⁴.

Also, in the period of April-June 2023 the Competitive Selection Commission for NEURC commissioners conducted the **selection of candidates for the NEURC Commissioner** position whose term in the office expired on 1 July 2023. The selection process was followed by international organizations, including the EU Delegation to Ukraine, the Secretariat, and USAID. As a result of the

³⁰ https://www.energy-community.org/dam/jcr:9f848c72-8c3d-4fbf-a8ca-fdb3273f31ce/Ukraine_Energy_Market_Observatory_Assesment_Note.pdf

³¹ <https://zakon.rada.gov.ua/laws/show/3141-20#n492>

³² https://www.energy-community.org/dam/jcr:42be4f40-e842-430d-b7cb-40939ca935ed/20072023_UEMO_REMIT_Law_final_clean.pdf

³³ <https://www.nerc.gov.ua/acts/pro-vstanovlennya-granichnih-cin-na-rinku-na-dobu-napered-vnutrishnodobovomu-rinku-ta-balansuyuchomu-rinku>

³⁴ <https://www.energy-community.org/dam/jcr:78db10df-0b4a-4c58-8bab-10cffebebf44/Note13.pdf>

selection process, two candidates were submitted to the CMU which according to Article 8 of the Law on NEURC should take a decision on the appointment within 10 working days from the date of submission of the relevant application by the Competition Commission. However the CMU still has not appointed the new Commissioners. This development will be reflected by the Secretariat together with other issues related to the NEURC's independence in the upcoming period.