

## DIRECTIVE (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity < ... ><sup>1</sup>

*Incorporated and adapted by the Decision of the Ministerial Council of the Energy Community No 2021/13/MC-EnC of 30 November 2021 amending Annex I to the Treaty Establishing the Energy Community (Energy Community Treaty) and incorporating Directive (EU) 2019/944 and Regulation (EU) 2019/941 in the Energy Community acquis communautaire.*

*The adaptations made by the Ministerial Council Decision 2021/13/MC-EnC are highlighted in **bold and blue**.*

### CHAPTER I

#### SUBJECT MATTER AND DEFINITIONS

##### **Article 1**

##### **Subject matter**

This Directive establishes common rules for the generation, transmission, distribution, energy storage and supply of electricity, together with consumer protection provisions, with a view to creating truly integrated competitive, consumer-centred, flexible, fair and transparent electricity markets in the **Energy Community**.

Using the advantages of an integrated market, this Directive aims to ensure affordable, transparent energy prices and costs for consumers, a high degree of security of supply and a smooth transition towards a sustainable low-carbon energy system. It lays down key rules relating to the organisation and functioning of the **Energy Community** 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 requirements, and rules on the independence of regulatory authorities in the **Contracting Parties**.

This Directive also sets out modes for **Contracting Parties**, regulatory authorities and transmission system operators to cooperate towards the creation of a fully interconnected internal market for electricity that increases the integration of electricity from renewable sources, free competition and security of supply.

##### **Article 2**

##### **Definitions**

For the purposes of this Directive, the following definitions apply:

(1) 'customer' means a wholesale or final customer of electricity;

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<sup>1</sup> The adjusted title of the Directive corresponds to Article 1(1) of Ministerial Council Decision 2021/13/MC-EnC

- (2) 'wholesale customer' means a natural or legal person who purchases electricity for the purpose of resale inside or outside the system where that person is established;
- (3) 'final customer' means a customer who purchases electricity for own use;
- (4) 'household customer' means a customer who purchases electricity for the customer's own household consumption, excluding commercial or professional activities;
- (5) 'non-household customer' means a natural or legal person who purchases electricity that is not for own household use, including producers, industrial customers, small and medium-sized enterprises, businesses and wholesale customers;
- (6) '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;
- (7) '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;
- (8) 'active customer' means a final customer, or a group of jointly acting final customers, who consumes or stores electricity generated within its premises located within confined boundaries or, where permitted by a **Contracting Party**, within other premises, or who sells self-generated electricity or participates in flexibility or energy efficiency schemes, provided that those activities do not constitute its primary commercial or professional activity;
- (9) 'electricity markets' means markets for electricity, including over-the-counter markets and electricity exchanges, markets for the trading of energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intraday markets;
- (10) 'market participant' means **a natural or legal person who buys, sells or generates electricity, who is engaged in aggregation or who is an operator of demand response or energy storage services, including through the placing of orders to trade, in one or more electricity markets, including in balancing energy markets<sup>2</sup>**;
- (11) 'citizen energy community' means a legal entity that:
- (a) is based on voluntary and open participation and is effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small enterprises;
  - (b) has for its primary purpose to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits; and
  - (c) may engage in generation, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders;
- (12) 'supply' means the sale, including the resale, of electricity to customers;
- (13) 'electricity supply contract' means a contract for the supply of electricity, but does not include electricity derivatives;
- (14) 'electricity derivative' means a financial instrument specified in point (5), (6) or (7) of Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council, where that

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<sup>2</sup> The definition displayed here corresponds to the first item in Article 4(2) of Ministerial Council Decision 2021/13/MC-EnC

instrument relates to electricity;

(15) 'dynamic electricity price contract' means an electricity supply contract between a supplier and a final customer that reflects the price variation in the spot markets, including in the day-ahead and intraday markets, at intervals at least equal to the market settlement frequency;

(16) 'contract termination fee' means a charge or penalty imposed on customers by suppliers or market participants engaged in aggregation, for terminating an electricity supply or service contract;

(17) 'switching-related fee' means a charge or penalty for changing suppliers or market participants engaged in aggregation, including contract termination fees, that is directly or indirectly imposed on customers by suppliers, market participants engaged in aggregation or system operators;

(18) 'aggregation' means a function performed by a natural or legal person who combines multiple customer loads or generated electricity for sale, purchase or auction in any electricity market;

(19) 'independent aggregator' means a market participant engaged in aggregation who is not affiliated to the customer's supplier;

(20) 'demand response' means the change of electricity load by final customers from their normal or current consumption patterns in response to market signals, including in response to time-variable electricity prices or incentive payments, or in response to the acceptance of the final customer's bid to sell demand reduction or increase at a price in an organised market as defined in point (4) of Article 2 of Commission Implementing Regulation (EU) No 1348/2014, whether alone or through aggregation;

(21) 'billing information' means the information provided on a final customer's bill, apart from a request for payment;

(22) 'conventional meter' means an analogue or electronic meter with no capability to both transmit and receive data;

(23) 'smart metering system' means an electronic system that is capable of measuring electricity fed into the grid or electricity consumed from the grid, providing more information than a conventional meter, and that is capable of transmitting and receiving data for information, monitoring and control purposes, using a form of electronic communication;

(24) '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;

(25) 'imbalance settlement period' means **time unit for which the imbalance of the balance responsible parties is calculated**<sup>3</sup>;

(26) 'near real-time' means, in the context of smart metering, a short time period, usually down to seconds or up to the imbalance settlement period in the national market;

(27) 'best available techniques' means, in the context of data protection and security in a smart metering environment, the most effective, advanced and practically suitable techniques for providing, in principle, the basis for complying with the **applicable**<sup>4</sup> data protection and security rules;

(28) 'distribution' means the transport of electricity on high-voltage, medium-voltage and low-voltage

<sup>3</sup> The definition displayed here corresponds to the second item in Article 4(2) of Ministerial Council Decision 2021/13/MC-EnC

<sup>4</sup> The definition displayed here corresponds to the third item in Article 4(2) of Ministerial Council Decision 2021/13/MC-EnC

distribution systems with a view to its delivery to customers, but does not include supply;

(29) 'distribution system operator' means a natural or legal person who is 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;

(30) 'energy efficiency' means the ratio of output of performance, service, goods or energy, to input of energy;

(31) 'energy from renewable sources' or 'renewable energy' means energy from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic) and geothermal energy, ambient energy, tide, wave and other ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas, and biogas;

(32) 'distributed generation' means generating installations connected to the distribution system;

(33) 'recharging point' means an interface that is capable of charging one electric vehicle at a time or exchanging the battery of one electric vehicle at a time;

(34) '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;

(35) 'transmission system operator' means a natural or legal person who is 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;

(36) 'system user' means a natural or legal person who supplies to, or is supplied by, a transmission system or a distribution system;

(37) 'generation' means the production of electricity;

(38) 'producer' means a natural or legal person who generates electricity;

(39) 'interconnector' means equipment used to link electricity systems;

(40) 'interconnected system' means a number of transmission and distribution systems linked together by means of one or more interconnectors;

(41) 'direct line' means either an electricity line linking an isolated generation site with an isolated customer or an electricity line linking a producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and customers;

(42) 'small isolated system' means any system that had 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;

(43) 'small connected system' means any system that had consumption of less than 3 000 GWh in the year 1996, where more than 5 % of annual consumption is obtained through interconnection with other systems;

(44) 'congestion' means congestion as defined in point **2(c) of Article 2 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision No 2011/02/MC-EnC of 6 October**

2011<sup>5</sup>;

(45) 'balancing' means **all actions and processes, in all timelines, through which transmission system operators ensure, in an ongoing manner, maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality**<sup>6</sup>;

(46) 'balancing energy' means **energy used by transmission system operators to carry out balancing**<sup>7</sup>;

(47) 'balance responsible party' means **a market participant or its chosen representative responsible for its imbalances in the electricity market**<sup>8</sup>;

(48) 'ancillary service' means a service necessary for the operation of a transmission or distribution system, including balancing and non-frequency ancillary services, but not including congestion management;

(49) 'non-frequency ancillary service' means a service used by a transmission system operator or distribution system operator for steady state voltage control, fast reactive current injections, inertia for local grid stability, short-circuit current, black start capability and island operation capability;

(50) < ... ><sup>9</sup>

(51) 'fully integrated network components' means network components that are integrated in the transmission or distribution system, including storage facilities, and that are used for the sole purpose of ensuring a secure and reliable operation of the transmission or distribution system, and not for balancing or congestion management;

(52) 'integrated electricity undertaking' means a vertically integrated undertaking or a horizontally integrated undertaking;

(53) '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 performs at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply;

(54) 'horizontally integrated undertaking' means an electricity undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply, and another non-electricity activity;

(55) 'related undertaking' means affiliated undertakings as defined in point (12) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council, and undertakings which belong to the same shareholders;

(56) 'control' means rights, contracts or 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

5 The definition displayed here corresponds to the fourth item in Article 4(2) of Ministerial Council Decision 2021/13/MC-EnC

6 The definition displayed here corresponds to the fifth item in Article 4(2) of Ministerial Council Decision 2021/13/MC-EnC

7 The definition displayed here corresponds to the sixth item in Article 4(2) of Ministerial Council Decision 2021/13/MC-EnC

8 The definition displayed here corresponds to the seventh item in Article 4(2) of Ministerial Council Decision 2021/13/MC-EnC

9 Not applicable according to the eighth item in Article 4(2) of Ministerial Council Decision 2021/13/MC-EnC

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;

(57) 'electricity undertaking' means a natural or legal person who carries out at least one of the following functions: generation, transmission, distribution, aggregation, demand response, energy storage, supply or purchase of electricity, and who is responsible for the commercial, technical or maintenance tasks related to those functions, but does not include final customers;

(58) 'security' means both security of supply and provision of electricity, and technical safety;

(59) 'energy storage' means, in the electricity system, deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy or use as another energy carrier;

(60) 'energy storage facility' means, in the electricity system, a facility where energy storage occurs.

## CHAPTER II

### GENERAL RULES FOR THE ORGANISATION OF THE ELECTRICITY SECTOR

#### *Article 3*

#### **Competitive, consumer-centred, flexible and non-discriminatory electricity markets**

1. **Contracting Parties** shall ensure that their national law does not unduly hamper cross-border trade in electricity, consumer participation, including through demand response, investments into, in particular, variable and flexible energy generation, energy storage, or the deployment of electromobility or new interconnectors between **Contracting Parties**, and shall ensure that electricity prices reflect actual demand and supply.

2. When developing new interconnectors, **Contracting Parties** shall take into account the electricity interconnection targets set out in point (1) of Article 4(d) of Regulation (EU) 2018/1999, **as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021**.

3. **Contracting Parties** shall ensure that no undue barriers exist within the internal market for electricity as regards market entry, operation and exit, without prejudice to the competence that **Contracting Parties** retain in relation to third countries.

4. **Contracting Parties** shall ensure a level playing field where electricity undertakings are subject to transparent, proportionate and non-discriminatory rules, fees and treatment, in particular with respect to balancing responsibility, access to wholesale markets, access to data, switching processes and billing regimes and, where applicable, licensing.

5. **Contracting Parties** shall ensure that market participants from third countries, when operating within the internal market for electricity, comply with applicable **Energy Community** and national

law, including that concerning environmental and safety policy.

#### **Article 4**

##### **Free choice of supplier**

**Contracting Parties** shall ensure that all customers are free to purchase electricity from the supplier of their choice and shall ensure that all customers are free to have more than one electricity supply contract at the same time, provided that the required connection and metering points are established.

#### **Article 5**

##### **Market-based supply prices**

1. Suppliers shall be free to determine the price at which they supply electricity to customers. **Contracting Parties** shall take appropriate actions to ensure effective competition between suppliers.
2. **Contracting Parties** shall ensure the protection of energy poor and vulnerable household customers pursuant to Articles 28 and 29 by social policy or 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, **Contracting Parties** may apply public interventions in the price setting for the supply of electricity to energy poor or vulnerable household customers. Such public interventions shall be subject to the conditions set out in paragraphs 4 and 5.
4. Public interventions in the price setting for the supply of electricity shall:
  - (a) pursue a general economic interest and not go beyond what is necessary to achieve that general economic interest;
  - (b) be clearly defined, transparent, non-discriminatory and verifiable;
  - (c) guarantee equal access for **Energy Community** electricity undertakings to customers;
  - (d) be limited in time and proportionate as regards their beneficiaries;
  - (e) not result in additional costs for market participants in a discriminatory way.
5. Any **Contracting Party** applying public interventions in the price setting for the supply of electricity in accordance with paragraph 3 of this Article shall also comply with point (d) of Article 3(3) and with Article 24 of Regulation (EU) 2018/1999 **as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021**, regardless of whether the **Contracting Party** concerned has a significant number of households in energy poverty.
6. For the purpose of a transition period to establish effective competition for electricity supply contracts between suppliers, and to achieve fully effective market-based retail pricing of electricity in accordance with paragraph 1, **Contracting Parties** may apply public interventions in the price setting for the supply of electricity to household customers and to microenterprises that do not benefit from public interventions pursuant to paragraph 3.
7. Public interventions pursuant to paragraph 6 shall comply with the criteria set out in paragraph 4 and shall:

- (a) be accompanied by a set of measures to achieve effective competition and a methodology for assessing progress with regard to those measures;
- (b) be set using a methodology that ensures non-discriminatory treatment of suppliers;
- (c) be set at a price that is above cost, at a level where effective price competition can occur;
- (d) be designed to minimise any negative impact on the wholesale electricity market;
- (e) ensure that all beneficiaries of such public interventions have the possibility to choose competitive market offers and are directly informed at least every quarter of the availability of offers and savings in the competitive market, in particular of dynamic electricity price contracts, and shall ensure that they are provided with assistance to switch to a market-based offer;
- (f) ensure that, pursuant to Articles 19 and 21, all beneficiaries of such public interventions are entitled to, and are offered to, have smart meters installed at no extra upfront cost to the customer, are directly informed of the possibility of installing smart meters and are provided with necessary assistance;
- (g) not lead to direct cross-subsidisation between customers supplied at free market prices and those supplied at regulated supply prices.

8. **Contracting Parties** shall notify the measures taken in accordance with paragraphs 3 and 6 to the **Energy Community Secretariat** within one month after their adoption and may apply them immediately. The notification shall be accompanied by an explanation of why other instruments were not sufficient to achieve the objective pursued, of how the requirements set out in paragraphs 4 and 7 are fulfilled and of the effects of the notified measures on competition. The notification shall describe the scope of the beneficiaries, the duration of the measures and the number of household customers affected by the measures, and shall explain how the regulated prices have been determined.

9. By 1 January **2025** and 1 January **2028**, **Contracting Parties** shall submit reports to the **Energy Community Secretariat** on the implementation of this Article, the necessity and proportionality of public interventions under this Article, and an assessment of the progress towards achieving effective competition between suppliers and the transition to market-based prices. **Contracting Parties** that apply regulated prices in accordance with paragraph 6 shall report on the compliance with the conditions set out in paragraph 7, including on compliance by suppliers that are required to apply such interventions, as well as on the impact of regulated prices on the finances of those suppliers.<sup>10</sup>

10. By 31 December **2028**, the **Energy Community Secretariat** shall review and submit a report to the **Ministerial Council** on the implementation of this Article for the purpose of achieving market-based retail pricing of electricity < ... >.<sup>11</sup>

## **Article 6**

### **Third-party access**

**1. Contracting Parties** shall ensure the implementation of a system of third-party access to the transmission and distribution systems based on published tariffs, applicable to all customers and applied

<sup>10</sup> The text displayed in Article 5(9) corresponds to the first item in Article 4(3) of Ministerial Council Decision 2021/13/MC-EnC

<sup>11</sup> The text displayed in Article 5(10) corresponds to the second item in Article 4(3) of Ministerial Council Decision 2021/13/MC-EnC



objectively and without discrimination between system users. **Contracting Parties** shall ensure that those tariffs, or the methodologies underlying their calculation, are approved in accordance with Article 59 prior to their entry into force 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 shall be given for such refusal, in particular having regard to Article 9, and based on objective and technically and economically justified criteria. **Contracting Parties** or, where **Contracting Parties** have so provided, the regulatory authorities of those **Contracting Parties**, 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 system operator or distribution system 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 has been denied. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.

3. This Article shall also apply to citizen energy communities that manage distribution networks.

## **Article 7**

### **Direct lines**

1. **Contracting Parties** shall take the measures necessary to enable:

(a) all producers and electricity supply undertakings established within their territory to supply their own premises, subsidiaries and customers through a direct line, without being subject to disproportionate administrative procedures or costs;

(b) all customers within their territory, individually or jointly, to be supplied through a direct line by producers and electricity supply undertakings.

2. **Contracting Parties** 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.

4. **Contracting Parties** may issue authorisations to construct a direct line, subject either to the refusal of system access on the basis, as appropriate, of Article 6 or to the opening of a dispute settlement procedure under Article 60.

5. **Contracting Parties** 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 in Article 9. Duly substantiated reasons shall be given for such a refusal.

## Article 8

### Authorisation procedure for new capacity

1. For the construction of new generating capacity, **Contracting Parties** shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.

2. **Contracting Parties** shall lay down the criteria for the grant of authorisations for the construction of generating capacity in their territory. In determining appropriate criteria, **Contracting Parties** 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;
- (j) the contribution of generating capacity to meeting the **Contracting Party's share in contributing to the Energy Community target for 2030 target referred to in Article 3(1) of Directive (EU) 2018/2001, as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021**; <sup>12</sup>
- (k) the contribution of generating capacity to reducing emissions; and
- (l) the alternatives to the construction of new generating capacity, such as demand response solutions and energy storage.

3. **Contracting Parties** shall ensure that specific, simplified and streamlined authorisation procedures exist for small decentralised and/or distributed generation, which take into account their limited size and potential impact.

**Contracting Parties** may set guidelines for that specific authorisation procedure. Regulatory authorities or other competent national authorities, including planning authorities, shall review those guidelines and may recommend amendments thereto.

Where **Contracting Parties** have established particular land use permit procedures applying to major new infrastructure projects in generation capacity, **Contracting Parties** 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 applicants.

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<sup>12</sup> The text displayed in Article 8(2)(j) corresponds to Article 4(4) of Ministerial Council Decision 2021/13/MC-EnC

## **Article 9**

### **Public service obligations<sup>13</sup>**

1. Without prejudice to paragraph 2, **Contracting Parties** shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that electricity undertakings operate in accordance with the principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market for electricity, and shall not discriminate between those undertakings as regards either rights or obligations.

2. Having full regard to the relevant provisions of the < ... > **Energy Community Treaty**, **Contracting Parties** may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including the 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 and verifiable, and shall guarantee equality of access for electricity undertakings of the **Energy Community** to national consumers. Public service obligations which concern the price setting for the supply of electricity shall comply with the requirements set out in Article 5 of this Directive.

3. Where financial compensation, other forms of compensation and exclusive rights which a **Contracting Party** grants for the fulfilment of the obligations set out in paragraph 2 of this Article 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.

4. **Contracting Parties** shall, upon implementation of this Directive, inform the **Energy Community Secretariat** 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 subsequently inform the **Energy Community Secretariat** every two years of any changes to those measures, whether or not they require a derogation from this Directive.

5. **Contracting Parties** may decide not to apply Articles 6, 7 and 8 of this Directive insofar as their application would obstruct, in law or in fact, the performance 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 **Energy Community**. The interests of the **Energy Community** include, inter alia, competition with regard to customers in accordance with < ... > **Annex III of the Energy Community Treaty** and this Directive.

<sup>13</sup> The text displayed in Articles 9(2) and (5) corresponds to Article 4(5) of Ministerial Council Decision 2021/13/MC-EnC

## CHAPTER III

### CONSUMER EMPOWERMENT AND PROTECTION

#### *Article 10*

##### **Basic contractual rights**

1. **Contracting Parties shall ensure that all final customers are entitled to have their electricity provided by a supplier, subject to the supplier's agreement, regardless of the Party to the Energy Community in which the supplier is registered, provided that the supplier follows the applicable trading and balancing rules. In that regard, Contracting Parties shall take all measures necessary to ensure that administrative procedures do not discriminate against suppliers already registered in another Party to the Energy Community.**<sup>14</sup>

2. Without prejudice to **stricter national** rules on consumer protection, **< ... > Contracting Parties** shall ensure that final customers have the rights provided for in paragraphs 3 to 12 of this Article.<sup>15</sup>

3. Final customers shall have the right to a contract with their supplier that specifies:

- (a) the identity and address of the supplier;
- (b) the services provided, the service quality levels offered, as well as the time for the initial connection;
- (c) the types of maintenance service offered;
- (d) the means by which up-to-date information on all applicable tariffs, maintenance charges and bundled products or services may be obtained;
- (e) the duration of the contract, the conditions for renewal and termination of the contract and services, including products or services that are bundled with those services, and whether terminating the contract without charge is permitted;
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate or delayed billing;
- (g) the method of initiating an out-of-court dispute settlement procedure in accordance with Article 26;
- (h) information relating to consumer rights, including information on complaint handling and all of the information referred to in this paragraph, that is clearly communicated on the bill or the electricity undertaking's web site.

Conditions shall be fair and well known in advance. In any case, this information shall 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 paragraph shall also be provided prior to the conclusion of the contract.

Final customers shall be provided with a summary of the key contractual conditions in a prominent

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<sup>14</sup> The text displayed in Article 10(1) corresponds to item 1 in Article 4(6) of Ministerial Council Decision 2021/13/MC-EnC

<sup>15</sup> The text displayed in Article 10(2) corresponds to item 2 in Article 4(6) of Ministerial Council Decision 2021/13/MC-EnC

manner and in concise and simple language.

4. Final customers shall be given adequate notice of any intention to modify contractual conditions and shall be informed about their right to terminate the contract when the notice is given. Suppliers shall notify their final customers, in a transparent and comprehensible manner, directly of any adjustment in the supply price and of the reasons and preconditions for the adjustment and its scope, at an appropriate time no later than two weeks, or no later than one month in the case of household customers, before the adjustment comes into effect. **Contracting Parties** shall ensure that final customers are free to terminate contracts if they do not accept the new contractual conditions or adjustments in the supply price notified to them by their supplier.

5. Suppliers shall provide final customers with transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services.

6. Suppliers shall offer final customers a wide choice of payment methods. Such payment methods shall not unduly discriminate between customers. Any difference in charges related to payment methods or prepayment systems shall be objective, non-discriminatory and proportionate and shall not exceed the direct costs borne by the payee for the use of a specific payment method or a prepayment system < ... >.<sup>16</sup>

7. Pursuant to paragraph 6, household customers who have access to prepayment systems shall not be placed at a disadvantage by the prepayment systems.

8. Suppliers shall offer final customers fair and transparent general terms and conditions, which shall be provided in plain and unambiguous language and shall not include non-contractual barriers to the exercise of customers' rights, such as excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods.

9. Final customers shall have the right to a good standard of service and complaint handling by their suppliers. Suppliers shall handle complaints in a simple, fair and prompt manner.

10. When accessing universal service under the provisions adopted by **Contracting Parties** pursuant to Article 27, final customers shall be informed about their rights regarding universal service.

11. Suppliers shall provide household customers with adequate information on alternative measures to disconnection sufficiently in advance of any planned disconnection. Such alternative measures 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 and not constitute an extra cost to the customers facing disconnection.

12. Suppliers shall provide final customers with a final closure account after any switch of supplier no later than six weeks after such a switch has taken place.

### **Article 11**

#### **Entitlement to a dynamic electricity price contract**

1. **Contracting Parties** shall ensure that the national regulatory framework enables suppliers to offer

<sup>16</sup> The text displayed in Article 10(6) corresponds to item 3 in Article 4(6) of Ministerial Council Decision 2021/13/MC-EnC

dynamic electricity price contracts. **Contracting Parties** shall ensure that final customers who have a smart meter installed can request to conclude a dynamic electricity price contract with at least one supplier and with every supplier that has more than 200 000 final customers.

2. **Contracting Parties** shall ensure that final customers are fully informed by the suppliers of the opportunities, costs and risks of such dynamic electricity price contracts, and shall ensure that suppliers are required to provide information to the final customers accordingly, including with regard to the need to have an adequate electricity meter installed. Regulatory authorities shall monitor the market developments and assess the risks that the new products and services may entail and deal with abusive practices.

3. Suppliers shall obtain each final customer's consent before that customer is switched to a dynamic electricity price contract.

4. For at least a ten-year period after dynamic electricity price contracts become available, **Contracting Parties** or their regulatory authorities shall monitor, and shall publish an annual report on the main developments of such contracts, including market offers and the impact on consumers' bills, and specifically the level of price volatility.

## **Article 12**

### **Right to switch and rules on switching-related fees**

1. Switching supplier or market participant engaged in aggregation shall be carried out within the shortest possible time. **Contracting Parties** shall ensure that a customer wishing to switch suppliers or market participants engaged in aggregation, while respecting contractual conditions, is entitled to such a switch within a maximum of three weeks from the date of the request. By no later than 2026, the technical process of switching supplier shall take no longer than 24 hours and shall be possible on any working day.

2. **Contracting Parties** shall ensure that at least household customers and small enterprises are not charged any switching-related fees.

3. By way of derogation from paragraph 2, **Contracting Parties** may permit suppliers or market participants engaged in aggregation to charge customers contract termination fees where those customers voluntarily terminate fixed-term, fixed-price electricity supply contracts before their maturity, provided that such fees are part of a contract that the customer has voluntarily entered into and that such fees are clearly communicated to the customer before the contract is entered into. Such fees shall be proportionate and shall not exceed the direct economic loss to the supplier or the market participant engaged in aggregation resulting from the customer's termination of the contract, including the costs of any bundled investments or services that have already been provided to the customer as part of the contract. The burden of proving the direct economic loss shall be on the supplier or market participant engaged in aggregation, and the permissibility of contract termination fees shall be monitored by the regulatory authority, or by another competent national authority.

4. **Contracting Parties** shall ensure that the right to switch supplier or market participants engaged in aggregation is granted to customers in a non-discriminatory manner as regards cost, effort and time.

5. Household customers shall be entitled to participate in collective switching schemes. **Contracting**

**Parties** shall remove all regulatory or administrative barriers for collective switching, while providing a framework that ensures the utmost consumer protection to avoid any abusive practices.

### **Article 13**

#### **Aggregation contract**

1. **Contracting Parties** shall ensure that all customers are free to purchase and sell electricity services, including aggregation, other than supply, independently from their electricity supply contract and from an electricity undertaking of their choice.

2. **Contracting Parties** shall ensure that, where a final customer wishes to conclude an aggregation contract, the final customer is entitled to do so without the consent of the final customer's electricity undertakings.

**Contracting Parties** shall ensure that market participants engaged in aggregation fully inform customers of the terms and conditions of the contracts that they offer to them.

3. **Contracting Parties** 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.

4. **Contracting Parties** shall ensure that the rights referred to in paragraphs 2 and 3 are granted to final customers in a non-discriminatory manner as regards cost, effort or time. In particular, **Contracting Parties** shall ensure that customers are not subject to discriminatory technical and administrative requirements, procedures or charges by their supplier on the basis of whether they have a contract with a market participant engaged in aggregation.

### **Article 14**

#### **Comparison tools**

1. **Contracting Parties** shall ensure that at least household customers, and microenterprises with an expected yearly consumption of below 100 000 kWh, have access, free of charge, to at least one tool comparing the offers of suppliers, including offers for dynamic electricity price contracts. Customers shall be informed of the availability of such tools in or together with their bills or by other means. The tools shall meet at least the following requirements:

(a) they shall be independent from market participants and ensure that electricity undertakings are given equal treatment in search results;

(b) they shall clearly disclose their owners and the natural or legal person operating and controlling the tools, as well as information on how the tools are financed;

(c) they shall set out clear and objective criteria on which the comparison is to be based, including services, and disclose them;

(d) they shall use plain and unambiguous language;

(e) they shall provide accurate and up-to-date information and state the time of the last update;

- (f) they shall be accessible to persons with disabilities, by being perceivable, operable, understandable and robust;
- (g) they shall provide an effective procedure for reporting incorrect information on published offers; and
- (h) they shall perform comparisons, while limiting the personal data requested to that strictly necessary for the comparison.

**Contracting Parties** shall ensure that at least one tool covers the entire market. Where multiple tools cover the market, those tools shall include, as complete as practicable, a range of electricity offers covering a significant part of the market and, where those tools do not completely cover the market, a clear statement to that effect, before displaying results.

2. The tools referred to in paragraph 1 may be operated by any entity, including private companies and public authorities or bodies.

3. **Contracting Parties** shall appoint a competent authority to be responsible for issuing trust marks for comparison tools that meet the requirements set out in paragraph 1, and for ensuring that comparison tools bearing a trust mark continue to meet the requirements set out in paragraph 1. That authority shall be independent of any market participants and comparison tool operators.

4. **Contracting Parties** may require comparison tools referred to in paragraph 1 to include comparative criteria relating to the nature of the services offered by the suppliers.

5. Any tool comparing the offers of market participants shall be eligible to apply for a trust mark in accordance with this Article on a voluntary and non-discriminatory basis.

6. By way of derogation from paragraphs 3 and 5, **Contracting Parties** may choose not to provide for the issuance of trust marks to comparison tools if a public authority or body provides a comparison tool that meets the requirements set out in paragraph 1.

## **Article 15**

### **Active customers**

1. **Contracting Parties** shall ensure that final customers are entitled to act as active customers without being subject to disproportionate or discriminatory technical requirements, administrative requirements, procedures and charges, and to network charges that are not cost-reflective.

2. **Contracting Parties** shall ensure that active customers are:

- (a) entitled to operate either directly or through aggregation;
- (b) entitled to sell self-generated electricity, including through power purchase agreements;
- (c) entitled to participate in flexibility schemes and energy efficiency schemes;
- (d) entitled to delegate to a third party the management of the installations required for their activities, including installation, operation, data handling and maintenance, without that third party being considered to be an active customer;
- (e) subject to cost-reflective, transparent and non-discriminatory network charges that account separately for the electricity fed into the grid and the electricity consumed from the grid, in accordance



with Article 59(9) of this Directive and **Article 14 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the system;<sup>17</sup>

(f) financially responsible for the imbalances they cause in the electricity system; to that extent they shall be balance responsible parties or shall delegate their balancing responsibility in accordance with Article 5 of Regulation (EU) 2019/943.

3. **Contracting Parties** may have different provisions applicable to individual and jointly-acting active customers in their national law, provided that all rights and obligations under this Article apply to all active customers. Any difference in the treatment of jointly-acting active customers shall be proportionate and duly justified.

4. **Contracting Parties** that have existing schemes that do not account separately for the electricity fed into the grid and the electricity consumed from the grid, shall not grant new rights under such schemes after 31 December **2026**. In any event, customers subject to existing schemes shall have the possibility at any time to opt for a new scheme that accounts separately for the electricity fed into the grid and the electricity consumed from the grid as the basis for calculating network charges.<sup>18</sup>

5. **Contracting Parties** shall ensure that active customers that own an energy storage facility:

- (a) have the right to a grid connection within a reasonable time after the request, provided that all necessary conditions, such as balancing responsibility and adequate metering, are fulfilled;
- (b) are not subject to any double charges, including network charges, for stored electricity remaining within their premises or when providing flexibility services to system operators;
- (c) are not subject to disproportionate licensing requirements or fees;
- (d) are allowed to provide several services simultaneously, if technically feasible.

## **Article 16**

### **Citizen energy communities**

1. **Contracting Parties** shall provide an enabling regulatory framework for citizen energy communities ensuring that:

- (a) participation in a citizen energy community is open and voluntary;
- (b) members or shareholders of a citizen energy community are entitled to leave the community, in which case Article 12 applies;
- (c) members or shareholders of a citizen energy community do not lose their rights and obligations as household customers or active customers;
- (d) subject to fair compensation as assessed by the regulatory authority, relevant distribution system operators cooperate with citizen energy communities to facilitate electricity transfers within citizen energy communities;
- (e) citizen energy communities are subject to non-discriminatory, fair, proportionate and transparent

<sup>17</sup> The number of corresponding Article of Regulation (EC) 714/2009 is adjusted, as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC.

<sup>18</sup> The text displayed in Article 15(4) corresponds to Article 4(7) of Ministerial Council Decision 2021/13/MC-EnC

procedures and charges, including with respect to registration and licensing, and to transparent, non-discriminatory and cost-reflective network charges in accordance with **Article 14 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the system.<sup>19</sup>

2. **Contracting Parties** may provide in the enabling regulatory framework that citizen 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 paragraph 4 of this Article;
- (c) are subject to the exemptions provided for in Article 38(2).

3. **Contracting Parties** shall ensure that citizen energy communities:

- (a) are able to access all electricity markets, either directly or through aggregation, in a non-discriminatory manner;
- (b) are treated in a non-discriminatory and proportionate manner with regard to their activities, rights and obligations as final customers, producers, suppliers, distribution system operators or market participants engaged in aggregation;
- (c) are financially responsible for the imbalances they cause in the electricity system; to that extent they shall be balance responsible parties or shall delegate their balancing responsibility in accordance with **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**;
- (d) with regard to consumption of self-generated electricity, citizen energy communities are treated like active customers in accordance with point (e) of Article 15(2);
- (e) are entitled to arrange within the citizen energy community the sharing of electricity that is produced by the production units owned by the community, subject to other requirements laid down in this Article and subject to the community members retaining their rights and obligations as final customers.

For the purposes of point (e) of the first subparagraph, where electricity is shared, this shall be without prejudice to applicable network charges, tariffs and levies, in accordance with a transparent cost-benefit analysis of distributed energy resources developed by the competent national authority.

4. **Contracting Parties** may decide to grant citizen energy communities the right to manage distribution networks in their area of operation and establish the relevant procedures, without prejudice to Chapter IV or to other rules and regulations applying to distribution system operators. If such a right is granted, **Contracting Parties** shall ensure that citizen energy communities:

- (a) are entitled to conclude an agreement on the operation of their network with the relevant distribution system operator or transmission system operator to which their network is connected;
- (b) are subject to appropriate network charges at the connection points between their network and the distribution network outside the citizen energy community and that such network charges

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<sup>19</sup> The number of corresponding Article of Regulation (EC) 714/2009 is adjusted, as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC.

account separately for the electricity fed into the distribution network and the electricity consumed from the distribution network outside the citizen energy community in accordance with Article 59(7);

(c) do not discriminate or harm customers who remain connected to the distribution system.

### **Article 17**

#### **Demand response through aggregation**

1. **Contracting Parties** shall allow and foster participation of demand response through aggregation. **Contracting Parties** shall allow final customers, including those offering demand response through aggregation, to participate alongside producers in a non-discriminatory manner in all electricity markets.

2. **Contracting Parties** shall ensure that transmission system operators and distribution system operators, when procuring ancillary services, treat market participants engaged in the aggregation of demand response in a non-discriminatory manner alongside producers on the basis of their technical capabilities.

3. **Contracting Parties** 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 the consent of other market participants;

(b) non-discriminatory and transparent rules that clearly assign roles and responsibilities to all electricity undertakings and customers;

(c) non-discriminatory and transparent rules and procedures for the exchange of data between market participants engaged in aggregation and other electricity undertakings that ensure easy access to data on equal and non-discriminatory terms while fully protecting commercially sensitive information and customers' personal data;

(d) an obligation on market participants engaged in aggregation to be financially responsible for the imbalances that they cause in the electricity system; to that extent they shall be balance responsible parties or shall delegate their balancing responsibility in accordance with **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**;

(e) provision for final customers who have a contract with independent aggregators not to be subject to undue payments, penalties or other undue contractual restrictions by their suppliers;

(f) a conflict resolution mechanism between market participants engaged in aggregation and other market participants, including responsibility for imbalances.

4. **Contracting Parties** may require electricity undertakings or participating final customers to pay financial compensation to other market participants or to the market participants' balance responsible parties, if those market participants or balance responsible parties are directly affected by demand response activation. Such financial compensation shall not create a barrier to market entry for market participants engaged in aggregation or a barrier to flexibility. In such cases, the financial compensation shall be strictly limited to covering the resulting costs incurred by the suppliers of participating customers or the suppliers' balance responsible parties during the activation of demand response.

The method for calculating compensation may take account of the benefits brought about by the independent aggregators to other market participants and, where it does so, the aggregators or participating customers may be required to contribute to such compensation but only where and to the extent that the benefits to all suppliers, customers and their balance responsible parties do not exceed the direct costs incurred. The calculation method shall be subject to approval by the regulatory authority or by another competent national authority.

5. **Contracting Parties** shall ensure that regulatory authorities or, where their national legal system so requires, transmission system operators and distribution system operators, acting in close cooperation with market participants and final customers, establish the technical requirements for participation of demand response in all electricity markets on the basis of the technical characteristics of those markets and the capabilities of demand response. Such requirements shall cover participation involving aggregated loads.

### **Article 18**

#### **Bills and billing information**

1. **Contracting Parties** shall ensure that bills and billing information are accurate, easy to understand, clear, concise, user-friendly and presented in a manner that facilitates comparison by final customers. 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. **Contracting Parties** shall ensure that final customers receive all their bills and billing information free of charge.

3. **Contracting Parties** shall ensure that final customers are offered the option of electronic bills and billing information and are offered flexible arrangements for the actual payment of the bills.

4. If the contract provides for a future change of the product or price, or a discount, this shall be indicated on the bill together with the date on which the change takes place.

5. **Contracting Parties** shall consult consumer organisations when they consider changes to the requirements for the content of bills.

6. **Contracting Parties** shall ensure that bills and billing information fulfil the minimum requirements set out in Annex I.

### **Article 19**

#### **Smart metering systems**

1. In order to promote energy efficiency and to empower final customers, **Contracting Parties** or, where a **Contracting Party** has so provided, the regulatory authority shall strongly recommend that electricity undertakings and other market participants optimise the use of electricity, inter alia, by providing energy management services, developing innovative pricing formulas, and introducing smart metering systems that are interoperable, in particular with consumer energy management systems and with smart grids, in accordance with the applicable **Energy Community** data protection rules.

2. **Contracting Parties** shall ensure the deployment in their territories of smart metering systems that assist the active participation of customers in the electricity market. Such deployment may be subject to a cost-benefit assessment which shall be undertaken in accordance with the principles laid down in Annex II.

3. **Contracting Parties** that proceed with the deployment of smart metering systems shall adopt and publish the minimum functional and technical requirements for the smart metering systems to be deployed in their territories, in accordance with Article 20 and Annex II. **Contracting Parties** shall ensure the interoperability of those smart metering systems, as well as their ability to provide output for consumer energy management systems. In that respect, **Contracting Parties** shall have due regard to the use of the relevant available standards, including those enabling interoperability, to best practices and to the importance of the development of smart grids and the development of the internal market for electricity.

4. **Contracting Parties** that proceed with the deployment of smart metering systems shall ensure that final customers contribute to the associated costs of the deployment in a transparent and non-discriminatory manner, while taking into account the long-term benefits to the whole value chain. **The extent of such contribution shall be decided by the national regulatory authorities of each Contracting Party.** **Contracting Parties** or, where a **Contracting Party** has so provided, the designated competent authorities, shall regularly monitor such deployment in their territories to track the delivery of benefits to consumers.<sup>20</sup>

5. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in paragraph 2, **Contracting Parties** shall ensure that this assessment is revised at least every four years, or more frequently, in response to significant changes in the underlying assumptions and in response to technological and market developments. **Contracting Parties** shall notify to the **Energy Community Secretariat** the outcome of their updated cost-benefit assessment as it becomes available.

6. The provisions in this Directive concerning smart metering systems shall apply to future installations and to installations that replace older smart meters. Smart metering systems that have already been installed, or for which the 'start of works' began, before **the date of entry into force of this Directive in the Energy Community**, may remain in operation over their lifetime but, in the case of smart metering systems that do not meet the requirements of Article 20 and Annex II, shall not remain in operation after 5 July 2031.<sup>21</sup>

For the purpose of this paragraph, 'start of works' means either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment.

<sup>20</sup> The text displayed in Article 19(4) corresponds to Article 4(8) of Ministerial Council Decision 2021/13/MC-EnC

<sup>21</sup> The text displayed in Article 19(6) corresponds to Article 4(1) of Ministerial Council Decision 2021/13/MC-EnC

## Article 20

### Functionalities of smart metering systems<sup>22</sup>

Where the deployment of smart metering systems is positively assessed as a result of the cost-benefit assessment referred to in Article 19(2), or where smart metering systems are systematically deployed after **the date of entry into force of this Directive in the Energy Community, Contracting Parties** shall deploy smart metering systems in accordance with European standards, Annex II and the following requirements:

(a) the smart metering systems shall accurately measure actual electricity consumption and shall be capable of providing 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 through 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 shall comply with relevant **applicable** security rules, having due regard of the best available techniques for ensuring the highest level of cybersecurity protection while bearing in mind the costs and the principle of proportionality;

(c) the privacy of final customers and the protection of their data shall comply with relevant **applicable** data protection and privacy rules;

(d) meter operators shall ensure that the meters of active customers who feed electricity into the grid can account for electricity fed into the grid from the active customers' premises;

(e) if final customers request it, data on the electricity they fed into the grid and their electricity consumption data shall be made available to them, in accordance with the implementing acts adopted pursuant to Article 24, through a standardised communication interface or through remote access, or to a third party acting on their behalf, in an easily understandable format allowing them to compare offers on a like-for-like basis;

(f) appropriate advice and information shall be given to final customers prior to or at the time of installation of smart meters, in particular concerning their full potential with regard to the management of meter reading and the monitoring of energy consumption, and concerning the collection and processing of personal data in accordance with the **applicable** data protection rules;

(g) smart metering systems shall enable final customers to be metered and settled at the same time resolution as the imbalance settlement period in the national market.

For the purposes of point (e) of the first subparagraph, it shall be possible for final customers to retrieve their metering data or transmit them to another party at no additional cost and in accordance with their right to data portability under **applicable** data protection rules.

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<sup>22</sup> The text displayed here corresponds to Article 4(1) of Ministerial Council Decision 2021/13/MC-EnC

## **Article 21**

### **Entitlement to a smart meter**

1. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in Article 19(2) and where smart metering systems are not systematically deployed, **Contracting Parties** shall ensure that every final customer is entitled on request, while bearing the associated costs, to have installed or, where applicable, to have upgraded, under fair, reasonable and cost-effective conditions, a smart meter that:

(a) is equipped, where technically feasible, with the functionalities referred to in Article 20, or with a minimum set of functionalities to be defined and published by **Contracting Parties** at national level in accordance with Annex II;

(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, **Contracting Parties** or, where a **Contracting Party** 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, no later than 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 the evolution of those costs as a result of technology developments and potential metering system upgrades.

## **Article 22**

### **Conventional meters**

1. Where final customers do not have smart meters, **Contracting Parties** shall ensure that final customers are provided with individual conventional meters that accurately measure their actual consumption.

2. **Contracting Parties** shall ensure that final customers are able to easily read their conventional meters, either directly or indirectly through an online interface or through another appropriate interface.

## Article 23

### Data management<sup>23</sup>

1. When laying down the rules regarding the management and exchange of data, **Contracting Parties** or, where a **Contracting Party** has so provided, the designated competent authorities shall specify the rules on the access to data of the final customer by eligible parties in accordance with this Article and the applicable < ... > legal framework. For the purpose of this Directive, data shall be understood to include metering and consumption data as well as data required for customer switching, demand response and other services.

2. **Contracting Parties** shall organise the management of data in order to ensure efficient and secure data access and exchange, as well as data protection and data security.

Independently of the data management model applied in each **Contracting Party**, the parties responsible for data management shall provide access to the data of the final customer to any eligible party, in accordance with paragraph 1. Eligible parties shall have the requested data at their disposal in a non-discriminatory manner and simultaneously. Access to data shall be easy and the relevant procedures for obtaining access to data shall be made publicly available.

3. The rules on access to data and data storage for the purpose of this Directive shall comply with the relevant **applicable data protection rules**.

The processing of personal data within the framework of this Directive shall be carried out in accordance with **applicable data protection rules**.

4. **Contracting Parties** or, where a **Contracting Party** has so provided, the designated competent authorities, shall authorise and certify or, where applicable, supervise the parties responsible for the data management, in order to ensure that they comply with the requirements of this Directive.

Without prejudice to the tasks of the data protection officers under **applicable data protection rules**, **Contracting Parties** may decide to require that parties responsible for the data management appoint compliance officers who are to be responsible for monitoring the implementation of measures taken by those parties to ensure non-discriminatory access to data and compliance with the requirements of this Directive.

**Contracting Parties** may appoint compliance officers or bodies referred to in point (d) of Article 35(2) of this Directive to fulfil the obligations under this paragraph.

5. No additional costs shall be charged to final customers for access to their data or for a request to make their data available.

**Contracting Parties** shall be responsible for setting the relevant charges for access to data by eligible parties.

**Contracting Parties** or, where a **Contracting Party** has so provided, the designated competent authorities shall ensure that any charges imposed by regulated entities that provide data services are reasonable and duly justified.

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23 The text displayed in Article 23 corresponds to Article 4(10) of Ministerial Council Decision 2021/13/MC-EnC



### Article 24

#### Interoperability requirements and procedures for access to data

1. In order to promote competition in the retail market and to avoid excessive administrative costs for the eligible parties, **Contracting Parties** shall facilitate the full interoperability of energy services within the **Energy Community**.
2. < ... ><sup>24</sup>
3. **Contracting Parties** shall ensure that electricity undertakings apply the interoperability requirements and procedures for access to data referred to in paragraph 2. Those requirements and procedures shall be based on existing national practices.

### Article 25

#### Single points of contact

**Contracting Parties** shall ensure the provision of single points of contact, to provide customers with all necessary information concerning their rights, the applicable law and dispute settlement mechanisms available to them in the event of a dispute. Such single points of contact may be part of general consumer information points.

### Article 26

#### Right to out-of-court dispute settlement

1. **Contracting Parties** shall ensure that final customers have access to simple, fair, transparent, independent, effective and efficient out-of-court mechanisms for the settlement of disputes concerning rights and obligations established under this Directive, through an independent mechanism such as an energy ombudsman or a consumer body, or through a regulatory authority. Where the final customer is a consumer within the meaning of **applicable law**, such out-of-court dispute settlement mechanisms shall comply with the quality requirements of **applicable law** and shall provide, where warranted, for systems of reimbursement and compensation.<sup>25</sup>
2. Where necessary, **Contracting Parties** shall ensure that alternative dispute resolution entities cooperate to provide simple, fair, transparent, independent, effective and efficient out-of-court dispute settlement mechanisms for any dispute that arises from products or services that are tied to, or bundled with, any product or service falling under the scope of this Directive.
3. The participation of electricity undertakings in out-of-court dispute settlement mechanisms for household customers shall be mandatory unless the **Contracting Party** demonstrates to the **Energy Community Secretariat** that other mechanisms are equally effective.

<sup>24</sup> Not applicable according to Article 4(11) of Ministerial Council Decision 2021/13/MC-EnC

<sup>25</sup> The text displayed in Article 26(1) corresponds to Article 4(12) of Ministerial Council Decision 2021/13/MC-EnC

## **Article 27**

### **Universal service**

1. **Contracting Parties** shall ensure that all household customers, and, where **Contracting Parties** deem it to be appropriate, small enterprises, enjoy universal service, namely the right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices. To ensure the provision of universal service, **Contracting Parties** may appoint a supplier of last resort. **Contracting Parties** shall impose on distribution system operators an obligation to connect customers to their network under terms, conditions and tariffs set in accordance with the procedure laid down in Article 59(7). This Directive does not prevent **Contracting Parties** from strengthening the market position of the household customers and small and medium-sized non-household customers by promoting the possibilities for the voluntary aggregation of representation for that class of customers.
2. Paragraph 1 shall be implemented in a transparent and non-discriminatory way, and shall not impede the free choice of supplier provided for in Article 4.

## **Article 28**

### **Vulnerable customers**

1. **Contracting Parties** shall take appropriate measures to protect customers and shall ensure, in particular, that there are adequate safeguards to protect vulnerable customers. In this context, each **Contracting Party** 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. The concept of vulnerable customers may include income levels, the share of energy expenditure of disposable income, the energy efficiency of homes, critical dependence on electrical equipment for health reasons, age or other criteria. **Contracting Parties** 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.
2. **Contracting Parties** shall take appropriate measures, such as providing benefits by means of their social security systems to ensure the necessary supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified pursuant to point (d) of Article 3(3) of Regulation (EU) 2018/1999 **as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021**, including in the broader context of poverty. Such measures shall not impede the effective opening of the market set out in Article 4 or market functioning and shall be notified to the **Energy Community Secretariat**, where relevant, in accordance with Article 9(4). Such notifications may also include measures taken within the general social security system.

**Article 29****Energy poverty**

When assessing the number of households in energy poverty pursuant to point (d) of Article 3(3) of Regulation (EU) 2018/1999 **as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021, Contracting Parties** shall establish and publish a set of criteria, which may include low income, high expenditure of disposable income on energy and poor energy efficiency.

The **Energy Community Secretariat** shall provide guidance on the definition of ‘significant number of households in energy poverty’ in this context and in the context of Article 5(5), starting from the premise that any proportion of households in energy poverty can be considered to be significant.

**CHAPTER IV****DISTRIBUTION SYSTEM OPERATION****Article 30****Designation of distribution system operators**

**Contracting Parties** shall designate or shall require undertakings that own or are responsible for distribution systems to designate one or more distribution system operators for a period of time to be determined by the **Contracting Parties**, having regard to considerations of efficiency and economic balance.

**Article 31****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, the distribution system operator shall 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 **Contracting Party** may require the distribution system operator, when dispatching generating installations, to give priority to generating installations using renewable sources or using high-efficiency cogeneration, in accordance with **Article 16 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**.

5. Each distribution system operator shall act as a neutral market facilitator in procuring the energy it uses to cover energy losses in its system in accordance with transparent, non-discriminatory and market-based procedures, where it has such a function.

6. 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, and shall be developed in coordination with transmission system operators and other relevant market participants. The terms and conditions, including rules and tariffs, where applicable, for the provision of such products and services to distribution system operators shall be established in accordance with Article 59(7) in a non-discriminatory and cost-reflective way and shall be published.

7. In performing the tasks referred to in paragraph 6, the distribution system operator shall procure the non-frequency ancillary services needed for its system in accordance with transparent, non-discriminatory and market-based procedures, unless the regulatory authority has assessed that the market-based provision of non-frequency ancillary services is economically not efficient and has granted a derogation. The obligation to procure non-frequency ancillary services does not apply to fully integrated network components.

8. The procurement of the products and services referred to in paragraph 6 shall ensure the effective participation of all qualified market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation, in particular by requiring regulatory authorities and distribution system operators in close cooperation with all market participants, as well as transmission system operators, to establish the technical requirements for participation in those markets on the basis of the technical characteristics of those markets and the capabilities of all market participants.

9. Distribution system operators shall cooperate with transmission system operators for the effective participation of market participants connected to their grid in retail, wholesale and balancing markets. Delivery of balancing services stemming from resources located in the distribution system shall be agreed with the relevant transmission system operator in accordance with < ... > Article 182 of Commission Regulation (EU) 2017/1485.<sup>26</sup>

10. **Contracting Parties** or their designated competent authorities may allow distribution system operators to perform activities other than those provided for in this Directive and in **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, where such activities are necessary for the distribution system operators to fulfil their obligations under this Directive or **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, provided that the regulatory authority has assessed the necessity of such a derogation. This paragraph shall be without prejudice to the right of the distribution system operators to own, develop, manage or operate networks other than electricity networks where the **Contracting Party** or the designated competent authority has granted such a right.

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26 The text displayed in Article 31(9) corresponds to Article 4(13) of Ministerial Council Decision 2021/13/MC-EnC

### Article 32

#### Incentives for the use of flexibility in distribution networks

1. **Contracting Parties** shall provide the necessary regulatory framework to allow and provide incentives to distribution system operators to procure flexibility services, including congestion management in their areas, in order to improve efficiencies in the operation and development of the distribution system. In particular, the regulatory framework shall ensure that distribution system operators are able to procure such services from providers of distributed generation, demand response or energy storage and shall promote the uptake of energy efficiency measures, where such services cost-effectively alleviate the need to upgrade or replace electricity capacity and support the efficient and secure operation of the distribution system. Distribution system operators shall procure such services in accordance with transparent, non-discriminatory and market-based procedures unless the regulatory authorities have established that the procurement of such services is not economically efficient or that such procurement would lead to severe market distortions or to higher congestion.

2. Distribution system operators, subject to approval by the regulatory authority, or the regulatory authority itself, shall, in a transparent and participatory process that includes all relevant system users and transmission system operators, establish the specifications for the flexibility services procured and, where appropriate, standardised market products for such services at least at national level. The specifications shall ensure the effective and non-discriminatory participation of all market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation. Distribution system operators shall exchange all necessary information and shall coordinate with transmission system operators in order to ensure the optimal utilisation of resources, to ensure the secure and efficient operation of the system and to facilitate market development. Distribution system operators shall be adequately remunerated for the procurement of such services to allow them to recover at least their reasonable corresponding costs, including the necessary information and communication technology expenses and infrastructure costs.

3. The development of a distribution system shall be based on a transparent network development plan that the distribution system operator shall publish at least every two years and shall submit to the regulatory authority. The network development plan shall provide transparency on the medium and long-term flexibility services needed, and shall set out 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 recharging 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 the distribution system operator is to use as an alternative to system expansion.

4. The distribution system operator shall consult all relevant system users and the relevant transmission system operators on the network development plan. The distribution system operator shall publish the results of the consultation process along with the network development plan, and submit the results of the consultation and the network development plan to the regulatory authority. The regulatory authority may request amendments to the plan.

5. **Contracting Parties** may decide not to apply the obligation set out in paragraph 3 to integrated

electricity undertakings which serve less than 100 000 connected customers or which serve small isolated systems.

### **Article 33**

#### **Integration of electromobility into the electricity network**

1. < ... > **Contracting Parties** shall provide the necessary regulatory framework to facilitate the connection of publicly accessible and private recharging points to the distribution networks. **Contracting Parties** 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.<sup>27</sup>

2. Distribution system operators shall not own, develop, manage or operate recharging points for electric vehicles, except where distribution system operators own private recharging points solely for their own use.

3. By way of derogation from paragraph 2, **Contracting Parties** may allow distribution system operators to own, develop, manage or operate recharging points for electric vehicles, provided that all of the following conditions are fulfilled:

(a) other parties, following an open, transparent and non-discriminatory tendering procedure that is subject to review and approval by the regulatory authority, have not been awarded a right to own, develop, manage or operate recharging points for electric vehicles, or could not deliver those services at a reasonable cost and in a timely manner;

(b) the regulatory authority has carried out an *ex ante* review of the conditions of the tendering procedure under point (a) and has granted its approval;

(c) the distribution system operator operates the recharging points on the basis of third-party access in accordance with Article 6 and does not discriminate between system users or classes of system users, and in particular in favour of its related undertakings.

The regulatory authority may draw up guidelines or procurement clauses to help distribution system operators ensure a fair tendering procedure.

4. Where **Contracting Parties** have implemented the conditions set out in paragraph 3, **Contracting Parties** 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 other parties in owning, developing, operating or managing recharging points for electric vehicles. Where the public consultation indicates that other parties are able to own, develop, operate or manage such points, **Contracting Parties** shall ensure that distribution system operators' activities in this regard are phased-out, subject to the successful completion of the tendering procedure referred to in point (a) of paragraph 3. As part of the conditions of that procedure, regulatory authorities may allow the distribution system operator to recover the residual value of its investment in recharging infrastructure.

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<sup>27</sup> The text displayed in Article 33(1) corresponds to Article 4(14) of Ministerial Council Decision 2021/13/MC-EnC

### **Article 34**

#### **Tasks of distribution system operators in data management**

**Contracting Parties** shall ensure that all eligible parties have non-discriminatory access to data under clear and equal terms, in accordance with the relevant data protection rules. In **Contracting Parties** where smart metering systems have been deployed in accordance with Article 19 and where distribution system operators are involved in data management, the compliance programmes referred to in point (d) of Article 35(2) 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) or (3), **Contracting Parties** shall take all necessary measures to ensure that vertically integrated undertakings do not have privileged access to data for the conduct of their supply activities.

### **Article 35**

#### **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) the 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 59(7), 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 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 its task.

3. Where the distribution system operator is part of a vertically integrated undertaking, the **Contracting Parties** 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 with respect to the separate identity of the supply branch of the vertically integrated undertaking.

4. **Contracting Parties** may decide not to apply paragraphs 1, 2 and 3 to integrated electricity undertakings which serve less than 100 000 connected customers, or serving small isolated systems.

### **Article 36**

#### **Ownership of energy storage facilities by distribution system operators**

1. Distribution system operators shall not own, develop, manage or operate energy storage facilities.

2. By way of derogation from paragraph 1, **Contracting Parties** may allow distribution system operators to own, develop, manage or operate energy storage facilities, where they are fully integrated network components and the regulatory authority has granted its approval, or where all of the following conditions are fulfilled:

(a) other parties, following an open, transparent and non-discriminatory tendering procedure that is subject to review and approval by the regulatory authority, have not been awarded a right to own, develop, manage or operate such facilities, or could not deliver those services at a reasonable cost and in a timely manner;

(b) 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 the facilities are not used to buy or sell electricity in the electricity markets; and

(c) the regulatory authority has assessed the necessity of such a derogation and has carried out an assessment of the tendering procedure, including the conditions of the tendering procedure, and has granted its approval.

The regulatory authority may draw up guidelines or procurement clauses to help distribution system operators ensure a fair tendering procedure.

3. The regulatory authorities shall perform, at regular intervals or at least every five years, a public



consultation on the existing energy storage facilities in order to assess the potential availability and interest in investing in such facilities. Where the public consultation, as assessed by the regulatory authority, indicates that third parties are able to own, develop, operate or manage such facilities in a cost-effective manner, the regulatory authority shall ensure that the distribution system operators' activities in this regard are phased out within 18 months. As part of the conditions of that procedure, regulatory authorities may allow the distribution system operators to receive reasonable compensation, in particular to recover the residual value of their investment in the energy storage facilities.

4. Paragraph 3 shall not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until **the date of entry into force of this Directive in the Energy Community**, provided that such battery storage facilities are:<sup>28</sup>

- (a) connected to the grid at the latest two years thereafter;
- (b) integrated into the distribution system;
- (c) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and
- (d) not used to buy or sell electricity in the electricity markets, including balancing.

### **Article 37**

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

Without prejudice to Article 55 or another legal requirement to disclose information, the distribution system operator shall 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 from being disclosed in a discriminatory manner.

### **Article 38**

#### **Closed distribution systems**

1. **Contracting Parties** may provide for 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. Closed distribution systems shall be considered to be distribution systems for the purposes of this Directive. **Contracting Parties** may provide for regulatory authorities to exempt the operator of a

<sup>28</sup> The text displayed in Article 36(4) corresponds to Article 4(1) of Ministerial Council Decision 2021/13/MC-EnC

closed distribution system from:

- (a) the requirement under Article 31(5) and (7) to procure the energy it uses to cover energy losses and the non-frequency ancillary services in its system in accordance with transparent, non-discriminatory and market-based procedures;
- (b) the requirement under Article 6(1) that tariffs, or the methodologies underlying their calculation, are approved in accordance with Article 59(1) prior to their entry into force;
- (c) the requirements under Article 32(1) to procure flexibility services and under Article 32(3) to develop the operator's system on the basis of network development plans;
- (d) the requirement under Article 33(2) not to own, develop, manage or operate recharging points for electric vehicles; and
- (e) the requirement under Article 36(1) not to own, develop, manage or operate energy storage facilities.

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) 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.

### ***Article 39***

#### **Combined operator**

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

## **CHAPTER V**

### **GENERAL RULES APPLICABLE TO TRANSMISSION SYSTEM OPERATORS**

#### ***Article 40***

##### **Tasks of transmission system operators<sup>29</sup>**

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 system with due regard to the environment, in close cooperation with neigh-

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<sup>29</sup> Articles 40(1)(j) and (3) are not applicable according to items 1 and 2 of Article 4(15) of Ministerial Council Decision 2021/13/MC-EnC respectively.

bouring transmission system operators and distribution system operators;

(b) ensuring adequate means to meet 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 facilities, insofar as such availability is independent from any other transmission systems with which its system is interconnected;

(e) providing to the operator of other systems 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;

(h) collecting congestion rents and payments under the inter-transmission system operator compensation mechanism, in accordance with Article 49 of Regulation (EU) 2019/943, granting and managing third-party access and giving reasoned explanations when it denies such access, which shall be monitored by the regulatory authorities; in carrying out their tasks under this Article transmission system operators shall primarily facilitate market integration;

(i) procuring ancillary services to ensure operational security;

(j) < ... >

(k) participating in the establishment of the European and national resource adequacy assessments pursuant to Chapter IV of Regulation (EU) 2019/943;

(l) the digitalisation of transmission systems;

(m) data management, including the development of data management systems, cybersecurity and data protection, subject to the applicable rules, and without prejudice to the competence of other authorities.

2. **Contracting Parties** may provide that one or several responsibilities listed in paragraph 1 of this Article be assigned to a transmission system operator other than the one which owns the transmission system to which the responsibilities concerned would otherwise be applicable. The transmission system operator to which the tasks are assigned shall be certified under the ownership unbundling, the independent system operator or the independent transmission system operator model, and fulfil the requirements provided for in Article 43, but shall not be required 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. This shall be without prejudice to the possibility for transmission system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model to delegate, on their own initiative and under their supervision, certain tasks to other transmission

system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model where that delegation of tasks does not endanger the effective and independent decision-making rights of the delegating transmission system operator.

3. < ... >

4. In performing the task referred to in point (i) of paragraph 1, transmission system operators shall procure balancing services subject to the following:

(a) transparent, non-discriminatory and market-based procedures;

(b) the participation of all qualified electricity undertakings and market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation.

For the purpose of point (b) of the first subparagraph, regulatory authorities and transmission system operators shall, in close cooperation with all market participants, establish technical requirements for participation in those markets, on the basis of the technical characteristics of those markets.

5. Paragraph 4 shall apply to the provision of non-frequency ancillary services by transmission system operators, unless the regulatory authority has assessed that the market-based provision of non-frequency ancillary services is economically not efficient and has granted a derogation. In particular, the regulatory framework shall ensure that transmission system operators are able to procure such services from providers of demand response or energy storage and shall promote the uptake of energy efficiency measures, where such services cost-effectively alleviate the need to upgrade or replace electricity capacity and support the efficient and secure operation of the transmission system.

6. Transmission system operators, subject to approval by the regulatory authority, or the regulatory authority itself, shall, in a transparent and participatory process that includes all relevant system users and the distribution system operators, establish the specifications for the < ... > ancillary services procured and, where appropriate, standardised market products for such services at least at national level. The specifications shall ensure the effective and non-discriminatory participation of all market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation. Transmission system operators shall exchange all necessary information and shall coordinate with distribution system operators in order to ensure the optimal utilisation of resources, to ensure the secure and efficient operation of the system and to facilitate market development. Transmission system operators shall be adequately remunerated for the procurement of such services to allow them to recover at least the reasonable corresponding costs, including the necessary information and communication technology expenses and infrastructure costs.<sup>30</sup>

7. The obligation to procure non-frequency ancillary services referred to in paragraph 5 does not apply to fully integrated network components.

8. **Contracting Parties** or their designated competent authorities may allow transmission system operators to perform activities other than those provided for in this Directive and in **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011** where such activities are necessary for the transmission system operators to fulfil

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<sup>30</sup> The text displayed in Article 40(6) corresponds to item 3 in 4(15) of Ministerial Council Decision 2021/13/MC-EnC

their obligations under this Directive or **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, provided that the regulatory authority has assessed the necessity of such a derogation. This paragraph shall be without prejudice to the right of the transmission system operators to own, develop, manage or operate networks other than electricity networks where the **Contracting Party** or the designated competent authority has granted such a right.

#### **Article 41**

##### **Confidentiality and transparency requirements for transmission system operators and transmission system owners**

1. Without prejudice to Article 55 or another 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 such disclosure is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information unbundling, **Contracting Parties** 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**

##### **Decision-making powers regarding the connection of new generating installations and energy storage facilities to the transmission system**

1. The transmission system operator shall establish and publish transparent and efficient procedures for non-discriminatory connection of new generating installations and energy storage facilities to the transmission system. Those procedures shall be subject to approval by the regulatory authorities.
2. The transmission system operator shall not be entitled to refuse the connection of a new generating installation 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.

The first subparagraph shall be without prejudice to the possibility for transmission system operators to limit the guaranteed connection capacity or to offer connections subject to operational limitations, in

order to ensure economic efficiency regarding new generating installations or energy storage facilities, provided that such limitations have been approved by the regulatory authority. The regulatory authority shall ensure that any limitations in guaranteed connection capacity or operational limitations are introduced on the basis of transparent and non-discriminatory procedures and do not create undue barriers to market entry. Where the generating installation or energy storage facility bears the costs related to ensuring unlimited connection, no limitation shall apply.

3. The transmission system operator shall not be entitled to refuse a new connection point, on the ground that it would lead to additional costs resulting from the 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**

#### **Ownership unbundling of transmission systems and transmission system operators<sup>31</sup>**

1. **Contracting Parties** shall ensure that:

(a) each undertaking which owns a transmission system acts as a transmission system operator;

(b) the same person or persons are not entitled either:

(i) 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; or

(ii) 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.

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<sup>31</sup> The text displayed in Articles 43(7) and (8) correspond to Article 4(16) of Ministerial Council Decision 2021/13/MC-EnC

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 point (b) of paragraph 1, 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, and the terms 'transmission system operator' and 'transmission system' shall include 'transmission system operator' and 'transmission system' within the meaning of that Directive.

4. The obligation set out in point (a) of paragraph 1 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 **Contracting Parties** for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 44 as an independent system operator or as an independent transmission operator for the purposes of Section 3.

5. For the implementation of this Article, where the person referred to in points (b), (c) and (d) of paragraph 1 is the **Contracting Party** 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. **Contracting Parties** shall ensure that neither commercially sensitive information referred to in Article 41 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.

7. Where on **6 October 2011**, the transmission system belongs to a vertically integrated undertaking a **Contracting Party** may decide not to apply paragraph 1.

In such case, the **Contracting Party** concerned shall either:

(a) designate an independent system operator in accordance with Article 44; or

(b) comply with Section 3.

8. Where, on **6 October 2011**, 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 Section 3, a **Contracting Party** may decide not to apply paragraph 1.

9. Before an undertaking is approved and designated as a transmission system operator under paragraph 8 of this Article, it shall be certified in accordance with the procedures laid down in Article 52(4), (5), and (6) of this Directive and in **Article 3 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, pursuant to which the **Energy Community Secretariat** shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than Section 3 of this Chapter.

10. Vertically integrated undertakings which own a transmission system shall not in any event be

prevented from taking steps to comply with paragraph 1.

11. 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 **Contracting Parties** which apply paragraph 1.

## Section 2

### Independent system operator

#### *Article 44*

#### Independent system operator

1. Where the transmission system belongs to a vertically integrated undertaking on 3 September 2009, **Contracting Parties** may decide not to apply Article 43(1) and designate an independent system operator upon a proposal from the transmission system owner. Such designation shall be subject to **opinion of the Energy Community Secretariat**.<sup>32</sup>

2. The **Contracting Party** may approve and designate an independent system operator provided that:

(a) the candidate operator has demonstrated that it complies with the requirements laid down in points (b), (c) and (d) of Article 43(1);

(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;

(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 operator and any other relevant entity; and

(e) the candidate operator has demonstrated its ability to comply with its obligations under **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, 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 and paragraph 2 of this Article shall be approved and designated as independent system operators by **Contracting Parties**. The certification procedure in either Article 52 of this Directive and **Article 3 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011** or in Article 53 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 in-

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<sup>32</sup> The text displayed in Article 44(1) corresponds to Article 4(17) of Ministerial Council Decision 2021/13/MC-EnC



ter-transmission system operator compensation mechanism in accordance with **Article 13 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, 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. 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**

#### **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.

## **Section 3**

### **Independent transmission operators**

#### **Article 46**

##### **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 other parts of the vertically integrated undertaking shall be prohibited. A transmission system operator may, however, render services to the vertically integrated undertaking, provided that:

(i) 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

(ii) 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, 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 after 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:

(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 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 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 Annex I to Directive (EU) 2017/1132 of the European Parliament and of the Council.

4. The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion with respect to 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.

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**

#### **Independence of the transmission system operator**

1. Without prejudice to the decisions of the Supervisory Body under Article 49, 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 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 other financial benefits 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 accordance with this 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(2) of this Directive, and in complying with obligations set out in **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, 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 point (d) of Article 46(1), 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 accordance with the requirements of this Chapter shall be approved and designated as a transmission system operator by the **Contracting Party** concerned. The certification procedure in either Article 52 of this Directive and **Article 3 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011** or in Article 53 of this Directive shall apply.

#### **Article 48**

##### **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.

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 another 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**

### **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.
2. The Supervisory Body shall be composed of members representing the vertically integrated undertaking, members representing third-party shareholders and, where the relevant national law so provides, members representing other interested parties such as employees of the transmission system operator.
3. The first subparagraph of Article 48(2) and Article 48(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 48(2) shall apply to all the members of the Supervisory Body.

## **Article 50**

### **Compliance programme and compliance officer**

1. **Contracting Parties** 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 regulatory authority, compliance with the programme shall be independently monitored by a compliance officer.
2. The compliance officer shall be appointed by the Supervisory Body, subject to 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 48(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.

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 all the resources necessary for fulfilling the compliance officer's duties. During his or her 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 laid down in **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, in particular regarding tariffs, third-party access services, capacity allocation and congestion management, transparency, 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 41.

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. The compliance officer shall have access to the offices of the transmission system operator without prior announcement.

12. 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.

## Article 51

### Network development and powers to make investment decisions<sup>33</sup>

1. 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. The transmission system operator shall publish the ten-year network development plan on its website.

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 fully take into account the potential for the use of demand response, energy storage facilities or other resources as alternatives to system expansion, as well as expected consumption, trade with other countries and investment plans for **Energy Community**-wide and regional networks, **as applicable**.

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-wide ten-year network development plan ('Union-wide network development plan') < ... >. If any doubt arises as to the consistency with the Union-wide network development plan, the regulatory authority shall consult ACER. The regulatory authority may require the transmission system operator to amend its ten-year network development plan.

The competent national authorities shall examine the consistency of the ten-year network development plan with the national energy and climate plan submitted in accordance with Regulation (EU) 2018/1999 **as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021**.

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, **Contracting Parties** 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

<sup>33</sup> The text displayed in Articles 51(3) and (5) correspond to Article 4(18) of Ministerial Council Decision 2021/13/MC-EnC



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.

8. Where the regulatory authority has made use of its powers under point (b) of paragraph 7, it may oblige the transmission system operator to agree to one or more of the following:

- (a) financing by any third party;
- (b) construction by any third party;
- (c) building the new assets concerned itself;
- (d) 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.

9. Where the regulatory authority has made use of its powers under 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*

#### Designation and certification of transmission system operators

1. Before an undertaking is approved and designated as transmission system operator, it shall be certified in accordance with the procedures laid down in paragraphs 4, 5 and 6 of this Article and in **Article 3 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**.

2. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 43 pursuant to the certification procedure below, shall be approved and designated as transmission system operators by **Contracting Parties**. The designation of transmission system operators shall be notified to the **Energy Community Secretariat** and published in the **Website of the Energy Community**.

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.

4. Regulatory authorities shall monitor the continuing compliance of transmission system operators with the requirements of Article 43. They shall open a certification procedure to ensure such com-

pliance:

- (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, or where they have reason to believe that such an infringement may have occurred; or
- (c) upon a reasoned request from the **Energy Community Secretariat**.

5. The regulatory authorities shall adopt a decision on the certification of a transmission system operator within four months of the date of the notification by the transmission system operator or from the date of the **Energy Community Secretariat** 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 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 **Energy Community Secretariat** by the regulatory authority, together with all the relevant information with respect to that decision. The **Energy Community Secretariat** shall act in accordance with the procedure laid down in **Article 3 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**.

7. The regulatory authorities and the **Energy Community Secretariat** 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 **Energy Community Secretariat** shall preserve the confidentiality of commercially sensitive information.

### **Article 53**

#### **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 **Energy Community Secretariat**.

The regulatory authority shall also notify to the **Energy Community Secretariat** 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 of 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 43; and
- (b) to the regulatory authority or to another competent national authority designated by the **Contracting Party** that granting certification will not put at risk the security of energy supply of the

**Contracting Party** and the **Energy Community**. In considering that question the regulatory authority or other competent national authority shall take into account:

- (i) the rights and obligations of the **Energy Community** with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the **Energy Community** is a party and which addresses the issues of security of energy supply;
- (ii) the rights and obligations of the **Contracting Party** with respect to that third country arising under agreements concluded with it, insofar as they comply with **Energy Community** law; and
- (iii) other specific facts and circumstances of the case and the third country concerned.

4. The regulatory authority shall notify the decision to the **Energy Community Secretariat** without delay, together with all the relevant information with respect to that decision.

5. **Contracting Parties** shall provide for the regulatory authority or the designated competent authority referred to in point (b) of paragraph 3, before the regulatory authority adopts a decision on the certification, to request an opinion from the **Energy Community Secretariat** on whether:

- (a) the entity concerned complies with the requirements of Article 43; and
- (b) granting certification will not put at risk the security of energy supply to the **Energy Community**.

6. The **Energy Community Secretariat** shall examine the request referred to in paragraph 5 as soon as it is received. Within two months of receiving the request, it shall deliver its opinion to the regulatory authority or, if the request was made by the designated competent authority, to that authority.

In preparing the opinion, the **Energy Community Secretariat** may request the views of **the Energy Community Regulatory Board**, the **Contracting Party** concerned, and interested parties. In the event that the **Energy Community Secretariat** makes such a request, the two-month period shall be extended by two months.

In the absence of an opinion by the **Energy Community Secretariat** within the period referred to in the first and second subparagraphs, the **Energy Community Secretariat** 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 **Energy Community**, the **Energy Community Secretariat** 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 **Energy Community** 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 **Energy Community** is a party and which addresses the issues of security of supply.

8. The regulatory authority shall, within two months of the expiry of the period referred to in paragraph 6, adopt its final decision on the certification. In adopting its final decision the regulatory authority shall take utmost account of the **Energy Community Secretariat's** opinion. In any event **Contracting Parties** shall have the right to refuse certification where granting certification puts at risk the **Contracting Party's** security of energy supply or the security of energy supply of another **Contracting Party**. Where the **Contracting Party** has designated another competent national authority to

make the assessment referred to in point (b) of paragraph 3, it may require the regulatory authority to adopt its final decision in accordance with the assessment of that competent national authority. The regulatory authority's final decision and the **Energy Community Secretariat's** opinion shall be published together. Where the final decision diverges from the **Energy Community Secretariat's** opinion, the **Contracting Party** concerned shall provide and publish, together with that decision, the reasoning underlying such decision.

9. Nothing in this Article shall affect the right of **Contracting Parties** to exercise, in accordance with **Energy Community** law, national legal controls to protect legitimate public security interests.

10. < ... ><sup>34</sup>

## Article 54

### Ownership of energy storage facilities by transmission system operators

1. Transmission system operators shall not own, develop, manage or operate energy storage facilities.

2. By way of derogation from paragraph 1, **Contracting Parties** may allow transmission system operators to own, develop, manage or operate energy storage facilities, where they are fully integrated network components and the regulatory authority has granted its approval, or where all of the following conditions are fulfilled:

(a) other parties, following an open, transparent and non-discriminatory tendering procedure that is subject to review and approval by the regulatory authority, have not been awarded a right to own, develop, manage or operate such facilities, or could not deliver those services at a reasonable cost and in a timely manner;

(b) such facilities or non-frequency ancillary services 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 in the electricity markets; and

(c) the regulatory authority has assessed the necessity of such a derogation, has carried out an *ex ante* review of the applicability of a tendering procedure, including the conditions of the tendering procedure, and has granted its approval.

The regulatory authority may draw up guidelines or procurement clauses to help transmission system operators ensure a fair tendering procedure.

3. The decision to grant a derogation shall be notified to the **Energy Community Secretariat** and **Energy Community Regulatory Board** together with relevant information about the request and the reasons for granting the derogation.

4. The regulatory authorities shall perform, at regular intervals or at least every five years, a public consultation on the existing energy storage facilities in order to assess the potential availability and interest of other parties in investing in such facilities. Where the public consultation, as assessed by the regulatory authority, indicates that other parties are able to own, develop, operate or manage such facilities in a cost-effective manner, the regulatory authority shall ensure that transmission system operators' activities in this regard are phased-out within 18 months. As part of the conditions of that

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34 Not applicable according to Article 4(19) of Ministerial Council Decision 2021/13/MC-EnC

procedure, regulatory authorities may allow the transmission system operators to receive reasonable compensation, in particular to recover the residual value of their investment in the energy storage facilities.

5. Paragraph 4 shall not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until **2026**, provided that such battery storage facilities are:

- (a) connected to the grid at the latest two years thereafter;
- (b) integrated into the transmission system;
- (c) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and
- (d) not used to buy or sell electricity in the electricity markets, including **balancing**.<sup>35</sup>

## Section 5

### Unbundling and transparency of accounts

#### *Article 55*

##### **Right of access to accounts**

1. **Contracting Parties** or any competent authority that they designate, including the regulatory authorities referred to in Article 57, 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.
2. **Contracting Parties** and any designated competent authority, including the regulatory authorities, shall preserve the confidentiality of commercially sensitive information. **Contracting Parties** may provide for the disclosure of such information where such disclosure is necessary in order for the competent authorities to carry out their functions.

#### *Article 56*

##### **Unbundling of accounts**<sup>36</sup>

1. **Contracting Parties** 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 < ... >.

Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these

<sup>35</sup> The text displayed here corresponds to Article 4(20) of Ministerial Council Decision 2021/13/MC-EnC

<sup>36</sup> The text displayed in Article 56(2) corresponds to Article 4(21) of Ministerial Council Decision 2021/13/MC-EnC

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. 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.

4. The audit referred to in paragraph 2 shall, in particular, verify that the obligation to avoid discrimination and cross-subsidisation referred to in paragraph 3 is respected.

## CHAPTER VII

### REGULATORY AUTHORITIES

#### *Article 57*

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

1. Each **Contracting Party** shall designate a single regulatory authority at national level.
2. Paragraph 1 shall be without prejudice to the designation of other regulatory authorities at regional level within **Contracting Parties**, provided that there is one senior representative for representation and contact purposes at **Energy Community** level within **Energy Community Regulatory Board**.
3. By way of derogation from paragraph 1, a **Contracting Party** may designate regulatory authorities for small systems in a geographically separate region whose consumption, in 2008, accounted for less than 3 % of the total consumption of the **Contracting Party** of which it is part. That derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at **Energy Community** level within **Energy Community Regulatory Board** < ... >.<sup>37</sup>
4. **Contracting Parties** shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For that purpose, **Contracting Parties** 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 other public or private entities;
  - (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. That requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by

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37 The text displayed in Article 57(3) corresponds to Article 4(2) of Ministerial Council Decision 2021/13/MC-EnC

the government not related to the regulatory powers and duties under Article 59.

5. In order to protect the independence of the regulatory authority, **Contracting Parties** shall in particular ensure that:

- (a) the regulatory authority can take autonomous decisions, independently from any political body;
- (b) the regulatory authority has all the necessary human and financial resources it needs to carry out its duties and exercise its powers in an effective and efficient manner;
- (c) the regulatory authority has a separate annual budget allocation and autonomy in the implementation of the allocated budget;
- (d) 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;
- (e) 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 the relevant position in the regulatory authority;
- (f) 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 end of the mandate of the regulatory authority's top management;
- (g) 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.

In regard to point (d) of the first subparagraph, **Contracting Parties** 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.

6. **Contracting Parties** may provide for the *ex post* control of the regulatory authorities' annual accounts by an independent auditor.

7. By 5 July 2022 and every four years thereafter, the **Energy Community Secretariat** shall submit a report to the **Ministerial Council** on the compliance of national authorities with the principle of independence set out in this Article.

### **Article 58**

#### **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 its duties and powers as laid down in Article 59, in close consultation with other relevant national authorities, including competition authorities, as well as authorities, including regulatory authorities, from neighbouring **Contracting Parties** and neighbouring third countries, as appropriate, and without prejudice to their competence:

- (a) promoting, in close cooperation with regulatory authorities of other **Contracting Parties**, the **Energy Community Secretariat** and **Energy Community Regulatory Board**, a competitive,

flexible, secure and environmentally sustainable internal market for electricity within the **Energy Community**, and effective market opening for all customers and suppliers in the **Energy Community**, 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 cross-border markets within the **Energy Community** with a view to achieving the objectives referred to in point (a);

(c) eliminating restrictions on trade in electricity between **Contracting Parties**, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate electricity flows across the **Energy Community**;

(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 accordance with general energy policy objectives, energy efficiency, as well as the integration of large and small-scale production of electricity from renewable sources and distributed generation in both transmission and distribution networks, and facilitating their operation in relation to other energy networks of gas or heat;

(e) facilitating access to the network for new generation capacity and energy storage facilities, in particular removing barriers that could prevent access for new market entrants and of electricity from renewable sources;

(f) ensuring that system operators and system users are granted appropriate incentives, in both the short and the long term, to increase efficiencies, especially energy efficiency, in system performance and to foster market integration;

(g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure a high level of consumer protection, in close cooperation with relevant consumer protection authorities;

(h) helping to achieve high standards of universal service and of 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**

### **Duties and powers of the regulatory authorities**

1. The regulatory authority shall have the following duties:

(a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies, or both;

(b) ensuring the compliance of transmission system operators and distribution system operators and, where relevant, system owners, as well as the compliance of any electricity undertakings and other market participants, with their obligations under this Directive, **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, the network codes and the guidelines adopted pursuant to Articles **6 and 7 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**,



and other relevant **Energy Community** law, including as regards cross-border issues, as well as with **Energy Community Regulatory Board** 's decisions;

(c) < ... ><sup>38</sup>

(d) approving products and procurement process for < ... > ancillary services;

(e) implementing the network codes and guidelines adopted pursuant to Articles **6 and 7 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011** through national measures or, where so required, coordinated regional or **Energy Community**-wide measures;

(f) cooperating in regard to cross-border issues with the regulatory authority or authorities of the **Contracting Parties** concerned and with **the Energy Community Regulatory Board < ... >**;<sup>39</sup>

(g) complying with, and implementing, any relevant legally binding decisions of the **Energy Community Secretariat** and of **Energy Community Regulatory Board**;

(h) ensuring that transmission system operators make available interconnector capacities to the utmost extent pursuant to **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**;

(i) reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the **Contracting Parties**, the **Energy Community Secretariat** and **Energy Community Regulatory Board**, including on the steps taken and the results obtained as regards each of the tasks listed in this Article;

(j) ensuring that there is no cross-subsidisation between transmission, distribution and supply activities or other electricity or non-electricity activities;

(k) 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 **Energy Community-wide** network development plan; such assessment may include recommendations to amend those investment plans;

(l) monitoring and assessing the performance of 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 indicators, and publish a national report every two years, including recommendations;

(m) setting or approving standards and requirements for quality of service and quality of supply or contributing thereto together with other competent authorities and monitoring compliance with and reviewing the past performance of network security and reliability rules;

(n) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of electricity undertakings with transparency obligations;

(o) 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, the impact of dynamic electricity price contracts and of the use of smart metering systems, switching rates, disconnection rates, charges for maintenance services, the execution of maintenance

<sup>38</sup> Article 59(1)(c) is not applicable according to item 1 in Article 4(23) of Ministerial Council Decision 2021/13/MC-EnC

<sup>39</sup> The text displayed in Articles 59(1)(d) and (f) correspond to items 2 and 3 in Article 4(23) of Ministerial Council Decision 2021/13/MC-EnC

services, the relationship between household and wholesale prices, the evolution of grid tariffs and levies, and complaints by household customers, as well as any distortion or restriction of competition, including by providing any relevant information, and bringing any relevant cases to the relevant competition authorities;

(p) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent 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;

(q) monitoring the time taken by transmission system operators and distribution system operators to make connections and repairs;

(r) helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced;

(s) publishing recommendations, at least annually, in relation to compliance of supply prices with Article 5, and providing those recommendations to the competition authorities, where appropriate;

(t) ensuring non-discriminatory 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;

(u) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers, customers and other market participants pursuant to **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**;

(v) monitoring investment in generation and storage capacities in relation to security of supply;

(w) monitoring technical cooperation between **Energy Community** and third-country transmission system operators;

(x) contributing to the compatibility of data exchange processes for the most important market processes at regional level;

(y) monitoring the availability of comparison tools that meet the requirements set out in Article 14;

(z) monitoring the removal of unjustified obstacles to and restrictions on the development of consumption of self-generated electricity and citizen energy communities.

2. Where a **Contracting Party** 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 competence 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 **Energy Community Regulatory Board** 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 < ... >.<sup>40</sup>

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40 The text displayed in Article 59(2) corresponds to item 4 in Article 4(23) of Ministerial Council Decision 2021/13/MC-EnC

3. **Contracting Parties** shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in this Article 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 **Energy Community Secretariat** 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, **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011** or any relevant legally binding decisions of the regulatory authority or of **Energy Community Regulatory Board**, or to propose that a competent court impose such penalties, including 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 investigation and relevant powers of instruction for dispute settlement under Article 60(2) and (3).

4. < ... ><sup>41</sup>

5. In addition to the duties conferred upon it under paragraphs 1 and 3 of this Article, when an independent system operator has been designated under Article 44, 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 point (d) of paragraph 3;
- (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 with respect to any complaint submitted by either party pursuant to Article 60(2);
- (c) without prejudice to the procedure under point (c) of Article 44(2), for the first ten-year network development plan, approve the investments planning and the multi-annual network development plan submitted at least every two years 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

<sup>41</sup> Not applicable according to item 5 in Article 4(23) of Ministerial Council Decision 2021/13/MC-EnC

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 14 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**.

6. In addition to the duties and powers conferred on it under paragraphs 1 and 3 of this Article, when a transmission system operator has been designated in accordance with Section 3 of Chapter VI, the regulatory authority shall be granted at least the following duties and powers:

(a) to impose penalties in accordance with point (d) of paragraph 3 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 with respect to any complaint submitted pursuant to Article 60(2);

(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 a justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article 50(4), such justification including, in particular, evidence demonstrating 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 in the case of a persistent breach by the transmission system operator of its obligations under this Directive, in particular in the case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking.

7. The regulatory authorities, except where **Energy Community Regulatory Board** is competent to fix and approve the terms and conditions or methodologies for the implementation of network codes and guidelines under **Articles 6 and 7 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011** < ... > because of their coordinated nature, shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the national methodologies used to calculate or establish the terms and conditions for:<sup>42</sup>

(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;

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<sup>42</sup> The text displayed in Article 59(7) corresponds to item 6 in Article 4(23) of Ministerial Council Decision 2021/13/MC-EnC

(b) the provision of ancillary 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, such ancillary 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.

8. The methodologies or the terms and conditions referred to in paragraph 7 shall be published.

9. With a view to increasing transparency in the market and providing all interested parties with all necessary information and decisions or proposals for decisions concerning transmission and distribution tariffs as referred in Article 60(3), regulatory authorities shall make publicly available the detailed methodology and underlying costs used for the calculation of the relevant network tariffs, while preserving the confidentiality of commercially sensitive information.

10. 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 regulatory authorities. Regulatory authorities may request amendments to those rules.

### **Article 60**

#### **Decisions and complaints**

1. Regulatory authorities shall have the authority to require transmission system operators and distribution system operators, if necessary, to modify the terms and conditions, including tariffs or methodologies referred to Article 59 of this Directive, to ensure that they are proportionate and applied in a non-discriminatory manner, in accordance with **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**. 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. 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 two months of 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. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to Article 59 or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, may, within two months, or within a shorter period as provided for by **Contracting Parties**, after publication of the decision or proposal for a decision, submit a

complaint for review. Such a complaint shall not have suspensive effect.

4. **Contracting Parties** 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 **Energy Community Treaty**, and in particular Article **18(1)(b) of the Treaty**.<sup>43</sup>

5. **Contracting Parties** 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. Complaints referred to in paragraphs 2 and 3 shall be without prejudice to the exercise of rights of appeal under **Energy Community** or national law.

7. 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. **Contracting Parties** 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.

## **Article 61**

### **Regional cooperation between regulatory authorities on cross-border issues**

1. Regulatory authorities shall closely consult and cooperate with each other, in particular within **Energy Community Regulatory Board**, and shall provide each other and **the Energy Community Regulatory Board** with any information necessary for the fulfilment of their tasks under this Directive. With respect to 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 suppliers in different **Contracting Parties**;

(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 resource adequacy assessments;

(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. Regulatory authorities shall have the right to enter into cooperative arrangements with each other

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<sup>43</sup> The text displayed in Article 60(4) corresponds to Article 4(24) of Ministerial Council Decision 2021/13/MC-EnC

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 competence.

5. < ... ><sup>44</sup>

### **Article 62**

#### **Duties and powers of regulatory authorities with respect to regional coordination centres<sup>45</sup>**

< ... >

### **Article 63**

#### **Compliance with the network codes and guidelines<sup>46</sup>**

1. Any regulatory authority and the **Energy Community Secretariat** may request the opinion of **Energy Community Regulatory Board** on the compliance of a decision taken by a regulatory authority with the network codes and guidelines referred to in this Directive or in **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**.

2. **The Energy Community Regulatory Board** shall provide its opinion to the regulatory authority which has requested it or to the **Energy Community Secretariat**, respectively, and to the regulatory authority which has taken the decision in question within three months of the date of receipt of the request.

3. Where the regulatory authority which has taken the decision does not comply with **Energy Community Regulatory Board's** opinion within four months of the date of receipt of that opinion, **the Energy Community Regulatory Board** shall inform the **Energy Community Secretariat** accordingly.

4. Any regulatory authority may inform the **Energy Community Secretariat** 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 **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011** within two months of the date of that decision.

5. Where the **Energy Community Secretariat**, within two months of having been informed by **the Energy Community Regulatory Board** in accordance with paragraph 3, or by a regulatory authority in accordance with paragraph 4, or, on its own initiative, within three months of 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 < ... > **Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011**, the **Energy Community Secretariat** may < ... > examine the case further. In such a case, it shall invite the regulatory authority and the parties to the proceedings before the regulatory

<sup>44</sup> Not applicable according to Article 4(25) of Ministerial Council Decision 2021/13/MC-EnC

<sup>45</sup> Not applicable according to Article 4(26) of Ministerial Council Decision 2021/13/MC-EnC

<sup>46</sup> The text displayed in Articles 63(5), (6) and (8) correspond to items 1, 2, 3 and 5 in Article 4(27) of Ministerial Council Decision 2021/13/MC-EnC

authority to submit observations.

6. Where the **Energy Community Secretariat** < ... > **examines** 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 < ... > **invite** the regulatory authority concerned to withdraw its decision on the basis that network codes and guidelines have not been complied with.

7. **In the absence of an opinion by paragraph 6, the Energy Community Secretariat shall be deemed not to raise objections to the decision of the regulatory authority.**<sup>47</sup>

8. The regulatory authority shall < ... > **take into utmost account** the **Energy Community Secretariat's** decision requiring it to withdraw its decision within two months and shall inform the **Energy Community Secretariat** accordingly.

9. < ... ><sup>48</sup>

#### **Article 64**

##### **Record keeping**

1. **Contracting Parties** shall require suppliers to keep at the disposal of the national authorities, including the regulatory authority, the national competition authorities and the **Energy Community Secretariat**, 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 2014/65/EU.

4. This Article shall not create additional obligations towards the authorities referred to in paragraph 1 for entities falling within the scope of Directive 2014/65/EU.

5. In the event that the authorities referred to in paragraph 1 need access to data kept by entities falling within the scope of Directive 2014/65/EU, the authorities responsible under that Directive shall provide them with the required data.

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47 The text displayed in Article 63(7) corresponds to item 4 in Article 4(27) of Ministerial Council Decision 2021/13/MC-EnC

48 Not applicable according to item 6 in Article 4(27) of Ministerial Council Decision 2021/13/MC-EnC



## CHAPTER VIII

### FINAL PROVISIONS

#### *Article 65*

#### **Level playing field<sup>49</sup>**

1. Measures that the **Contracting Parties** may take pursuant to this Directive in order to ensure a level playing field shall be compatible with the **Energy Community Treaty**, in particular < ... > **Article 41** thereof, and with **Energy Community** 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 **Energy Community Secretariat**.
3. The **Energy Community Secretariat** 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 after receipt of the complete information. In the event that the **Energy Community Secretariat** has not acted within that two-month period, it shall be deemed not to have raised objections to the notified measures.

#### *Article 66*

#### **Derogations<sup>50</sup>**

1. < ... >
2. < ... >
3. < ... > For the purposes of point (b) of Article 43(1), 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.<sup>51</sup>
4. < ... >
5. < ... >

<sup>49</sup> The text displayed in Article 65(1) corresponds to Article 4(28) of Ministerial Council Decision 2021/13/MC-EnC

<sup>50</sup> Articles 66(1), (2), (4) and (5) are not applicable according to item 1 in Article 4(29) of Ministerial Council Decision 2021/13/MC-EnC

<sup>51</sup> The text displayed in Article 66(3) corresponds to item 2 in Article 4(29) of Ministerial Council Decision 2021/13/MC-EnC

## **Article 67**

### **Exercise of the delegation<sup>52</sup>**

< ... >

## **Article 68**

### **Committee procedure<sup>52</sup>**

< ... >

## **Article 69**

### **Energy Community Secretariat monitoring, reviewing and reporting<sup>53</sup>**

1. The **Energy Community Secretariat** shall monitor and review the implementation of this Directive and shall submit a progress report to the **Ministerial Council** as an annex to the State of the Energy Union Report referred to in Article 35 of Regulation (EU) 2018/1999 **as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021**.

2. By 31 December 2025, the **Energy Community Secretariat** shall review the implementation of this Directive and shall submit a report to the **Ministerial Council**. < ... >

The **Energy Community Secretariat's** review shall, in particular, assess whether customers, especially those who are vulnerable or in energy poverty, are adequately protected under this Directive.

## **Article 70**

### **Amendments to Directive 2012/27/EU<sup>52</sup>**

< ... >

## **Article 71**

### **Transposition<sup>54</sup>**

1. **Contracting Parties** shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 2 to 5, Article 6(2) and (3), Article 7(1), point (j) and (l) of Article 8(2), Article 9(2), Article 10(2) to (12), Articles 11 to 24, Articles 26, 28 and 29, Articles 31 to 34 and 36, Article 38(2), Articles 40 and 42, point (d) of Article 46(2), Articles 51 and 54, Articles 57 to 59, Articles 61 to 63, points (1) to (3), (5)(b) and (6) of Article 70 and Annexes I and II by 31 December **2023**. They shall immediately communicate the text of those provisions to the **Energy Community Secretariat**.

However, **Contracting Parties** shall bring into force the laws, regulations and administrative provisions necessary to comply with:

<sup>52</sup> Articles 67, 68 and 70 are not applicable according to Article 4(30) of Ministerial Council Decision 2021/13/MC-EnC

<sup>53</sup> The text displayed in Article 69(2) corresponds to Article 4(31) of Ministerial Council Decision 2021/13/MC-EnC

<sup>54</sup> The text displayed in Article 71(1) corresponds to items 1, 2 and 3 in Article 4(32) of Ministerial Council Decision 2021/13/MC-EnC

- (a) point (5)(a) of Article 70 by **30 June 2023**;
- (b) point (4) of Article 70 by **31 December 2023**.

When **Contracting Parties** 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. **Contracting Parties** shall determine how such reference is to be made and how that statement is to be formulated.

2. **Contracting Parties** shall communicate to the **Energy Community Secretariat** the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### **Article 72**

##### **Repeal**

< ... >

#### **Article 73**

##### **Entry into force<sup>55</sup>**

**This Directive enters into force on the day of adoption of Ministerial Council Decision 2021/13/MC-ENC. < ... >**

#### **Article 74**

##### **Addressees<sup>55</sup>**

**This Directive is addressed to the Contracting Parties and the institutions of the Energy Community. < ... >**

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<sup>55</sup> The text displayed in Articles 73 and 74 correspond to Article 8 of Ministerial Council Decision 2021/13/MC-ENC

## ANNEX I

### MINIMUM REQUIREMENTS FOR BILLING AND BILLING INFORMATION

1. Minimum information to be contained on the bill and in the billing information

1.1. The following key information shall be prominently displayed to final customers in their bills, distinctly separate from other parts of the bill:

(a) the price to be paid and a breakdown of the price where possible, together with a clear statement that all energy sources may also benefit from incentives that were not financed through the levies indicated in the breakdown of the price;

(b) the date on which payment is due.

1.2. The following key information shall be prominently displayed to final customers in their bills and billing information, distinctly separate from other parts of the bill and billing information:

(a) electricity consumption for the billing period;

(b) the name and contact details of the supplier, including a consumer support hotline and email address;

(c) the tariff name;

(d) the end date of the contract, if applicable;

(e) the information on the availability and benefits of switching;

(f) the final customer's switching code or unique identification code for the final customer's supply point;

(g) information on final customers' rights as regards out-of-court dispute settlement, including the contact details of the entity responsible pursuant to Article 26;

(h) the single point of contact referred to in Article 25;

(i) a link or reference to where comparison tools referred to in Article 14 can be found.

1.3. Where bills are based on actual consumption or remote reading by the operator, the following information shall be made available to final customers in, with or signposted to within their bills and periodic settlement bills:

(a) comparisons of the final customer's current electricity consumption with the final customer's consumption for the same period in the previous year in graphic form;

(b) contact information for consumer organisations, energy agencies or similar bodies, including website addresses, from which information may be obtained on available energy efficiency improvement measures for energy-using equipment;

(c) comparisons with an average normalised or benchmarked final customer in the same user category.

2. Frequency of billing and the provision of billing information:

(a) billing on the basis of actual consumption shall take place at least once a year;

(b) where the final customer does not have a meter that allows remote reading by the operator, or where the final customer has actively chosen to disable remote reading in accordance with national

law, accurate billing information based on actual consumption shall be made available to the final customer at least every six months, or once every three months, if requested or where the final customer has opted to receive electronic billing;

(c) where the final customer does not have a meter that allows remote reading by the operator, or where the final customer has actively chosen to disable remote reading in accordance with national law, the obligations in points (a) and (b) may be fulfilled by means of a system of regular self-reading by the final customer, whereby the final customer communicates readings from the meter to the operator; billing or billing information may be based on estimated consumption or a flat rate only where the final customer has not provided a meter reading for a given billing interval;

(d) where the final customer has a meter that allows remote reading by the operator, accurate billing information based on actual consumption shall be provided at least every month; such information may also be made available via the internet, and shall be updated as frequently as allowed by the measurement devices and systems used.

### 3. Breakdown of the final customer's price

The customer's price is the sum of the following three components: the energy and supply component, the network component (transmission and distribution) and the component comprising taxes, levies, fees and charges.

Where a breakdown of the final customer's price is presented in bills, the common definitions of the three components in that breakdown established under Regulation (EU) 2016/1952 of the European Parliament and of the Council shall be used throughout the **Energy Community**.

### 4. Access to complementary information on historical consumption

**Contracting Parties** shall require that, to the extent that complementary information on historical consumption is available, such information is made available, at the request of the final customer, to the supplier or service provider designated by the final customer.

Where the final customer has a meter that allows remote reading by the operator installed, the final customer shall have easy access to complementary information on historical consumption allowing detailed self-checks.

Complementary information on historical consumption shall include:

(a) cumulative data for at least the three previous years or the period since the start of the electricity supply contract, if that period is shorter. The data shall correspond to the intervals for which frequent billing information has been produced; and

(b) detailed data according to the time of use for any day, week, month and year, which is made available to the final customer without undue delay via the internet or the meter interface, covering the period of at least the previous 24 months or the period since the start of the electricity supply contract, if that period is shorter.

### 5. Disclosure of energy sources

Suppliers shall specify in bills the contribution of each energy source to the electricity purchased by the final customer in accordance with the electricity supply contract (product level disclosure).

The following information shall be made available to final customers in, with, or signposted to within their bills and billing information:

(a) the contribution of each energy source to the overall energy mix of the supplier (at national level, namely in the **Contracting Party** in which the electricity supply contract has been concluded, as well as at the level of the supplier if the supplier is active in several **Contracting Parties**) over the preceding year in a comprehensible and clearly comparable manner;

(b) information on the environmental impact, in at least terms of CO<sub>2</sub> emissions and the radioactive waste resulting from the electricity produced by the overall energy mix of the supplier over the preceding year.

As regards point (a) of the second subparagraph, with respect to electricity obtained via an electricity exchange or imported from an undertaking situated outside the **Energy Community**, aggregate figures provided by the exchange or the undertaking in question over the preceding year may be used.

For the disclosure of electricity from high efficiency cogeneration, guarantees of origin issued under Article 14(10) of Directive 2012/27/EU may be used. The disclosure of electricity from renewable sources shall be done by using guarantees of origin, except in the cases referred to in points (a) and (b) of Article 19(8) of Directive (EU) 2018/2001 **as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021**.

The regulatory authority or another competent national authority shall take the necessary steps to ensure that the information provided by suppliers to final customers pursuant to this point is reliable and is provided at a national level in a clearly comparable manner.

## ANNEX II

### SMART METERING SYSTEMS

1. **Contracting Parties** shall ensure the deployment of smart metering systems in their territories that may be subject to an economic assessment of all of the long-term costs and benefits to the market and the individual consumer or which form of smart metering is economically reasonable and cost-effective and which time frame is feasible for their distribution.
2. Such assessment shall take into consideration the methodology for the cost-benefit analysis and the minimum functionalities for smart metering systems provided for in Commission Recommendation 2012/148/EU as well as the best available techniques for ensuring the highest level of cybersecurity and data protection.
3. Subject to that assessment, **Contracting Parties** or, where a **Contracting Party** has so provided, the designated competent authority, shall prepare a timetable with a target of up to ten years for the deployment of smart metering systems. Where the deployment of smart metering systems is assessed positively, at least 80 % of final customers shall be equipped with smart meters either within seven years of the date of the positive assessment or by 2024 for those **Contracting Parties** that have initiated the systematic deployment of smart metering systems before **the date of entry into force of this Directive in the Energy Community**<sup>56</sup>.

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<sup>56</sup> The text displayed here corresponds to Article 4(1) of Ministerial Council Decision 2021/13/MC-EnC