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European electricity market reform

On 26 June 2024, the rules representing the culmination of the reform of the European electricity market were published in the Official Journal of the European Union (“**OJEU**”): Regulation (EU) 2024/1747 of the European Parliament and of the Council of 13 June 2024, amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union’s electricity market design (the “**Regulation**”) and Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024, amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union’s electricity market design (the “**Directive**”).

Both the Regulation and the Directive will enter into force 20 days after their publication in the OJEU, on 16 July 2024.

This Legal Briefing highlights the main aspects of the reform introduced by the Regulation and the Directive.

1. The aim of the reform

As stated in the recitals of the Regulation, the reform aims to achieve affordable and competitive electricity prices for all consumers, promoting investment in clean energy technologies.

It should be noted that the approved reform does not constitute a structural reform of the marginal cost configuration of the European electricity market, which is maintained, but rather aims to adapt this configuration to address specific price crisis situations.

2. Measures related to the day-ahead and intraday markets

Gate closure time of the cross-zonal intraday market

The Regulation recognises the importance of intraday markets for the integration of variable renewable energy sources into the electricity system at the least cost, as they give the possibility to market participants to trade electricity shortages or surpluses closer to the time of delivery.

Therefore, with the aim of maximising market participants’ opportunities to trade electricity shortages and surpluses and contribute to better integrating variable renewable energy sources into the electricity system, it is foreseen that the nominated electricity market operator (hereinafter “**NEMO**”) will allow market participants to trade energy as close to real-time as possible, and at least until the intraday cross-zonal gate closure time¹. Furthermore, it is foreseen that, from 1 January 2026, the intraday cross-zonal gate closure time must not be more than 30 minutes ahead of real time².

¹ Article 8 of Regulation (EU) 2019/943.

² It also provides that, when such a change generates risks to the security of supply and in order to facilitate a cost-efficient transition to a shorter cross-zonal gate closure time, transmission system operators may request an exemption, based on an impact assessment and subject to the approval of the relevant regulatory authority, to obtain an extension of the implementation timeline. This request must include an action plan with concrete measures to implement the new cross-zonal intraday market gate closure time.

2.1. Single day-ahead and intraday coupling

To promote the liquidity of intraday markets, measures are established to ensure that order books are shared among NEMOs in the day-ahead and intraday market coupling timeframes³.

2.2. Lowering of the minimum bid size

It is foreseen that short-term electricity markets must ensure that small-scale flexibility service providers can participate by lowering the minimum bid size.

3. Peak-shaving product

A mechanism is created for Member States to request system operators to propose the procurement of peak-shaving products to achieve a reduction in electricity demand during peak hours.

A “*peak-shaving product*” is defined as a “*market-based product by means of which market participants can provide peak shaving to system operators*” and “*peak-shaving*” is defined as “*the ability of market participants to reduce electricity consumption from the grid at peak hours at the request of the system operator*”.

This measure is intended to be applied only when a regional or Union-wide electricity price crisis is declared pursuant to Article 66a of Directive (EU) 2019/944⁴ (which is analysed further in section 7 of this Legal Briefing).

The proposal for a peak-shaving product must be evaluated by the regulatory authority of the Member State proposing the measure and must comply with various requirements. Furthermore, the procurement of peak-shaving products:

- i) must be limited to demand response (i.e. it may only be offered to consumers) and must not prevent participating assets from accessing other markets.
- ii) Its procurement must be based on objective, transparent, market-based, and non-discriminatory criteria and must be carried out through a competitive bidding process, which can be continuous, in which the product that meets pre-defined technical and environmental criteria at the lowest cost will be selected, and which must enable effective participation of consumers, either directly or through aggregation.

In any case, the sizing of the product will be limited to ensure that the forecasted costs do not exceed the expected benefits of the peak-shaving product.

4. Promotion of forward markets

The recitals of the Regulation highlight the importance of forward markets, both for consumers and suppliers, as a mechanism to cover their exposure to long-term prices and reduce dependence on short-term prices. With the intention of strengthening these markets, the Commission is mandated to, by 17 January 2026 at the latest and after consulting relevant stakeholders, carry out an assessment of the impact of possible measures to achieve the objective of improving the ability of market participants to protect themselves against price risks in the internal electricity market. In particular, the Commission must assess the possible introduction of regional virtual hubs for forward markets⁵.

The measures resulting from the assessment carried out by the Commission must be adopted by 17 July 2026 at the latest.

³ Article 7 of Regulation (EU) 2019/943.

⁴ Article 7a of Regulation (EU) 2019/943.

⁵ Article 9 of Regulation (EU) 2019/943.

Furthermore, it is envisaged that, under certain circumstances, a competent regulatory authority may require power exchanges or transmission system operators to implement additional measures, such as market-making activities, to improve the liquidity of the forward markets⁶.

5. Investment incentives

The Regulation introduces a new Chapter IIIa, concerning “specific investment incentives to achieve the Union’s decarbonisation objectives”, which regulates the following measures.

5.1. Power purchase agreements (“PPA”)

PPAs are defined as “a contract under which a natural or legal person agrees to purchase electricity from an electricity producer on a market basis”, and Member States are urged to promote the use of PPAs, among other means, by removing unjustified obstacles and disproportionate or discriminatory burdens or procedure.

Furthermore, it is envisaged that the Commission will assess, after consulting relevant stakeholders, the potential and viability of establishing one or several Union market platforms for PPAs, to be used on a voluntary basis.

It is expressly provided that Member States must ensure the existence of guarantee schemes at market prices aimed at reducing the financial risks associated to offtaker payment default under PPAs, specifying that these instruments may include state-backed guarantee schemes at market prices, private guarantees, or facilities pooling demand for PPAs.

Additionally, it is envisaged that support schemes for electricity from renewable sources will allow the participation of projects that reserve part of the electricity to be sold through a renewable energy PPA or other market-based arrangements, provided that such participation does not negatively affect market competition, particularly when both parties involved in the PPA are controlled by the same entity.

5.2. Two-way contracts for difference for investment

It is envisaged that direct price support schemes for investments in new power-generating facilities for the generation of electricity from wind, solar, geothermal, hydroelectric without reservoir, and nuclear energy sources will take the form of two-way contracts for difference for investment or equivalent regimes that produce the same effects⁷.

In this context, a “two-way contract for difference” or “CFD” is defined as “a contract between a power-generating facility operator and a counterpart, usually a public entity, that provides both minimum remuneration protection and a limit to excess remuneration”.

This obligation to structure direct support schemes through CFDs or equivalent regimes that produce the same effects will apply only to contracts governed by direct price support schemes for investments in new generation concluded on or after 17 July 2027, or, in the case of hybrid offshore projects connected to two or more bidding zones, 17 July 2029.

In any case, it is envisaged that participation in these direct price support schemes in the form of a two-way contract for difference or equivalent regimes will be voluntary.

Furthermore, it is envisaged that Member States will use the revenues from these mechanisms to finance investment to reduce electricity costs for final customers and, in particular, specific economic activities, such as investments in the development of distribution networks, renewable energy sources, electric vehicle charging infrastructure, and the costs of direct price support schemes.

⁶ Article 9 of Regulation (EU) 2019/943.

⁷ Article 19d of Regulation (EU) 2019/943.

5.3. Measures related to non-fossil flexibility support schemes: payments for available capacity

The concept of “flexibility” is introduced as “*the ability of an electricity system to adjust to the variability of generation and consumption patterns and to grid availability, within the relevant market timeframes*”.

There is an obligation for each Member State to determine an indicative national objective for non-fossil flexibility that includes the respective specific contributions to this target from both (i) demand response and (ii) energy storage⁸. It is envisaged that Member States may achieve these targets through various means⁹, including support schemes for non-fossil flexibility consisting of payments for the available capacity of non-fossil flexibility¹⁰.

The design of support schemes for non-fossil flexibility must meet certain requirements, including that (i) they are limited to new investments in non-fossil flexibility resources, such as demand side response and energy storage; (ii) capacity providers are selected through an open, transparent, competitive, voluntary, non-discriminatory, and cost-effective process; and (iii) they offer incentives for integration into electricity markets under market conditions and in a manner adapted to them.

6. Capacity mechanisms

The Regulation introduces certain modifications to the current regulation of Capacity Mechanisms¹¹, primarily to eliminate their temporary nature and include them as a structural part of the functioning of the European electricity market.

7. Public interventions in electricity supply pricing

The Directive introduces a new Article 66a under the title “*Access to Affordable Energy During the Electricity Price Crisis*”, which enables the Council, following a proposal from the Commission, to declare an electricity price crisis at a regional or Union level, provided the following conditions are met:

- i) There are very high average prices in wholesale electricity markets equivalent to at least two and a half times the average price of the previous five years and at least 180 EUR/MWh, which are expected to continue for at least six months, without taking into account periods during which an electricity price crisis was declared at a regional or Union level in the calculation of the five-year average price;
- ii) There are sharp increases in retail electricity prices of around 70% that are expected to continue for at least three months.

The declaration of a price crisis will be adopted by a Council implementing decision, which must specify its validity period, which can be up to one year, extendable by consecutive periods of up to one year. This will enable Member States to apply specific and temporary public interventions in the setting of electricity supply prices within certain limits during the validity period of the decision.

8. Flexible connection agreements

The Directive introduces a new Article 6a in Directive (EU) 2019/944 to allow the regulatory authority, when provided for by a Member State, to develop a framework for transmission system operators and distribution

⁸ Article 19f of Regulation (EU) 2019/943.

⁹ In accordance with Article 19f, “*Member States may achieve that objective by realising the identified potential of non-fossil flexibility, via the removal of identified market barriers or via the non-fossil flexibility support schemes referred to in Article 19g of this Regulation*”.

¹⁰ Article 19g of Regulation (EU) 2019/943.

¹¹ As foreseen in the Regulation Recitals “*Capacity mechanisms should be open to the participation of all resources that are capable of providing the required technical performance, which may include gas-fired power plants, provided they satisfy the emission limit set out in Article 22(4) of Regulation (EU) 2019/943 as well as any national emission threshold or other objective environmental criteria which Member States may wish to apply to speed up the transition away from fossil fuels*”.

system operators to offer the possibility of establishing flexible connection agreements in areas where network capacity availability is limited or non-existent for new connections.

This framework will ensure that (i) flexible connections do not delay network reinforcements in identified areas; (ii) the conversion of flexible connection agreements into firm connection agreements once the network is developed based on established criteria; (iii) for areas where the regulatory authority considers that network development is not the most efficient solution, flexible connection agreements may be provided as a permanent solution, including for energy storage, where applicable.

The system user connecting through a flexible grid connection will be required to install a power control system certified by an authorised certifier.

9. Right to energy sharing

The Directive introduces Article 15a into Directive (EU) 2019/944, establishing the right to shared energy, whereby Member States must ensure that all households, small and medium-sized enterprises, public bodies, and, where a Member State has so decided, other categories of final customers, have the right to participate in shared energy uses as active customers in a non-discriminatory manner, within the same bidding zone or in a more limited geographical area as determined by that Member State.

Furthermore, Member States must ensure that active customers have the right to share renewable energy among themselves based on private agreements or through a legal entity, without participation in shared energy consumption being part of the main commercial or professional activity of the active customers involved.

For these purposes, active customers may appoint a third-party organiser of shared energy consumption who, among other capabilities, may own or manage a storage or renewable energy generation facility of up to 6 MW without being considered an active customer, unless they are one of the active customers participating in the shared energy consumption project.

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