

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

CHAPTER VI

UNBUNDLING OF TRANSMISSION SYSTEM OPERATORS

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 51 of Regulation (EU) 2019/943.

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 Member States. The designation of transmission system operators shall be notified to the Commission and published in the *Official Journal of the European Union*.

3 Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 43.

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 compliance:

- a upon notification by the transmission system operator pursuant to paragraph 3;
- b on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Article 43, or where they have reason to believe that such an infringement may have occurred; or
- c upon a reasoned request from the Commission.

5 The regulatory authorities shall adopt a decision on the certification of a transmission system operator within four months of the date of the notification by the transmission system operator or from the date of the Commission request. After expiry of that period, the certification shall be deemed to be granted. The explicit or tacit decision of the regulatory authority shall become effective only after conclusion of the procedure set out in paragraph 6.

6 The explicit or tacit decision on the certification of a transmission system operator shall be notified without delay to the Commission by the regulatory authority, together with all the relevant information with respect to that decision. The Commission shall act in accordance with the procedure laid down in Article 51 of Regulation (EU) 2019/943.

7 The regulatory authorities and the Commission may request from transmission system operators and undertakings performing any of the functions of generation or supply any information relevant for the fulfilment of their tasks under this Article.

8 Regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

Article 53

Certification in relation to third countries

1 Where certification is requested by a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries, the regulatory authority shall notify the Commission.

The regulatory authority shall also notify to the Commission without delay any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system or a transmission system operator.

2 The transmission system operator shall notify to the regulatory authority any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator.

3 The regulatory authority shall adopt a draft decision on the certification of a transmission system operator within four months 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 Member State that granting certification will not put at risk the security of energy supply of the Member State and the Union. In considering that question the regulatory authority or other competent national authority shall take into account:
 - (i) the rights and obligations of the Union with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the Union is a party and which addresses the issues of security of energy supply;
 - (ii) the rights and obligations of the Member State with respect to that third country arising under agreements concluded with it, insofar as they comply with Union 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 Commission without delay, together with all the relevant information with respect to that decision.

5 Member States shall provide for the regulatory authority or the designated competent authority referred to in point (b) of paragraph 3, before the regulatory authority adopts a decision on the certification, to request an opinion from the Commission on whether:

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

6 The Commission 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 Commission may request the views of ACER, the Member State concerned, and interested parties. In the event that the Commission makes such a request, the two-month period shall be extended by two months.

In the absence of an opinion by the Commission within the period referred to in the first and second subparagraphs, the Commission shall be deemed not to raise objections to the decision of the regulatory authority.

7 When assessing whether the control by a person or persons from a third country or third countries will put at risk the security of energy supply to the Union, the Commission shall take into account:

- a the specific facts of the case and the third country or third countries concerned; and
- b the rights and obligations of the Union with respect to that third country or third countries arising under international law, including an agreement concluded with one or more third countries to which the Union 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 Commission's opinion. In any event Member States shall have the right to refuse certification where granting certification puts at risk the Member State's security of energy supply or the security of energy supply of another Member State. Where the Member State has designated another competent 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 Commission's opinion shall be published together. Where the final decision diverges from the Commission's opinion, the Member State concerned shall provide and publish, together with that decision, the reasoning underlying such decision.

9 Nothing in this Article shall affect the right of Member States to exercise, in accordance with Union law, national legal controls to protect legitimate public security interests.

10 This Article, with exception of point (a) of paragraph 3 thereof, shall also apply to Member States which are subject to a derogation under Article 66.

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, Member States 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 Commission and ACER 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 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 2024, 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.