

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 1

Ownership unbundling

Article 43

Ownership unbundling of transmission systems and transmission system operators

- 1 Member States 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.
- 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

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‘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 Member States for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 44 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 Member State or another public body, two separate public bodies exercising control over a transmission system operator or over a transmission system on the one hand, and over an undertaking performing any of the functions of generation or supply on the other, shall be deemed not to be the same person or persons.

6 Member States 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 3 September 2009, the transmission system belongs to a vertically integrated undertaking a Member State may decide not to apply paragraph 1.

In such case, the Member State concerned shall either:

- a designate an independent system operator in accordance with Article 44; or
- b comply with Section 3.

8 Where, on 3 September 2009, the transmission system belongs to a vertically integrated undertaking and there are arrangements in place which guarantee more effective independence of the transmission system operator than Section 3, a Member State 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 51 of Regulation (EU) 2019/943, pursuant to which the Commission 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 Member States 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, Member States 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 approval by the Commission.

2 The Member State 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 (EU) 2019/943, 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 Member States. The certification procedure in either Article 52 of this Directive and Article 51 of Regulation (EU) 2019/943 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 inter-transmission system operator compensation mechanism in accordance with Article 49 of Regulation (EU) 2019/943, 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

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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:

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- 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⁽¹⁾.
- 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.

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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 Articles 16, 18, 19 and 50 of Regulation (EU) 2019/943, 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 Member State concerned. The certification procedure in either Article 52 of this Directive and Article 51 of Regulation (EU) 2019/943 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

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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 Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that the compliance with that programme is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. It shall be subject to approval by the regulatory authority. Without prejudice to the powers of the 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 (EU) 2019/943, 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.

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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

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 Union-wide and regional networks.

4 The regulatory authority shall consult all actual or potential system users on the ten-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential system users may be required to substantiate such claims. The regulatory authority shall publish the result of the consultation process, in particular possible needs for investments.

5 The regulatory authority shall examine whether the ten-year network development plan covers all investment needs identified during the consultation process, and whether it is consistent with the non-binding Union-wide ten-year network development plan ('Union-wide network development plan') referred to in point (b) of Article 30(1) of Regulation (EU) 2019/943. 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.

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6 The regulatory authority shall monitor and evaluate the implementation of the ten-year network development plan.

7 In circumstances where the transmission system operator, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten-year network development plan, was to be executed in the following three years, Member States shall ensure that the regulatory authority is required to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten-year network development plan:

- a to require the transmission system operator to execute the investments in question;
- b to organise a tender procedure open to any investors for the investment in question; or
- c to oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.

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 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*.

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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

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- 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

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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;

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- 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.

Section 5

Unbundling and transparency of accounts

Article 55

Right of access to accounts

1 Member States 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 Member States and any designated competent authority, including the regulatory authorities, shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where such disclosure is necessary in order for the competent authorities to carry out their functions.

Article 56

Unbundling of accounts

1 Member States shall take the necessary steps to ensure that the accounts of electricity undertakings are kept in accordance with paragraphs 2 and 3.

2 Electricity undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to Directive 2013/34/EU.

Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public in their head office.

3 Electricity undertakings shall, in their internal accounting, keep separate accounts for each of their transmission and distribution activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution. 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.

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- (1) Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law ([OJ L 169, 30.6.2017, p. 46](#)).