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)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) A number of amendments are to be made to Directive 2009/72/EC of the European Parliament and of the Council[(4)]. In the interests of clarity, that Directive should be recast.

(2) The internal market for electricity, which has been progressively implemented throughout the Union since 1999, aims, by organising competitive electricity markets across country borders, to deliver real choice for all Union final customers, be they citizens or businesses, new business opportunities, competitive prices, efficient investment signals and higher standards of service, and to contribute to security of supply and sustainability.

(3) Directive 2003/54/EC of the European Parliament and of the Council[(5)] and Directive 2009/72/EC have made a significant contribution towards the creation of the internal market for electricity. However, the Union's energy system is in the middle of a profound change. The common goal of decarbonising the energy system creates new opportunities and challenges for market participants. At the same time, technological developments allow for new forms of consumer participation and cross-

border cooperation. There is a need to adapt the Union market rules to a new market reality.

(4) The Commission Communication of 25 February 2015, entitled 'A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy', sets out a vision of an Energy Union with citizens at its core, where citizens take ownership of the energy transition, benefit from new technologies to reduce their bills and participate actively in the market, and where vulnerable consumers are protected.

(5) The Commission Communication of 15 July 2015, entitled 'Delivering a New Deal for Energy Consumers', put forward the Commission's vision for a retail market that better serves energy consumers, including by better linking wholesale and retail markets. By taking advantage of new technology, new and innovative energy service companies should enable all consumers to fully participate in the energy transition, managing their consumption to deliver energy efficient solutions which save them money and contribute to the overall reduction of energy consumption.

(6) The Commission Communication of 15 July 2015, entitled 'Launching the public consultation process on a new energy market design', highlighted that the move away from generation in large central generating installations towards decentralised production of electricity from renewable sources and towards decarbonised markets requires adapting the current rules of electricity trading and changing the existing market roles. The Communication underlined the need to organise electricity markets in a more flexible manner and to fully integrate all market players – including producers of renewable energy, new energy service providers, energy storage and flexible demand. It is equally important for the Union to invest urgently in interconnection at Union level for the transfer of energy through high-voltage electricity transmission systems.

(7) With a view to creating an internal market for electricity, Member States should foster the integration of their national markets and cooperation among system operators at Union and regional level, and incorporate isolated systems that form electricity islands that persist in the Union.

(8) In addition to addressing new challenges, this Directive seeks to address the persisting obstacles to the completion of the internal market for electricity. The refined regulatory framework needs to contribute to overcoming the current problems of fragmented national markets which are still often determined by a high degree of regulatory interventions. Such interventions have led to obstacles to the supply of electricity on equal terms as well as higher costs in comparison to solutions based on cross-border cooperation and market-based principles.

(9) The Union would most effectively meet its renewable energy targets through the creation of a market framework that rewards flexibility and innovation. A well-functioning electricity market design is the key factor enabling the uptake of renewable energy.

(10) Consumers have an essential role to play in achieving the flexibility necessary to adapt the electricity system to variable and distributed renewable electricity generation. Technological progress in grid management and the generation of renewable electricity

has unlocked many opportunities for consumers. Healthy competition in retail markets is essential to ensuring the market-driven deployment of innovative new services that address consumers' changing needs and abilities, while increasing system flexibility. However, the lack of real-time or near real-time information provided to consumers about their energy consumption has prevented them from being active participants in the energy market and the energy transition. By empowering consumers and providing them with the tools to participate more in the energy market, including participating in new ways, it is intended that citizens in the Union benefit from the internal market for electricity and that the Union's renewable energy targets are attained.

(11) The freedoms which the Treaty on the Functioning of the European Union (TFEU) guarantees the citizens of the Union — inter alia, the free movement of goods, the freedom of establishment and the freedom to provide services — are achievable only in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

(12) Promoting fair competition and easy access for different suppliers is of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market for electricity. Nonetheless, it is possible that market failure persists in peripheral small electricity systems and in systems not connected with other Member States, where electricity prices fail to provide the right signal to drive investment, and therefore requires specific solutions to ensure an adequate level of security of supply.

(13) In order to foster competition and ensure the supply of electricity at the most competitive price, Member States and regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of generation, energy storage and demand response.

(14) Member States should ensure that no undue barriers exist within the internal market for electricity as regards market entry, operation and exit. At the same time, it should be clarified that that obligation is without prejudice to the competence that Member States retain in relation to third countries. That clarification should not be interpreted as enabling a Member State to exercise the exclusive competence of the Union. It should also be clarified that market participants from third countries who operate within the internal market are to comply with the applicable Union and national law in the same manner as other market participants.

(15) Market rules allow for the entry and exit of producers and suppliers based on their assessment of the economic and financial viability of their operations. That principle is not incompatible with the possibility for Member States to impose on undertakings operating in the electricity sector public service obligations in the general economic interest in accordance with the Treaties, in particular with Article 106 TFEU, and with this Directive and Regulation (EU) 2019/943 of the European Parliament and of the Council[6].

(16) The European Council of 23 and 24 October 2014 stated in its conclusions that the Commission, supported by the Member States, is to take urgent measures in order to ensure the achievement of a minimum target of 10 % of existing electricity

interconnections, as a matter of urgency, and no later than 2020, at least for Member States which have not yet attained a minimum level of integration in the internal energy market, which are the Baltic States, Portugal and Spain, and for Member States which constitute their main point of access to the internal energy market. It further stated that the Commission is also to report regularly to the European Council with the objective of arriving at a 15 % target by 2030.

(17) Sufficient physical interconnection with neighbouring countries is important to enable Member States and neighbouring countries to benefit from the positive effects of the internal market as stressed in the Commission Communication of 23 November 2017, entitled 'Communication on strengthening Europe's energy networks', and as reflected in Member States' integrated national energy and climate plans under Regulation (EU) 2018/1999 of the European Parliament and of the Council[7].

(18) Electricity markets differ from other markets such as those for natural gas, for example because they involve the trading in a commodity which cannot currently be easily stored and which is produced using a large variety of generating installations, including through distributed generation. This has been reflected in the different approaches to the regulatory treatment of interconnectors in the electricity and gas sectors. The integration of electricity markets requires a high degree of cooperation among system operators, market participants and regulatory authorities, in particular where electricity is traded via market coupling.

(19) Securing common rules for a true internal market and a broad supply of electricity that is accessible to all should also be one of the main goals of this Directive. To that end, undistorted market prices would provide incentives for cross-border interconnections and for investments in new electricity generation while leading to price convergence in the long term.

(20) Market prices should give the right incentives for the development of the network and for investing in new electricity generation.

(21) Different types of market organisation exist in the internal market for electricity. The measures that Member States could take in order to ensure a level playing field should be based on overriding requirements of general interest. The Commission should be consulted on the compatibility of those measures with the TFEU and with other Union law.

(22) Member States should maintain wide discretion to impose public service obligations on electricity undertakings in pursuing objectives of general economic interest. Member States should ensure that household customers and, where Member States consider it to be appropriate, small enterprises, enjoy the right to be supplied with electricity of a specified quality at clearly comparable, transparent and competitive prices. Nevertheless, public service obligations in the form of price setting for the supply of electricity constitute a fundamentally distortive measure that often leads to the accumulation of tariff deficits, the limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, lower levels of consumer engagement and satisfaction, and the restriction of competition, as well as to there being fewer innovative products and services on the market.

Consequently, Member States should apply other policy tools, in particular targeted social policy measures, to safeguard the affordability of electricity supply to their citizens. Public interventions in price setting for the supply of electricity should be carried out only as public service obligations and should be subject to specific conditions set out in this Directive. A fully liberalised, well-functioning retail electricity market would stimulate price and non-price competition among existing suppliers and provide incentives to new market entrants, thereby improving consumer choice and satisfaction.

(23) Public service obligations in the form of price setting for the supply of electricity should be used without overriding the principle of open markets in clearly defined circumstances and beneficiaries and should be limited in duration. Such circumstances might occur for example where supply is severely constrained, causing significantly higher electricity prices than normal, or in the event of a market failure where interventions by regulatory authorities and competition authorities have proven to be ineffective. This would disproportionately affect households and, in particular, vulnerable customers who typically expend a higher share of their disposable income on energy bills compared to high-income consumers. In order to mitigate the distortive effects of public service obligations in price setting for the supply of electricity, Member States applying such interventions should put in place additional measures, including measures to prevent distortions of price setting in the wholesale market. Member States should ensure that all beneficiaries of regulated prices are able to benefit fully from the offers available on the competitive market when they choose to do so. To that end, those beneficiaries need to be equipped with smart metering systems and have access to dynamic electricity price contracts. In addition, they should be directly and regularly informed of the offers and savings available on the competitive market, in particular relating to dynamic electricity price contracts, and should be provided with assistance to respond to and benefit from market-based offers.

(24) The entitlement of beneficiaries of regulated prices to receive individual smart meters without extra costs should not prevent Member States from modifying the functionality of smart metering systems where smart meter infrastructure does not exist because the cost-benefit assessment regarding the deployment of smart metering systems was negative.

(25) Public interventions in price setting for the supply of electricity should not lead to direct cross-subsidisation between different categories of customer. According to that principle, price systems must not explicitly make certain categories of customer bear the cost of price interventions that affect other categories of customer. For example, a price system, in which the cost is borne by suppliers or other operators in a non-discriminatory manner, should not be considered to be direct cross-subsidisation.

(26) In order to ensure the maintenance of the high standards of public service in the Union, all measures taken by Member States to achieve the objective of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives

and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high standards of public service.

(27) It should be possible for Member States to appoint a supplier of last resort. That supplier might be the sales division of a vertically integrated undertaking which also performs distribution functions, provided that it meets the unbundling requirements of this Directive.

(28) It should be possible for measures implemented by Member States for the purpose of achieving the objectives of social and economic cohesion to include, in particular, the provision of adequate economic incentives, using, where appropriate, any existing national and Union tools. Such tools may include liability mechanisms to guarantee the necessary investment.

(29) To the extent that measures taken by Member States to fulfil public service obligations constitute State aid under Article 107(1) TFEU, there is an obligation under Article 108(3) TFEU to notify them to the Commission.

(30) Cross–sectorial law provides a strong basis for consumer protection for a wide range of energy services that exist, and is likely to evolve. Nevertheless, certain basic contractual rights of customers should be clearly established.

(31) Plain and unambiguous information should be made available to consumers concerning their rights in relation to the energy sector. The Commission has established, after consulting relevant stakeholders, including Member States, regulatory authorities, consumer organisations and electricity undertakings, an energy consumer checklist that provides consumers with practical information about their rights. That checklist should be kept up to date, provided to all consumers and made publicly available.

(32) Several factors impede consumers from accessing, understanding and acting upon the various sources of market information available to them. It follows that the comparability of offers should be improved and barriers to switching should be minimised to the greatest practicable extent without unduly limiting consumer choice.

(33) Smaller customers are still being charged a broad range of fees directly or indirectly as a result of switching supplier. Such fees make it more difficult to identify the best product or service and diminish the immediate financial advantage of switching. Although removing such fees might limit consumer choice by eliminating products based on rewarding consumer loyalty, restricting their use further should improve consumer welfare, consumer engagement and competition in the market.

(34) Shorter switching times are likely to encourage consumers to search for better energy deals and switch supplier. With the increased deployment of information technology, by the year 2026, the technical switching process of registering a new supplier in a metering point at the market operator should typically be possible to complete within 24 hours on any working day. Notwithstanding other steps in the switching process that are to be completed before the technical process of switching is initiated, ensuring that it is possible by that date for the technical process of switching to take place within 24 hours would minimise switching times, helping to increase consumer engagement

and retail competition. In any event, the total duration of the switching process should not exceed three weeks from the date of the customer's request.

(35) Independent comparison tools, including websites, are an effective means for smaller customers to assess the merits of the different energy offers that are available on the market. Such tools lower search costs as customers no longer need to collect information from individual suppliers and service providers. Such tools can provide the right balance between the need for information to be clear and concise and the need for it to be complete and comprehensive. They should aim to include the broadest possible range of available offers, and to cover the market as completely as is feasible so as to give the customer a representative overview. It is crucial that smaller customers have access to at least one comparison tool and that the information given on such tools be trustworthy, impartial and transparent. To that end, Member States could provide for a comparison tool that is operated by a national authority or a private company.

(36) Greater consumer protection is guaranteed by the availability of effective, independent out-of-court dispute settlement mechanisms for all consumers, such as an energy ombudsman, a consumer body or a regulatory authority. Member States should introduce speedy and effective complaint-handling procedures.

(37) All consumers should be able to benefit from directly participating in the market, in particular by adjusting their consumption according to market signals and, in return, benefiting from lower electricity prices or other incentive payments. The benefits of such active participation are likely to increase over time, as the awareness of otherwise passive consumers is raised about their possibilities as active customers and as the information on the possibilities of active participation becomes more accessible and better known. Consumers should have the possibility of participating in all forms of demand response. They should therefore have the possibility of benefiting from the full deployment of smart metering systems and, where such deployment has been negatively assessed, of choosing to have a smart metering system and a dynamic electricity price contract. This should allow them to adjust their consumption according to real-time price signals that reflect the value and cost of electricity or transportation in different time periods, while Member States should ensure the reasonable exposure of consumers to wholesale price risk. Consumers should be informed about benefits and potential price risks of dynamic electricity price contracts. Member States should also ensure that those consumers who choose not to actively engage in the market are not penalised. Instead, their ability to make informed decisions on the options available to them should be facilitated in the manner that is the most suited to domestic market conditions.

(38) In order to maximise the benefits and effectiveness of dynamic electricity pricing, Member States should assess the potential for making more dynamic or reducing the share of fixed components in electricity bills, and where such potential exists, should take appropriate action.

(39) All customer groups (industrial, commercial and households) should have access to the electricity markets to trade their flexibility and self-generated electricity. Customers should be allowed to make full use of the advantages of aggregation of production and supply over larger regions and benefit from cross-border competition. Market

participants engaged in aggregation are likely to play an important role as intermediaries between customer groups and the market. Member States should be free to choose the appropriate implementation model and approach to governance for independent aggregation while respecting the general principles set out in this Directive. Such a model or approach could include choosing market-based or regulatory principles which provide solutions to comply with this Directive, such as models where imbalances are settled or where perimeter corrections are introduced. The chosen model should contain transparent and fair rules to allow independent aggregators to fulfil their roles as intermediaries and to ensure that the final customer adequately benefits from their activities. Products should be defined on all electricity markets, including ancillary services and capacity markets, so as to encourage the participation of demand response.

(40) The Commission Communication of 20 July 2016, entitled 'European Strategy for Low-Emission Mobility', stresses the need for the decarbonisation of the transport sector and the reduction of its emissions, especially in urban areas, and highlights the important role that electromobility can play in contributing to those objectives. Moreover, the deployment of electromobility constitutes an important element of the energy transition. Market rules set out in this Directive should therefore contribute to creating favourable conditions for electric vehicles of all kinds. In particular, they should ensure the effective deployment of publicly accessible and private recharging points for electric vehicles and should ensure the efficient integration of vehicle charging into the system.

(41) Demand response is pivotal to enabling the smart charging of electric vehicles and thereby enabling the efficient integration of electric vehicles into the electricity grid which will be crucial for the process of decarbonising transport.

(42) Consumers should be able to consume, to store and to sell self-generated electricity to the market and to participate in all electricity markets by providing flexibility to the system, for instance through energy storage, such as storage using electric vehicles, through demand response or through energy efficiency schemes. New technology developments will facilitate those activities in the future. However, legal and commercial barriers exist, including, for example, disproportionate fees for internally consumed electricity, obligations to feed self-generated electricity to the energy system, and administrative burdens, such as the need for consumers who self-generate electricity and sell it to the system to comply with the requirements for suppliers, etc. Such obstacles, which prevent consumers from self-generating electricity and from consuming, storing or selling self-generated electricity to the market, should be removed while it should be ensured that such consumers contribute adequately to system costs. Member States should be able to have different provisions in their national law with respect to taxes and levies for individual and jointly-acting active customers, as well as for household and other final customers.

(43) Distributed energy technologies and consumer empowerment have made community energy an effective and cost-efficient way to meet citizens' needs and expectations regarding energy sources, services and local participation. Community energy offers an inclusive option for all consumers to have a direct stake in producing, consuming or sharing energy. Community energy initiatives focus primarily on providing affordable

energy of a specific kind, such as renewable energy, for their members or shareholders rather than on prioritising profit-making like a traditional electricity undertaking. By directly engaging with consumers, community energy initiatives demonstrate their potential to facilitate the uptake of new technologies and consumption patterns, including smart distribution grids and demand response, in an integrated manner. Community energy can also advance energy efficiency at household level and help fight energy poverty through reduced consumption and lower supply tariffs. Community energy also enables certain groups of household customers to participate in the electricity markets, who otherwise might not have been able to do so. Where they have been successfully operated such initiatives have delivered economic, social and environmental benefits to the community that go beyond the mere benefits derived from the provision of energy services. This Directive aims to recognise certain categories of citizen energy initiatives at the Union level as 'citizen energy communities', in order to provide them with an enabling framework, fair treatment, a level playing field and a well-defined catalogue of rights and obligations. Household customers should be allowed to participate voluntarily in community energy initiatives as well as to leave them, without losing access to the network operated by the community energy initiative or losing their rights as consumers. Access to a citizen energy community's network should be granted on fair and cost-reflective terms.

(44) Membership of citizen energy communities should be open to all categories of entities. However, the decision-making powers within a citizen energy community should be limited to those members or shareholders that are not engaged in large-scale commercial activity and for which the energy sector does not constitute a primary area of economic activity. Citizen energy communities are considered to be a category of cooperation of citizens or local actors that should be subject to recognition and protection under Union law. The provisions on citizen energy communities do not preclude the existence of other citizen initiatives such as those stemming from private law agreements. It should therefore be possible for Member States to provide that citizen energy communities take any form of entity, for example that of an association, a cooperative, a partnership, a non-profit organisation or a small or medium-sized enterprise, provided that the entity is entitled to exercise rights and be subject to obligations in its own name.

(45) The provisions of this Directive on citizen energy communities provide for rights and obligations, which are possible to deduce from other, existing rights and obligations, such as the freedom of contract, the right to switch supplier, the responsibilities of the distribution system operator, the rules on network charges, and balancing obligations.

(46) Citizen energy communities constitute a new type of entity due to their membership structure, governance requirements and purpose. They should be allowed to operate on the market on a level playing field without distorting competition, and the rights and obligations applicable to the other electricity undertakings on the market should be applied to citizen energy communities in a non-discriminatory and proportionate manner. Those rights and obligations should apply in accordance with the roles that they undertake, such as the roles of final customers, producers, suppliers or distribution system operators. Citizen energy communities should not face regulatory restrictions

when they apply existing or future information and communications technologies to share electricity produced using generation assets within the citizen energy community among their members or shareholders based on market principles, for example by offsetting the energy component of members or shareholders using the generation available within the community, even over the public network, provided that both metering points belong to the community. Electricity sharing enables members or shareholders to be supplied with electricity from generating installations within the community without being in direct physical proximity to the generating installation and without being behind a single metering point. Where electricity is shared, the sharing should not affect the collection of network charges, tariffs and levies related to electricity flows. The sharing should be facilitated in accordance with the obligations and correct timeframes for balancing, metering and settlement. The provisions of this Directive on citizen energy communities do not interfere with the competence of Member States to design and implement policies relating to the energy sector in relation to network charges and tariffs, or to design and implement energy policy financing systems and cost sharing, provided that those policies are non-discriminatory and lawful.

(47) This Directive empowers Member States to allow citizen energy communities to become distribution system operators either under the general regime or as 'closed distribution system operators'. Once a citizen energy community is granted the status of a distribution system operator, it should be treated as, and be subject to the same obligations as, a distribution system operator. The provisions of this Directive on citizen energy communities only clarify aspects of distribution system operation that are likely to be relevant for citizen energy communities, while other aspects of distribution system operation apply in accordance with the rules relating to distribution system operators.

(48) Electricity bills are an important means by which final customers are informed. As well as providing data on consumption and costs, they can also convey other information that helps consumers to compare their current arrangements with other offers. However, disputes over bills are a very common source of consumer complaints, a factor which contributes to the persistently low levels of consumer satisfaction and engagement in the electricity sector. It is therefore necessary to make bills clearer and easier to understand, as well as to ensure that bills and billing information prominently display a limited number of important items of information that are necessary to enable consumers to regulate their energy consumption, compare offers and switch supplier. Other items of information should be made available to final customers in, with or signposted to within their bills. Such items should be displayed on the bill or be in a separate document attached to the bill, or the bill should contain a reference to where the final customer is easily able to find the information on a website, through a mobile application or by other means.

(49) The regular provision of accurate billing information based on actual electricity consumption, facilitated by smart metering, is important for helping customers to control their electricity consumption and costs. Nevertheless, customers, in particular household customers, should have access to flexible arrangements for the actual payment of their bills. For example, it could be possible for customers to be provided

with frequent billing information, while paying only on a quarterly basis, or there could be products for which the customer pays the same amount every month, independently of the actual consumption.

(50) The provisions on billing in Directive 2012/27/EU of the European Parliament and of the Council[8] should be updated, streamlined and moved to this Directive, where they fit more coherently.

(51) Member States should encourage the modernisation of distribution networks, such as through the introduction of smart grids, which should be built in a way that encourages decentralised generation and energy efficiency.

(52) Engaging consumers requires appropriate incentives and technologies such as smart metering systems. Smart metering systems empower consumers because they allow them to receive accurate and near real-time feedback on their energy consumption or generation, and to manage their consumption better, to participate in and reap benefits from demand response programmes and other services, and to lower their electricity bills. Smart metering systems also enable distribution system operators to have better visibility of their networks, and as a consequence, to reduce their operation and maintenance costs and to pass those savings on to the consumers in the form of lower distribution tariffs.

(53) When it comes to deciding at national level on the deployment of smart metering systems, it should be possible to base this decision on an economic assessment. That economic assessment should take into account the long-term benefits of the deployment of smart metering systems to consumers and the whole value chain, such as better network management, more precise planning and identification of network losses. Should that assessment conclude that the introduction of such metering systems is cost-effective only for consumers with a certain amount of electricity consumption, Member States should be able to take that conclusion into account when proceeding with the deployment of smart metering systems. However, such assessments should be reviewed regularly in response to significant changes in the underlying assumptions, or at least every four years, given the fast pace of technological developments.

(54) Member States that do not systematically deploy smart metering systems should allow consumers to benefit from the installation of a smart meter, upon request and under fair and reasonable conditions, and should provide them with all the relevant information. Where consumers do not have smart meters, they should be entitled to meters that fulfil the minimum requirements necessary to provide them with the billing information specified in this Directive.

(55) In order to assist consumers' active participation in the electricity markets, the smart metering systems to be deployed by Member States in their territory should be interoperable, and should be able to provide data required for consumer energy management systems. To that end, Member States should have due regard to the use of relevant available standards, including standards that enable interoperability on the level of the data model and the application layer, to best practices and the importance of the development of data exchange, to future and innovative energy services, to the deployment of smart grids and to the internal market for electricity.

Moreover, the smart metering systems that are deployed should not represent a barrier to switching supplier, and should be equipped with fit-for-purpose functionalities that allow consumers to have near real-time access to their consumption data, to modulate their energy consumption and, to the extent that the supporting infrastructure permits, to offer their flexibility to the network and to electricity undertakings and to be rewarded for it, and to obtain savings in their electricity bills.

(56) A key aspect of supplying customers is providing access to objective and transparent consumption data. Thus, consumers should have access to their consumption data and to the prices and service costs associated with their consumption, so that they can invite competitors to make offers based on that information. Consumers should also have the right to be properly informed about their energy consumption. Prepayments should not place a disproportionate disadvantage on their users, while different payment systems should be non-discriminatory. The information on energy costs that is provided to consumers sufficiently frequently would create incentives for energy savings because it would give customers direct feedback on the effects of investment in energy efficiency and on changes of behaviour. In that respect, the full implementation of Directive 2012/27/EU will help consumers to reduce their energy costs.

(57) Currently, different models for the management of data have been developed or are under development in Member States following deployment of smart metering systems. Independently of the data management model it is important that Member States put in place transparent rules under which data can be accessed under non-discriminatory conditions and ensure the highest level of cybersecurity and data protection as well as the impartiality of the entities which process data.

(58) Member States should take the necessary measures to protect vulnerable and energy poor customers in the context of the internal market for electricity. Such measures may differ according to the particular circumstances in the Member States in question and may include social or energy policy measures relating to the payment of electricity bills, to investment in the energy efficiency of residential buildings, or to consumer protection such as disconnection safeguards. Where universal service is also provided to small enterprises, measures to ensure universal service provision may differ according to whether those measures are aimed at household customers or small enterprises.

(59) Energy services are fundamental to safeguarding the well-being of the Union citizens. Adequate warmth, cooling and lighting, and energy to power appliances are essential services to guarantee a decent standard of living and citizens' health. Furthermore, access to those energy services enables Union citizens to fulfil their potential and enhances social inclusion. Energy poor households are unable to afford those energy services due to a combination of low income, high expenditure on energy and poor energy efficiency of their homes. Member States should collect the right information to monitor the number of households in energy poverty. Accurate measurement should assist Member States in identifying households that are affected by energy poverty in order to provide targeted support. The Commission should actively support the implementation of the provisions of this Directive on energy poverty by facilitating the sharing of good practices between Member States.

(60) Where Member States are affected by energy poverty and have not developed national action plans or other appropriate frameworks to tackle energy poverty, they should do so, with the aim of decreasing the number of energy poor customers. Low income, high expenditure on energy, and poor energy efficiency of homes are relevant factors in establishing criteria for the measurement of energy poverty. In any event, Member States should ensure the necessary supply for vulnerable and energy poor customers. In doing so, an integrated approach, such as in the framework of energy and social policy, could be used and measures could include social policies or energy efficiency improvements for housing. This Directive should enhance national policies in favour of vulnerable and energy poor customers.

(61) Distribution system operators have to cost-efficiently integrate new electricity generation, especially installations generating electricity from renewable sources, and new loads such as loads that result from heat pumps and electric vehicles. For that purpose, distribution system operators should be enabled, and provided with incentives, to use services from distributed energy resources such as demand response and energy storage, based on market procedures, in order to efficiently operate their networks and to avoid costly network expansions. Member States should put in place appropriate measures such as national network codes and market rules, and should provide incentives to distribution system operators through network tariffs which do not create obstacles to flexibility or to the improvement of energy efficiency in the grid. Member States should also introduce network development plans for distribution systems in order to support the integration of installations generating electricity from renewable energy sources, facilitate the development of energy storage facilities and the electrification of the transport sector, and provide to system users adequate information regarding the anticipated expansions or upgrades of the network, as currently such procedures do not exist in the majority of Member States.

(62) System operators should not own, develop, manage or operate energy storage facilities. In the new electricity market design, energy storage services should be market-based and competitive. Consequently, cross-subsidisation between energy storage and the regulated functions of distribution or transmission should be avoided. Such restrictions on the ownership of energy storage facilities is to prevent distortion of competition, to eliminate the risk of discrimination, to ensure fair access to energy storage services to all market participants and to foster the effective and efficient use of energy storage facilities, beyond the operation of the distribution or transmission system. That requirement should be interpreted and applied in accordance with the rights and principles established under the Charter of Fundamental Rights of the European Union (the ‘Charter’), in particular the freedom to conduct a business and the right to property guaranteed by Articles 16 and 17 of the Charter.

(63) Where energy storage facilities are fully integrated network components that are not used for balancing or for congestion management, they should not, subject to approval by the regulatory authority, be required to comply with the same strict limitations for system operators to own, develop, manage or operate those facilities. Such fully integrated network components can include energy storage facilities such as capacitors

or flywheels which provide important services for network security and reliability, and contribute to the synchronisation of different parts of the system.

(64) With the objective of progress towards a completely decarbonised electricity sector that is fully free of emissions, it is necessary to make progress in seasonal energy storage. Such energy storage is an element that would serve as a tool for the operation of the electricity system to allow for short-term and seasonal adjustment, in order to cope with variability in the production of electricity from renewable sources and the associated contingencies in those horizons.

(65) Non-discriminatory access to the distribution network determines downstream access to customers at retail level. To create a level playing field at retail level, the activities of distribution system operators should therefore be monitored so that distribution system operators are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to household customers and small non-household customers.

(66) Where a closed distribution system is used to ensure the optimal efficiency of an integrated supply that requires specific operational standards, or where a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the system users. Industrial sites, commercial sites or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities, and chemical industry sites can include closed distribution systems because of the specialised nature of their operations.

(67) Without the effective separation of networks from activities of generation and supply (effective unbundling), there is an inherent risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated undertakings to invest adequately in their networks.

(68) Only the removal of the incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the appointment of the network owner as the system operator and its independence from any supply and production interests, is clearly an effective and stable way to solve the inherent conflict of interests and to ensure security of supply. For that reason, the European Parliament, in its resolution of 10 July 2007 on prospects for the internal gas and electricity market, referred to ownership unbundling at transmission level as the most effective tool for promoting investments in infrastructure in a non-discriminatory way, fair access to the network for new entrants and transparency in the market. Under ownership unbundling, Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control over a producer or supplier and, at the same time, exercise control or any right over a transmission system operator or transmission system. Conversely, control over a transmission system operator or transmission system should preclude the possibility of exercising control or any right over a producer or

supplier. Within those limits, a producer or supplier should be able to have a minority shareholding in a transmission system operator or transmission system.

(69) Any system for unbundling should be effective in removing any conflict of interests between producers, suppliers and transmission system operators, in order to create incentives for the necessary investments and to guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for regulatory authorities.

(70) Since ownership unbundling requires the restructuring of undertakings in some instances, Member States that decide to implement ownership unbundling should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should apply across the two sectors.

(71) Under ownership unbundling, to ensure full independence of network operation from supply and generation interests, and to prevent exchanges of any confidential information, the same person should not be a member of the managing board of both a transmission system operator or a transmission system and an undertaking performing any of the functions of generation or supply. For the same reason, the same person should not be entitled to appoint members of the managing boards of a transmission system operator or a transmission system and to exercise control or any right over a producer or supplier.

(72) The setting up of a system operator or transmission operator that is independent from supply and generation interests should enable a vertically integrated undertaking to maintain its ownership of network assets while ensuring the effective separation of interests, provided that such independent system operator or independent transmission operator performs all of the functions of a system operator, and provided that detailed regulation and extensive regulatory control mechanisms are put in place.

(73) Where, on 3 September 2009, an undertaking owning a transmission system was part of a vertically integrated undertaking, Member States should be given a choice between ownership unbundling and setting up a system operator or transmission operator which is independent from supply and generation interests.

(74) To preserve fully the interests of the shareholders of vertically integrated undertakings, Member States should have the choice of implementing ownership unbundling either by direct divestments or by splitting the shares of the integrated undertaking into shares of a network undertaking and shares of a remaining supply and generation undertaking, provided that the requirements resulting from ownership unbundling are complied with.

(75) The full effectiveness of the independent system operator or independent transmission operator solutions should be ensured by way of specific additional rules. The rules on independent transmission operators provide an appropriate regulatory framework to guarantee fair competition, sufficient investment, access for new market entrants and integration of electricity markets. Effective unbundling through provisions on independent transmission operators should be based on a pillar of organisational measures and measures relating to the governance of transmission system operators

and on a pillar of measures relating to investment, to connecting new production capacities to the network and to market integration through regional cooperation. The independence of transmission operators should also be ensured, inter alia, through certain 'cooling-off' periods during which no management or other relevant activity giving access to the same information that could have been obtained in a managerial position is exercised in the vertically integrated undertaking.

(76) Member States have the right to opt for full ownership unbundling in their territory. Where a Member State has exercised that right, an undertaking does not have the right to set up an independent system operator or an independent transmission operator. Furthermore, an undertaking performing any of the functions of generation or supply cannot directly or indirectly exercise control or any right over a transmission system operator from a Member State that has opted for full ownership unbundling.

(77) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To that end, the same person should not be able to exercise control or any right, in violation of the rules of ownership unbundling or the independent system operator option, solely or jointly, over the composition, voting or decisions of both the bodies of the transmission system operators or the transmission systems and the bodies of the producer or supplier. With regard to ownership unbundling and the independent system operator solution, provided that the relevant Member State is able to demonstrate that the relevant requirements have been complied with, two separate public bodies should be able to control generation and supply activities, on the one hand, and transmission activities, on the other.

(78) Fully effective separation of network activities from supply and generation activities should apply throughout the Union to both Union and non-Union undertakings. To ensure that network activities and supply and generation activities throughout the Union remain independent from each other, regulatory authorities should be empowered to refuse to certify transmission system operators that do not comply with the unbundling rules. To ensure the consistent application of those rules across the Union, the regulatory authorities should take the utmost account of Commission opinions when they take decisions on certification. In addition, to ensure respect for the international obligations of the Union, and to ensure solidarity and energy security within the Union, the Commission should have the right to give an opinion on certification in relation to a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries.

(79) Authorisation procedures should not lead to administrative burdens that are disproportionate to the size and potential impact of the producers. Unduly lengthy authorisation procedures may constitute a barrier to access for new market entrants.

(80) Regulatory authorities need to be able to take decisions in relation to all relevant regulatory issues if the internal market for electricity is to function properly, and need to be fully independent from any other public or private interests. This precludes neither judicial review nor parliamentary supervision in accordance with the constitutional laws of the Member States. In addition, the approval of the budget of the regulatory authority by the national legislator does not constitute an obstacle to budgetary autonomy. The

provisions relating to the autonomy in the implementation of the allocated budget of the regulatory authority should be implemented in the framework defined by national budgetary law and rules. While contributing to the regulatory authorities' independence from any political or economic interest through an appropriate rotation scheme, it should be possible for Member States to take due account of the availability of human resources and of the size of the board.

(81) Regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operators, or on the basis of a proposal agreed between those operators and the users of the network. In carrying out those tasks, regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from distributed generation and demand-side management measures.

(82) Regulatory authorities should fix or approve individual grid tariffs for transmission and distribution networks or a methodology, or both. In either case, the independence of the regulatory authorities in setting network tariffs pursuant to point (b)(ii) of Article 57(4) should be preserved.

(83) Regulatory authorities should ensure that transmission system operators and distribution system operators take appropriate measures to make their network more resilient and flexible. To that end, they should monitor those operators' performance based on indicators such as the capability of transmission system operators and distribution system operators to operate lines under dynamic line rating, the development of remote monitoring and real-time control of substations, the reduction of grid losses and the frequency and duration of power interruptions.

(84) Regulatory authorities should have the power to issue binding decisions in relation to electricity undertakings and to impose effective, proportionate and dissuasive penalties on electricity undertakings which fail to comply with their obligations or to propose that a competent court impose such penalties on them. To that end, regulatory authorities should be able to request relevant information from electricity undertakings, to conduct appropriate and sufficient investigations, and to settle disputes. Regulatory authorities should also be granted the power to decide, irrespective of the application of competition rules, on appropriate measures that ensure customer benefits through the promotion of effective competition necessary for the proper functioning of the internal market for electricity.

(85) Regulatory authorities should coordinate among themselves when carrying out their tasks to ensure that the European Network of Transmission System Operators for Electricity (the 'ENTSO for Electricity'), the European Entity for Distribution System Operators (the 'EU DSO entity'), and the regional coordination centres comply with their obligations under the regulatory framework of the internal market for electricity, and with decisions of the Agency for the Cooperation of Energy Regulators (ACER), established by Regulation (EU) 2019/942 of the European Parliament and of the Council[9]. With the expansion of the operational responsibilities of the ENTSO for

Electricity, the EU DSO entity and the regional coordination centres, it is necessary to enhance oversight with regard to entities that operate at Union or regional level. Regulatory authorities should consult each other and should coordinate their oversight to jointly identify situations where the ENTSO for Electricity, the EU DSO entity or the regional coordination centres do not comply with their respective obligations.

(86) Regulatory authorities should also be granted the power to contribute to ensuring high standards of universal and public service obligations in accordance with market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules, including the examination of mergers with a Union dimension, and the rules on the internal market, such as the rules on the free movement of capital. The independent body to which a party affected by the decision of a regulatory authority has a right to appeal could be a court or another tribunal that is empowered to conduct a judicial review.

(87) This Directive and Directive 2009/73/EC of the European Parliament and of the Council[(10)] do not deprive Member States of the possibility of establishing and issuing their national energy policy. It follows that, depending on a Member State's constitutional arrangements, it might be within Member State's competence to determine the policy framework in which the regulatory authorities are to operate, for example concerning security of supply. However, the general energy policy guidelines issued by the Member State should not impinge on the independence or autonomy of the regulatory authorities.

(88) Regulation (EU) 2019/943 provides for the Commission to adopt guidelines or network codes to achieve the necessary degree of harmonisation. Such guidelines and network codes constitute binding implementing measures and, with regard to certain provisions of this Directive, are a useful tool that can be adapted quickly where necessary.

(89) Member States and the Contracting Parties to the Treaty establishing the Energy Community[(11)] should cooperate closely on all matters concerning the development of an integrated electricity trading region and should take no measures that endanger the further integration of electricity markets or the security of supply of Member States and Contracting Parties.

(90) This Directive should be read together with Regulation (EU) 2019/943, which lays down the key principles of the new market design for electricity which will enable better rewards for flexibility, provide adequate price signals, and ensure the development of functioning integrated short-term markets. Regulation (EU) 2019/943 also sets out new rules in various areas, including on capacity mechanisms and cooperation between transmission system operators.

(91) This Directive respects the fundamental rights and observes the principles recognised in the Charter. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles, in particular the right to the protection of personal data guaranteed by Article 8 of the Charter. It is essential that any processing of personal data under this Directive comply with Regulation (EU) 2016/679 of the European Parliament and of the Council[(12)].

(92) In order to provide the minimum degree of harmonisation required to achieve the aim of this Directive, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to establish rules on the extent of the duties of the regulatory authorities to cooperate with each other and with ACER and setting out the details of the procedure for compliance with the network codes and guidelines. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(13)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of the delegated acts.

(93) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to determine interoperability requirements and non-discriminatory and transparent procedures for access to metering data, consumption data, as well as data required for customer switching, demand response and other services. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(14)].

(94) Where a derogation applies pursuant to Article 66(3), (4) or (5), that derogation should also cover any provisions in this Directive that are ancillary to, or that require the prior application of, any of the provisions from which it has been granted a derogation.

(95) The provisions of Directive 2012/27/EU related to electricity markets, such as the provisions on metering and billing of electricity, demand response, priority dispatch and grid access for high-efficiency cogeneration, are updated by the provisions laid down in this Directive and in Regulation (EU) 2019/943. Directive 2012/27/EU should therefore be amended accordingly.

(96) Since the objective of this Directive, namely the creation of a fully operational internal market for electricity, cannot be sufficiently achieved by the Member States but can rather, by the reasons of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(97) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[(15)], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(98) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to Directive 2009/72/EC. The obligation to transpose the provisions which are unchanged arises under Directive 2009/72/EC.

(99) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the date of application of Directive 2009/72/EC set out in Annex III,

HAVE ADOPTED THIS DIRECTIVE:

(**1**) OJ C 288, 31.8.2017, p. 91.

(**2**) OJ C 342, 12.10.2017, p. 79.

(**3**) Position of the European Parliament of 26 March 2019 (not yet published in the Official Journal) and Decision of the Council of 22 May 2019.

(**4**) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

(**5**) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ L 176, 15.7.2003, p. 37), repealed and replaced, with effect from 2 March 2011, by Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

(**6**) Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (see page 54 of this Official Journal).

(**7**) Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

(**8**) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

(**9**) Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (see page 22 of this Official Journal).

(**10**) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

(**11**) OJ L 198, 20.7.2006, p. 18.

(**12**) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(**13**) OJ L 123, 12.5.2016, p. 1.

(**14**) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(**15**) OJ C 369, 17.12.2011, p. 14.