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energy compliance

REGULATORY REPORT

Correggio Digest

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CORREGGIO CONSULTING

Rue le Corrège 93 B-1000 BRUSSELS, Belgium

info@correggio-consulting.eu

www.correggio-consulting.eu

Editor: Dr. Jan Haizmann



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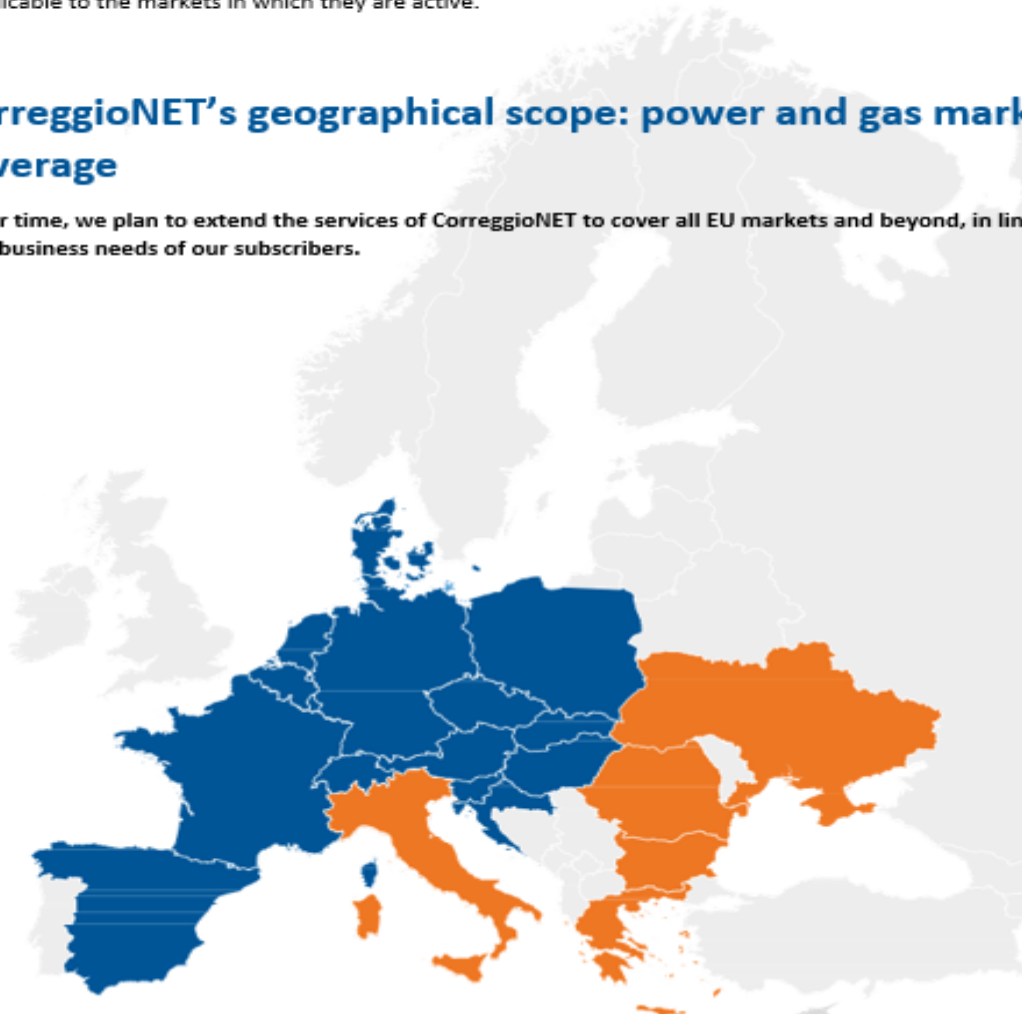
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Contact us

CorreggioNET
c/o Correggio Consulting Limited

Rue le Corrège 93
1000 Brussels, Belgium

Phone: +32 (0) 470 71 10 95
E-Mail: info@correggionet.eu

Regulatory Hotline for CorreggioNET subscribers:

Phone: +32 (0) 470 71 10 95

E-Mail: support@correggionet.eu

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LETTER FROM THE EDITOR

German Government under increasing pressure to step up climate policy efforts

29 May

Dear Correggio Report Reader,

Over the last two years, we have been waiting in vain to see new initiatives on climate policy from the German Grand Coalition. The Merkel IV Government has been slow to implement even their modest commitments on the law-making side, as we have reported in previous editions of the Correggio Digest. With the flawed exit from coal, following the recommendations of the so-called Coal Commission, Germany is now facing complete lack of progress on its energy transition (Energiewende) efforts.

The political parties currently represented in the Merkel IV Government are facing increasing problems as the climate commitments for 2030 seem to be increasingly difficult to reach. With the Green Party scoring above 20% on average and the coalition partners hitting ever new lows in elections, the pressure is sharply up on the Government to show tangible results, including accelerating the non-performing smart grid-expansion, incentivising a switch to electric vehicles, moving away from nuclear and coal generation, and strengthening energy efficiency measures.

Amongst the Government's electorate, increased frustration can be observed in view of the inability of elected officials to find meaningful solutions to any of these major projects, whilst pretending to be the "Spitzenkandidat" for an energy sector revival and renewable energy in Europe. With the forthcoming federal elections in 2020, the Government needs to step up its efforts. An immediate response to the outcome of the European election and the record high polling results of the Green Party, was the decision to set up a specialised climate task force.

All this considered, their European peers are struggling to understand why the government of a large European economy does not live up to its own policies and cannot meet its own commitments.

Happy Reading!

Jan Haizmann

Editor of Correggio DIGEST

EUROPEAN UNION

>> EUROPEAN COUNCIL

1. Council adopts amended EU Gas Directive

15 April

Following its endorsement by the European Parliament, on 15 April the European Council adopted the amended EU Gas Directive. The Directive extends EU gas market rules to pipelines to and from third countries (read more in our [March 2018](#), [April 2018](#) and [February 2019](#) issues). However, it also allows derogations for existing infrastructure.

The 2009 Gas Directive introduced third-party access, unbundling and tariff transparency requirements for shipping gas. Article 49(a) now allows EU Member States to grant derogations for “objective reasons” on the territory where the transmission pipeline has its first connection point. The derogation can be granted for up to 20 years, but can also be renewed. The Commission’s role is limited to an observer in the negotiation process. However, the intention to use a derogation is subject to its approval and requires notification, as well as submission of relevant documents (Art. 49(b)). The Commission also needs to be notified of the final derogation agreement before it can be signed by the Member State.

Member States have 9 months to transpose the Directive into their national legislation. Although the new rules allow for derogations and do not provide a tool that could automatically block infrastructure such as Nord Stream 2, they establish greater oversight over the infrastructure coming into Europe and may be beneficial from a political perspective.

The new rules come into force 20 days after their publication in the Official Journal.

More information at:

<https://data.consilium.europa.eu/doc/document/PE-58-2019-INIT/en/pdf>

>> REGULATOR (ACER)

2. ACER publishes report on conditional gas capacity products

5 April

Conditional gas capacity products have been the subject of debate for some time now, as they go against the freedom to book entry and exit capacity independently. Technically speaking, however, the EU Network Code on Capacity Allocation Mechanisms (NC CAM) does not forbid explicitly their use. Today, they exist in a number of different forms in 11 EU Member States (Austria, Belgium, Bulgaria, Germany, Hungary, Luxemburg, the Netherlands, Poland, Romania, Slovakia and Great Britain) and two others are considering using them in the future (Ireland and Greece). In Germany, they are used extensively, but have often been challenged (see table below).

Member State	Entries		Exits	
	Booked conditional capacity (GWh/d)	Share of total booked capacity	Booked conditional capacity (GWh/d)	Share of total booked capacity
Austria	95	4%	156	8%
Germany	3 541	69%	1 977	57%
Luxembourg	20	100%	0	0

In their recent report on conditional gas capacity products, the Agency for the Cooperation of Energy Regulators (ACER) have come up with a set of recommendations, but have not stated that such products should be removed. Instead, they have suggested a cost-benefit analysis to quantify the impact on prices and network utilisation of removing conditional products. They have also highlighted the need to standardise these products across Europe and to publish relevant data on the ENTSOG Transparency Platform.

A cost-benefit analysis is likely to yield ambiguous conclusions. Conditional capacity products are often the result of different physical constraints on the network and allow more capacity to be offered to the market. They are also sold at a discount that reflects the risk of interruption. However, this discount is also to the detriment of other network users and can give a competitive advantage to some shippers. One thing is clear: nobody would benefit from a solution, where the cancellation of conditional products would result in limiting the firm capacity on offer.

More information at:

https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%20Report%20on%20the%20conditionalities%20stipulated%20in%20contracts%20for%20standard%20capacity%20products%20for%20firm%20capacity.pdf

>> EUROPEAN INSTITUTIONS

3. Time to get ready for EMIR REFIT

28 May

On 28 May, the recast European Market Infrastructure Regulation, also known as EMIR REFIT, was published in the Official Journal of the European Union. The Regulation will enter into force on 17 June. While a few of the provisions will start applying at a later stage, most of the amendments will come into effect immediately.

Changes related to the clearing obligation framework will kick in on day one, which means that non-financial counterparties (NFCs) have only a few days left to complete their calculations against the clearing thresholds. As highlighted by the European Securities and Markets Authority (ESMA) in a statement on the application of EMIR REFIT from March, there is no delayed application of this requirement (read more in our [March 2019](#) edition). Firms that choose not to calculate their positions or are exceeding one or more of the clearing thresholds, have to notify

immediately ESMA and their national competent authority. They must set up clearing arrangements within four months of the notification and have to start applying bilateral margining and stringent risk mitigation techniques to their OTC derivative transactions.

The calculation methodology differs from the current 30-day rolling average of one's positions. Instead, NFCs will be required to carry out the calculations once per year and include the aggregate month-end average of the previous 12 months. They will still have to calculate positions on a group level (i.e. including all NFCs in the group and excluding transactions for risk-reducing purposes) and will have to be ready to demonstrate that their calculations do not lead to the systematic underestimation of those positions – a provision that the industry is yet to figure out how to implement in practice.

One of the positive changes introduced by EMIR REFIT is an asset-class specific approach to the clearing threshold, which means that NFCs breaching the clearing threshold in one asset class will have to clear their OTC derivative transactions only in that asset class. However, NFCs that are not calculating their positions will have to clear all asset classes. The approach does not extend to bilateral margining requirements, which will continue to apply to all asset classes, even if the threshold has been exceeded only in one of them.

Furthermore, the amended provisions include an exemption from reporting obligations for intragroup transactions involving at least one NFC. Counterparties are required to notify regulators of the use of the exemption and regulators have three months in which they could object. The UK regulator FCA has already issued a notification form. However, contrary to expectations, the form is rather complex and demanding. This runs against the stated objective of simplifying reporting requirements and may limit the usefulness of the exemption. The risk is also that similar developments may follow in other jurisdictions.

In addition, EMIR REFIT introduces new reporting obligations for financial counterparties (FCs). FCs will be responsible and fully liable for the reporting of transactions with non-financial counterparties below the clearing threshold (NFCs-) on behalf of both parties. NFCs- will still have to make sure to provide any information that is required for the reporting, but is not held by the FCs, such as whether the transaction is for risk reducing purposes or not. They also have the option to opt-out in case they prefer to continue reporting on their own, but they would have to inform the FC accordingly. The obligations will apply 12 months after the entry into force of EMIR REFIT, which gives market participants some time to prepare. NFCs- transacting with third-country firms, which would be FCs if they were based in the EU and are subject to an equivalent regime, can also benefit from this provision.

The EMIR REFIT review is part of the regulatory fitness initiative of the European Commission and aims to simplify the reporting regime and reduce undue regulatory burdens on non-financial and small financial counterparties (read more in our [February 2019](#) edition). It contains some helpful improvements. However, the ability of a number of the provisions to deliver real benefits for NFCs and to mitigate disproportionate compliance costs would require further assessment.

More information at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0834&from=EN>

>> REGULATOR (ESMA)**4. ESMA update MiFID II market size opinion with figures for 2018****27 May**

On 27 May, the European Securities and Markets Authority (ESMA) updated their Opinion on ancillary activity - market size calculations with figures for 2018. The figures for exchange-traded derivatives (ETDs) are based on data for the whole year, while those for over-the-counter (OTC) derivatives are annualised figures based on a four-month period covering January to April 2018.

This is still a slightly more representative sample than the data used for the OTC derivatives figures for 2017, which covered a three-month period between July and September. The figures for 2018 are higher than those for 2017, which is broadly in line with market trends for that period. The ETD figures for 2017 have been amended due to a mistake when the previous edition was compiled. This is the third issue of the Opinion since preparations for the entry into force of the recast Markets in Financial Instruments Directive (MiFID II) started (read more in our [October 2018](#) and [June 2017](#) editions).

The Opinion was published after the deadline for the 2019 notifications under the MiFID II ancillary activity framework, so it is of limited use beyond verifying one's assumptions. Furthermore, ESMA do not comment on potential Brexit-related implications. Some commodities, such as oil, coal and emission allowances, are largely traded in the UK. The expected exit of the UK from the EU would mean that the UK market will no longer count towards the size of the relevant markets, as confirmed by ESMA in a statement from 5 February. As a result, the figures for some of the asset classes are likely to shrink considerably, with respective unintended implications for firms relying on the ancillary activity framework to stay exempt from MiFID II licensing requirements. The market expects ESMA to bring some further clarity on the matter in the near future to avoid harmful uncertainty.

More information at:

<https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-opinion-ancillary-activity-calculations-0>

https://www.esma.europa.eu/sites/default/files/library/esma_70-155-7026_use_of_uk_data_in_esma_databases_in_case_of_a_no-deal_brexit.pdf

5. ESMA issue consultation on impact of MiFID II position limits regime**24 May**

On 24 May, the European Securities and Markets Authority (ESMA) launched a consultation on the impact of the position limits regime under the recast Markets in Financial Instruments Directive (MiFID II). The regime sets limits on the positions that market participants can hold in on-venue commodity derivative contracts and economically equivalent over-the-counter (OTC) contracts. The purpose of the consultation is to evaluate the experience of the market so far.

Comments are required with respect to three aspects in particular: the impact of the regime on 1) market liquidity; 2) market abuse prevention; and 3) orderly pricing and settlement processes. Not much analysis is offered by ESMA in the consultation document, but regulators invite both qualitative and quantitative assessments, as well as some more open suggestions for improvements to the regime. It is interesting to note that ESMA make reference to the US position limits regime, which is much more limited than the European and covers only 9 benchmark contracts. This seems to suggest that regulators may be open to a potential future reduction in the scope of the regime to a smaller number of liquid benchmark contracts, as opposed to its current scope, which includes new and illiquid contracts as well. This, however, would require re-opening of the level one legislative text, which brings its own risks.

The consultation closes on 5 July and the feedback will serve as a basis for ESMA's work on a draft advice to the European Commission on the functioning of the regime. ESMA will consult on the actual draft advice in Q4 of 2019. The advice has been requested by the Commission as part of a number of review processes set in MiFID II and the accompanying it Regulation (MiFIR), which require the Commission to submit reports to the European Parliament and Council on the functioning of the respective regimes. The timeline for the Commission reports has slipped and in January ESMA sent an official letter to the Commission asking for those deadlines to be postponed. Despite the delay, work has already begun and more consultations will follow.

More information at:

https://www.esma.europa.eu/sites/default/files/library/esma70-156-1101_call_for_evidence_position_limits.pdf

https://www.esma.europa.eu/sites/default/files/library/esma70-156-907_letter_chair_to_eu_commission_on_the_mifid_review_reports.pdf

6. ESMA launches consultation on reporting guidelines under SFTR

27 May

On 27 May, the European Securities and Markets Authority (ESMA) launched a consultation on draft guidelines for reporting under Art. 4 and 12 of the Securities Financing Transactions Regulation (SFTR). These guidelines will complete the package of measures forming the SFTR framework. Technical standards on the format and frequency of reporting, as well as on the details of data to be reported, were published in March, following a protracted adoption period.

The objective of SFTR is to enhance the transparency of shadow banking and securities financing transactions. Commodities, however, are also in scope of the regulation, which means that market participants have to carry out a careful assessment of their repurchasing agreements and sell and buy-back transactions/ buy and sell-back transactions relating to commodities, as well as their commodities lending or borrowing transactions, as those may be in scope of the Regulation. Helpfully, the draft guidelines clarify that emission allowances are not in scope, as they are not commodities, but financial instruments under the recast Markets in Financial Instruments Directive (MiFID II). Confusion was caused by the technical standards on reporting listing emission

allowances in the respective reporting tables. SFTR includes an explicit exemption for derivative contracts within the scope of the European Market Infrastructure Regulation (EMIR).

The Regulation came into force on 12 January 2016. A number of provisions - notably the ones on reporting - have delayed application. For non-financial counterparties, those kick in 21 months following the publication of the respective technical standards in the Official Journal of the European Union, i.e. Q1 2021. However, record-keeping obligations have been in place since the entry into force of the Regulation.

The consultation closes on 29 July.

More information at:

<https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-reporting-under-articles-4-and-12-sftr>

https://ec.europa.eu/info/law/securities-financing-transactions-sftr-regulation-2015-2365/amending-and-supplementary-acts/implementing-and-delegated-acts_en

>> OTHER (ENTSO-E)

7. European TSOs consult on cross-zonal capacity reservation for balancing purposes

15 May

On 15 May, European transmission system operators (TSOs) issued a consultation on one of the methodologies for cross-zonal transmission capacity reservation for balancing purposes or for the sharing of reserves. According to the EU Electricity Balancing Guideline (EB GL), TSOs wishing to exchange balancing capacity or to share reserves can do so by reserving cross-zonal transmission capacity in three different ways: co-optimisation in the day-ahead (D-1) timeframe; a so-called “market-based” approach - up to a week ahead of real time; and a so-called “economic efficiency” approach - up to a month ahead of real time. The TSOs added a fourth option – a so-called “inverted market-based” approach – also in the day-ahead timeframe. The various options differ not only in relation to the timing when capacity to share reserves is to be reserved, but also with respect to the data to be used to assess the amount of capacity, which is to be reserved by the TSOs (real energy and balancing bids, forecast energy and balancing bids, or a mix of the two) – see summary picture below.

**(Inverted) Market-based approach
(D-1, 12:00)**

- Real energy bids
- Forecasted balancing bids

**Co-optimization
(D-1, 12:00)**

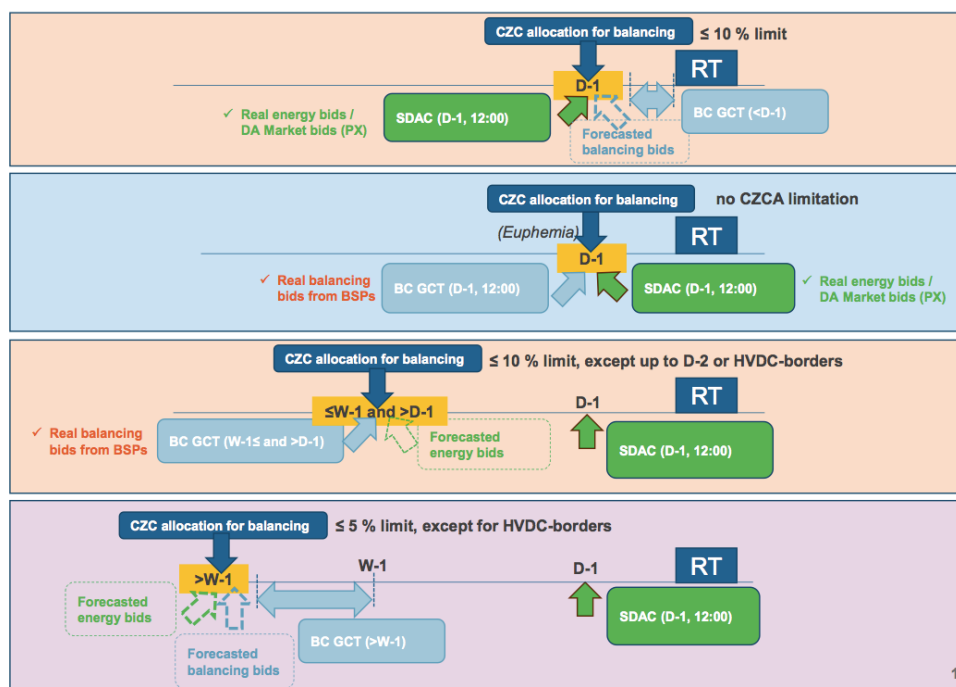
- Real energy bids
- Real balancing bids

**Market-based approach
(≤W-1 and >D-1)**

- Forecasted energy bids
- Real balancing bids

**Economic efficiency
(> W-1)**

- Forecasted energy bids
- Forecasted balancing bids



Source: ENTSO-E

The only approach that needs to be approved at the European level is co-optimisation. This is the approach that is up for consultation until July. The other approaches may be developed at the level of the capacity calculation region (CCR), if the TSOs of one or more CCR(s) prefer so. But even for the co-optimisation approach, only the TSOs that wish to do so will apply the methodology agreed at the European level.

The methodology is likely to raise concerns among market participants, notably for the following reasons:

- Reserving transmission capacity for balancing purposes in the day-ahead timeframe reduces opportunities for cross-border trading in the intraday timeframe;
- It may make economic sense in D-1 to reserve capacity for balancing purposes, but this does not take into account changing market fundamentals between D-1 and real-time, where market participants would be able to react and find the economic optimum in the intraday market.

The methodology, nonetheless, clarifies a point of serious concern for market participants: if TSOs end up not using the capacity reserved in D-1, that capacity shall be released for the exchange of balancing energy with shorter activation times or in the imbalance netting process.

For the moment, it remains unclear what effect the co-optimisation process would have on the performance of the market coupling algorithm Euphemia, which is already under pressure with the increasing number of coupled bidding zones in Europe and the growing number of complex products.

Market participants are invited to respond to the consultation by 31 July.

More information at:

https://consultations.entsoe.eu/markets/ebgl-art40-co_czca/

8. ENTSO-E conclude analysis of significant frequency drop in January

28 May

On 28 May, the European network of transmission system operators (TSOs) for electricity (ENTSO-E) issued their final report assessing the reasons behind a significant frequency drop, which occurred in January. The frequency in Continental Europe dropped to 49.8 Hz for nine seconds, causing TSOs in the synchronous area to switch to a state of alert. It seems that the drop was caused by a frozen measurement on four interconnection lines between Germany and Austria that lasted 48 hours. It was further aggravated by the usual deterministic frequency deviation (DFD) at the change of the hour. The conjunction of the two led to the event, which had a limited impact thanks to load shedding of interruptible industrial clients in France and activation of massive Frequency Containment Reserves across the synchronous area.

The ENTSO-E report spends remarkably little time on the primary cause of the event – only one page out of forty tackles the frozen measurement at of the German-Austrian tie lines. There is no mention of the responsibility of the concerned TSOs, and the recommendations for preventing such situations from occurring in the future are surprisingly scarce and non-committal.

In contrast, ENTSO-E decided to focus their report on DFDs. A task force seems to have been asked to make proposals for the reduction of DFDs and their impact. However, to date, market participants have been neither informed, nor invited to contribute to the work of such a task force. While the subject, of course, is of importance, the weight given to it in the analysis of the frequency disruption seems disproportionate.

As DFDs are a result of the discrepancy between market products and the physical reality of energy delivery, one may fear that TSOs may propose “solutions” that disregard market realities. Market participants will need to keep the work of the ENTSO-E task force under close scrutiny.

More information at:

https://docstore.entsoe.eu/Documents/News/2019/190522_SOC_TOP_11.6_Task%20Force%20Significant%20Frequency%20Deviations_External%20Report.pdf

BULGARIA

>> PARLIAMENT

9. Amendments to Bulgarian Energy Act enter into force

21 May

On 21 May new amendments to the Bulgarian Energy Act were published in the State Gazette. The changes entered into force on the date of publication with some exceptions, which will start applying as of 1 July.

One of the key amendments extends the requirement for mandatory trade on the Bulgarian electricity exchange IBEX to all electricity generators with installed capacity of or above 1 MW (the previous threshold stood at 4 MW). Forecasts suggest that an additional volume of 1 500 000 MWh/per year is to be offered on IBEX, which would increase the liquidity on the exchange.

Furthermore, as of 1 July traders exporting electricity generated in Bulgaria will be explicitly excluded from the persons obliged to pay access and transmission fees, i.e. the so-called “export fees”. This step will facilitate regional electricity market coupling, allowing the Bulgarian electricity market to become more closely integrated in the internal European electricity market.

In addition, changes have been introduced to the powers of the Bulgarian regulator to set the so-called “regulated market quotas” – quantities of electricity that generators are required to make available for sale under regulated prices. As of 1 July, the regulator shall set this regulated market quotas as monthly forecasts (currently the quotas are set on an annual basis). This change will allow generators to forecast better the quantities that they will be able to offer to the free market / export.

The amendments also foresee a tender procedure to be introduced for granting feed-in tariffs for new highly efficient CHP generators. Last but not least, a new mechanism is envisaged for the promotion of new generation from renewable energy sources – customers supplied directly by a renewable energy generator put into operation after 1 July will be exempted from paying the “social obligation” fee.

More information at:

<https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=137543>

<http://www.ibex.bg/en/>

FRANCE

>> REGULATOR (CRE)

10. CRE approve design of regional intraday auctions at Italian borders

23 May

After a six-month grace period awarded by the Agency for the Cooperation of Energy Regulators (ACER) (read more in our [February 2018](#) issue) the French regulator CRE approved the proposed design of regional intraday auctions at the North Italian borders proposed by the Italian, French, Austrian and Slovenian transmission system operators (TSOs). While the concept of regional intraday auctions is still debated, mainly as it creates a risk of draining liquidity away from continuous intraday trading via XBID, the proposed model is in line with the ACER decision on pan-European intraday auctions (read more in our [October 2018](#) issue) for capacity pricing. This is in stark contrast, for instance, to the design of regional intraday auctions as implemented in Iberia (read more in our [November 2017](#) issue).

The regional auctions at the North Italian borders will follow the schedule of the pan-European auctions and will be replaced by them once implemented. All remaining hours of the day will be tradable at each auction and cross-border trading with the Northern neighbours of Italy will not be halted like in Iberia.

The only point of concern remains the time during which XBID will be suspended in order to carry out the auctions. CRE agreed with the proposal of the transmission system operators (TSOs) to suspend XBID for 45 minutes for the first year, a compromise that goes way beyond the 10 minutes allowed by the EU Capacity Calculation and Congestion Management Guideline (CACM GL). While this was not made clear in the consultation document submitted to the market, the TSOs seem to have committed to reducing the interruption time to 10 minutes within a year.

More information at:

<https://www.cre.fr/Documents/Deliberations/Approbation/Encheres-regionales-complementaires-infrajournalieres-sur-les-frontieres-italiennes>

>> OTHER (RTE)

11. RTE consult on amendments to the electricity imbalance price

23 May

On 23 May, the French transmission system operator (TSO) RTE launched a consultation on proposed amendments to the imbalance price setting methodology. This consultation concerns immediate and future developments of the electricity imbalance price with a view to gradually adapting to the requirements of the EU Electricity Balancing Guideline (EB GL) at the European level.

The consultation focuses on the establishment of a single imbalance price (for upward and downward activation). This poses the question of the suppression of the “k factor” currently added to the imbalance price in France and requested by the Regulator in 2017. RTE explore three different options:

- Single imbalance price for upward and downward activation, and suppression of the k factor;
- Single imbalance price for upward and downward activation, and addition of the k factor, whichever the system state; and
- Single imbalance price for upward and downward activation, and addition of the k factor when the system is long and deduction of the k factor when the system is short.

		System: long	System: short
Current situation	Positive imbalance price	$PMP_H - k * PMP_H $	$PMP_B - k * PMP_B $
	Negative imbalance price	$PMP_H + k * PMP_H $	$PMP_B + k * PMP_B $
Solution 1	Positive imbalance price = Negative imbalance price	PMP_H	PMP_B
Solution 2	Positive imbalance price = Negative imbalance price	$PMP_H + k * PMP_H $	$PMP_B + k * PMP_B $
Solution 3	Positive imbalance price = Negative imbalance price	$PMP_H + k * PMP_H $	$PMP_B - k * PMP_B $
PMP = Weighted average price PMPh = Weighted average price in case of long system PMPb = Weighted average price in case of short system			

Source: RTE/Correggio Consulting

RTE propose to retain solution 3. According to their assessment, this solution would be in line with the EB GL, and would incentivise balance responsible parties (BRPs) to contribute to the system balance. However, it would not be an incentive for BRPs to be balanced at the individual level.

The proposal would be disappointing for market participants, as contrary to the request of the regulator, the suggestion is for the distortive k factor to remain as an important component of the imbalance price. Further, it is not clear how this solution would be compatible with the EB GL, which actually requests that the imbalance price should create a strong signal for individual BRPs to be balanced. Rather, RTE seem to focus on what is important for them as a TSO, namely keeping the system as a whole balanced. While this is a sound objective as such, it looks like RTE's assessment misses the point. They do not take into account the ability of an imbalance price based on a true marginal price to incentivise behavioural change, without reference to the

spot market for aFRR and imbalance netting. Should this have been considered, perhaps maintaining the k factor would not have been even a question for discussion.

More information at:

<https://www.concerte.fr/concertation/règles-mare-appel-à-contributions-relatif-à-l'évolution-du-prix-de-règlement-des-écarts>

GERMANY

>> FEDERAL GOVERNMENT

12. German energy sector: update on latest legislative developments and rulings

Institution	Concerns	Impact	Entry into force
Federal Parliament (Upper House)	RES tax breaks, Energy Tax Act (Energiesteuer-gesetz)	The Energy Tax Act aims to bring German renewable energy (RES) tax breaks in line with European legislation on state aid. The general RES tax exemption, as provided in § 9 Abs.1 Nr. 1 StromStG (Electricity Tax Act), is now limited to RES energy generated for own use. Energy tax becomes due as soon as the RES generator sells power into the public grid. Private RES generators are eligible for the exemption if their generation remains below 2MW. More information at: http://dipbt.bundestag.de/extrakt/ba/WP19/2430/243002.html	01/07/2019
Energy regulator (BNetzA)	Balancing, Standard Balancing Agreement, BNetzA ruling BK6-18-061	The German regulator authorised the new standard conditions for balancing responsible parties (BRP) for power. Upon request from transmission system operators (TSOs), Chamber 6 of the BNetzA approved a new balancing agreement, which will be used by all TSOs. The agreement strengthens considerably the position of TSOs, while tightening the requirements for BRPs. The changes include: (1) Stricter obligations for BRPs with respect to the admission of balancing sub-accounts and changes to the use of existing accounts. These must be made known to TSOs in writing. BRPs need to declare the future volumes to be operated through these accounts. The declared power volumes will determine the amount of the security deposits. (2) Higher security deposits. TSOs are allowed to increase the required deposits in case of a single late payment by BRPs.	01/05/2019

		<p>(3) In case of false insolvency proceedings, the balancing service providers (BSP) will still have to pay a higher deposit, even in case the proceedings are not successful;</p> <p>(4) Cash deposits are abandoned and TSOs can refuse payments through third parties;</p> <p>(6) BRPs must guarantee their ability to be contacted or could be liable for not being reachable.</p> <p>(7) TSOs may terminate a BRP only after sending a letter announcing the termination and in case the BRP does not rectify the irregular information.</p> <p>(8) The General Data Protection Regulation (GDPR) has been implemented in the Standard Balancing Agreement.</p> <p>More information at: https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1_GZ/BK6-GZ/2018/2018_0001bis0999/BK6-18-061/BK6_18_061_Genehmigung.html?nn=872252</p>	
Energy regulator (BNetzA)	Chamber 6 of BNetzA, ruling on minimum availability limits for energy storage	BNetzA confirmed that a minimum activation limit of 15 minutes is not required for energy storage operators, thereby easing the access of storage operators to the primary reserve market. TSOs had suggested an activation period of minimum 30 minutes. EU Regulation EU 2017/1485 gives TSOs the power to suggest minimum availability limits. However, the BnetzA did not agree with the request, enabling energy storage operators to obtain easier access to balancing markets.	Immediate
Competition regulator (Bundeskartellamt) and energy regulator (BNetzA)	Market surveillance and competition law	<p>The German competition authority and energy regulator carried out a joint consultation on draft guidelines concerning the prevention of abusive practices in the electricity generation and wholesale trading sectors. The guidelines also address issues of interpretation related to the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT). The consultation ended on 20 May.</p> <p>The forthcoming guidelines are of interest for wholesale market participants for a number of reasons. They will provide clearer guidance on abuse patterns under REMIT and a new approach to dealing with</p>	N/A

		<p>infringements of competition law, such as capacity hoarding or abuse of dominant position. Once published, the guidelines will become a must-read document for compliance managers.</p> <p>More information at:</p> <p>https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2019/20_03_2019_Leitfaden_Missbrauchsaufsicht.html</p>	
Energy regulator (BNetzA)	Primary reserve management	<p>The BNetzA has published rulings relating to Art. 43(1) 2015/1222 of the EU Guidelines on Capacity Allocation and Congestion Management (CACM). Those related to the calculation of exchange schedules in a day-ahead market-coupling situation and the proposal for a European platform for reserve energy with automatic functionality for shortest-term measures leading to frequency retention according to Art. 21 Abs. 1 of Regulation EU 2017/2195.</p>	Immediate
Energy regulator (BNetzA)	<p>Ruling on reference price methodology (REGENT-NCG/GP)</p> <p>Ruling on capacity calculation methodology (BEATE)</p>	<p>The BnetzA has issued a ruling on the reference price methodology, as provided in Art. 26 Abs. 1 of Regulation (EU) Nr. 2017/460, for all points of the NetConnect Germany / GASPOOL (REGENT-NCG/GP) gas transmission network. The regulator confirmed the details of a postage stamp approach to the application of Art. 7 of Regulation (EU) No. 2017/460. This means that the entry-exit system is not a reflection of the contractual path, but of the distance.</p> <p>The BNetzA issued a ruling on the calculation of grid fees, as provided in § 15 Abs. 2 bis 7 GasNEV (BEATE 2.0).</p> <p>More information at:</p> <p>https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/BK09/BK9_01_Aktuell/BK9_Aktuell_node.html</p>	Immediate
TSOs (gas)	Merger of the two gas market zones	<p>The German gas TSOs and the two market area managers GASPOOL Balancing Services (GASPOOL) and NetConnect Germany (NCG) are working on the</p>	01/10/2021

		<p>design of the future market area. The merger of the two current German market areas shall take effect on 1 October 2021.</p> <p>More information at: http://www.marktgebietszusammenlegung.de/en/home/</p>	
Energy regulator (BNetzA)	Chamber 7 of BNetzA publishes new co-operation agreement	<p>The Kooperationsvereinbarung Gas X (KoV X.1) has been published by the BNetzA. The agreement has strict requirements for BSPs.</p> <p>New provisions have been introduced in case of suspicious behaviour and concerns about potential abuse of the balancing system by a single BSP. KOV X requires enhanced know-your-customer (KYC) checks for new BSPs and their transportation customers at the entrance to the booking portal. The KYC should help to spot “known suspects”.</p> <p>Furthermore, KOV now provides for a whistle-blower and warning mechanism in case of suspicions market events and an easy termination structure for rogue BSPs.</p> <p>For Further reading:http://www.bdeu.de/kov</p>	01/06/2019

GREECE

>> EUROPEAN COMMISSION

13. Commission sees insufficient progress on key energy market reforms

6 June

In a recent report on Greece, the European Commission concludes that progress on the implementation of energy market reforms has slowed, notably over the past few months.

The report finds that the ongoing divestment of the incumbent PPC's lignite plants will not be achieved within the agreed timeline. As the last bid failed due to offers being below the valuation, the first valuation will not be taken into account in the new round. Several companies have expressed interest, although it remains to be seen whether bids will be made and accepted. PPC made a unilateral decision to extend the process to 15 July, following consultation with the Ministry of Energy and the Environment.

The ongoing divestment has contributed to the decline in PPC's profitability and its worsening cash flows, together with higher CO2 prices, retail market share loss, and the NOME auctions. The 2018 financial results of the company are very different from those for 2017, when PPC made a profit. According to the Commission, structural issues remain, and this raises questions about the size PPC is able to maintain, and about its pricing policy.

With respect to the target model for the electricity market, the Commission acknowledges that Greece has taken some steps in the right direction, such as stakeholder workshops and English-language translations of the rulebooks. However, it is already clear that the implementation of the intraday, day-ahead and balancing markets, which has already failed to meet the initial deadline of April 2019, will not be completed before 2020. This means that Greece's coupling with the neighbouring markets of Italy and Bulgaria will be postponed further.

On the positive side, the NOME electricity auctions have taken place as planned and PPC's retail market share receded to just below 77% in March 2019, down from around 78% in January 2019. Whilst this does reflect some progress, the Commission is concerned that the market conditions are still some way off the goal of PPC's market share going below 50% by the end of 2019.

Finally, the report welcomes the ability and willingness of the Greek regulator RAE to monitor the market and to make the necessary regulatory decisions in a timely and transparent manner. As these are essential requirements for the success of the energy market reform, the authorities are contemplating provisions to increase the independence of the regulator and to enhance its overall capacity through hiring new permanent staff.

More information at:

https://ec.europa.eu/info/sites/info/files/economy-finance/ip103_en.pdf

>> REGULATOR (RAE)

14. RAE approves new rules for horizontally-integrated utilities' financial statements

16 May

As of 16 May, horizontally-integrated utilities active in the supply of natural gas and electricity to end-customers in Greece are required to draw up their financial statements in compliance with the "Principles and allocation rules for assets, liabilities/expenditure and income for the establishment of separate accounts relating to electricity and gas supply activity." The requirement was introduced through decision 162/2019 of the Greek regulator RAE.

The internal accounts of such utilities have to include the balance sheet and profit and loss statement, which must be drawn up as if the electricity and gas supply activities were carried out by two separate entities. Specific provisions in the above allocation rules and principles apply to those accounts that cannot be directly linked to the gas or electricity supply activities (e.g. accounting, computerisation). Furthermore, RAE has the right to access the accounts of each company and request additional explanations or clarifications, as well as additional financial information.

For a more detailed account of this new framework, gas and electricity suppliers should seek expert advice from their accounting consultants.

More information at:

https://energypress.gr/sites/default/files/media/document_23_0.pdf

POLAND

>> GOVERNMENT

15. Poland receives substantial EU funding despite deteriorating conditions for competition in power and gas markets

15 April

Trading activity in the Polish gas and power markets has been hanging in a regulatory limbo. Gas can effectively be imported exclusively by the incumbent (read more in our [January 2019](#) issue) and power is still waiting for the final blow in the form of a price freeze (read more in our [March 2019](#) issue). Both spark tensions between the Polish authorities and the European Commission. However, this does not seem to be a reason to prevent Poland from receiving substantial EU funding for energy infrastructure development.

The authorities received green light to grant premiums to CHPs supplying district heating networks and to reduce the surcharges paid by energy intensive consumers, which financed the support schemes for CHPs. The Commission is also evaluating whether Polish energy intensive consumers could be relieved from part of the costs of financing the capacity mechanism.

In addition, the EU has granted 128mIn EUR of funding for the expansion of the Swinoujscie LNG terminal from 5 to 7.5 bcm and nearly 215mIn EUR for completing the Baltic Pipe project connecting Poland with Norway's gas production fields via Denmark. From the perspective of the Commission, the support relates to benefits in terms of emission reductions and gas supply diversification in the region. In Poland, however, it has been used as evidence for the strength of the relation between the Government and the Commission.

The usefulness of the investments on the gas side is hard to challenge; after all, while Poland no longer has a proper gas market, nothing prevents exports to the country. Both the LNG terminal and a direct connection to Norway's gas fields put the countries in the region in a much better position vis-a-vis Gazprom in the context of the soon-to-expire long-term contracts.

The decision on CHP support, however, is less straightforward. Most of the existing production facilities eligible for the co-generation premium are coal-fired and it is hard to argue that their production costs are above market prices, at least most of the time. Then again, in view of the forthcoming price freeze, it is difficult to speak of a "competitive advantage," as there will be hardly any room for competition left.

Overall, the considerable EU funding for Poland sends the wrong message to the region and does not comfort the independent market participants who are struggling to stay in business.

More information at:

http://europa.eu/rapid/press-release_IP-19-2150_en.htm

https://ec.europa.eu/info/news/state-aid-commission-clears-increase-regasification-capacity-lng-terminal-swinoujscie-poland-2019-mar-18_en

https://ec.europa.eu/info/news/energy-union-commission-endorse-baltic-pipe-project-pipeline-unites-creating-new-gas-supply-corridor-european-market-2019-apr-15_en

16. Power market suspension likely to go ahead

12 June

As highlighted by the Correggio Digest earlier this year (read more in our [March 2019](#) edition), the Polish Government has announced its intention to limit end consumer prices for the entire 2019 to the price level from the summer of 2018. This interferes both with the role of the energy regulator in setting the tariffs for vulnerable consumers and with all B2B contracts with delivery in 2019.

The proposal was met with strong opposition by market participants and the European Commission. They have highlighted that this violates the freedom of economic activity and constitutes state aid to end consumers of considerable and non-permissible proportions. The government, however, remains determined to go ahead with the plan, since 2019 is an election year and since the power price increase this year would have been substantial (read more in our [March 2019](#) edition).

Despite the protests, it seems that the price freeze will be implemented, forcing suppliers to bear the immediate costs of the price difference between the wholesale price and the administered retail power price. A new draft act was published in the evening of Friday, 7 June. The draft introduces only a few minor changes to the initial proposal and excludes only larger customers from the list of customers who will benefit from the price freeze. The compensation mechanism is still very vague (no related implementing regulation has been drafted yet) and the uncertainty is pushing some smaller market participants to the brink of bankruptcy. To make matters worse, the new draft also extends to 2021 the validity of the energy efficiency certificates that were due to expire by the end of June.

The amended price freeze act is now going through Parliament, just two working days after its publication. This has caused widespread chaos in the market, with the price of energy efficiency certificates increasing tenfold since Friday. The Commission has not reacted so far, suggesting that the Polish power market is heading full speed towards a brick wall.

More information at:

[http://orka.sejm.gov.pl/Druki8ka.nsf/Projekty/8-020-1345-2019/\\$file/8-020-1345-2019.pdf](http://orka.sejm.gov.pl/Druki8ka.nsf/Projekty/8-020-1345-2019/$file/8-020-1345-2019.pdf)

The Correggio Digest is a regulatory monitoring service that covers developments in energy and financial regulation and in energy policy. The subscription-only service is issued monthly and delivers intelligence on policy developments impacting the energy industry at the EU and national levels.

The report has been in circulation since 2008 and is an authoritative source for energy policy developments in Europe.

To find out more, please contact:

Jan Haizmann

+32 2 737 1100

info@correggio-consulting.eu



advisory / regulatory

business & back-office services

communications & policy

Correggio Consulting

Rue le Corrège 93

B-1000 BRUSSELS, Belgium

T ++32 (0) 2732.54.74

F ++32 (0) 2734.39.21

info@correggio-consulting.eu