



CORREGGIO
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CorreggioNET
energy compliance

REGULATORY REPORT

Correggio Digest

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One-stop-shop for European regulation and market rules compliance

The regulatory environment for European energy traders is becoming increasingly complex. New compliance obligations for energy traders are constantly being put in place on both a European and a national level. At the same time, compliance with national requirements is becoming increasingly difficult as the implementation of EU rules can differ across EU Member States.

Conducting your business activities in the context of this growing and changing regulatory framework can feel like navigating through a “compliance jungle.” Setting up the necessary interfaces and processes to comply with trade reporting requirements and obtaining or extending the right shipper or supply license can feel like trying to cross that jungle without a map.

Regulatory compliance obligations triggered by being a physical gas shipper, electricity grid user, or trader, requires increasing financial resources to meet ever increasing obligations, whereas the current market environment calls for cutting costs.

CorreggioNET

- Facilitates access to new energy markets through the provision of up-to-date information on market access rules and procedures at the wholesale level;
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Over time CorreggioNET intends to cover all EU markets and beyond in line with the business needs of our subscribers.

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LETTER FROM THE EDITOR

German Climate Protection Act – a trigger for big changes?

30 September

Dear Correggio Digest Reader,

The German Government is struggling to live up to its promise to meet its carbon reduction goals, although the Merkel IV Government has made a lot of noise around her “climate cabinet.”

The new Climate Protection Act (CPA) provides for legally binding CO2 reductions in clearly identified industrial sectors and for a national CO2 emissions reduction target of 55% compared to 1990 levels. However, it keeps silent about the Government’s targets beyond 2030, using a general reference to reaching CO2 neutrality by 2050, although the climate goals are meant to be binding.

The Act provides for the possibility to offset lack of reductions in one industrial sector by overperforming in others. For example, a 10% shortfall in climate reductions in the energy sector could be offset by an overperforming construction sector, which has an excess of CO2 reductions beyond the annual reduction plan.

It is worth noting, however, that no sanctions are foreseen for underperforming sectors. The powers of the national Climate Council to perform an annual assessment of the efficiency of CO2 reductions have been removed. It seems that the Government is not interested in receiving annual reasoned assessments of the performance of CO2 reduction measures.

We have been waiting to see new initiatives for climate policy from Germany. The Merkel IV Government has been slow in implementing reforms and rather modest in its achievements on the law-making side, as reported in various editions of the Correggio Digest. Increased frustration can be observed amongst the electorate in view of the inability of elected officials to find meaningful solutions.

Happy Reading!

Jan Haizmann

Editor of Correggio DIGEST

EUROPEAN UNION

>> EUROPEAN COMMISSION

1. *Update on Ukraine's gas transit status*

19 September

The third round of high-level trilateral talks between Ukraine, Russia and the EU over gas transit to Europe ended on 19 September. This time the discussion was particularly interesting, due to the approaching end of the current gas transit contract (read more in our [July edition](#)) and the sudden U-turn in the OPAL case.

Little time is left for striking a new deal for gas transit via Ukraine and the list of points to be discussed is still long. The atmosphere became even more heated as a result of the sudden ruling of the European Court of Justice (ECJ) on 10 September reinstating the capacity limit which can be used by Gazprom on the OPAL gas pipeline (an extension of NordStream, distributing gas down south towards the Czech Republic). Few hoped that an appeal filed by Poland, Naftogaz, Lithuania and Latvia would deprive the Russian producer, once again, from its monopoly - the limit was lifted by Commission decision no. C(2016)6950, but the Court decided that the status quo acts to the detriment of security of supply in the CEE region. With export capacities dropping in the north, the negotiating position of the Ukrainian transit has conveniently improved. Perhaps this is why this time the trilateral discussion attracted not only government officials, but also the CEOs of both Gazprom and Naftogaz.

All sides have agreed to conclude a new contract under the EU acquis. Contracts, volumes and the tariff-setting methodology were all discussed, but they have not been set or disclosed. Russia has requested assurances that Ukraine will transpose the EU legislation on time and Ukraine has committed to speed up the process. In the meantime, the Cabinet of Ministers of Ukraine has approved the plan for Naftogaz's unbundling in January 2020, which may turn out to be more than an empty promise. The new independent transmission system operator (TSO) will be called Gas Transmission System Operator of Ukraine (GTSOU) and it will be owned by the Ministry of Finance. The next steps envisage inter-ministerial discussions over the contract details and a follow-up trilateral talk by the end of October.

Since the ECJ ruled against the interests of Gazprom, justifying its decision with the solidarity principle, the position of Ukraine has clearly improved. Currently, it seems that the transit pipeline will remain in use, since NordStream 2 is not ready yet, the Nordstream 1 extension is curtailed by over 550 GWh/d and the Jamal pipeline is already being fully utilised. The prospect of a new contract has apparently given Ukraine the necessary motivation to return to developing its gas market. It is yet to be seen whether the situation will be stabilised in reality and for the long term, or merely on paper and until NordStream2 becomes ready.

More information at:

https://europa.eu/rapid/press-release_STATEMENT-19-5689_en.htm

<http://en.pgnig.pl/news/-/news-list/id/pgnig-poland-wins-opal-case/newsGroupId/1910852>

<http://www.naftogaz.com/www/3/nakweben.nsf/0/D8BC2878DEB5362BC225847A0063BBC2?OpenDocument&year=2019&month=09&nt=News&>

2. Commission announces new College and policy objectives

10 September

On 10 September, the President-elect of the new European Commission, Ursula von der Leyen, announced the proposed composition of the College of Commissioners.

On the energy side, two figures will lead the work of the Commission:

- **Executive Vice-President nominee Frans Timmermans**, the Dutch candidate and current first Vice-President of the Juncker Commission, in charge of Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights. In the von der Leyen Commission, Mr Timmermans will be in charge of the European Green Deal, coordinating the work of all Commissioners handling the energy transition file one way or another. As Executive Vice-President, Mr Timmermans will also have direct control over the Climate Action Directorate-General (DG). He will work under the guidance of Ms von der Leyen herself.
- **Commissioner nominee Kadri Simson**, the Estonian candidate and former Minister of Economic Affairs and Infrastructure, a post that put her in a position to manage difficult negotiations on the Clean Energy Package during the Estonian Presidency of the Council in the second half of 2017. In the von der Leyen Commission, Ms Simson will be in charge of the Energy portfolio, and will oversee directly the work of DG Energy. She will work under the guidance of Mr Timmermans.

The mission letters of the two officials comprise all the elements that form the current European strategy on energy and climate: security of supply, affordability, sustainability, and a strong energy market. In addition, the von der Leyen Commission introduces a few new policy objectives:

- Increasing the carbon emissions reduction target from the currently agreed 40% to 50%, even potentially 55% by 2030, in order to reach carbon neutrality by 2050;
- Starting to work on the decarbonisation of the transport sector;
- Introducing a carbon tax at the external borders of the EU;
- Bringing gas to contribute to the EU decarbonisation agenda;
- Incentivising the use of the *euro* for energy imports on global markets.

The hearings of Ms Simson and Mr Timmermans – both of which went well – took place on 3 and 8 October, respectively. The composition of the new College will need to be approved by the European Parliament (simple majority) before the Commission can start working on 1 November. The vote in Plenary is set for 23 October. The European Parliament's Legal Committee, however, has found Hungary's and Romania's commissioner-designates unfit for office due to conflicts of interests. More recently, the French commissioner-designate has also been opposed. This would

require some last-minute changes, which is not unprecedented, but is a rare occurrence, and may delay the start of the new Commission.

More information at:

https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-frans-timmermans-2019_en.pdf

https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-kadri-simson_en.pdf

https://europa.eu/rapid/press-release_IP-19-5542_en.htm

https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

>> REGULATOR (ACER)

3. ACER launches discussion on regulatory framework for future coupled and low-carbon energy system

9 September

On 23 July, the Agency for the Cooperation of Energy Regulators (ACER) launched a “Bridge beyond 2025” consultation to gather views on trends in the gas sector and to assess the direction in which the regulatory framework in Europe should evolve to remain fit for purpose. In addition to posing questions, the Agency has also prepared answers, which they would like to test with stakeholders.

The Agency has undoubtedly put a lot of thought into this consultation. The document addresses both existing and potential issues, without shying away from the more contentious ones, such as power-to-gas asset ownership by transmission system operators (TSOs) or targeted (country or region-specific) regulation. Both issues have already created heated discussions among EU Member States, the Commission, regulators, TSOs and market participants, and they will undoubtedly be picked up again in the course of the October Regulatory (Madrid) Forum.

While the consultation responses have not been published yet at the time of writing, different stakeholders have already signalled major differences of opinion. The upcoming discussions around the new Gas Package will be difficult and lengthy.

More information at:

https://acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2019_G_06.aspx

4. ACER revises decision on gas capacity booking platform for German-Polish border

8 August

After receiving objections to its initial ruling on the assignment of a gas capacity booking platform for the German-Polish border (read more in our [October 2018 edition](#)), the Agency for the Cooperation of Energy Regulators (ACER) run a second consultation round and collected offers

from all three booking platforms in Europe. The ruling pointed to RBP, the only platform that was not operational at the border at all.

The ruling follows a careful examination of the offers placed by RBP, GCA and PRISMA. All three platforms were found to be compliant with the requirements of EU and national law and all of them had passed the IT requirements test. What differentiated the platforms from one another was an IT case study and/or the financial offer, but the scores granted to each of them remain confidential.

The result is perhaps the least convenient for market participants, who now have to sign up for the new platform, in most cases probably exclusively to book the single interconnection point (IP) in question. At the same time, this is perhaps the best way to force both sides to cooperate – the ruling grants RBP the right to auction the IP for three years or until Poland and Germany agree on the assignment of the platform.

More information at:

<https://acer.europa.eu/Media/News/Pages/ACER-decides-on-the-gas-capacity-booking-platform-for-German-Polish-border-.aspx>

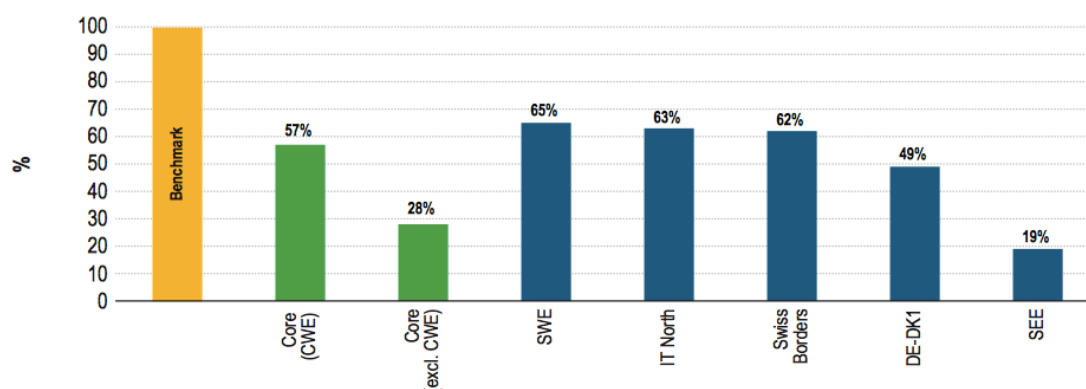
5. ACER issues Recommendation on the 70% threshold for cross-border capacity allocation

9 August

On 9 August, the Agency for the Cooperation of Energy Regulators (ACER) issued a Recommendation on the implementation of the 70% threshold for the allocation of cross-border transmission capacity. This new rule aims to improve the availability of cross-border transmission capacity at the borders of bidding zones in Europe. It is included in the recast Electricity Regulation (2019/943), part of the Clean Energy Package, which has been in force since 6 July (read more in our [July edition](#)).

Although the threshold of 70% is a brand-new concept, the objective of increasing capacity availability at bidding zone borders has a fairly long history. Art. 16(3) of the Electricity Regulation (714/2009) under the Third Energy Package enshrined into European legislation the principles of *non-discrimination between internal and cross-border transactions* and *maximisation of available transmission capacity at bidding zone borders*. Those were elaborated further in the EU Guidelines on Congestion Management and Capacity Allocation. However, by the time the drafting of the Clean Energy Package and the recast Regulation started in 2016, it had become clear that the provisions of Regulation 714/2009 were being violated on a daily basis, with transmission system operators (TSOs) using the calculation and allocation of cross-border transmission capacity as a tool to manage internal congestion and unscheduled cross-border (loop) flows.

Figure i: Ratio of available tradable capacity to benchmark capacity on HVAC borders per CCR – 2017 (%)



Source: ACER

The threshold shall apply as of 1 January 2020. The ACER Recommendation, hence, aims to answer a first set of implementation-related questions, such as: what is included in the 70%; to which timeframes does the minimum threshold apply; how should the level of available capacity currently allocated at bidding zone borders in Europe be calculated; and how much more capacity needs to be allocated at those borders that are under the threshold? With detailed guidance on these questions, TSOs should be expected and able to apply the same methodology in the implementation of the rule.

The recast Regulation, however, also comes with some flexibility in the application of the rule: a possibility for Member States to apply an action plan that would allow them to gradually reach the 70% threshold by 2025 according to a linear trajectory; and a possibility for TSOs to request derogations from regulators for a period of one to two years, based on system security concerns. The ACER Recommendation does not provide guidance on the implementation of these provisions.

Thus, the uncertainty factor is now moving to the question of exceptions, with a number of Member States and TSOs expected to request the application of an action plan or a derogation. In short, we are moving from a world where too little cross-border transmission capacity was made available to the market, but at least the market could project how much TSOs would be allocating, to a world where cross-border transmission capacity is expected to increase, but the market will not be able to forecast – at least at the start – capacity volumes. This is a serious concern, as the capacity auctions for 2020 forward transmission rights (September, October) are held without market participants being able to assess the future availability of capacity at European borders. Without full and timely transparency on the plans of individual Member States and TSOs and without proper coordination among them, we can expect serious disruptions of electricity markets in the new year.

More information at:

https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2001-2019.pdf

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.158.01.0054.01.ENG&toc=OJ:L:2019:158:TOC

>> TSO (IFA, ElecLink, BritNed, NemoLink)

6. Cable operators propose rules for intraday capacity access between Great Britain and the Continent in case of a “no-deal” Brexit

1 September

In August and September, the cable operators of IFA 1 (in service, 2GW capacity), ElecLink (go-live planned for Q1 2020, 1 GW capacity) and IFA 2 (go-live planned for Q4 2020, 1 GW capacity) consulted market participants on rules for intraday capacity access between France and Great Britain in case the UK leaves the EU without transitional arrangements (“no-deal Brexit”).

The proposed rules foresee the following processes and timings:

IFA 1

Name of the Auction	Deadline for publishing Auction Specifications	Gate opening of the Auction	Gate closure of the Auction	Delivery hours	Nomination gates
Intraday Auction 1	19:20 D-1	19:20 D-1	19:50 D-1	00:00 to 08:00	24 nomination gates GCT 70 minutes before delivery
Intraday Auction 2	05:20 D day	05:20 D day	05:50 D day	08:00 to 16:00	
Intraday Auction 3	13:20 D day	13:20 D day	13:50 D day	16:00 to 20:00	
Intraday Auction 4	17:20 D day	17:20 D day	17:50 D day	20:00 to 24:00	

IFA 2

Name of the Auction	Deadline for publishing Auction Specifications	Gate opening of the Auction	Gate closure of the Auction	Delivery hours	Nomination gates
Intraday Auction 1	19:20 D-1	19:20 D-1	19:50 D-1	00:00 to 12:00	24 nomination gates GCT 70 minutes before delivery
Intraday Auction 2	05:20 D day	05:20 D day	05:50 D day	12:00 to 16:00	
Intraday Auction 3	13:20 D day	13:20 D day	13:50 D day	16:00 to 20:00	
Intraday Auction 4	17:20 D day	17:20 D day	17:50 D day	20:00 to 24:00	

ElecLink

Name of the Auction	Deadline for publishing Auction Specifications	Gate opening of the Auction	Gate closure of the Auction	Delivery hours	Nomination gates
Intraday Auction 1	15:40 D-1	15:55 D-1	16:25 D-1	00:00 to 14:00	<ul style="list-style-type: none"> • 21:00 D-1 > 00:00 to 14:00 • 03:00 > 07:00 to 14:00 • 08:00 > 12:00 to 14:00
Intraday Auction 2	09:05 D day	09:20 D day	09:50 D day	14:00 to 24:00	<ul style="list-style-type: none"> • 11:00 > 15:00 to 24:00 • 14:00 > 18:00 to 24:00 • 17:00 > 21:00 to 24:00

In parallel, BritNed (in service, 1GW capacity), the cable linking Great Britain and the Netherlands, also consulted on amended intraday auction processes and timings in case of a no-deal Brexit. NemoLink (in service, 1GW capacity), the cable linking Great Britain and Belgium, presented its proposal to auction capacity in the intraday timeframe, which is currently not offered, as the new cable began operations only in early 2019. The timings would be valid in any Brexit configuration.

BritNed

Name of the Auction	Deadline for publishing Auction Specifications	Gate opening of the Auction	Gate closure of the Auction	Delivery hours	Nomination gates
Intraday Auction 1	19:25 D-1	19:30 D-1	20:00 D-1	00:00 to 24:00	24 nomination gates GCT 70 minutes before delivery
Intraday Auction 2	05:45 D day	05:50 D day	06:20 D day	08:00 to 24:00	
Intraday Auction 3	09:45 D day	09:50 D day	10:20 D day	12:00 to 24:00	
Intraday Auction 4	13:45 D day	13:50 D day	14:20 D day	16:00 to 24:00	
Intraday Auction 5	15:45 D day	15:50 D day	16:20 D day	18:00 to 24:00	

NemoLink

Name of the Auction	Deadline for publishing Auction Specifications	Gate opening of the Auction	Gate closure of the Auction	Delivery hours	Nomination gates
Intraday Auction 1	21:55 D-1	21:45 D-1	22:10 D-1	00:00 to 06:00	24 nomination gates GCT 75 minutes before delivery
Intraday Auction 2	03:40 D day	03:30 D day	03:55 D day	06:00 to 12:00	
Intraday Auction 3	09:40 D day	09:30 D day	09:55 D day	12:00 to 18:00	
Intraday Auction 4	15:40 D day	15:30 D day	15:55 D day	18:00 to 24:00	

While the proposed rules still need to be approved by the British, French, Dutch and Belgian regulators, little is expected to change in the new timings listed above. The cable operators seem well-prepared to ensure the continued allocation of capacity at interconnectors between Great Britain and the Continent, whatever the outcome of the Brexit negotiations between the UK and the EU.



Source: Correggio Consulting

More information at:

<http://ifa1interconnector.com/media/1172/07082019-final-no-deal-access-rules.pdf>

<http://www.eleclink.co.uk/information/ElecLink%20Intraday%20Allocation%20Rules.pdf>

https://www.nemolink.co.uk/wp-content/uploads/2019/09/NEMO-NLL-CO-GEN-1027_Intraday_Allocation-and-Noms-Rules_Consultation-Doc_v0.2.pdf

https://www.britned.com/documents/141/BritNed_Access_Rules_no-deal_Brexit_new_ID_arrangements.pdf

AUSTRIA

>> REGULATOR (E-Control)

7. Latest regulatory developments

30 September

Institution	Act/ decision/ ruling	Impact	Relevant date
Energy regulator (E-Control)	Gas Labeling Regulation (Verordnung einer freiwilligen Gaskennzeichnung durch Versorger und die Gaskennzeichnung bei Erreichen der Schwellenwerte gemäß § 130 GWG 2011)	<p>The Austrian regulator have published their Regulation on voluntary gas labelling (GoO), which is scheduled to enter into force on 1 January 2020.</p> <p>For the labelling, suppliers have to use three categories:</p> <ul style="list-style-type: none"> • Natural gas; • Renewable gases; and/or • Other gases (like blue hydrogen). <p>Further differentiation is possible. Additional information, such as environmental impact (e.g. CO2 footprint), can be provided on a voluntary basis.</p> <p>The regulator hopes to provide clarity about gas labelling following the earlier example of the regulation of green power labelling.</p>	Published on 11-09-2019; entry into force: 01/01/2020
Energy regulator (E-Control)	New Gas Market Ordinance (GMMO-VO)	<p>E-control have launched a consultation on a draft Gas Market Model Ordinance.</p> <p>In 2017, together with stakeholders, they started a process to redesign the Austrian gas balancing system. The implementation of this system will be completed with the new Gas Market Model Ordinance, which is planned to enter into force on 1 October 2021.</p> <p>Comments on the consultation draft must be sent to marktregeln@e-control.at by 25 October 2019.</p> <p>The balancing reform has been quite controversial (read more in our January edition). The new model provides for the following:</p> <ul style="list-style-type: none"> • Integrated daily balancing for transmission and distribution, with the same rules for all entry/exit points and a single balancing system: <ul style="list-style-type: none"> ○ Allocation of constant supply to consumers with connected capacities <300 MWh/h; ○ Balancing energy pricing in line with the Gas BAL NC; ○ A Gas BAL NC small adjustment of 3%; 	Consultation ends 25-10-2019; planned entry into force: 01-10-2021

		<ul style="list-style-type: none"> • Within-day obligations that complement the daily balancing regime: <ul style="list-style-type: none"> ○ Tolerances for balance responsible parties' within-day balancing whose amount is derived from the quantities allocated to consumers and which are fed from the available linepack; ○ A cautious 4% tolerance level; ○ A WDO fee payable by balance responsible parties only for days during which opposing balancing actions had to be taken; ○ Calculation of the daily imbalance quantity based on the net imbalances during a gas day beyond the balance responsible party's tolerance; ○ Cost-reflective pricing of the WDO fee, i.e. the fee being set so that it covers the actual costs the single clearing entity has incurred for within-day balancing; • Provision of comprehensive information about the position of each individual balance group and of the market area; • Large consumer schedules, provided for system operation reasons; • Curtailment of balance groups, adjusted to reflect that there are no consumer schedules anymore; • A new framework for technical network balancing with improved transparency, cost-reflective settlement; • More efficient commercial processes: <ul style="list-style-type: none"> ○ Application of most features of the current neutrality charge system in the distribution area under the integrated balancing framework; ○ Calculation of the neutrality charge and the clearing fee from total entry and exit allocations; ○ Single clearing entity; ○ A monthly clearing rhythm that maintains the current 2nd clearing mechanism. 	
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More information at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2019_II_275/BGBLA_2019_II_275.pdfsi

<https://www.e-control.at/recht/aktuelle-begutachtungsentwuerfe>

https://www.e-control.at/documents/1785851/0/Erläuterungen+Gaskennzeichnungs-VO+26082019_final+nach+Regulierungsbeirat+%281%29.pdf/cf934481-50ee-5587-016b-4726394ffe40?t=1568798614178

GERMANY

>> GOVERNMENT

8. Latest legislative developments

30 September

Institution	Act/ decision/ ruling	Impact	Relevant date
Federal Ministry of Economic Affairs and Energy	Emergency Gas Plan (Notfallplan Gas)	<p>The Federal Ministry of Economic Affairs and Energy has circulated their draft Emergency Gas Plan, which is meant to secure the German and regional gas needs in cases of a gas supply crisis. Pursuant to Art. 8 of EU Regulation 2017/1938, the plan includes a regional chapter, which specifies appropriate and effective cross-border measures for each crisis level among the Member States of the respective risk groups.</p> <p>Within the region are Belgium, the Czech Republic, Denmark, Germany, France, Luxembourg, the Netherlands, Austria, Slovakia and Sweden, with Germany being the regional coordinator. The regional chapter was developed jointly by all Member States in this draft emergency plan.</p> <p>The measures available at the emergency level within the risk group are similar to those listed in the respective national chapter on non-market-based measures, but with the addition of being subject to cross-border coordination within the risk group.</p> <p>The competent authority of the state declaring emergency would have to update the other Member States of the group about the emergency situation at least once a day, or as often as possible. Additionally, the Member State may request the European Commission to declare a regional or Union emergency in case the crisis is likely to extend to other areas, pursuant to Art. 12 of EU Regulation 2017/1938.</p> <p>In case of a supply crisis, transmission system operators (TSOs) shall be forced to cooperate and exchange information using the ReCo System for Gas established by ENTSG, pursuant to Art. 3 of EU Regulation 2017/1938. ENTSG shall inform the EU Commission and can work out measures.</p> <p>The plan falls short of providing much detail on the solidarity mechanisms among Member States. This is the result of disagreement on these measure among the various Member States.</p>	05-08-2019

>> **REGULATOR (BNetzA)****9. Latest regulatory developments****30 September**

Institution	Act/ decision/ ruling	Impact	Relevant date
Energy regulator (Federal Network Agency/ Bundesnetzagentur (BNetzA))	6 th Chamber, Resolution of 30 September, 8175-06-0019/1 Distribution Grid Component	With Resolution 8175-06-0019/1 – Verteilernetzkomponente (Distribution Grid Component) from 30 September, the German regulator clarified additional grid charges for specific solar and wind generation (§ 39i EEG). The Resolution provides for additional grid charges between 3ct/kWh and 88 ct/kWh, depending on the geographic location of the generation facility and the capacity of the local and regional grid. The grid fee component is meant to disincentive further wind construction in places where currently there are grid capacity constraints.	30-09-2019
Energy regulator (Federal Network Agency/ Bundesnetzagentur (BNetzA))	KAP+/ 7 th Chamber, BNetzA	<p>In 2021, the two German gas market zones will merge into one-zone.</p> <p>In May 2019, BNetzA launched a consultation on how additional firm capacities could be offered to the unified market ("Trading Hub Europe"). In the consultation, it became clear that the merger is likely to lead to capacity congestion and that there would be a need to offer additional firm capacity into the market. In a second consultation, BNetzA are now calling for market-based suggestions to address this potential congestion and enquiring about a new demand scenario.</p> <p>At a workshop in March, 'wheeling,' 'third-party use' and 'exchange-based spread products' were listed as potential market-based products to generate additional firm capacities. Following a public discussion, the transmission system operators (TSOs) have provided their proposal in terms of process and products – the concept of selling and buying back capacities.</p> <p>This second consultation is open until 8 November. The conceptual approach provides for more flexible products compared to the ones that are currently on offer. BNetzA plans prior testing of the market-based products.</p>	08-11-2019
Energy regulator (Federal Network Agency/ Bundesnetzagentur (BNetzA))	Guidance on price volatility in German electricity trading	The energy and competition authorities have recently issued long-awaited Guidance on price caps for wholesale trading (Preisspitzen im Stromgroßhandel). The background of this joint Guidance is the need to explain the interplay	27-09-2019

Bundesnetzagentur (BNetzA) and Competition authority (Federal Cartel Authority/ Bundeskartellamt)		<p>between price discovery/ price building and market abuse, on one hand, and market manipulation as provided by the German Competition Act (GWB), on the other.</p> <p>The Guidance specifies that price spikes can be the result of normal price signals and that taking speculative positions in the physical market is not illegal in the German electricity market. Limits to this general rule are holding back capacities or realising profits through illegal market practices, which would be subject to sanctions under the Competition Act.</p> <p>We recommend reading the Guidance, as it summarised the administrative and legal understanding of how the German electricity market is meant to work.</p>	
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More information at:

https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/DE/2017/22122017_GEMA.html

https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2019/20190523_KAP.html

https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1_GZ/BK7-GZ/2019/2019_0001bis0999/2019_0001bis0099/BK7-19-0037/BK7-19-0037_VerfEinleit.html

https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2019/20190927_Leitfaden.html;jsessionid=02E69BAAFB0DFDB0017FB6C2AEDFC517

>> OTHERS

10. Latest developments

30 September

Institution	Act/ decision/ ruling	Impact	Relevant date
BDEW/ VKU/ GEODE	New Cooperation Agreement (KOV-X)	<p>BDEW/ VKU/ GEODE informed that the new Cooperation Agreement shall enter into force on 1 January 2020.</p> <p>The KOV-X Agreement forms the basis for the use of the German gas grids. The current version is the 10th version and it is applicable to all German high-pressure grids. A new version was required to reflect the following regulatory changes: "BEATE 2.0" (BK9-18/608); "REGENT" (NCG/GP, BK9-18/610-NCG, BK9-18/611-GP); "MARGIT"(BK9-18/612).</p> <p>The standard contract reinforces the rights of transmission system operators (TSOs) in poor</p>	Issued on 30-09-2019; entry into force: 01-01-2020

		<p>credit situations and puts more obligations on balancing responsible parties to keep their positions balanced. These changes are in response to fraudulent use of the balancing market by some shippers in 2018 and 2019.</p> <p>The KOV-X also reflects changes to §§ 38 and 39 of the Grid Access Regulation (GasNZV), in force since 1 June 2019.</p>	
Monopoly Commission (Monopolkommission)	Annual Energy Sector Report	<p>The Monopoly Commission issued their annual advisory report for energy in September 2019. The Commission made the following (non-binding) recommendations to the industry:</p> <ul style="list-style-type: none"> • The balancing market reform should be concluded promptly; • Areas defined for RES-generation should compete with each other to maximise their potential; • Price peaks in the short-term electricity market should be subject to a special market segment for competition law purposes. 	18-09-2019
Higher District Court	No feed-in compensation for sudden grid unavailability	<p>Recently, the Higher District Court (OLG) Brandenburg ruled that no compensation payments under the Renewables Act could be claimed if the grid was unavailable (Case number– 6 U 27/18). In the underlying lawsuit, a RES-generator had brought compensation claims to the Court. The grid operator, who had deactivated certain parts of the grid in order to keep the grid stable, highlighted the grid unavailability.</p> <p>This Higher Court judgement adds additional operational risks for RES-generators. The RES operator lost the feed-in tariff and – according to the ruling – could not reclaim it back according to § 12 Abs. 1 S. 1 EEG 2012 or § 280 BGB. The grid operator was exempted from any liability for depriving the RES-generator from the feed-in tariff, as the measure was required to maintain grid stability.</p>	30-08-2019
Electricity Transmission System Operators (TSOs)	RES surcharge poised to raise by 5.5% in 2020	<p>In September, the four German electricity TSOs presented their view that the RES surcharge (EEG Umlage) needs to be increased by 5.5% compared to 2019. The 2020 surcharge will be 6.756 c/KWh (the current RES surcharge is 6.405 c/KWh).</p> <p>This development is the result of poor liquidity of RES account cash reserves. The increase is a blow to the Government, which has been trying to limit the surcharge in recent years.</p>	15-10-2019

More information at:

<https://www.bdeu.de/service/standardvertraege/kooperationsvereinbarung-gas/>

<https://www.netztransparenz.de/EEG/EEG-Umlagen-Uebersicht/EEG-Umlage-2020>

ITALY

>> NATIONAL GOVERNMENT

11. Key new legislative developments

18 September

Institution	Ordinance/ Act/ Ruling	Impact	Date
Ministry of Economic Development	Capacity Market Decree	The Decree approves the Italian capacity remuneration mechanism, based on reliability options. Auctions will be held by the end of 2019, with delivery for years 2022-2023.	Entry into force: 28-06-2019
Ministry of Economic Development	Renewable Energy Sources (RES, or FER in Italian) Decree	The RES Decree approves the auctions for RES incentives starting from September 2019.	Entry into force: 05-07-2019

More information at:

<https://www.mise.gov.it/index.php/it/89-normativa/decreti-ministeriali/2039896-decreto-ministeriale-28-giugno-2019-capacity-market>

<https://www.mise.gov.it/index.php/it/per-i-media/notizie/it/198-notizie-stampa/2039932-rinnovabili-di-maio-e-costa-firmano-il-decreto-fer-1>

>> **REGULATOR****12. Key new regulatory developments****18 September**

Institution	Ordinance /Act/ Ruling	Impact	Date/Duration
National Regulatory Authority (ARERA)	Capacity Market Resolution	The Capacity Market Resolution sets out the technical details for the Italian capacity mechanism. Premium caps in the auctions are set at 75.00 €/MWh for new and 33.00 €/MWh for existing capacity. The strike price should be around 125.00 €/MWh. The mechanism may have an impact on the free formation of wholesale electricity prices in Italy and neighbouring countries.	First auction: 06-11-2019
Transmission system operator (Terna)	Capacity Market technical rules	The TSO has published its manual, Q&As and new portal for the Italian capacity mechanism.	Workshop: 26-09-2019, Rome; First auction: 06-11-2019
Public company for sustainable development (GSE)	RES Auctions Regulation	GSE has published the Regulation and timeline for the forthcoming RES auctions for the period 2019-2021. The auctions are projected to add 8GW of RES capacity and investments of around 10 bill euro. The auctions may affect wholesale and retail electricity prices in Italy in the coming years.	First auction: 30-09-2019 to 30-10-2019

More information at:

<https://www.arera.it/it/docs/19/363-19.htm>

<https://www.arera.it/it/docs/19/364-19.htm>

<https://www.arera.it/it/docs/19/365-19.htm>

<https://www.terna.it/it/sistema-elettrico/pubblicazioni/news-operatori>

<https://www.gse.it/servizi-per-te/news/fer-elettriche-on-line-il-regolamento-operativo-del-dm-4-luglio-2019>

POLAND

>> GOVERNMENT

13. RES Act revised once again

29 August

The Polish authorities seem to have realised that the country will miss its renewable energy target by a great deal of installed power, since little investments has come online ever since wind generation was blocked (read more in our [April 2018 edition](#)). In July, an amended RES Act reached Parliament. The Act contains a number of amendments, which market participants have been promoting for a long time.

The minimum distance from buildings for wind turbines remains unchanged, but the five-year waiver for projects that had received permits before the rule came into force, has been extended until mid-2024. This means that this year's auction has the potential to grant financing to quite a few onshore wind projects. Additionally, the government has decided to loosen the deadlines for auction-winning projects to come online (2 years for PV and up to 33 months for wind turbines). Small hydroelectric power stations and biogas generators up to 2.5 MW can count on feed-in premiums. An additional change is the new "prosumer" package, offering financial support to the smallest installations installed by households or small enterprises for which power generation is a side activity.

The revised Act does have the potential to deliver substantial new renewable generation capacities in the country. The problem is that many of the investors interested in auctions this year will be state-owned entities, as they are not in a position to move their business elsewhere. In addition, the higher power prices in Poland may put into question the need for financial support for RES projects, particularly for those that are larger in scale. With no more money for subsidies and a potential increase in end-customer bills through RES fees (currently amounting to 0 PLN/kWh), the Government may be tempted to amend the RES Act once again.

More information at:

[http://orka.sejm.gov.pl/Druki8ka.nsf/Projekty/8-020-1370-2019/\\$file/8-020-1370-2019.pdf](http://orka.sejm.gov.pl/Druki8ka.nsf/Projekty/8-020-1370-2019/$file/8-020-1370-2019.pdf)

SPAIN

>> REGULATOR

14. Key new regulatory developments

18 September

Institution	Ordinance /Act/ Ruling	Impact	Date/Duration
National Regulatory Authority (CNMC)	Proposed circulares on: <ul style="list-style-type: none"> • LNG, gas storage and capacity access • Gas balancing • Gas tariffs • Electricity market design • Intraday timings • Infrastructure remuneration • Electricity balancing and congestion management • TERRE, the European implementation project for exchanging replacement reserves in line with the EU Guideline on Electricity Balancing 	CNMC has launched consultations on several reforms. The regulatory impact will become clear in Q4 2019/ Q1 2020.	Consultation results: Q4 2019/ Q1 2020

More information at:

<https://www.cnmc.es/ambitos-de-actuacion/energia/consultas-publicas>

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.

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