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27 April 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF THE INTERNAL ENERGY MARKET

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provided for a transition period which ended on 31 December 2020. The Withdrawal Agreement provided also, in some cases, for separation provisions at the end of the transition period.

During the transition period, the European Union and the United Kingdom negotiated a Trade and Cooperation Agreement, which was signed on 30 December 2020³ and applies provisionally since 1 January 2021.⁴

All interested parties, and especially economic operators, are reminded of the legal situation applicable since the end of the transition period, taking account of the Trade and Cooperation Agreement (Part A below). This notice also explains the rules applicable to Northern Ireland since the end of the transition period (Part B below).

Please note: This notice does not address EU rules on

- greenhouse gas emission trading;
- financial services;
- guarantees of origin and certification of installer;
- VAT and excise.

For these aspects, other notices are in preparation or have been published.

¹ A third country is a country not member of the European Union.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 444, 31.12.2020, p.14.

⁴ OJ L 1, 1.1.2021, p.1.

A. LEGAL SITUATION SINCE THE END OF THE TRANSITION PERIOD

Since 1 January 2021, the EU acquis on the internal energy market⁵ no longer applies to and in the United Kingdom.⁶

This has in particular the following consequences:

1. COMPENSATION BETWEEN TRANSMISSION SYSTEM OPERATORS (TSOs)

Regulation (EU) 2019/943⁷ sets out the principles for an inter-transmission system operator compensation mechanism and for charges for access to networks.

On the basis of these principles, Commission Regulation (EU) No 838/2010⁸ provides that EU TSOs receive compensation for hosting cross-border flows of electricity on their networks. This compensation replaces explicit charges for the use of interconnectors.

Regarding third country imports and exports of electricity, Commission Regulation (EU) No 838/2010⁹ provides that a transmission system use fee is to be paid on all scheduled imports and exports of electricity from all third countries which have not adopted an agreement whereby it is applying Union law.

Article ENER.13(3) of the Trade and Cooperation Agreement provides that each Party shall take the necessary steps to ensure the conclusion as soon as possible of a multi-party agreement relating to the compensation for the costs of hosting cross-border flows of electricity between transmission system operators participating in the inter-transmission system operator compensation mechanism established by Commission Regulation (EU) No 838/2010 and United Kingdom transmission system operators.

The multi-party agreement shall aim to ensure that (i) United Kingdom transmission system operators are treated on an equivalent basis as a transmission system operator in a country participating in the inter-transmission system operator compensation mechanism; and (ii) the treatment of United Kingdom transmission system operators is not more favourable in comparison to that which would apply to a transmission system operator participating in the inter-transmission system operator compensation mechanism.

⁵ Directive (EU) 2019/944 concerning common rules for the internal market in electricity, OJ L 158, 14.6.2019, p. 125; Directive 2009/73/EC concerning common rules for the internal market in natural gas, OJ L 211, 14.8.2009, p. 94; Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators, OJ L 158, 14.6.2019, p. 22; Regulation (EU) 2019/943 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54; Regulation (EU) 2019/941 on risk-preparedness in the electricity sector, OJ L 158, 14.6.2019, p. 1; Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks, OJ L211, 14.8.2009, p. 36; Regulation (EU) No 1227/2011 on wholesale market integrity and transparency, OJ L 163, 15.6.2013, p.1.

⁶ Regarding the applicability of certain rules of the EU internal energy market to Northern Ireland, see Part B of this notice.

⁷ Regulation (EU) 2019/943 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54.

⁸ Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging, OJ L 250, 24.9.2010, p. 5; see notably Annex A, points 2 and 3.

⁹ Annex A, point 7, of Commission Regulation (EU) No 838/2010.

2. INTERCONNECTIVITY

EU gas and electricity market legislation sets out rules on the calculation and allocation of interconnection capacity and provides for mechanisms to facilitate their implementation. In particular:

- Commission Regulation (EU) 2016/1719¹⁰ establishes a single platform to allocate TSOs' forward interconnection capacities. It provides a central point of contact to market participants for the booking of long-term transmission capacities across the EU.
- Commission Regulation (EU) 2017/2195¹¹ establishes the European balancing platforms for the exchange of standard balancing products. As single points of contact they allow EU TSOs to resource balancing energy at short notice from across the borders.
- Commission Regulation (EU) 2015/1222¹² establishes the single day-ahead and intraday coupling of the EU's electricity markets. It assists market participants in organising bulk power transactions across EU borders close to delivery. The single day-ahead and intraday market couplings are the central tools to integrate the EU's internal electricity market. Regulation (EU) 2015/1222 also provides for common requirements for the designation of nominated electricity market operators (NEMOs) in market coupling. Their tasks include receiving orders from market participants, having overall responsibility for matching and allocating orders in accordance with the single day-ahead and intraday coupling results, publishing prices and settling and clearing the contracts resulting from the trades according to relevant participant agreements and regulations. NEMOs are entitled to offer their services in Member States other than those in which they are designated.

Articles ENER.13, ENER.14, ENER.15 and ENER.19 of the Trade and Cooperation Agreement provides a framework for developing arrangements and technical procedures for the efficient use of electricity and gas interconnectors between the Union and the United Kingdom and provides for mechanisms to facilitate their implementation. However, those arrangements may not involve or imply participation by United Kingdom transmission system operators in Union procedures relating to the use of interconnections.¹³

The exclusion from participation applies to the single allocation platform for forward interconnection capacity, the European balancing platforms and the single day-ahead and

¹⁰ Articles 48 to 50 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on forward capacity allocation, OJ L 259, 27.9.2016, p. 42.

¹¹ Articles 19 to 21 of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, OJ L 312, 28.11.2017, p. 6.

¹² Chapters 5 and 6 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, OJ L 197, 25.7.2015, p. 24.

¹³ Cf., for electricity, Article ENER.13(2) and, for gas, Article ENER.15(3) of the Trade and Cooperation Agreement. Regarding gas transmission systems, currently commercial arrangements developed by TSOs in order to comply with their obligations in Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems are not "Union procedures" in the sense of the Agreement. This is without prejudice to the status of any future procedures or arrangements, which may be developed.

intraday coupling of the EU electricity markets. In addition, United Kingdom-based NEMOs have become third country operators and are no longer entitled to carry out market coupling services in the EU.

3. COORDINATING SYSTEM OPERATION

Commission Regulation (EU) 2017/1485¹⁴ requires TSOs to establish system operation regions. In addition, Commission Regulation (EU) 2019/943¹⁵ requires TSOs of a system operation region to establish a regional coordination centre (RCC) by 1 July 2022. RCCs will help TSOs among others to better manage congestions on their systems and to improve the calculation of capacities on their interconnectors.

Since 1 January 2021, system operation regions no longer cover the United Kingdom. Consequently, the United Kingdom TSOs cannot participate in RCCs. This is without prejudice to the possibility for technical cooperation between RCCs and United Kingdom TSOs.

4. ELECTRICITY AND GAS TRADING

Regulation (EU) 1227/2011¹⁶ prohibits market abuses on EU wholesale power and gas markets. In order to effectively prosecute market abuses, Article 9(1) of Regulation (EU) 1227/2011 requires EU-based market participants to register with their national energy regulatory authority. Market participants from third countries are required to register with the national energy regulatory authority of a Member State where they are active.

Since 1 January 2021, market participants based in the United Kingdom have become third country participants. Consequently, according to Article 9(1) of Regulation (EU) 1227/2011, participants based in the United Kingdom who wish to continue trading EU wholesale energy products have to register with the national energy regulatory authority of a Member State where they are active. According to Article 9(4) of Regulation (EU) 1227/2011, the registration form has to be submitted prior to entering into a transaction which is required to be reported.

Article ENER.7 of the Trade and Cooperation Agreement provides that the Parties shall cooperate with a view to detecting and preventing trading based on inside information and market manipulation, and where appropriate may exchange information including on market monitoring and enforcement activities.

¹⁴ Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation, OJ L 220, 25.8.2017, p.1.

¹⁵ Articles 34-47 of the Regulation (EU) 2019/943.

¹⁶ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale market integrity and transparency, OJ L 326, 8.12.2011, p. 1 (REMIT).

5. INVESTMENTS IN TRANSMISSION SYSTEM OPERATORS

Directive (EU) 2019/944¹⁷ and Directive (EU) 2009/73/EC¹⁸ provide for the certification of TSOs. According to Article 53 of Directive (EU) 2019/944 and Article 11 of Directive (EU) 2009/73/EC, the certification of a TSO which is controlled by a person or persons from a third country is subject to specific rules. In particular, the Directives require Member States and the Commission to assess whether granting certification to the concerned transmission system operator controlled by (a) third country person(s) will put at risk the security of energy supply of the Member State and the EU.

Since 1 January 2021, TSOs controlled by investors from the United Kingdom are TSOs controlled by persons from a third country. For these TSOs to continue their activity in the EU, they require a certification in accordance with Article 53 of Directive (EU) 2019/944 and Article 11 of Directive (EU) 2009/73/EC. Member States may refuse certification where granting certification poses a threat to security of supply of the Member State.

6. CONDITIONS FOR GRANTING AND USING AUTHORISATIONS FOR THE PROSPECTION, EXPLORATION AND PRODUCTION OF HYDROCARBONS

Directive (EU) 94/22/EC¹⁹ sets out the rules for authorising the prospection, exploration and production of hydrocarbons. It ensures *inter alia* that procedures are open to all entities and authorisations should be granted on the basis of objective and published criteria. According to the second sub-paragraph of Article 2(2) of Directive (EU) 94/22/EC, Member States may refuse on grounds of national security to allow access to and exercise of these activities to any entity which is effectively controlled by third countries or third country nationals.

Since 1 January 2021, the second sub-paragraph of Article 2(2) of Directive (EU) 94/22/EC applies where authorisations have been granted or are requested to be granted to an entity which is effectively controlled by the United Kingdom or United Kingdom nationals.

B. APPLICABLE RULES IN NORTHERN IRELAND SINCE THE END OF THE TRANSITION PERIOD

Since the end of the transition period, the Protocol on Ireland/Northern Ireland (“IE/NI Protocol”) applies.²⁰ The IE/NI Protocol is subject to periodic consent of the Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period.²¹

¹⁷ Directive (EU) 2019/944 concerning common rules for the internal market in electricity, OJL 158, 14.6.2019, p. 125.

¹⁸ Directive 2009/73/EC concerning common rules for the internal market in natural gas, OJ L 211, 14.8.2009, p. 94.

¹⁹ Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons OJ L 164, 30.6.1994, p. 3.

²⁰ Article 185 of the Withdrawal Agreement.

²¹ Article 18 of the IE/NI Protocol.

The IE/Ni Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/Ni Protocol, the EU and the United Kingdom have furthermore agreed that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State.²²

The IE/Ni Protocol provides that certain EU rules concerning wholesale electricity markets apply to and in the United Kingdom in respect of Northern Ireland.²³

This means that in so far as references to the EU in Parts A and B of this notice apply to the generation, transmission, distribution and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity²⁴, they have to be understood as including Northern Ireland, whereas references to the United Kingdom have to be understood as referring only to Great Britain.

More specifically, this means *inter alia* the following:

- Northern Ireland-based operators are treated like Union operators for the purposes of the inter-transmission system operator compensation mechanism (see above, section A.1)
- Northern Ireland-based operators are treated as Union operators for the purposes of the single allocation platform for forward interconnection capacity, the European balancing platforms and the single day-ahead and intraday coupling (see above, section A.2).
- The provisions of Regulation (EU) 1227/2011 continue to apply in respect of wholesale electricity trading in Northern Ireland. Contracts and derivatives for the supply or transport of electricity (but not gas) in Northern Ireland are wholesale energy products as defined under Regulation (EU) 1227/2011 (see above, section A.4)

However, the IE/Ni Protocol excludes the possibility for the United Kingdom in respect of Northern Ireland to

- participate in the decision-making and decision-shaping of the Union;²⁵
- invoke the country of origin principle or mutual recognition for, *inter alia*, registrations with a national competent authority.²⁶

More specifically, this means *inter alia* the following:

²² Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

²³ Article 9 of the IE/Ni Protocol and annex 4 to that Protocol.

²⁴ Provisions relating to retail markets and consumer protection shall not apply.

²⁵ Where an information exchange or mutual consultation is necessary, this will take place in the joint consultative working group established by Article 15 of the IE/Ni Protocol.

²⁶ First subparagraph of Article 7(3) of the IE/Ni Protocol.

- the Northern Ireland regulator is excluded from participation in the Agency for Cooperation of Energy Regulators;
- A registration with the regulatory authority in the United Kingdom acting in respect of Northern Ireland is not valid in the EU (cfr. Article 7 (3) of the IE/NI Protocol). Thus, market participants trading wholesale energy products have to register with a Union Member State.

The website of the Commission on EU rules on energy policy (<https://ec.europa.eu/energy/en/home>) provides general information concerning Union legislation applicable to the internal energy market. These pages will be updated with further information, where necessary.

European Commission
Directorate-General Energy