



Brussels, 30.4.2020
C(2020) 2656 final

COMMISSION OPINION

of 30.4.2020

**pursuant to Article 20(5) of Regulation (EC) No 2019/943 on the implementation plan of
the United Kingdom with respect to Great Britain (GB)**

(ONLY THE ENGLISH VERSION IS AUTHENTIC)

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I. PROCEDURE

On 13 December 2019 the Commission received an implementation plan from the UK Department for Energy (BEIS) with respect to GB, prepared pursuant to Article 20(3) of Regulation (EC) No 2019/943¹ (hereafter “Electricity Regulation”). Article 20(3) of the Electricity Regulation requires Member States with adequacy concerns to set out measures to eliminate regulatory distortions or market failures on their markets in an implementation plan.

Pursuant to Article 20(5) of the Electricity Regulation, the Commission is required to issue an opinion on whether the proposed measures and the timeline for their adoption are sufficient to eliminate the regulatory distortions or market failures.

II. DESCRIPTION OF THE IMPLEMENTATION PLAN

In its implementation plan, the UK proposes to implement the following measures for GB:

1. General wholesale price conditions

The UK indicates that there are no price caps or regulated prices in relation to wholesale electricity in the GB market.

2. Balancing markets

- (a) The UK has carried out a reform of the imbalance settlement rules in the GB market (‘cash out reform’). The GB regulator will continue to monitor the impacts after the implementation of the second phase of the modification.
- (b) Since December 2019, the UK has allowed independent aggregators to access the GB balancing market.
- (c) By 2022, the UK will open up access to existing balancing services markets to a wider range of flexible technologies, including energy storage and demand-side response.

¹ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, 14.6.2019, OJ, L 158, p. 54

3. Demand side response

The UK considers the roll-out of smart meters as a key enabler of demand side response. The UK has rolled out approx.. 15 million smart meters to homes and small businesses in GB. The UK explains that in September 2019 it launched a consultation on a post-2020 policy framework to further drive investment and maintain momentum towards a market-wide rollout as soon as practicable.

4. Retail markets: regulated prices

The UK has introduced temporary and targeted price caps for specified retail products in GB. The UK explains that these caps are set by the GB regulator (Ofgem) so as to enable competition between suppliers, and to enable suppliers to cover the efficient costs of supplying customers. The caps allow for tariffs to be set by the supplier, as long as they do not breach the maximum allowed in the region and for the type of meter and payment method.

- (a) The pre-payment meter price cap, which applies to around 1 million customers with pre-payment meters who receive the Warm Home Discount and who were also on their supplier's default tariff, will remain in place until the end of 2020, after which the regulator will consider whether any measures are needed to protect pre-payment meter customers going forward.
- (b) The price cap on standard and default tariffs (default price plans offered by energy suppliers, which often carry the most expensive rate for gas and electricity) lasts until the end of 2020, with the option to extend annually up to 2023 if the conditions for an effective competition are not in place. Around 10 million UK households are on such tariffs.

5. Interconnection

The UK has committed to increasing the level of interconnection by 2030. In addition to the 5 GW that is operational, 4.8 GW of additional capacity is already under construction. A further 6.1 GW has been granted initial regulatory approval under the Cap and Floor regime², which aims to strike a balance between commercial incentives and appropriate risk mitigation for project developers.

² The floor (cap) is a minimum (maximum) amount of revenue that an electricity interconnector can earn. There is a 'merchant' exposure between the cap and the floor. Should an interconnector not receive enough revenue from its operations, the interconnector's revenues will be 'topped up' to the floor level with funds transferred by the GB TSO, which in turn are recovered through transmission charges. Should an interconnector's revenue exceed the cap, the interconnector will transfer the excess revenue to the TSO, which will in turn reduce the transmission charges.

III. COMMENTS

On the basis of the present notification the Commission has the following comments on the implementation plan.

1. Balancing markets

Article 20(3)(c) of the Electricity Regulation requires Member States to consider the implementation of a shortage pricing function. The Commission notes that the UK has already implemented such a mechanism as a result of its reform of the GB imbalance settlement system (Reserve Scarcity Price).

In the Commission's view, it is important that this mechanism is well designed so that it does not only provide incentives for short term flexibility but also sends appropriate signals for investments to maintain system adequacy. In this context, the Commission invites the UK to consider whether the price adder which the referred function creates in times of scarcity should apply not only to balance responsible parties but also to balance service providers which provide balancing energy to the TSO.

The Commission understands that in scarcity situations when consumers are involuntarily disconnected (when the Loss of Load Probability equals to 1) the Reserve Scarcity Price would equal to the Value of Lost Load (VoLL). In the imbalance settlement mechanism VoLL is currently set at 6,000 GBP/MWh. The Commission also understands that in the context of determining the volume of capacities procured under the capacity mechanism GB applies a VoLL of 17,000 GBP/MWh. The Commission believes there is no fundamental reason why those two values should differ. The Commission therefore invites the UK to make sure that the VoLL applied in the GB imbalance settlement mechanism is adjusted to the level of VoLL applied in the capacity mechanism as soon as possible.

2. Demand-side response

The Commission considers that the UK should continue to pursue the market-wide rollout of smart meters to facilitate the uptake of price-based demand response. This would help to reduce peak loads.

3. Retail markets: regulated prices

The Commission notes that the UK has a price cap on standard and default tariffs in GB until the end of 2020, with the option to extend annually up to 2023 if the conditions for an effective competition are not in place.

In respect of this intervention, the Commission recommends that the UK respects the principles set out in Article 5 and Article 9 of Directive (EU) 2019/944³.

Given that the reasons for intervening in price setting would appear to include consumer disengagement, and the automaticity with which suppliers are able to switch consumers from promotional offers to more expensive standard variable tariffs, the Commission invites the UK to re-examine whether the price cap is proportionate, and whether other interventions could better ensure the public interest is met.

In this regard, the UK may want to consider the following:

- More effective consumer information, including through obligations on suppliers, and outreach by the GB regulator (Ofgem);
- Contractual restrictions aimed at addressing potentially exploitative practices, including longer minimum duration periods for fixed-term offers, or constraints on what suppliers are able to do with consumers at the end of a fixed-term deal;
- Steps to increase the inconvenience to consumers ('hassle') of being moved onto a potentially more costly tariff at the end of a fixed-term deal;⁴
- Steps to increase the convenience and automaticity of selecting a new offer at the end of a fixed-term deal;
- Requiring consumers who are moving house to actively choose a supply offer.

In any event, the Commission encourages the UK to continue to closely monitor the price cap's effects on competition and consumer engagement. The Commission appreciates that publicity generated by the cap may have helped to heighten consumer awareness of the savings competitive offers can make. However, the longer-term effects of the intervention may be difficult to anticipate.

4. Capacity mechanism

The Commission invites the UK to make sure that the design of its capacity mechanism complies with the requirements of the Electricity Regulation and adapt its mechanism, where necessary, as required by Article 22(5) of the regulation.

³ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, 14.6.2019, OJ, L 158, p. 125

⁴ Requiring opt-in consent for the move, or a new direct debit bank mandate, for example.

IV. CONCLUSION

Pursuant to Article 20.5 of the Electricity Regulation, the Commission invites the UK to amend its implementation plan to take utmost account of the above comments of the Commission. The UK is invited to publish its amended plan within three months and inform the Commission.

Pursuant to Article 20.6 of the Electricity Regulation, the UK shall monitor the application of their implementation plan and shall publish the results of the monitoring in an annual report and submit that report to the Commission. In this report, the UK is invited to explain whether and to what extent the market reforms have been implemented according to the planned timeline, and if not explain the reasons why.

The Commission's position on this particular notification is without prejudice to any position it may take on the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained therein to be confidential. The UK is invited to inform the Commission within ten working days following receipt whether and why they consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which they wish to have deleted prior to such publication.

Done at Brussels, 30.4.2020

For the Commission
Kadri Simson
Member of the Commission

