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COMMISSION OPINION

of 30.4.2020

**pursuant to Article 20(5) of Regulation (EC) No 2019/943 on the implementation plan of
Belgium**

(ONLY FRENCH AND DUTCH VERSIONS ARE AUTHENTIC)

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I. PROCEDURE

On 25 November 2019 the Commission received an implementation plan from the Belgian Energy Ministry prepared pursuant to Article 20(3) of Regulation (EC) No 2019/943 (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, Belgium proposes to implement the following measures:

1. General wholesale price conditions

Belgium claims that there are no price caps or regulated prices in relation to wholesale electricity in the Belgian market. Day-ahead and intraday electricity prices on wholesale markets are only limited by technical price limits.

2. Balancing markets

- (a) Belgium states that the balancing market price cap was increased in 2018 to a dynamic price cap of 13,500 €/MWh, a value well above the current intra-day maximum clearing price.
- (b) Belgium has introduced a so-called ‘alpha component’ in its imbalance pricing mechanism. It constitutes an extra imbalance price component laid upon Balance Responsible Parties (BRPs) to increase the real-time price signal when the system imbalance of the Belgian control zone increases. Belgium states that it is reviewing its ‘alpha component’.
- (c) In Belgium, frequency containment reserves (FCR) and manual Frequency Restoration Reserves (mFRR) are open to all technologies, all players, all voltage levels. Automatic Frequency Restoration Reserve (aFRR) is only open to CIPU units

(Contract for the Injection of Production Units). Belgium has proposed the following commitments related to the procurement of balancing and ancillary services:

- (1) Not later than July 2020, FCR shall be tendered on a daily basis and procured exclusively regionally.
 - (2) Not later than July 2020, aFRR shall be tendered on a daily basis and all technologies, all players and all voltage levels will be able to participate in the market. Activated balancing energy shall be remunerated through marginal pricing as soon as there will be sufficient liquidity.
 - (3) Since February 2020, mFRR is dimensioned & sized on a daily basis, and activated balancing energy is remunerated through marginal pricing.
- (d) Belgium is implementing Imbalance Netting, as well as prepares for joining the EU balancing platforms for aFRR and mFRR which are expected to be in place by end 2021 and 2022 respectively.

3. Demand side response

- (a) Demand side response is eligible to participate in the wholesale electricity markets (including day-ahead and intra-day) as well as the balancing market and is treated in a similar way as other market participants and balancing service providers. Demand side response can be represented either individually or via aggregators.
- (b) Belgium commits to a roll-out of smart meters which will be different for each of its regions:
 - (1) Flanders:
 - (a) No later than 2023, 33% of customers shall have a smart meter.
 - (b) No later than 2028, 66% of customers in Flanders shall have a smart meter.
 - (c) No later than 2034, 100% of customers in Flanders shall have a smart meter.
 - (2) Wallonia:
 - (a) No later than 1 January 2023, there will be a systematic roll out of smart meters (i) for residential consumers in default of payment, (ii) when the meter has to be changed, (iii) for new connections to the grid, (iv) when the consumer requests it.
 - (b) No later than 31 December 2029, there will be 80% of smart meter installed for (i) consumers with a consumption equal or above 6.000 kWh, (ii) prosumers, when the net developable electrical power is equal or above 5 kWe; (iii) for charging points open to the public.
 - (3) Brussels Region: smart meters rolled out (i) when meters have to be changed or (ii) for new connections to the grid.

4. Retail markets: regulated prices

Belgium applies public interventions in the price setting for the supply of electricity to energy vulnerable household customers, which represent around 10% of residential customers (less than 5% of demand). The tariff is based on the lowest commercial tariff in the zone with the lowest network tariff and thus follows the evolution of market prices.

There is currently no plan of the government to eliminate social tariffs. Belgium commits to comply with Article 5 of Directive (EU) 2019/944¹ (hereinafter “Electricity Directive”) regarding market-based supply prices.

5. Interconnection

(1) Belgium has worked on improving its interconnections with other Member States and will already have an electricity interconnection rate of 21% at the beginning of 2020 which is above the interconnection targets referred in point (d)(1) of Article 4 of Regulation (EU) 2018/1999. The following Belgian network reinforcements recently became or will become operational in the coming years:

- (a) ALEGrO: The ALEGrO PCI project for a 1 GW interconnector between Belgium and Germany is on track to be commissioned by 2020
- (a) NEMO: The NEMO PCI project for a 1 GW interconnector between Belgium and the UK has been operational since 2019
- (b) BRABO: The BRABO PCI project concerns an upgrade of the Belgian electricity grid with the aim to, among others, increase the import capacity from the Netherlands

6. Other measures

Belgium currently has a strategic reserve in place. Belgium commits that the design of the current strategic reserve shall meet the requirements of Article 22(2) of the Electricity Regulation.

¹ 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

III. COMMENTS

On the basis of the present notification the Commission has the following comments on the implementation plan. As a general consideration, the Commission reiterates that the thorough implementation of the rules proposed as part of the Clean energy for all Europeans package² is essential to making sure that the transition to a climate natural energy system takes place at least cost and that the security of supply is maintained during transition.

1. General wholesale market considerations

The Commission welcomes that there are no price caps for day-ahead and intraday markets in Belgium other than the harmonised maximum and minimum clearing prices for single day-ahead and intraday coupling in accordance with Articles 41(1) and 54(1) of Commission Regulation (EU) 2015/1222³.

2. Balancing markets

Regulation (EU) 2017/2195⁴ (EGBL) emphasises the importance of correct remuneration of balancing services and defines minimum rules for the procurement of balancing services through a competitive process. In this regard, the Commission welcomes Belgium's commitment to have single harmonised products as much as possible, allow open participation for all technologies, all players, all voltage levels and daily procurement.

The Commission also welcomes the commitment of Belgium to participate in the EU platforms for mFRR, aFRR and imbalance netting according to Article 20, 21 and 22 of EGBL as well as existing initiatives for joint procurement of FCR resources.

Effective scarcity pricing will encourage market participants to react to market signals and to be available when the market most needs them and ensures that they recover their costs in the wholesale market. Article 44(3) of EGBL describes an additional settlement mechanism separate from the imbalance settlement, to settle the procurement costs of balancing capacity, administrative costs and other costs related to balancing, preferably achieved with the introduction of a shortage pricing function. The Commission notes that Belgium has already introduced a so-called 'alpha component' in its imbalance pricing mechanism that exhibits some characteristics of a scarcity pricing function. It constitutes an extra imbalance price component laid upon BRPs to increase the real-time price signal when the system imbalance of the Belgian control zone increases. By doing so, it provides extra financial incentives to BRPs to avoid large and persistent imbalances. The Commission notes that the 'alpha component' relates to balancing energy and applies only to BRPs.

The Commission is of the view that the 'alpha component' already exhibits certain characteristics of a scarcity pricing function. The Commission, however, invites Belgium to

² <https://ec.europa.eu/energy/en/topics/energy-strategy/clean-energy-all-europeans>

³ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, 25.7.2015, OJ, L 197, p.24

⁴ Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing 28.11.2017, OJ L 312, p. 6

consider whether the scarcity pricing function should apply not only to BRPs but also to balancing service providers (BSPs). This may support security of supply by ensuring that BRPs and BSPs face the same price for the energy produced/consumed, as price differentiation may result in inefficient arbitrage from market players. The Commission also considers that the scarcity pricing function should be triggered by the scarcity of reserves in the system and it should be calibrated to increase balancing energy prices to the Value of Lost Load when the system runs out of reserves. The Commission invites Belgium to consider amending its scarcity pricing scheme accordingly by no later than 1 January 2022.

3. Demand-side response

Belgium has committed to a progressive roll out of smart meters in the different regions: Flanders, Wallonia and Brussels. The Commission notes that Flanders has decided on a full roll-out of smart meters over the next 15 years. In contrast, Wallonia & Brussels have not committed on a full roll out.

The Commission considers that Belgium should continue the rollout of smart meters with the necessary functionalities to facilitate the uptake of price-based demand response. This would help to reduce peak loads. This would also enable all Belgian consumers to get access to new services and products, better modulate their energy behaviour and get rewarded for doing so, while also serving the interests of the energy system as a whole. Moreover, the national authorities are encouraged to promptly put in place a simple and transparent framework for access to data by eligible parties, as well as consumers and those with their consent, to effectively operationalise the respective provisions (Articles 23, 24) of the Electricity Directive.

4. Retail markets: regulated prices

The Commission welcomes Belgium's commitment to comply with Article 5 of the Electricity Directive. In addition, the Commission notes that the public intervention in prices applied in Belgium falls under Article 5(3) to (5) of the Electricity Directive, namely public interventions in the price setting for the supply of electricity to energy poor and energy vulnerable customers. The Commission would like to draw Belgium's attention in particular to paragraph 4(d) of Article 5 regarding limitation in time and relevant case law⁵. Also, Article 5(5) of the Electricity Directive provides that if Member States apply such price interventions, they shall also comply with point (d) of Article 3(3) and Article 24 of

⁵ Case C-265/08, *Federutility*, paragraph 35: « First, such an intervention must be limited in duration to what is strictly necessary in order to achieve its objective [...]. In that respect, the mere fact that the national law in question labels the intervention as temporary is not in itself sufficient for a finding that it is proportionate from the point of view of its duration. [...] In that context, the referring court should examine whether and to what extent the relevant national law requires the administration to make a periodic re-examination, at close intervals, of the need for it to intervene in the gas sector and the manner of its doing so, having regard to the development of that sector.

Regulation (EU) 2018/1999⁶ regardless of whether the Member State concerned has a significant number of households in energy poverty. The relevant provisions require Member States to set an indicative objective to reduce energy poverty and to outline policies and measures to address energy poverty, and to report thereon in their integrated national energy and climate progress report.

IV. CONCLUSION

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

Pursuant to Article 20.6 of the Electricity Regulation, Belgium shall monitor the application of its implementation plan and shall publish the results of the monitoring in an annual report and submit that report to the Commission. In this report, Belgium 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. Belgium 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

⁶ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council, 21.12.2018, OJ, L 328, p.1