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**COMMISSION OPINION**

**of 20.5.2021**

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

(ONLY THE BULGARIAN VERSION IS AUTHENTIC)

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### I. PROCEDURE

On 20 January 2020, the Commission received an implementation plan from Bulgaria 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, Bulgaria proposes to implement the following measures:

#### 1. General wholesale price conditions

The Bulgarian wholesale market is very concentrated. The main State-owned power producers – under the Bulgarian Energy Holding (hereafter ‘BEH’) group - Kozloduy NPP, Natsionalna Elektriesheska Kompania (hereafter ‘NEK’) and Maritsa East 2 TPP (hereafter ‘ME2’) have approximately 60% market share in electricity production (including sales to NEK on the regulated market)<sup>1</sup>. A large part of the wholesale market is regulated, as there are two market segments on the wholesale market in Bulgaria – regulated and free.

##### *Free market*

In the free market, prices are determined based on demand and supply. Bulgaria indicates that there are no price caps for day-ahead and intraday markets in Bulgaria 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) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management<sup>2</sup> (hereafter ‘CACM Guideline’).

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<sup>1</sup> BEH mix of energy sources combines nuclear, lignite and hydropower. See information on BEH: <https://bgenh.com/en/page/51/Overview.html>.

<sup>2</sup> 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

The Independent Bulgarian Energy Exchange EAD (hereafter ‘IBEX’), as the single organised trading platform in Bulgaria, was established in January 2014. IBEX was wholly owned by BEH. In order to solve the competition concerns identified in the Commission decision on the case BEH – Electricity<sup>3</sup>, BEH committed to divest its ownership in IBEX. Since 12 February 2018, IBEX is owned and controlled by the Bulgarian Stock Exchange (“BSE-Sofia”).

IBEX operates as a monopoly nominated electricity market operator (NEMO) in the meaning of Article 5 of CACM Guideline. National law expressly provides that no more than one licence can be granted within Bulgaria to carry out day-ahead and intraday trading services.

Bulgaria gives an indication on market liquidity: the volumes traded on the day-ahead market have shown an upward trend since the Commission decision on BEH – Electricity was adopted. The volumes traded on the intraday market appear to be on a modest but volatile upward trend. Forward trading (for physical delivery) and availability of futures trading is limited in Bulgaria at present.

### *Regulated market*

In Bulgaria, certain plants are required to sell their output at administrative prices (rather than prices determined freely on the market) to NEK, the central buyer. These so called “quota obligations” include:

- (a) the Maritza East 1 (hereafter ‘ME1’) and Maritza East 3 (hereafter ‘ME3’) power plants, who have to sell their output to NEK at prices and quantities of energy and capacity set according to long term power purchase arrangements (hereafter ‘PPAs’); and
- (b) certain other plants<sup>4</sup> under quota obligations who are obliged to sell their output to NEK at prices and quantities determined each year by the regulatory authority (‘Energy and Water Regulatory Committee’ or ‘EWRC’). The volumes are based on forecasts provided by NEK regarding the quantities of electricity that will be required to serve the regulated retail market. The prices - made up of energy and capacity payments - are generator specific and cover each plant’s fixed costs and variable costs. Generators are selected based on their ability to produce at a price no more than 10% above the regulatory authority’s projected baseload market price.

On this regulated market, NEK has a role of ‘central buyer/ public provider’: it purchases electricity from these generators and supplies it to suppliers who serve end-consumers on regulated prices. The Electricity Security of Supply Fund<sup>5</sup> (hereafter ‘ESSF’) compensates NEK for the difference between its purchase costs and its revenues from sales to end suppliers. If the amount supplied to NEK exceeds demand in the regulated market, NEK has the right to sell additional volumes on the free market.

In this context, Bulgaria commits to the following reforms:

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<sup>3</sup> Commission decision of 10.12.2015 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union Case AT.39767 - BEH Electricity.

<sup>4</sup> Currently, under the quota system are the following power plants: Kozloduy NPP, ME2, TPP Bobov dol, Hydro Power Plants owned by NEK, RES under 1 MW, CHPs under 1 MW.

<sup>5</sup> ESSF in turn raises revenues from sales of EU ETS allowances, a 5% contribution on domestic generators’ revenues and the public obligation fee.

- (a) By 30 June 2021, Bulgaria commits to terminating regulated producer prices in the form of two contracts for long-term purchase of electricity (i.e. ME 1 and ME 3 PPAs) concluded with NEK.
- (b) Immediately after point (a) and in parallel to the introduction of the capacity mechanism, Bulgaria commits to eliminating the existence of the quota obligations for the other plants and the role of NEK as ‘public provider’.

Bulgaria commits that, as a result, all producers shall sell the electricity they generate on the free market.

## **2. Balancing markets**

Bulgaria provides a detailed description of the balancing market. It indicates that it plans to update and adapt the balancing market design. The measures include:

### *Balancing*

- (a) publishing the current system balance, estimated imbalance prices and estimated balancing energy prices as close as possible to real time, with a delay not exceeding 30 minutes after delivery as per Article 6 of the Electricity Regulation, by 1 February 2021;
- (b) ensure that for at least 40% of the standard balancing products and a minimum of 30% of all products used for balancing capacity, contracts for balancing capacity shall be concluded for no more than one day before the provision of balancing capacity and the contracting period shall be no longer than one day. The contracting of the remaining part of the balancing capacity shall be performed for a maximum of one month in advance of the provision of balancing capacity and shall have a maximum contractual period of one month as per Article 6 of the Electricity Regulation, by 1 July 2021;
- (c) allowing market participants to submit their bids as close to real time as possible as per Article 6 of the Electricity Regulation, by 31 December 2021;
- (d) ensuring that balancing gate closure time is not before the intraday cross-zonal transmission capacity gate closure time, by 31 December 2021;
- (e) removing price restrictions for balancing energy activation as per Article 10 of the Electricity Regulation, by 1 July 2022;

### *Imbalance settlement*

- (f) introducing a 15 minutes’ imbalance settlement period as per Article 8 of the Electricity Regulation, by no later than 31 December 2022;
- (g) introducing a single balancing price for periods where balancing energy was not activated, by 31 December 2022. The imbalance price shall reflect the value of avoided activation of balancing energy from frequency restoration reserve or replacement reserve in accordance with Article 55 of Commission Regulation 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing<sup>6</sup> (‘hereafter Balancing Guideline’) (i.e. the lowest price bid for activation of balancing energy submitted to the TSO during the relevant settlement period).

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<sup>6</sup> Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, OJ L 312, 28.11.2017, p. 6–53

### **3. Demand side response**

Bulgaria indicates that all types of demand-side response are eligible to participate in the wholesale electricity markets (including day-ahead and intraday), as individual players or via aggregators. Any demand side response provider who can provide at least 5MW of demand response is also eligible to participate in providing Replacement Reserve (RR) services and also can participate in Frequency Containment Reserves (FCR) and Frequency Restoration Reserves (FRR) competitive monthly tenders, which have been performed from December 2020. Some large industrial consumers do currently participate in providing Replacement Reserves. However, there are currently no demand side response aggregators active in Bulgaria.

Bulgaria also communicates that 100% of industrial users, 53% of business customers in the free market and almost 0% of customers in the regulated market are provided with smart meters. Smart meters are capable of metering and transmitting at least hourly metering values and data management systems enable suppliers to settle customers based on at least hourly metering values. Regarding the installation of smart meters, Bulgaria has recently approved amendments to the Bulgarian Energy Act, which now requires electricity distribution companies to install smart meters for industrial clients if requested.

Bulgaria claims that all customers in the free market have, at least in principle, access to dynamic price contracts linked to wholesale spot market prices. Most suppliers offer dynamic price contracts, which offer a tariff equal to the hourly spot market price plus a surcharge. No such contracts exist for customers on the regulated market.

Bulgaria does not propose any commitments to improve demand response participation in the markets nor regarding further smart meter deployment.

### **4. Retail markets: regulated prices, energy poverty and vulnerable customers**

Bulgaria indicates that there are two segments<sup>7</sup> on the retail market – regulated and free.

On the free market, ‘free market suppliers’ supply electricity to household and non-household customers at prices based on supply and demand.

On the regulated market, ‘end suppliers’ supply electricity to household consumers connected at the distribution level at regulated prices determined by the regulatory authority. Regionally designated end suppliers purchase their electricity supplies from NEK, the ‘central buyer/public provider’. NEK in turn purchases electricity from generators on long-term PPAs or at prices determined by the regulatory authority (see section 1 above).

Bulgaria communicates that differences between retail regulated and free market retails tariffs depend on a) the difference between the cost at which power is purchased from NEK by end suppliers and the wholesale price of power faced by free market suppliers; and b) differences

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<sup>7</sup> There are also suppliers of last resort who guarantees the universal service provision as a last resort in accordance with a license obtained from the regulatory authority. They have an obligation to supply electricity to consumers who are connected at the distribution level who have not chosen a supplier or when the supplier they have chosen fails to provide the supply.

in the allowed profit for ‘end suppliers’ compared to required profits for ‘free market suppliers’.

Bulgaria indicates that since October 2020 all non-household consumers are supplied from the free market. This means that only household consumers are eligible to buy electricity at regulated prices. In this regard, Bulgaria communicates that the ERWC will determine the regulated retail prices for each calendar year, based on forecast wholesale market prices.

There is currently no definition of energy poor or vulnerable customer in Bulgaria and there is no clear pathway for the transition to market-based retail prices for other groups of customers.

In this context, Bulgaria proposes the following reforms:

- (a) implementing measures to ensure a smooth and gradual transition for household customers to a liberalised electricity retail market, through the partial regulation of prices until full deregulation after 31 December 2024.
- (b) developing a platform for comparing electricity supply offers, freely available to all households, which should be operational by early 2021 - to accompany the liberalisation process.
- (c) introducing a mechanism for the protection of vulnerable consumers before the liberalisation process of electricity prices for household customers is launched.
- (d) determining criteria such as low income, high energy costs as a share of the available income, and low energy efficiency for identifying households in a position of energy poverty in accordance with Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity<sup>8</sup> (hereafter ‘Electricity Directive’) by 31 December 2021. Bulgaria indicates that this shall allow an estimation of the number of households in a position of energy poverty, and possibly the setting of an indicative target to reduce this number. At present, the draft plan indicates that Bulgaria is not planning to introduce public interventions in the retail price setting for vulnerable customers.

## **5. Interconnection capacity and cross-border trade**

### *Interconnection targets*

Bulgaria indicates that it has reached the interconnection target of 10% by 2020 and of at least 15% by 2030 as per Article 4(d)(1) of Regulation 2018/1999.

According to Bulgaria, there are currently no structural congestions in the internal electricity network. Nonetheless, Bulgaria commits to monitoring the situation and appropriate action will be taken in case structural congestions materialise.

Bulgaria indicates that redispatching instructions and payments are made to generators through the balancing mechanism as it is currently not possible to separately identify the costs of redispatching actions taken through the balancing mechanism (as opposed to the costs of actions required for overall energy balance of the Bulgarian system).

### *Market coupling*

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<sup>8</sup> 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, OJ L 158, 14.6.2019, p. 125–199.

Bulgaria expects day ahead market coupling with its neighbours in the following timeframe:

- (a) Romania - Work is underway to launch a market coupling project at the Bulgaria - Romanian border, which is expected to start in August 2021.
- (b) Greece - Market coupling at the Bulgarian - Greek border is expected to be implemented in April 2021.
- (c) Northern Macedonia - Market coupling on the Bulgarian - Northern Macedonia border is expected to take place in Q1 2022.
- (d) Serbia – Trilateral market coupling on the Bulgaria, Serbia and Croatian borders is expected to take place after 2021.

Bulgaria expects the following timeline for intraday coupling:

- (a) Romania – the Bulgarian-Romanian border joined the second wave of the single intraday coupling project in November 2019.
- (b) Greece – the Bulgarian – Greece border is expected to join the third wave of the single intraday coupling project expected to start end 2021.

#### *Import-export fees*

Bulgaria indicates that the electricity export fees that have previously been in place in Bulgaria have been removed. Bulgaria states that in 2015 a requirement was introduced for all generators in Bulgaria and importers to Bulgaria to pay a contribution equivalent to 5% of monthly revenues to the Electricity Security of Supply Fund (ESSF). The charge faced by importers was abolished in 2019. There are currently no plans for amendment or removal of the 5% contribution.

### III. COMMENTS

On the basis of the present notification the Commission has the following comments on the draft decision. As a general consideration, the Commission reiterates that the thorough implementation of the rules proposed as part of the Clean energy for all Europeans package<sup>9</sup> is essential to making sure that the transition to a climate neutral energy system takes place at least cost and that the security of supply is maintained during transition.

#### 1. General wholesale market considerations

##### *Price caps*

The Commission welcomes that, in line with Article 10 of the Electricity Regulation, there are no price caps for day-ahead and intraday markets in Bulgaria 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 the CACM Guideline.

##### *Wholesale market liberalisation and market-based supply*

The Commission recalls that Articles 3 and 10 of the Electricity Regulation establish strict rules on the operation of electricity markets. In particular, prices shall be formed based on demand and supply, whereas market rules should encourage free price formation. In addition, Article 10 requires that Member States identify policies and measures in their territory that could contribute to indirectly restricting wholesale price formation. Member States shall in such cases take measures to eliminate any measure having impact on wholesale price formation against the above-mentioned rules.

In this context, the Commission is of the view that the fact that NEK's purchases are not on a market basis but instead governed by minimum purchase ("take-or-pay") obligations (in the case of ME1 and ME3, included in their respective PPAs with NEK) and decisions by the regulatory authority on the regulated prices (in the case of the 'quota obligations'), distorts competition in the electricity market. Indeed, in at least some periods, there may be a risk that regulated demand is met through regulated purchases of generation when cheaper alternatives may have been available in the free market. In other times, the regulated prices at which NEK procures electricity may be so low as to have exclusionary effects on free market suppliers who procure from generators on market based prices.

At the same time, the prices for the regulated market segment as well as the payments under the PPAs contain a capacity payment for availability of the eligible producers. The Commission notes that such capacity payments seem to fall under the rules for capacity mechanism of the Electricity Regulation and they should thus be made compliant as soon as possible. Irrespective of this opinion, the Commission reserves its right to take any further actions in this regard.

The Commission welcomes in principle the profound reform of the Bulgarian wholesale power market where all Bulgarian generation should be able to genuinely compete for all Bulgarian demand at free prices. This would mean that all generators owned by BEH (in particular Kozloduy NPP, 'ME2' and hydro producers) are released from their quota or similar obligations to NEK in serving the regulated market.

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<sup>9</sup> <https://ec.europa.eu/energy/en/topics/energy-strategy/clean-energy-all-europeans>

Given the need to be compliant with the rules of the Electricity Directive and Electricity Regulation on market-based supply prices, the Commission is of the view that the elimination of the quotas in Bulgaria should take place immediately. Maintaining the quota model for prolonged periods of time will prolong the distortions caused between the liberalized market and the regulated market.

Regarding the termination of the long-term purchase agreements of ME1 and ME3, the Commission notes the commitment of Bulgaria to terminate these contracts. Such termination together with the elimination of quota obligations and the role of NEK is expected to increase supply competition and liquidity in the day-ahead and forward markets. While doing so, Bulgaria should take into account potential consequences of such termination for the good functioning of the market and take measures to ensure that liquid forward, day-ahead and intraday markets exist in Bulgaria.

The Commission strongly recommends that the quotas' elimination be synchronised with the termination of the long-term power purchase agreements of ME1 and ME3, i.e. by 30 June 2021 at the latest.

The Commission notes that the Bulgarian Energy Act (Articles 4 and 70) allows the Energy Minister to impose public service obligations to specific undertakings. In the past, it appears that these provisions were used for imposing public service obligations to ME2.

The Commission stresses that all public service obligation provisions must comply with Article 9 of the Electricity Directive and with EU State aid law, as referred to in that Article.

More specifically, public service obligations have to be clearly defined, transparent, non-discriminatory and verifiable, and shall guarantee equality of access for electricity undertakings of the Union to national consumers. Furthermore, in accordance with the CJEU case law, such public service obligations also have to be limited in time and applied to a limited category of beneficiaries excluding wholesale customers<sup>10</sup>. Complying with these requirements is also a pre-condition for State aid approval, which is in principle required for this type of schemes and measures.

#### *Measures towards full liberalisation*

In 2015, the Commission finalised an antitrust investigation under Article 102 TFEU against BEH. In that context, the Commission had identified liquidity issues in the Bulgarian market given the market dominance of BEH via its three electricity generation subsidiaries (Kozloduy NPP, Maritsa East 2 TPP and Hydro Power Plants of NEK), which resulted in a high concentration and limited competition.<sup>11</sup> To address the Commission's competition concerns BEH and its subsidiaries committed, among other things, to offer gradually increasing quantities of electricity on the day ahead market at IBEX, under certain conditions and for a five-year period, from January 2016 to January 2021. The Commission notes based on the data provided by Bulgaria that these commitments led to an increase of liquidity in the day-ahead market. However, while other market players can also offer capacity available to them on the day-ahead market, the structure of the market in terms of dominance of BEH has not been altered.

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<sup>10</sup> See, by analogy, the Judgment of the Court - 10 September 2015, Commission v Poland, Case C-36/14, ECLI:EU:C:2015:570

<sup>11</sup> COMMISSION DECISION of 10.12.2015 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union Case AT.39767 - BEH Electricity, - [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39767/39767\\_2018\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39767/39767_2018_3.pdf).

The Commission acknowledges that market liberalisation, including the elimination of the quota obligations, as committed by Bulgaria and the upcoming market coupling with Greece and Romania will have some positive effect to the share of energy supplied by BEH in the day-ahead market. However, these steps will likely not immediately eliminate the dominant market position of BEH and its subsidiaries. While dominant participants may be a barrier for attracting new players and for creating liquidity in the market, if BEH were to reduce or discontinue providing liquidity in the day ahead market, this may increase the price volatility and expose the buyers to significant price risk. The reliability of the trading results in terms of prices provided by the day ahead market may also be undermined.

Further, it seems that the forward market organised in IBEX (auctions and continuous trading) has very limited liquidity and limited products. The hedging opportunities are further limited due to the recent suspension of the continuous trading platform. At the same time, based on information submitted to the Commission, the market for Bulgarian financial future products operated by EEX has very little liquidity.

The Commission underlines that the IBEX monopoly status covered under the CACM Guideline applies only to day-ahead and intraday markets and under certain conditions. Restrictions to players to trade over the counter (OTC), having equivalent effect to a quantitative restriction on exports or not allowing other organised markets to offer forward services in the territory of Bulgaria need to be assessed considering their impact to the free movement of goods in line with Article 35 of the TFEU and Article 9 of the Electricity Regulation, taking due account of recent case law of the Court of Justice, as well as their impact on competition.<sup>12</sup>

Taking into account the high concentration in the Bulgaria market and the monopoly status of IBEX, the Commission strongly recommends Bulgaria to facilitate for a transitional period the market access to the electricity tied in quota obligations (in particular from the BEH owned power plants of Kozloduy NPP, ‘ME2’ and hydro producers). In this context, Bulgaria should set up a transparent system of primary offerings of electricity through which those power plants would be obliged to offer their expected electricity production. The delivery periods should comprise of at least day-ahead and different maturities of forward deliveries up to two years ahead.

Regarding the day-ahead market, Bulgaria should introduce measures ensuring at least the achieved level of liquidity. Such measures may include the obligation for BEH’s electricity generation subsidiaries to sell certain volumes of electricity in the day-ahead market or the prohibition of bilateral supply contracts for dominant suppliers above certain thresholds while allowing though bilateral trading for other trades.

The offering of forward products should take place through transparent and dedicated auctions, organized at a rolling basis (at least four times per calendar year). The forward products should include different maturities, including at least quarter-ahead and year-ahead products, for the firm delivery of both base and peak-loads. The terms of the auctions should be non-discriminatory and provide equal access to all market participants. There should be no use restrictions on the electricity offered including any restrictions on re-sell or exports.

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<sup>12</sup> Judgment of the Court of 17 September 2020 in Case C- 648/18 Hidroelectrica, ECLI:EU:C:2020:723.

Due to the monopoly nature of IBEX, the exact terms of the auctions, including the conditions of participation, products offered and characteristics of the auctions should be approved by the Bulgarian national regulatory authority after properly consulting with market participants.

The Commission strongly recommends both the quota obligation elimination and the set-up of dedicated forward auctions as soon as possible and no later than 30 June 2021.

### *Monitoring of IBEX*

Due to the monopoly status of IBEX on all segments of the electricity market, the Commission invites Bulgaria to strengthen the monitoring role of the regulatory authority. Decisions having an important impact on market participants should not be left to the discretion of IBEX alone, such as definition or abolishment of forward products.

Further, the Commission invites Bulgaria to introduce rules in line with Article 5(1) and (2) of CACM Guideline according to which, the competent national authority shall fix or approve the NEMO fees for trading in the day-ahead and intraday markets, sufficiently in advance of their entry into force, or specify the methodologies used to calculate them.

## **2. Balancing markets**

The Commission welcomes that the pricing of the balancing energy at marginal price (the highest accepted offer price) was introduced on 1 July 2020. It notes however that price restrictions continue to apply and Bulgaria commits to abolish them only by 1 July 2022 when the European platforms will become operational.

The Commission expresses concerns regarding the link between the removal of the price restrictions and the launch of the European balancing platforms. Bulgaria states that the current price caps for the balancing energy providers' prices are a regulatory solution, made on the basis of analysis carried out by the regulatory authority, appeals by the market participants, and some bad practices and price disturbances in 2014, when the balancing market was introduced. The Commission invites therefore Bulgaria to take measures to eliminate the reasons for such alleged bad practices.

In particular, the Commission considers it crucial that competition increases in the balancing timeframe. It invites Bulgaria to take measures to include more balancing service providers by reviewing prequalification and monitoring requirements allowing participation of as many technologies as possible as demand response and storage. Increase of competition will ease the shift to other required reforms as the elimination of balancing price caps.

The Commission welcomes the commitment of Bulgaria to participate in the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation, the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation, and the European platform for imbalance netting according to Articles 20, 21 and 22 of the Electricity Balancing Guideline, as well as existing initiatives for joint procurement of frequency containment reserve resources, by 1 July 2022.

The Commission notes the above commitment as a positive step towards compliance with the balancing rules in the Electricity Regulation and the Electricity Balancing Guideline. Most of these rules are, however, applicable already and should be implemented as soon as possible.

The Commission stresses that no direct link exists between the operation of the European Balancing Platforms and some of these reforms while acknowledging the need for technical adaptations or other actions in Bulgaria for the implementation of some reforms (e.g. balancing market tools, regulatory interventions, IBEX actions required).

Regarding the publication of data related to balancing as per Article 6 of the Electricity Regulation, the Commission notes that it took place on 1 February 2021. During the public consultation, the Commission received numerous requests for increased transparency and publication of additional data. We encourage Bulgaria to engage with market participants and where appropriate increase transparency in the balancing timeframe.

Regarding the obligation to align the balancing capacity procurement with Article 6(9) of the Electricity Regulation, the Commission welcomes that Bulgaria introduced monthly auctions (for the provision of balancing capacity/reserves) at the end of December 2020 and expects that further steps are taken to ensure that at least 40% of all balancing capacities are purchased on a daily basis. At the same time, any derogation from daily auctions should be granted based on an assessment of the transmission system operator and approval by the regulatory authority as required by the above mentioned provision.

The Commission encourages Bulgaria to bring its rules and procedures in line with Article 6 (4) of the Electricity Regulation allowing market participants to submit their bids as close to real time ensuring that balancing gate closure time is not before the intraday cross-zonal transmission capacity gate closure time, as soon as possible and at the latest as committed in the draft Plan by 31 December 2021. Therefore, the Commission considers that the possibility of balancing service providers to update their offers up to two hours prior to the intraday cross-zonal market gate closure time is not sufficiently meeting this requirement and the commitment for full compliance with the legislation should be included in the draft Plan.

Further, the Commission welcomes the intention to remove price restrictions for balancing energy activation, as well as the shortage and surplus prices as per Article 10 of the Electricity Regulation. Currently bidding limits (100BGN/MWh on top of the received hourly price on day ahead market) are lower than the applied intraday technical bidding limits. In addition, a fixed price for balancing capacity is set to 10BGN/MW. The Commission expects Bulgaria to eliminate such limits as soon as possible, considering other measures (like ex-post market monitoring) and in any case recommends to increase the bidding limits for balancing energy above the minimum intraday bidding limits.

#### *Imbalance settlement*

Regarding the imbalance settlement measures, the Commission welcomes the introduction of a 15 minute imbalance settlement period as per Article 8 of the Electricity Regulation by no later than 31 December 2022. By that time, 15-minute day-ahead and intraday products should also be introduced as required by the said article.

The Commission further encourages Bulgaria to introduce a single balancing price for periods where balancing energy was not activated, as early as possible to comply with Article 55 of the Electricity Balancing Guideline.

Finally, effective scarcity pricing encourages 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 of the Electricity Balancing Guideline 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 invites Bulgaria to consider introducing a scarcity pricing function as soon as

possible but no later than 31 December 2022. Alternatively, Bulgaria should set out another timeline in its final plan including explaining its reasons why the chosen timeline would be more appropriate.

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 Bulgaria 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 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 (VoLL) when the system runs out of reserves.

### **3. Demand-side response and smart meters**

The draft plan does not include measures regarding demand-side response and smart meters.

#### *Demand side response and aggregation*

Bulgaria states that any demand side response provider who can provide at least 5 MW of demand response is eligible to participate in providing certain balancing services (replacement reserves) and can participate in FCR and FRR competitive monthly auctions as introduced from December 2020. Some large industrial consumers do currently participate in providing RR. However, there are currently no demand side response aggregators active in Bulgaria, and neither is there a licensing regime for such players.

Therefore and given the market failures identified regarding the wholesale and balancing market as well as the lack of competition brought forward as justification for some of these failures, the Commission urges Bulgaria to develop or review as appropriate legal, regulatory and technical market rules to enable participation of aggregators (of demand side response and of smaller generation) in the wholesale market and in the balancing market tenders for reserve services.

In this context, it is further the Commission's view that a minimum bid size of 5MW is too high to allow smaller installations' participation in providing replacement reserve services. The Commission invites Bulgaria to decrease such minimum size and recommends 1MW as applied in many other Member States (e.g. France, Germany for FRR, Italy, Greece, Spain, Slovenia) or 500 kW (as set out for day-ahead and intraday markets in Article 8 the Electricity Regulation).

#### *Smart meter rollout*

Based on the plan and to the knowledge of the Commission, no assessment is done or planned regarding the benefits of smart meters deployment since the entry into force of the Electricity Directive. In line with Article 19 (5) of the Electricity Directive, the Commission considers that Bulgaria should commit to undertaking a comprehensive cost-benefit analysis

considering recent developments and market requirements to identify if deployment of smart meters would be cost effective for all or a subset of consumers and provide a timeline for such analysis. Such a cost-benefit assessment should be undertaken in accordance with the principles laid down in Annex II of the Electricity Directive.

In case of a positive cost-benefit analysis, Bulgaria shall ensure the deployment of smart metering systems that assist the active participation of customers in the electricity market in line with Article 19(2) of the Electricity Directive. Considering the deployment would start after 3 July 2019, the smart meters will need to comply with the functional requirements in Article 20 of the Directive. In this regard, the Commission notes that already installed smart meters do not seem to be able to accommodate the future imbalance settlement period of 15 minutes and 15 minutes products and thus considerably limit possibilities for participation of customers in the electricity markets.

In any case and in accordance with Article 5 (7) (f) of the Electricity Directive, Bulgaria will need to ensure that household customers that still benefit from regulated prices are entitled to, and are offered to, receive individual smart meters without extra upfront costs, as well as the necessary information and assistance in this regard. Furthermore, even if the rollout of smart metering systems is negatively assessed, the Commission wishes to remind Bulgaria that, in accordance with Article 21 (1) of the Electricity Directive, all types of final customers, not only industrial clients, are entitled on request, while bearing the associated costs, to have a smart meter installed.

#### **4. Retail markets: regulated prices, energy poverty and vulnerable customers**

##### *Retail market liberalisation*

The Commission welcomes Bulgaria's intention to eliminate regulated final household customer prices by end 2024 following a staged transition to a liberalised electricity market. However, in the Commission's view, in order to provide clear signals and path for such transition, Bulgaria should include a concrete timeline for this stepwise approach in the draft plan.

In the Commission's view, such a stepwise approach could include the following steps:

- A 50% of households based on certain criteria, by end 2022;
- Full retail price deregulation, by end 2024.

Alternatively, Bulgaria should set out another timeline for a stepwise approach in its final plan including explaining its reasons why the chosen timeline would be more appropriate.

The Commission recalls that Article 5 of the Electricity Directive contains detailed rules on market-based supply prices that are applicable from 1 January 2021. Among others, Member States need to ensure that any public interventions respect the rules set and notify the Commission within one month after their adoption.

Furthermore, Bulgaria should re-examine the need for retail price regulation at close intervals, and at least by 1 January 2022 as specified in Article 5 (9) of the Electricity Directive, allowing for the possibility of an earlier phase out.

In the meantime the Commission recalls that regulated prices should be set above cost, at a level where effective price competition can occur, in accordance with Article 5 (7) (c) of the Electricity Directive. Regulated prices should also be designed using a methodology that ensures non-discriminatory treatment of suppliers in accordance with Article 5 (7) (b) of the Electricity Directive. Therefore, the regulatory authority should calculate and publish the regulated prices at close intervals, preferably every quarter.

Furthermore, the Commission recalls that in accordance to Article 5 (7) (e) of the Electricity Directive, Bulgaria should ensure that all beneficiaries of price interventions have the possibility to choose competitive market offers and be directly informed at least every quarter of the availability of the offers and are offered with assistance to switch to a market-based offer.

Finally, the Commission welcomes the elimination of the role of NEK as a ‘central buyer’. This enables the four territorial suppliers to genuinely compete for supply sources (including for imports). Concordantly, the Commission expects the “public service obligation fee” and “public supply” related price component to disappear from the date of the liberalisation of the wholesale market, considering the quantities or the regulated market will be purchased by the end suppliers on a market basis.

#### *Energy poverty*

The Commission welcomes Bulgaria’s consideration to introduce more targeted measures for energy vulnerable and poor consumers. This is important for the social acceptance and justice of the transition. In this regard, Bulgaria should clearly define the concept of vulnerable customers, as well as introduce specific measures to protect them in critical times as soon as possible.

Bulgaria should also assess the number of households in energy poverty and set indicative target for the reduction of energy poverty. In this regard, the Commission recommends Bulgaria to consult the Recommendation on Energy Poverty C(2020) 9600 final and the accompanying staff working document which lists the latest indicator figures across the EU and lays out several best practices on the use of indicators by different Member States.

Data available with the EU Energy Poverty Observatory suggests that Bulgaria faces particular challenges as regards energy poverty, with reportedly 33.7% of the population experiencing difficulties to keep their homes adequately warm and 30.1% of the population being unable to pay their utility bills on time. Therefore, Bulgaria should adopt as soon as possible structural measures to address the problem, notably in the context of its building renovation strategies. In this regard, the Commission refers Bulgaria to the specific section in the Renovation Wave on worst performing buildings and tackling energy poverty and recalls the Commission Recommendation (EU) 2019/786 on building renovation, which provides a

first overview of examples of good practices, notably as regards social housing and delivering advisory services to energy poor households.

The Commission urges Bulgaria to implement the measures and targets pertaining to vulnerable customers and energy poverty before the current indicated deadline on 31 December 2021 considering the transposition deadline of the Electricity Directive on 1 January 2021.

## **6. Network congestion issues, interconnection capacity and cross border trade**

### *Network congestion and interconnection targets*

The Commission welcomes that Bulgaria commits to monitoring the situation of use of interconnections and appropriate action will be taken in case structural congestions materialise.

With respect to this, at present Bulgaria applies a derogation from the requirement to make at least 70% of capacity available for cross-border trade, indicating several reasons including the need for coordination on market coupling, technical limitations and the need to invest in transmission infrastructure. The Commission reminds, however, that technical limitations and underinvestment into transmission infrastructure cannot be considered valid reasons for a derogation from offering at least 70% of capacity available for cross-border trade. Based on Article 16(9) of the Electricity Regulation, the derogation can be granted only if it is necessary for maintaining operational security. The Commission recommends Bulgaria to develop a plan to address the underlying problems with a clear timeline to maximise cross-zonal trade and meet the requirement in Article 16(8) of the Electricity Regulation and to communicate this plan to the Commission and ACER at the latest by end 2021.

The Commission notes that Bulgaria has not suggested a measure to separate bids activated for congestion management from bids for balancing energy in line with Article 13(2) of the Electricity Regulation and Article 30 (1)(b) of the Electricity Balancing guideline. As balancing energy bids used for redispatching shall not set the balancing energy price as from entry into force of the Electricity Regulation on 1 January 2020, the Commission recommends Bulgaria to propose a plan how this legal requirement will be complied with. It is reminded that participation in the European Platforms requires such separation and thus, at the latest by the time of Bulgaria's participation therein a technical solution shall be in place.

### *Market coupling*

The Commission welcomes the efforts of Bulgaria to couple its markets with the neighbours in line with the priorities set by the Commission. It is expected that no further delays occur for coupling the day-ahead markets with Greece and Romania as well as launching the single intraday market coupling on the Greek-Bulgarian border.

### *Import- export fee*

The Commission welcomes that Bulgaria has removed the import fee for foreign generators. The Commission is of the view that Bulgaria should consider removing the 5% contribution of monthly revenues to the ESSF for domestic generators as well. The presence of the 5% contribution is unequal treatment of domestic players towards foreign ones in particular once the market coupling with neighbours takes place. Such levy harms the position of domestic market participants as it equals to an export fee rising the costs of electricity for cross border trade.

Linked to this reform, the Commission expects the need for the 5% contribution to reduce or disappear over time as regulated prices at wholesale level are phased out, NEK's role as 'central buyer/public supplier' is abolished and wholesale prices are formed based on supply and demand. Nonetheless, to the extent revenues from the sales of EU ETS allowances are insufficient for ESSF to pay the costs of support to RES and CHP, Bulgaria should consider changing the basis of recovery of the 5% contribution.

## **7. Other recommendations**

The Commission understands also that Bulgaria has phased out the cold reserve. To be fully effective, this measure should be supplemented by the full and correct transposition and implementation of the Electricity Directive requirements on public service obligations and State aid.

The Commission recommends that Bulgaria together with the other Member States in the region strive for completing all required steps towards establishing a regional coordination centre in accordance with Article 34 to 47 of the Electricity Regulation. The regional coordination centre should be operational by July 2022. Regional coordination centres support the increasingly integrated operation of electricity systems across the EU, thereby ensuring their efficient and secure performance.

It seems that general concerns exist regarding the consultation of market participants during the preparation and adoption of legislative and other acts, including this draft Plan. The Commission invites Bulgaria to consider establishing structured stakeholder fora where all relevant stakeholders are regularly consulted upon and issues raised in the electricity market are discussed. Such national stakeholders' fora, next to the European stakeholder committees established with the CACM Guideline and other similar Regulations, exist in other Member States and have proven useful tools for decision makers and the acceptance of reforms by market participants.

## **IV. CONCLUSION**

Pursuant to Article 20(5) of the Electricity Regulation, Bulgaria shall amend its implementation plan to take utmost account of the above comments of the Commission. Bulgaria is invited to publish its amended plan within 2 months and inform the Commission.

Pursuant to Article 20(6) of the Electricity Regulation, Bulgaria 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, Bulgaria 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. Bulgaria is invited to inform the Commission within five 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, 20.5.2021

*For the Commission*

*Kadri Simson*

*Member of the Commission*