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Rev1

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND THE INTERNAL ENERGY MARKET

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement¹ establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').² The United Kingdom will then become a 'third country'.³

Preparing for the withdrawal is not just a matter for EU and national authorities, but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, stakeholders are reminded of legal repercussions which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the EU rules in the field of energy market regulation⁴ will no longer apply to the United Kingdom. This has in particular the following consequences:

¹ Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

³ A third country is a country not member of the EU.

⁴ Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in electricity, OJ L 211, 14.8.2009, p. 55; Directive 2009/73/EC of the European Parliament and the Council concerning common rules for the internal market in natural gas, OJ L 211, 14.8.2009, p. 94; Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, OJ L 211, 14.8.2009, p. 1; Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges of electricity, OJ L 211, 14.8.2009, p. 15; Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks, OJ L 211, 14.8.2009, p. 36, Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, OJ L 326, 8.12.2011, p. 1.

1. COMPENSATION BETWEEN TRANSMISSION SYSTEM OPERATORS (TSOs)

Regulation (EC) No 714/2009⁵ 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 838/2010⁶ 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 838/2010⁷ 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. As of the withdrawal date this provision will apply to imports of electricity from and exports of electricity to the United Kingdom.

2. INTERCONNECTIVITY

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

- Commission Regulation (EU) 2016/1719⁸ establishes a single platform to allocate TSOs' forward interconnection capacities. It provides a central point of contact to market participant for the booking of long-term transmission capacities across the EU.
- Commission Regulation (EU) 2017/2195⁹ 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) 2015/1222¹⁰ establishes the single day-ahead and intraday coupling of the EU's electricity markets. It assists market participants in

⁵ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges of electricity, OJ L 211, 14.8.2009, p. 15; see notably Articles 13 and 14.

⁶ Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging, OJ L 250, 24.9.2010, p. 5; see notably Annex A, points 2 and 3.

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

⁸ See 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.

⁹ See 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.

¹⁰ See 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.

organising bulk power transactions across EU borders close to delivery time. 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.

As of the withdrawal date, United Kingdom based operators will cease to participate in the single allocation platform for forward interconnection capacity, the European balancing platforms and the single day-ahead and intraday coupling. United Kingdom based NEMOs will become third country operators and will no longer be entitled to carry out market coupling services in the EU.

3. ELECTRICITY AND GAS TRADING

Regulation (EU) 1227/2011¹¹ 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.

As of the withdrawal date, market participants based in the United Kingdom will become third country participants. As a consequence, 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 as of the withdrawal date will need 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.

The national regulatory authority registering market participants from the United Kingdom is responsible for ensuring that the enforcement provisions pursuant to Article 13 to 18 of Regulation (EU) 1227/2011 can be effectively applied.

4. INVESTMENTS IN TRANSMISSION SYSTEM OPERATORS

Directive (EU) 2009/72/EC¹² and Directive (EU) 2009/73/EC¹³ provide for the certification of TSOs. According to Article 11 of Directive (EU) 2009/72/EC and

¹¹ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, OJ L 326, 8.12.2011, p. 1 (REMIT).

¹² Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in electricity, OJ L 211, 14.8.2009, p. 55.

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.

TSOs controlled on the withdrawal date 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 11 of Directive (EU) 2009/72/EC and Directive (EU) 2009/73/EC. Member States may refuse certification where granting certification poses a threat to security of supply of the Member State.

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

Directive (EU) 94/22/EC¹⁴ 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.

As of the withdrawal date, 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.

The website of the Commission on energy policy (<https://ec.europa.eu/energy/en/home>) provides general information. These pages will be updated with further information, where necessary.

European Commission
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¹³ Directive 2009/73/EC of the European Parliament and the Council concerning common rules for the internal market in natural gas, OJ L 211, 14.8.2009, p. 94.

¹⁴ 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.