



**Analysis of the draft amendments to the Law “On the Electricity Market” related to the harmonization of the rules for the cross-border capacity allocation published by NEURC for public consultation on 17 April 2023**

by the Energy Community Secretariat

May, 2023

## PURPOSE STATEMENT

Assessment of the draft amendments to the Law “On the Electricity Market” related to the harmonization of the rules for the cross-border capacity allocation published by NEURC for public consultation on its website

## TABLE OF CONTENT

Introduction	1
Background	1
Compliance assessment	2
Conclusions and recommendations	4

---

### Energy Community Secretariat

Am Hof 4, 1010 Vienna, Austria

Tel: + 431 535 2222

Fax: + 431 535 2222 11

Web: [www.energy-community.org](http://www.energy-community.org)

Twitter: [https://twitter.com/ener\\_community](https://twitter.com/ener_community)

LinkedIn: <https://www.linkedin.com/company/energy-community/>



## Ukraine Energy Market Observatory

Assessment 07/2023

### Introduction

The present assessment concerns draft amendments to the Law “On the Electricity Market” (hereinafter, Electricity Market Law) published for public consultation by the National Energy and Utilities Regulatory Commission (hereinafter, NEURC) on 17 April 2023.<sup>1</sup> The amendments concern joint capacity allocations on interconnectors between Ukraine and neighbouring Parties to the Energy Community such as the European Union and Moldova.

The same issue is addressed by the draft amendments to the Law “On the Electricity Market” (hereinafter, Electricity Market Law) related to provisions on the joint capacity allocations on interconnectors between Ukraine and the neighbouring Parties to the Energy Community (the European Union and Moldova) that were proposed by the Committee on Energy, Housing and Utilities Services of Verkhovna Rada of Ukraine (hereinafter, the Committee) on 21 April 2023 within the draft Law aiming to transpose the Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (hereinafter, the REMIT Regulation) registered as Law No. 5322 that is pending the second reading in May 2023. The Secretariat’s comments to these draft amendments, published in the Ukraine Energy Market Observatory Assessment 06/2023<sup>2</sup> on 2 May 2023, remain valid.

### Background

The Secretariat was consulted on an earlier drafts amendments to the Electricity Market Law prepared by NEURC. Namely, on 13 March 2023, NEURC addressed the Secretariat with a letter and draft amendments simplifying the procedure for adoption of national legislation governing joint capacity allocations. Instead of adoption of a procedure for cross-border allocations, NEURC proposed providing consent to rules to be developed and approved by the electricity Transmission System Operator (hereinafter, the TSO) after agreement with the neighbouring TSOs. The Secretariat provided its comments on 17 March 2023 and supported such proposal subject to ensuring that the NEURC’s consent would be subject to a public consultation by NEURC or the TSO, *Ukrenergo* and that NEURC needs to be competent to request changes to cross-border allocation rules. Following NEURC’s views on the Secretariat’s comments submitted on 24 March 2023, and a meeting between NEURC and the Secretariat held on 29 March 2023, the Secretariat submitted its comments to the draft amendments. Among the rest, the Secretariat underlined that the proposed amendments are considered a transitional approach until the transposition and implementation of the new electricity package by 31 December 2023. Following this, the Secretariat published its

---

<sup>1</sup> [The draft Law of Ukraine "On Amendments to the Law of Ukraine "On the Electricity Market" in terms of settling certain issues of joint auctions for the distribution of throughput capacity of interstate intersections is published | National Energy and Utilities Regulatory Commission \(nerc.gov.ua\)](#)

<sup>2</sup> See: Energy Community Secretariat, Ukraine Energy Market Observatory [Assessment 06/2023 Analysis of the draft amendments to the Law “On the Electricity Market” related to the harmonization of the rules for cross-border capacity allocation registered as Law No. 5322 in Verkhovna Rada of Ukraine](#)

assessment of that draft in Ukraine Energy Market Observatory Assessment 04/2023 in March 2023 (hereinafter, Observatory Assessment 04/2023).<sup>3</sup>

After the publication of the Observatory Assessment, NEURC submitted an updated draft amendments to the Secretariat on 6 April 2023, in which it took into consideration several of the Secretariat's comments, to which the Secretariat submitted its review on 17 April 2023, expressed its support for the draft amendments to the Electricity Market Law with few caveats. Namely, the Secretariat referred to the need for opening public consultation to all interested parties (including foreigners), the need to define a procedure for congestion revenue sharing under unilateral auctions to be applied in transitional period until the joint auctions are introduced, as well as the need to include a clear deadline for submission of the rules on joint cross-border capacity allocation by the TSO to NEURC.

The same day, on 17 April 2023, NEURC published draft amendments to the Electricity Market Law on its website for public consultation. Since those draft amendments did not take into account the last comments submitted by the Secretariat, those are reflected in the compliance assessment below. For the rest, concerning background information and the impact of joint capacity allocation on the markets and stakeholders in Ukraine and the neighbouring systems, the Secretariat refers to its Observatory Assessment 04/2023.

Finally, upon request from Committee, the Secretariat reviewed the draft amendments part of Law No. 5322 and published Observatory Assessment No. 06/2023.

## Compliance assessment

On 15 December 2022, the Ministerial Council by Decision 2022/03/MC-EnC incorporated the European Union's electricity market acquis in the Energy Community complemented by Procedural Act 2022/01/MC-EnC on Regional Energy Market Integration. The deadline for transposition and implementation of those acts by Contracting Parties, including Ukraine, is 31 December 2023. As part of those acts, the Network Codes and Guidelines set out detailed rules related to different market segments and system operation, including related to capacity allocation in for the long-term (Regulation (EU) 2016/1719) and short-term (Regulation (EU) 2015/1222) timeframe.

As the draft amendments to the Electricity Market Law are evidently not intended to transpose Decision 2022/03/MC-EnC, the detailed compliance assessment in the Annex is based on the rules of the Third Energy Package, namely Directive 2009/72/EC and Regulation (EC) 714/2009. Ensuring complete transposition of the new acquis by the end of this year will require further amendments to the primary (and secondary) legislation which are not yet incorporated within these draft amendments published for public consultation by NEURC on 17 April 2023.

The Secretariat finds the draft amendments are largely compliant with the Energy Community *acquis*. However, few provisions still need alignment with the *acquis*:

---

<sup>3</sup> See: Energy Community Secretariat, Ukraine Energy Market Observatory [Assessment 04/2023, Assessment of the draft amendments to the Law "On the Electricity Market" related to the harmonization of the rules for the cross-border capacity allocation provided by the NEURC](#)

- The draft amendments to Article 33(17<sup>1</sup>) and Article 39(10) of the Electricity Market Law shall clearly define that public consultations should be open to every interested party. The objective of such clarification should be allowing participation to both domestic and foreign market participants and national regulatory authorities.
- Section XVII Final and transitional provisions draft amendments to the Electricity Market Law shall ensure:
  - o Congestion revenue sharing under unilateral auctions

Article 43 of the Electricity Market Law obliges the TSO (hereinafter, TSOs) to agree with the neighbouring TSOs on the distribution (sharing) of congestion income in case of joint allocation only, whereas the case of unilateral allocation is not covered by that provision. Given the fact that the sharing of revenues under the unilateral auctions is still an open issue with the neighbouring countries, the Secretariat is of an opinion that the transitional provisions of the Electricity Market Law shall define an obligation for congestion revenue sharing also under unilateral allocation until joint auctions are put in place as required by point 6.3 of Annex I to Regulation (EC) 714/2009).

- o Temporary character of unilateral auctions

Provisions governing unilateral auctions, i.e. para 3 in Article 38(10) of the draft amendments to the Electricity Market Law defining that “*if joint coordinated procedure for transmission capacity allocation is not introduced, the capacity allocation structure shall be approved by the Regulator,*” shall be moved to the Section XVII Final and transitional provisions. The reason being that the very objective of the draft amendments to the Electricity Market Law is to enable performing joint auctions by *Ukrenergo* and the neighbouring TSOs, and any unilateral auction shall be temporary in accordance with the Procedure currently in place. Otherwise, it is not clear which rules would govern unilateral auctions, having in mind that the Procedure now in place, according to the draft amendments is moved to final and transitional provisions. In addition, the final and transitional provisions governing this issue, should specify clearly the temporary character of such unilateral auctions by specifying the temporary validity of the Procedure for allocation currently in place only until joint auctions are introduced.

- o A clear deadline for the submission of the rules for capacity allocation for NEURC's approval

A timeline for the TSO to submit proposal(s) to NEURC (e.g. 6 months from the entry into force of the Electricity Market Law amendments at the latest) should be defined in the final and transitional provisions.

With regard to the argument that since submission of rules by *Ukrenergo* depends on prior agreement with the neighbouring TSOs, the Secretariat would like to underline that such clarity is a general EU practice also when agreement of several TSOs is required. Moreover, as the Secretariat was informed by the TSOs during the joint meeting on 31 March 2023 that the rules for daily and long-term allocations are already drafted, the Secretariat considers that there are no obstacles for their swift submission to the NEURC for approval.

## Conclusions and recommendations

The proposed amendments to the Law are largely compliant with the Energy Community *acquis* in force. That said, the Secretariat recommends that:

- it is necessary that the draft amendments stipulate that public consultations should be open to every interested party, thus allowing participation of foreign entities;
- as the rules for joint allocation are a crucial next step for further integration of the Ukrainian market with the neighboring ones, it is highly recommended to stipulate deadlines by the Law for the submission of draft rules for cross-border allocations to be made by the TSO (as short as possible);
- acknowledging that the Electricity Market Law lacks clarity on the sharing of congestion revenues with neighbouring TSOs under unilateral auctions, the Secretariat recommends introducing an additional provision (into the Final and Transitional Provisions as a temporary measure for the period of the unilateral allocation), defining that the congestion revenues are shared among the TSOs involved, in accordance with criteria agreed between the TSOs involved and reviewed by the respective regulatory authorities;
- the draft amendments shall stipulate the temporary character of unilateral auctions, by phasing out the Procedure for (unilateral) allocations now in force when joint auctions would be introduced;
- having in mind that such compensation in case of *force majeure* is introduced by the draft amendments to the Electricity Market Law for the case of joint cross-border allocations, it is recommended to envisage such compensation during the temporary period of unilateral auctions, by defining it in the final and transitional provisions.

Artur Lorkowski

Dirk Buschle