Response by Energia to SEM Committee Consultation Paper

SEM-20-028

Implementation of Regulation 2019/943

in relation to

Dispatch and Redispatch

22 June 2020

1. Introduction

Energia welcomes the opportunity to respond to this important SEM Committee consultation on the implementation of Regulation 2019/943 (the Regulation) in relation to dispatch and redispatch. This consultation addresses complex and fundamental changes to SEM that go beyond the scope of the issues addressed in the paper, and highlight the need for urgent decisions, further consultations and dedicated workstreams across all market participants to progress. There are also areas of the consultation paper where we fundamentally disagree with the positions adopted by the RAs, on both legal and policy grounds, primarily in relation to the compensation for redispatch in Article 13.

In this response we do not directly address the formal consultation questions as they risked distracting from the key issues contained in the consultation paper. The response has been structured so as to first put the requirements of Articles 12 and 13 in some context and Section 2 outlines the consistent and purposeful intention of the EU Commission to reform the internal electricity market in response to the challenges of climate change, the Paris agreement and the EU's own objective of being a global leader in the area of renewable energy. In Section 3, some of the specific issues outlined in the consultation paper with Article 12 are addressed. Section 4 addresses Article 13; it provides a detailed examination of the specific requirements of the Article and a critique the RAs interpretation of various aspects of it. Finally, Section 5 draws together some of the conclusions from the response and highlights some areas where we feel urgent action is required.

Within this document there are references the IWEA response to this consultation, specifically on the correct legal interpretation of Article 13(7). It should be noted that Energia endorses the IWEA response to this consultation and it is representative of our views.

2. EU's Clean Energy Package & Regulation 2019/943

Before addressing the specifics of the Articles that are the subject of this consultation, it is informative to step back and consider the wider legislative and policy framework, of which the Regulation forms an important part. In 2015, the European Commission outlined its proposals for the Energy Union. The Energy Union is based on five related and mutually reinforcing dimensions:

1. **Security, solidarity and trust** – diversifying Europe's sources of energy and ensuring energy security through solidarity and cooperation between EU countries
2. **A fully integrated internal energy market** – enabling the free flow of energy through the EU through adequate infrastructure and without technical or regulatory barriers
3. **Energy efficiency** – improved energy efficiency will reduce dependence on energy imports, lower emissions, and drive jobs and growth
4. **Climate action, decarbonising the economy** – the EU is committed to a quick ratification of the Paris Agreement and to retaining its leadership in the area of renewable energy

5. **Research, innovation and competitiveness** – supporting breakthroughs in low-carbon and clean energy technologies by prioritising research and innovation to drive the energy transition and improve competitiveness.[1]

Dimensions 2 and 4 are arguably the most relevant to the current consultation and they highlight that Europe is to become a leader in the area of renewable energy and that a fully integrated internal market should enable the free flow of energy through adequate infrastructure and without technical or regulatory barriers.

To give further effect to the objectives of the Energy Union and noting the conclusion of the Paris Climate Agreement in 2015, in 2016 the EU Commission set out a series of legislative and non-legislative proposals; the Clean Energy Package for All Europeans (CEP). While final agreement on the proposals was not until 2019, the central elements remained largely unchanged throughout. In this package, the Commission addressed all five dimensions of the Energy Union:

1. **Energy efficiency first**: the revamped directive on energy efficiency sets a new, higher target of energy use for 2030 of 32.5%, and the new Energy performance of buildings directive maximizes the energy saving potential of smarter and greener buildings.
2. **More renewables**: an ambitious new target of at least 32% in renewable energy by 2030 has been fixed, with specific provisions to foster public and private investment, in order for the EU to maintain its global leadership on renewables.
3. **A better governance of the Energy Union**: A new energy rulebook under which each Member State drafts National Energy and Climate Plans (NECPs) for 2021-2030 setting out how to achieve their energy union targets, and in particular the 2030 targets on energy efficiency and renewable energy. These draft NECPs are currently being analysed by the Commission, with country-specific recommendations to be issued before the end of June.
4. **More rights for consumers**: the new rules make it easier for individuals to produce, store or sell their own energy, and strengthen consumer rights with more transparency on bills, and greater choice flexibility.
5. **A smarter and more efficient electricity market**: the new laws will increase security of supply by helping integrate renewables into the grid and manage risks, and by improving cross-border cooperation.[2]

As one would expect, there is a strong focus on promoting renewable investment, in part by managing relevant risks, and helping to integration renewables into the grid to provide for a more efficient electricity market that is world-leading on renewables. There is also a clear focus on customers in the Energy Union and consequently the CEP, with new measures to strengthen customer rights, facilitate customers' participation in energy markets, and "*to provide final customers – household and business – with safe, secure, sustainable, competitive and affordable energy*"[3].

Regulation 2019/943 of the European parliament and of the Council on the internal market for electricity (recast), is an integral part of the achievement of Europe's long-

[1] https://ec.europa.eu/energy/topics/energy-strategy/energy-union_en?redir=1

[2] https://ec.europa.eu/info/news/clean-energy-all-europeans-package-completed-good-consumers-good-growth-and-jobs-and-good-planet-2019-may-22_en

[3] Regulation 2019/942; Recital 2

term ambitions. Herein the fundamental principles of the electricity market across Europe are spelled out, using the EU's most powerful legislative device, a Regulation.

Box 1: What is a Regulation?

A "regulation" is a binding legislative act. It must be applied in its entirety across the EU.[4] An EU Regulation has general application to Member States, is binding in its entirety and is directly applicable without the need for any national implementing legislation.[5] An EU Regulation also has direct effect, meaning that it can be relied on in a national court, and its provisions will override any inconsistent national law.[6]

The strict implementation of an EU Regulation is therefore not something in respect of which a Member State (or any emanation thereof, including the RAs) has any discretion. The Regulation must be implemented strictly in accordance with its terms and statutory duties emanating from domestic legislation must be seen as being subservient to the provisions of the Regulation.

Article 3 of the Regulation sets out the principles regarding the operation of electricity markets and is worth citing in full:

Box 2: *Article 3 Principles regarding the operation of electricity markets*[7]

Member States, regulatory authorities, transmission system operators, distribution system operators, market operators and delegated operators shall ensure that electricity markets are operated in accordance with the following principles:

(a) prices shall be formed on the basis of demand and supply;

(b) market rules shall encourage free price formation and shall avoid actions which prevent price formation on the basis of demand and supply;

(c) market rules shall facilitate the development of more flexible generation, sustainable low carbon generation, and more flexible demand;

(d) customers shall be enabled to benefit from market opportunities and increased competition on retail markets and shall be empowered to act as market participants in the energy market and the energy transition;

(e) market participation of final customers and small enterprises shall be enabled by aggregation of generation from multiple power-generating facilities or load from multiple demand response facilities to provide joint offers on the electricity market and be jointly operated in the electricity system, in accordance with Union competition law;

(f) market rules shall enable the decarbonisation of the electricity system and thus the economy, including by enabling the integration of electricity from renewable energy sources and by providing incentives for energy efficiency;

(g) market rules shall deliver appropriate investment incentives for generation, in particular for long-term investments in a decarbonised and sustainable electricity system, energy storage, energy efficiency and demand response to meet market needs, and shall facilitate fair competition thus ensuring security of supply;

[4] https://europa.eu/european-union/eu-law/legal-acts_en

[5] Article 288 of the Treaty on the Functioning of the European Union (TFEU).

[6] *Van Gend en Loos* (case 26/62)

[7] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0943

(h) barriers to cross-border electricity flows between bidding zones or Member States and cross-border transactions on electricity markets and related services markets shall be progressively removed;

(i) market rules shall provide for regional cooperation where effective;

(j) safe and sustainable generation, energy storage and demand response shall participate on equal footing in the market, under the requirements provided for in the Union law;

(k) all producers shall be directly or indirectly responsible for selling the electricity they generate;

(l) market rules shall allow for the development of demonstration projects into sustainable, secure and low-carbon energy sources, technologies or systems which are to be realised and used to the benefit of society;

(m) market rules shall enable the efficient dispatch of generation assets, energy storage and demand response;

(n) market rules shall allow for entry and exit of electricity generation, energy storage and electricity supply undertakings based on those undertakings' assessment of the economic and financial viability of their operations;

(o) in order to allow market participants to be protected against price volatility risks on a market basis, and mitigate uncertainty on future returns on investment, long-term hedging products shall be tradable on exchanges in a transparent manner and long-term electricity supply contracts shall be negotiable over the counter, subject to compliance with Union competition law;

(p) market rules shall facilitate trade of products across the Union and. regulatory changes shall take into account effects on both short-term and long-term forward and futures markets and products;

(q) market participants shall have a right to obtain access to the transmission networks and distribution networks on objective, transparent and non-discriminatory terms.

In summary both in Article 3 and elsewhere, the Regulation provides a number of clear objectives for these recast market rules, including:

1. Provide for market-based electricity trading and balance responsibility.
2. Complete the effective integration of renewable energy into the internal energy market to drive investments in the long term and contribute to delivering the objectives of Energy Union and the 2030 climate and energy framework.
3. Removal of State interventions and market distortions in the European wholesale electricity market, including priority dispatch.
4. Enable decarbonisation, facilitate the development of sustainable low carbon generation and deliver appropriate investment incentives for renewable generation.
5. Maximise the use of electricity generated from renewable sources or high-efficiency cogeneration.

However, the Regulation is noteworthy both for what it includes and what it does not include. There are various references to customers in the Regulation but these relate primarily to opportunities for customers' increased participation in the market. There is a single reference to affordability in Recital 2 of the Regulation (as quoted above) relating to the objectives of the Energy Union. At no point does the Regulation

reference the overall cost implementation may impose on customers, or that this is a relevant consideration for Member States. In this regard, the intention of the Regulation is clear; regulatory and technical barriers, including grid, as well as the cost to customers, are either nor relevant or should be overcome, such that the further deployment of renewable electricity generation is both promoted and facilitated.

In terms of the two Articles that form the basis for this consultation; Article 12 requires all (new) renewable generators to participate in the market on the same basis as conventional generators and for the use of electricity from renewable sources or high-efficiency cogeneration to be maximised. Article 13 requires a market-based system for redispatch but where such a market does not exist, it stipulates that generators must receive full financial compensation such that they are indifferent to the redispatch action imposed on them; i.e. they are to receive the benefit they otherwise would have had the opportunity to obtain, if there had been a market. While this summary could be described as an over-simplification of the complex issues raised in the consultation paper, it nevertheless highlights the necessary conclusion of this process; i.e. the full market integration of renewables into SEM, noting the benefits and burdens this places on (new) renewable generators, with the unfettered ability to be compensated for redispatch where the system cannot guarantee the capability of the network(s) to transmit the maximum amount of electricity produced from renewable energy sources or high-efficiency cogeneration.

In light of the foregoing, it is appropriate at this point to pick-up a number of the points made by the RAs in the consultation as to why SEM might be different or as to why the requirements of the Regulation, specifically Article 13, may not apply,including;

(i) "*the balance of risk between consumers and generators*";

(ii) "*the utility of curtailed electricity*";

(iii) "*the limited funding available to invest in programmes to reduce the overall level of curtailment and facilitate higher levels of renewables on the system*";

(iv) the "*high level of instantaneous renewable generation in the SEM in comparison to the majority of EU Member States*";

(v) "*specific characteristics in the SEM in relation to system wide curtailment that are not reflected in other EU Member States*";

(vi) the fact that "*one of the SEM Committee's primary responsibilities is to protect the interests of electricity consumers on the island of Ireland*" and "*the inclusion of compensation of curtailment within DBCs up to the level outlined in Article 13(7)(b) would present an additional cost and risk to consumers based on the level of support provided to renewable generators and the DAM price over time*"; and

(vii) "*the differences between the jurisdictional renewable energy support schemes which generators currently benefit from or will benefit from in future, including the total MW in support, capacity factors and support prices per MWh*".

To the extent that any of these points are relevant considerations, they were at best arguments to be included in the finalisation of the Regulation. For the purposes of the exercise at hand, the implementation of Articles 12 and 13, these arguments are irrelevant as they breach one or more of the following:

1. Expressing a view that is contrary to the intention of the Regulation;

2. Seeking to ignore the hierarchy of laws on the island;
3. Having regard to irrelevant considerations, not provided for in the Regulation.

In summary, it is apparent from this examination of the Regulation and of the wider objective of the Energy Union framework, including the CEP, that the terms of this Regulation must strictly be implemented and in doing so are designed to give certainty and clarity to the market and to investors. Europe has set a clear strategy here to attract renewable electricity investment and not to delay or diminish this investment on the basis of regulatory or technical barriers – e.g. the ability of the grid to accommodate the volume of renewable electricity required to meet the 2030/50 climate targets – that should be removed or overcome through market based mechanisms to invest where required or incur the cost of providing the necessary certainty to investors.

3. Article 12 Dispatch

As already noted, Article 12 requires all (new) renewable generators to participate in the market on the same basis as conventional generators and for the use of electricity from renewable sources or high-efficiency cogeneration to be maximised. Importantly, it provides for ending the designation of all but the smallest new renewable generation projects as priority dispatch; a key pillar of the existing market and associated systems. The implementation of Article 12 in SEM raises a number of issues, some of which a are discussed here and also receive a more detailed exposition in the IWEA response.

Eligibility for Priority Dispatch

Energia is aligned with both IWEA and EAI in supporting the view that the correct approach to the grandfathering of priority dispatch rights is to limit the scope of any such grandfathering to contracts concluded prior to 4th July 2019, that provide a route to market; e.g. REFIT/ROC Letter of Offer or PPA. The core principle underpinning this position is the separation of separation of projects as we move from a support regime that is no longer open to new applicants (REFIT / ROC) to a new scheme; e.g. RESS or any support scheme forthcoming from the NI Strategic Energy Review. In the case of the former, the inclusion of priority dispatch and non-priority dispatch projects in RESS is an unnecessary complicating factor, particularly given the RESS Terms and Conditions and the approach to negative price events.

In terms of the other options proposed, neither adhere to the principle of separating REFIT from RESS. Furthermore, commissioning programmes are rare and therefore seem as an usual basis upon which to seek to base this definition and it is unclear what contracts of relevance are concluded where a unit is merely eligible to be processed to receive a valid connection offer.

Equal Treatment of All Generators in Scheduling and Dispatch and Balance Responsibility

Further to the broader objective of the Regulation previously discussed, the equal treatment of all but the smallest generation units in the market is a requirement. On this point the consultation paper is clear, non-dispatchable renewable generators that are “in the market” do not participate on an equal basis with dispatchable units today and, are unable to submit TOD or COD and where PN’s are submitted, they are ignored by the TSOs who include their own forecasts of availability for the units.

The requirements of this Article will necessitate changes to the central market systems to allow all non-priority dispatch, non-dispatchable, controllable generators to fully participate in the market. Clarity on the changes required and the timing of the

changes is urgently required, particularly if the impact of this uncertainty on the upcoming RESS auction is to be avoided.

Full market participation also brings with it the challenges of balance responsibility for the generator. The full implementation of Article 13 and the corresponding opportunity or entitlement to access compensation for redispatch, is representative of the symbiotic arrangements in the Regulation with respect to market risk and reward.

Revision of the Priority Dispatch Hierarchy

On the inclusion of the proposal to revise the priority dispatch hierarchy, it is apparent from both the consultation paper, as well as from engagements with both the RAs and EirGrid, that these proposals require further consideration, explanation and consultation.

At this stage, the main points upon which we would request further clarity are:

1. Is it sustainable to have two separate priority dispatch hierarchies, as set out in in sections 3.4 and 4.3 of the consultation paper?
2. How is the term "SNSP restrictions" to be implemented in the initial priority dispatch hierarchy and how is such an approach consistent with the requirement of the Regulation and other legislation?
3. In the event that these changes are made, how will they be given effect to in the BMPS?
4. Given this is outside of the scope of Article 12 of the Regulation, what priority will it be given in terms of the changes that are otherwise required by law?

Definition of "significant modification" and the Cessation of Priority Dispatch

Article 12 envisages loss of priority dispatch where there is a significant modification to a power-generation facility. There is deemed to be a significant modification to a power-generation facility where a new connection agreement "is required". The term "significant modification" needs careful consideration and, as noted by the RAs, may lead to adverse consequences, particularly where amended and restated connection agreements are issued to address, for example, a separately metered extension to allow for co-location of new renewables development with existing generation. An amendment of an existing connection offer (whether or not restated at the same time that it is being amended) is not as a matter of law a "new connection agreement". It is the same connection agreement, albeit amended. This is a well-established legal principle.

Energia supports IWEA's position that a new connection agreement by itself does not trigger the loss of priority dispatch; priority dispatch is lost if there is a material change to a metered Generator Unit (in SEM terminology) that has required a new connection offer. If a new connection agreement is entered into for policy reasons or convenience, but the relevant modification could have been affected by amending the existing connection agreement, then it necessarily follows that a new connection agreement is not required. Article 12 only requires that there is significant modification to a power-generation facility where a new connection agreement is required, not when a new connection agreement is entered into for convenience but the modification could have been implemented without the new agreement.

Energia also shares IWEA's concerns over the merging of units, both of which have priority dispatch, and for modifications already in train. We also support the request

for clear processes and transparency from the System Operators as to when and why new connection agreements are "required" as per Article 12.

Overall, the points raised here in relation to Article 12 and the consultation paper indicate an urgent need for clarity on certain issues – e.g. eligibility for priority dispatch and a definition of "significant modifications" – as well as a number of other areas that will require further consultation; e.g. priority dispatch hierarchy.

One aspect that requires urgent consideration and engagement amongst industry, the Regulatory Authorities, System Operators and SEMO is in relation to understanding how non-priority dispatch renewables, both new generators and existing generators wishing to forego priority dispatch as per the Regulation, will participate in the market; how settlement will work; and what market systems will be utilised in order to dispatch these units.

4. Article 13 Redispatch

Article 13 of the Electricity Regulation sets out how redispatching is governed, outlines objectives for System Operators to minimise redispatch, and how financial compensation for redispatched generation, energy storage or demand response is facilitated. In furtherance of the broader objectives of the Regulation and CEP outlined herein, the Article introduces an unequivocal requirement on TSO to compensate generators for redispatch. In so doing, the Article provides for the following intended outcomes:

i. Certainty to investors;

ii. A counter-weight to generators that are to be newly exposed to balancing risk;

iii. The correct incentives to TSOs in how they plan, build and operate the system; and,

iv. An important metric on the SEM's overall compliance with the requirements of the Regulation; the higher the level of compensation, the more work that has to be done by the TSOs to guarantee systems capable of transmitting the large volumes of renewable energy expected under the Clean Energy Package.

Before turning specifically to the issues relating to compensation for redispatch, it is instructive to consider some of the other provisions contained in the Article.

Market Based Redispatch

Consistent with the requirements of this Regulation – see Article 3 – and of the wider framework of the CEP and Energy Union, the redispatch of generation should be market based. So as to highlight the clear intention of the Regulation in this regard, the following is an extract of Article 13(1) to 13(3).

1. *The redispatching of generation and redispatching of demand response shall be based on objective, transparent and non-discriminatory criteria. It shall be open to all generation technologies, all energy storage and all demand response, including those located in other Member States unless technically not feasible.*

2. *The resources that are redispatched shall be selected from among generating facilities, energy storage or demand response using market-based mechanisms and shall be financially compensated. Balancing energy bids used for redispatching shall not set the balancing energy price.*

3. *Non-market-based redispatching of generation, energy storage and demand response may only be used where:*

   (a) no market-based alternative is available;

   (b) all available market-based resources have been used;

   (c) the number of available power generating, energy storage or demand response facilities is too low to ensure effective competition in the area where suitable facilities for the provision of the service are located; or

   (d) the current grid situation leads to congestion in such a regular and predictable way that market-based redispatching would lead to regular strategic bidding which would increase the level of internal congestion and the Member State concerned either has adopted an action plan to address this congestion or ensures that minimum available capacity for cross-zonal trade is in accordance with Article 16(8).

In summary, redispatch should be market-based, open to all and financially compensated. Non-market based redispatching of generation is only permitted where a market-based solution is not available, has been fully exhausted or for reasons of competition related to congestion or otherwise, it is not possible. It is important to note that with a market-based approach, there is no distinction between the firm and non-firm delivery of energy; "*[i]t shall be open to all generation technologies*". The requirements of Article 13(1) to 13(3) are clear and unequivocal.

Reporting and Requirements on System Operators

Similar to the previous section, it is instructive to extract the relevant provisions in Article 13 relating to the reporting requirements on the system operators, as well as the other requirements in relation to redispatching and the suitability of the grid. These aspects are expressly covered in Article 13(4) to 13(5):

4. *The transmission system operators and distribution system operators shall report at least annually to the competent regulatory authority, on:*

   (a) the level of development and effectiveness of market-based redispatching mechanisms for power generating, energy storage and demand response facilities;

   (b) the reasons, volumes in MWh and type of generation source subject to redispatching;

   (c) the measures taken to reduce the need for the downward redispatching of generating installations using renewable energy sources or high-efficiency cogeneration in the future including investments in digitalisation of the grid infrastructure and in services that increase flexibility.

   The regulatory authority shall submit the report to ACER and shall publish a summary of the data referred to in points (a), (b) and (c) of the first subparagraph together with recommendations for improvement where necessary.

5. *Subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria established by the regulatory authorities, transmission system operators and distribution system operators shall:*

   (a) guarantee the capability of transmission networks and distribution networks to transmit electricity produced from renewable energy sources or high-efficiency cogeneration with minimum possible redispatching,

which shall not prevent network planning from taking into account limited redispatching where the transmission system operator or distribution system operator is able to demonstrate in a transparent way that doing so is more economically efficient and does not exceed 5 % of the annual generated electricity in installations which use renewable energy sources and which are directly connected to their respective grid, unless otherwise provided by a Member State in which electricity from power-generating facilities using renewable energy sources or high-efficiency cogeneration represents more than 50% of the annual gross final consumption of electricity;

(b) take appropriate grid-related and market-related operational measures in order to minimise the downward redispatching of electricity produced from renewable energy sources or from high-efficiency cogeneration;

(c) ensure that their networks are sufficiently flexible so that they are able to manage them.

Article 13(4) clearly sets out the reporting and governance framework by which market-based redispatching mechanisms and their effectiveness are outlined, including the measures taken to reduce the need to redispatch generation from renewable sources or high-efficiency cogeneration. Furthermore, there is a requirement on RAs to publish the relevant data and recommendations for improvement where necessary.

In terms of what improvements may be necessary, Article 13(5) sets out the requirements on SO in respect of the grid and redispatching of renewable generation. These requirements include a guarantee as to the "*capability of transmission networks and distribution networks to transmit electricity produced from renewable energy sources or high-efficiency cogeneration with minimum possible redispatching*". Limited redispatching is provided for in certain circumstances, with some discretion expressly afforded to Member States wherein, "*electricity from power-generating facilities using renewable energy sources or high-efficiency cogeneration represents more than 50% of the annual gross final consumption of electricity*"; i.e. in systems with less than 50%, this Article establishes a maximum in all circumstances of 5% redispatch of renewables and high-efficiency cogeneration.

There is also a requirement to "*take appropriate grid-related and market-related operational measures in order to minimise the downward redispatching of electricity produced from renewable energy sources or from high-efficiency cogeneration*" and to "*ensure that their networks are sufficiently flexible so that they are able to manage them*".

Taking the Article as a whole up to this point, it is clear that redispatching of renewables should be as low as possible, with active measures being taken by the system operators and RAs to address any issues, and that in a market-based system for redispatch, it should be open to all and units must be compensated.

Non-Market Based Redispatching and Compensation

Up to this there has been a consistency in the principles, objective and requirements contained in this Article, that is mirrored in the Regulation as a whole, the CEP and back to the Energy Union. It would seem somewhat inconsistent at this point that the remaining part of the Article would depart from this strong and consistent thread but it nevertheless requires some consideration. For this purpose, Article 13(6) and 13(7) have been reproduced herein:

6. *Where non-market-based downward redispatching is used, the following principles shall apply:*

   (a) *power-generating facilities using renewable energy sources shall only be subject to downward redispatching if no other alternative exists or if other solutions would result in significantly disproportionate costs or severe risks to network security;*

   (b) *electricity generated in a high-efficiency cogeneration process shall only be subject to downward redispatching if, other than downward redispatching of power-generating facilities using renewable energy sources, no other alternative exists or if other solutions would result in disproportionate costs or severe risks to network security;*

   (c) *self-generated electricity from generating installations using renewable energy sources or high-efficiency cogeneration which is not fed into the transmission or distribution network shall not be subject to downward redispatching unless no other solution would resolve network security issues;*

   (d) *downward redispatching under points (a), (b) and (c)shall be duly and transparently justified. The justification shall be included in the report under paragraph 3.*

7. *Where non-market based redispatching is used, it shall be subject to financial compensation by the system operator requesting the redispatching to the operator of the redispatched generation, energy storage or demand response facility except in the case of producers that have accepted a connection agreement under which there is no guarantee of firm delivery of energy. Such financial compensation shall be at least equal to the higher of the following elements or a combination of both if applying only the higher would lead to an unjustifiably low or an unjustifiably high compensation:*

   (a) *additional operating cost caused by the redispatching, such as additional fuel costs in the case of upward redispatching, or backup heat provision in the case of downward redispatching of power-generating facilities using high-efficiency cogeneration;*

   (b) *net revenues from the sale of electricity on the day-ahead market that the power-generating, energy storage or demand response facility would have generated without the redispatching request; where financial support is granted to power-generating, energy storage or demand response facilities based on the electricity volume generated or consumed, financial support that would have been received without the redispatching request shall be deemed to be part of the net revenues.*

Save for in certain circumstances, Article 13(6) introduces a new hierarchy of redispatch in markets where non-market-based redispatching is used. In relation to this hierarchy and the hierarchy proposed in relation to Article 12, important issues and points of clarification arise that must be addressed by the RAs; this must be done urgently to inform the wider aspects of the implementation of the Regulation.

Article 13(7) clearly outlines the approach to non-market-based redispatch compensation as being payable "*by the system operator requesting the redispatching to the operator of the redispatched generation, energy storage or demand response facility except in the case of producers that have accepted a connection agreement under which there is no guarantee of firm delivery of energy*". in terms of the level of

compensation, it states that this shall be "*at least equal to the higher of*" the "*additional operating cost caused by the redispatching*" and the day-ahead net revenue that would have been received, including any financial support payable on the volume of electricity generated (e.g. metered generation), that would have been paid other than for the redispatching. Once again, the Article in unequivocal in it how the level of compensation should be calculated and in how it expressly relates to the financial compensation payable to the redispatched "*generation… facility*".

The Article does allow for an adjustment to be applied, if by applying the strict formula set-out in Article 13(7) it would "*lead to an unjustifiably low or an unjustifiably high compensation*". In such circumstances, the Article only provides for a combination of the compensation approaches outlined in 13(7)(a) and 13(7)(b) to be applied. By expressly doing so, the Article prevents the substitution of alternative approaches and must, within the intention of the article, only makes an adjustment to the level of financial compensation such that it is no longer and an "*unjustifiably low or an unjustifiably high compensation*" to the generation facility.

Herein we adopt the legal interpretation of Article 13(7) provided in section 5.2 of the IWEA response to this consultation and for the avoidance of doubt, we say that this is the only interpretation that is consistent with the requirements and objectives of the Article, the Regulation and the wider framework of the CEP and Energy Union, and is applicable to all non-market-based redispatch (constraint and curtailment).

Financial Compensation and SEM-20-028

Having presented the requirements of Article 13 and what we say is the only correct legal interpretation of the Article, it is possible to summarise our views on the treatment of financial compensation in the consultation paper.

1. The RAs have erroneously concluded that constraints in SEM are market based; constraints in SEM are non-market-based. It is obvious under the requirements of Article 13(1) and 13(2) that the generation facility must be able to fully participate in the market in a non-discriminatory manner. This consultation paper goes to great lengths in relation to Article 12 to describe how non-dispatchable renewable generators do not and cannot fully participate in the market; this is precisely the basis for the market changes that are required for non-priority, non-dispatchable generators.

   Furthermore, it is impossible to reconcile the difference in financial compensation paid under what is erroneously termed a market-based approach in SEM and the amount that should be paid under the non-market-based compensation requirements of the Regulation; i.e. higher of net day-ahead revenue and REFIT/ROC. It is not possible to conclude that the difference is the result of a competitive process, given the non-dispatchable renewable generator is unable to bid in the market and thus to compete. There is no explanation for this difference offered in the consultation paper

   Pursuant to the Regulation and for the reasons provided in the consultation paper, the SEM Committee's position that constraints for non-dispatchable renewable generators are market-based cannot lawfully be sustained.

2. The RAs have correctly interpreted curtailment in SEM as non-market-based redispatch. The analysis undertaken by the RAs that is presented in the paper correctly interprets the requirements of Article 13(7) and for the avoidance of any doubt the paper includes the following (page 47):

> *The RAs' interpretation of this, in the context of the SEM, is that under the current pro-rata curtailment regime, an appropriate level of compensation should be provided to curtailed generators, based on the higher of the additional operating cost caused by redispatching (for which non-synchronous units in the SEM currently have short run marginal costs of 0), or the net revenues from the day-ahead market including any financial support that would have been received under support schemes (such as REFIT, ROCs or RESS) (provided the financial support in question is linked to the amount actually generated). Where it is deemed that the level of financial compensation is unjustifiably high or low, compensation may be provided based on a combination of both elements.*

At no point in the paper do the RAs refer to the applicable day-ahead price or the REFIT, ROC or RESS price – as the basis for financial compensation for non-market-based redispatching for the purposes of curtailment in SEM – as being "unjustifiably high". On the contrary, as evidenced by their own analysis, the applicable day-ahead or the REFIT, ROC or RESS price is regarded by the RAs as the appropriate level of compensation in these circumstances.

We are in full agreement with the RAs on this interpretation.

3. The RAs have erred in law and has introduced an irrelevant consideration into their assessment of non-market-based compensation for curtailment in SEM. Furthermore, this interpretation is inconsistent with the wider objectives and requirements of the Regulation and of the broader CEP framework.

   Having clearly set out the appropriate level of compensation for non-market-based redispatch (re. curtailment) in SEM and that this level is not "unjustifiably high", the RAs have sought to introduce a further test within Article 13(7) relating to the volume of non-market-based redispatch. Not only does that test not exist, the implication is it would reduce the level of compensation payable to a generator for non-market-based redispatch to below the level of compensation specified in the Regulation and considered appropriate by the RAs. Furthermore, it is inconsistent with and would frustrate the intention of the Article and wider provisions of the Regulation.

   If the level of compensation is prescribed, as it is in Article 13(7), and it is not considered by the RAs to be "unjustifiably high" but the RAs regard the overall cost to be "unjustifiably high", it indicates that the RAs' issue is with the volume of non-market based redispatching in the SEM. As this is one of the specific issues the Regulation seeks to address, it is entirely wrong and unsustainable for the RAs to persist with this line of argument.

   It is therefore firmly our view that RAs interpretation of "unjustifiably high" is wrong and that the analysis and conclusions that follow from it, including the options, are irrelevant and impermissible considerations, with the intention of frustrating the objectives of the Regulation.

For the avoidance of doubt, it is firmly Energia's view that the redispatch of non-dispatchable renewable generation in SEM is non-market-based. Full financial compensation, as per the agreed interpretation of Article 13(7), should be paid to all affected generators for the volume of energy redispatched by the system operator in the case of curtailment but limited to generators capable of the firm delivery of energy for constraints. It is also necessary that generators receive this compensation and changes will be required to the calculation of the PSO by CRU to account for this.

Finally, as this Regulation came into force on 01 January 2020, it is imperative that the RAs act with the requisite urgently to introduce it.

5. Conclusions

This consultation has given rise to a number of complex and fundamental questions regarding the role and participation of primarily non-dispatchable renewables in the SEM. As is the intention of the Regulation, the RAs have no option but to address these challenges and to fully implement the requirements of Articles 12 and 13. This must be done in a manner that is consistent with all of the requirements of the Regulation. It is apparent from this response that both Articles 12 and 13 play an important role in the transformation of the internal electricity market and to achieving the objectives of the CEP and Energy Union.

As the Regulation came into force on 1st January 2020, the RAs must urgently progress the implementation of the required changes and noting this consultation is a first step, continued meaningful progress will be necessary. Some of the required changes are significant, both in terms of the system implementation issues they give rise to but also for market participants and potential investors. It is therefore important that the RAs set a clear roadmap for full implementation of Articles 12 and 13, and in the interim provide as much clarity to the market as possible. As the implementation of Articles 12 and 13 is overdue, separate dedicated workstreams should be tasked with the implementation of key aspects of the regulation as soon as possible.

Noting that not all issues will be resolved by this consultation alone, we call on the RAs to urgently address the following:

1. Decide on the threshold to be applied to the grandfathering of priority dispatch. There is a strong justification for limiting the scope for grandfathering priority dispatch only to those units who, prior to the Regulation, had a reasonable expectation, arising from a concluded legal agreement, of benefitting from it; i.e. those with legal agreements on a route to market in place prior to 4 July 2019 and have evidence of same.

   A decision on the implementation of "significant modifications" is also urgently required.

2. The RAs should immediately institute a workstream on the required market reform with the System Operators, in consultation with market participants. This scope of this work, from design to full implementation, should be strictly time limited (e.g. 12 months) so as to minimise further delay and uncertainty for investors, and potential costs for customers.

3. Noting the importance of understanding the approach to compensation to informing the considerations of market participants on other significant areas affected by this consultation – e.g. hierarchy of priority dispatch, RESS auctions, NI Energy Strategy and support for renewables – a decision on the issue of compensation is urgently required.

   We can see no basis in the Regulation for the positions outlined by the RAs in respect of redispatch compensation for either constraints or curtailment. As a result, the RAs positions on compensation for redispatch are considered to be flawed and ultimately unsustainable in the context of the legal requirements and policy objectives of the Regulation.

The EU's Clean Energy Package is intended to facilitate the achievement of Europe's 2030 targets and longer-term objectives. Compliance with this Regulation is a legal

requirement throughout Europe and to achieve this, change is inevitable and may come with a cost. The Regulation is silent on the cost of achieving compliance and given affordability for customers is addressed elsewhere in the CEP, it must be that the overall cost is an irrelevant consideration, save for where expressly provided for in the Regulation. The benefits t customers follow from the full implementation of the Regulation. We note this is undoubtedly a challenge for the RAs given their statutory mandate but it is the law and the Regulation has precedence. It is therefore the responsibility of the RAs to strictly implement the requirements of Articles 12 and 13, and to do so as soon as possible.