

## Regulation EU 2019/943

### Legal Advice Request

1. The DCP 420 Working Group identified article 18 of the [regulation \(EU\) 2019/943](#) (see figure 1 below) as a potential cause for concern in relation to:
  - a. non-discriminatory charging of network users; and
  - b. introducing unrelated costs to support unrelated policy objectives.

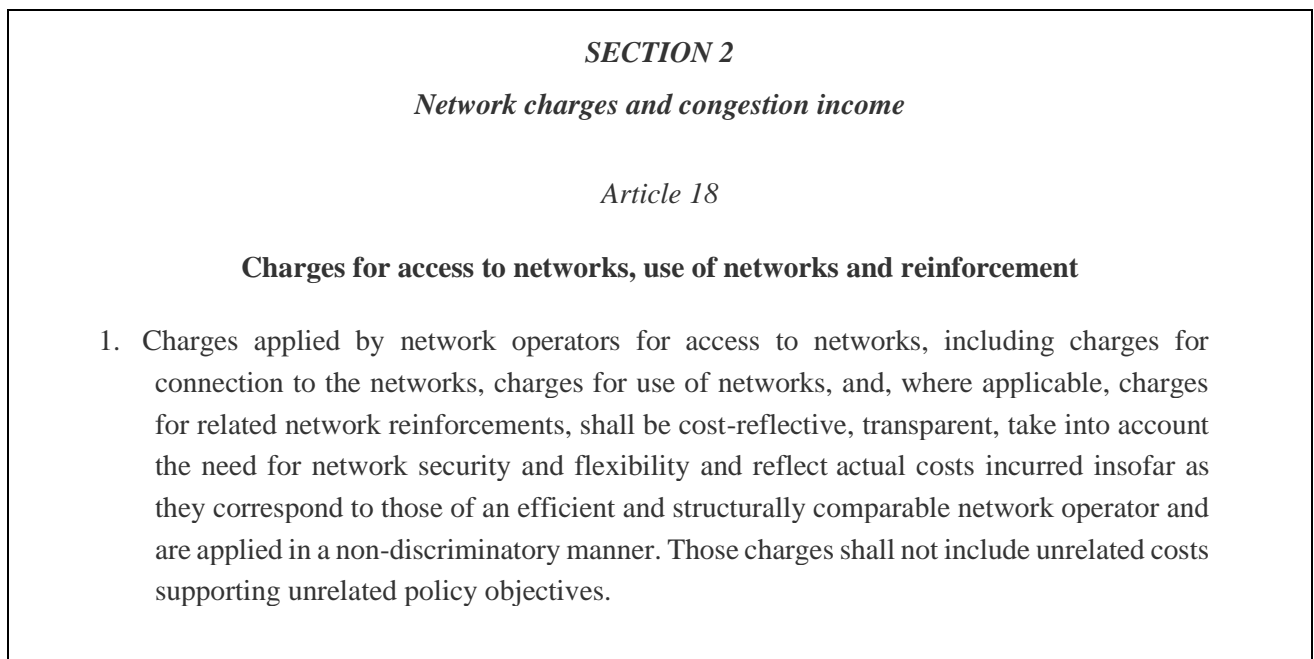


Figure 1

2. The DCUSA Secretariat, acting on behalf of the DCP 420 Working Group, sought guidance from its legal advisors, Gowling WLG, on compliance with EU legislation EU2019/943.
3. The legal advice stated that the Working Group correctly identified the need to comply with the legislation and that the Working Group would need to consider this in the development of the final solution. However, to provide a full legal assessment of the compliance of any proposed solution would require significant additional work and therefore result in additional costs to industry. It is therefore proposed that Parties consider any compliance issues relating to the options above and the EU legislation with their own legal advisors and provide feedback as part of their consultation responses. These will be collated in the change report for consideration by Parties during voting and in the change declaration for consideration by the Authority.
4. The Working Group agreed that it would like to seek a firmer view from DCUSA's legal advisors.
5. The DCUSA Secretariat, acting on behalf of the DCP 420 Working Group, sought approval from the Panel to seek additional legal advice from Gowling WLG.

## Panel Decision

6. The Panel decided not to approve the request for additional legal advice. This is primarily on the basis that there is unlikely to be sufficient benefit from the output to warrant the additional cost that would be incurred. In reaching this decision, the Panel considered a number of points:
  - a. That the Working Group had sought some preliminary legal advice on the matter but that the Working Group believed the advice provided to date fell short of providing a definitive view on whether the options currently proposed comply with the regulation or whether this prevents the Working Group from progressing a solution.
  - b. Whether, if they were to approve the request, the same advice might be applicable to DCP 412 'Allocation of banding for TCR Charges for 'Peak' Final Demand Customers', as it had also covered the topic of potential conflict with Article 18 of EU Regulation 2019/943. However, the Panel noted that there were differences as DCP 420 is seeking to change the charging arrangements for a very specific subset of customers (i.e., publicly accessible EV charging stations) and DCP 412 is seeking to change the charging arrangements for any customers whose consumption patterns fit a particular set of criteria.
  - c. That the initial legal advice provided was likely to be sufficient for the purposes of the Working Group, in that it covered off that the group had correctly identified the relevant topics and so would be able set out their discussions and views on the topic in their final change report such that Ofgem can then make an informed decision with all the relevant information available to them.
  - d. That any further view from Gowling WLG is likely to be caveated with the fact that it is their opinion/view and won't provide the Working Group with a final legal position and therefore could still be challenged or overridden by Ofgem, if their lawyers took a different view.
  - e. That DCUSA Working Groups need to make an assessment of whether the change better facilitates the DCUSA Objectives and when it comes time to vote, Parties need to vote on the basis of whether the change better facilitates the DCUSA Objectives. As one of the DCUSA Objectives refers to "compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators", the Working Group are likely going to need to set out their views as to whether the changes better facilitate that Objective alongside the other Objectives, and then consider the Objectives 'in the round'.
  - f. That in their original advice to the Working Group, Gowling WLG explained that the quoted Regulation applies directly as part of UK law and that compliance with the Regulation is also one of the relevant objectives which apply under DNO licences in respect of the use of system charging methodologies. The Panel also noted the view from Gowling WLG that there is sometimes an overlap between and also some natural tension between some of the requirements of the Regulation (and of the DNO licence objectives), so it will be necessary to balance these appropriately.
  - g. That the Working Group and Parties (when voting) set out their views on the basis of whether or not the change will better facilitate the DCUSA Objectives but that given Ofgem's statutory duties are wider than matters that the Parties must take into consideration and are detailed mainly in the Electricity Act 1989. The Panel therefore believe that Ofgem are likely to be in a

better position to consider the change from a number of angles and to consider whether there might be benefits to Net Zero that outweigh any negative impact on the specific EU Regulation as they now have a Net Zero mandate which does not feature in the DCUSA Objectives.

- h. The Panel considered whether Parties (including Working Group members) should be seeking their own legal advice from their own companies, rather than obtaining external legal advice from Gowling WLG due to the fact that it is the Parties to the DCUSA, who will need to be comfortable that the change would not put them in breach of any law or licence condition.
- 7. The Panel concluded that the existing legal advice was sufficient in that it covered off that the group had identified the relevant topics and that the Panel recommends that Working Group members seek their own in-house legal advice should any additional assurance be felt to be necessary, especially when it comes to voting on the change. It was also the view of the Panel that the Working Group should set out their discussions and views on the topic in their final change report such that Parties, and in turn Ofgem, can then make an informed decision with all the relevant information available to them.