



STATUTORY INSTRUMENTS.

S.I. No. 366 of 2022

EUROPEAN UNION (INTERNAL MARKET IN ELECTRICITY) (4)
REGULATIONS 2022

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I, Eamon Ryan, Minister for the Environment, Climate and Communications, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect or further effect to Articles 2, 12, 13, 14, 17, 25, 26(1), 31(1), 31(6), 36, 40(1), 54, and 59(1)(v) of Directive (EU) 2019/944 of the European Parliament and Council of 5 June 2019 on common rules for the internal market in electricity and amending Directive 2012/27/EU¹, hereby make the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the European Union (Internal Market in Electricity) (4) Regulations 2022.

(2) These Regulations shall come into operation on 18th July 2022.

Interpretation

2. (1) In these Regulations –

“2000 Regulations” means the European Communities (Internal Market in Electricity) Regulations 2000 (S.I. No. 445 of 2000);

“2005 Regulations” means the European Communities (Internal Market in Electricity) Regulations 2005 (S.I. No. 60 of 2005);

“2011 Regulations” means the European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations 2011 (S.I. No. 463 of 2011);

“2022 Regulations” means the European Union (Internal Market in Electricity) Regulations 2022 (S.I. No. 20 of 2022);

“Act of 1999” means the Electricity Regulation Act 1999 (No. 23 of 1999);

“aggregation” means a function performed by a natural or legal person who combines multiple customer loads or generated electricity for sale, purchase or auction in any electricity market;

“ancillary service” means a service necessary for the operation of a transmission or distribution system, including balancing and non-frequency ancillary services, but not including congestion management;

“balance responsible party” means balance responsible party as defined in point (14) of Article 2 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity;

¹ OJ L 158, 14.6.2019, p. 125–199

“demand response” means the change of electricity load by final customers from their normal or current consumption patterns in response to market signals, including in response to time-variable electricity prices or incentive payments, or in response to the acceptance of the final customer's bid to sell demand reduction or increase at a price in an organised market as defined in point (4) of Article 2 of Commission Implementing Regulation (EU) No 1348/2014², whether alone or through aggregation;

“Directive” means 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;

“distribution” means the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;

“distribution system operator” means the holder of a licence under section 14(1)(g) of the Act of 1999;

“electricity markets” means markets for electricity, including over-the-counter markets and electricity exchanges, markets for the trading of energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intraday markets;

“electricity supply contract” means a contract for the supply of electricity, but does not include electricity derivatives;

“electricity undertaking” means a natural or legal person who carries out at least one of the following functions: generation, transmission, distribution, aggregation, demand response, energy storage, supply or purchase of electricity, and who is responsible for the commercial, technical or maintenance tasks related to those functions, but does not include final customers;

“final customer” means a customer who purchases electricity for own use;

“independent aggregator” means a market participant engaged in aggregation who is not affiliated to the customer's supplier;

“market participant”, in the context of electricity, means market participant as defined in point 25 of Article 2 of Regulation 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity;

“producer” means a natural or legal person who generates electricity;

“regional coordination centre” means a regional coordination centre established pursuant to Article 35 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity;

“security” means both security of supply and provision of electricity, and technical safety;

² Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency OJ L 363, 18.12.2014, p. 121

“switching related fee” means a charge or penalty for changing suppliers or market participants engaged in aggregation, including contract termination fees, that is directly or indirectly imposed on customers by suppliers, market participants engaged in aggregation or system operators;

“transmission system operator” has the meaning assigned to ‘transmission system operator’ in point (35) of Article 2 of 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 includes an interconnector operator.

(2) A word or expression that is used in these Regulations and is also used in the Directive shall have in these Regulations the same meaning as it has in the Directive unless the contrary intention appears.

Amendment of section 2(1) of the Act of 1999

3. (1) Section 2(1) of the Act of 1999 is amended in the definition of ‘congestion’ by substituting “(10)” with “(4)”.

Amendment of the 2000 Regulations

4. (1) Regulation 2(1) of the 2000 Regulations is amended -

- (a) In the definition of “related undertaking” –
 - (i) In paragraph (a) by the substitution of “Article 41 of the Seventh Council Directive 83/349/EEC of 13 June 1983,” with “Article 2(12) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013³”
 - (ii) In paragraph (b) by the substitution of “Article 33(1)” with “Article 2(13).”
- (b) In the definition of “electricity undertaking” by the insertion of “but does not include final customers” after “1927”.

Amendment of the 2005 Regulations

5. (1) Regulation 2(1) of the 2005 Regulations is amended by the insertion of the following definition after the definition of “public electricity supplier”:

“ ‘security’ means both security of supply and provision of electricity, and technical safety.”.

Amendment of the 2022 Regulations in relation to rights and rules on switching

6. (1) Regulation 2(1) of the 2022 Regulations is amended by the insertion of the following definition after the definition of “supply”:

“ ‘switching related fee’ means a charge or penalty for changing suppliers or market participants engaged in aggregation, including contract termination fees, that is directly or indirectly

³ OJ L 182, 29.6.2013, p. 19–76

imposed on customers by suppliers, market participants engaged in aggregation or system operators.”.

(2) Regulation 13 of the 2022 Regulations is amended -

- (a) In paragraph (1) by the insertion after “suppliers” of “or market participants engaged in aggregation”, and by the insertion after “supplier” of “or market participant engaged in aggregation”,
- (b) By the substitution of paragraph (2) with the following:
 “(2)(a) Customers shall, with due regard to contractual conditions, be entitled to switch suppliers or market participants engaged in aggregation within a maximum of three weeks from the date of the request to switch, and
 (b) By 2026 customers shall be entitled to switch supplier within 24 hours and on any working day.”,
- (c) In paragraph (4) by the insertion after “supplier” of “or market participant engaged in aggregation”,
- (d) In paragraph (5) by the insertion after “supplier” of “or market participant engaged in aggregation”,
- (e) In paragraph (6) by the insertion after “supplier” of “or market participant engaged in aggregation”,
- (f) By the insertion of the following after paragraph (7):
 “(8) Notwithstanding Regulation 5(8)(b) of the 2011 Regulations, the Commission shall ensure that the right to switch under paragraph (1) is granted to customers in a non-discriminatory manner as regards cost, effort and time;
 (9) Notwithstanding Regulation 5(8)(c) of the 2011 Regulations, the Commission shall ensure that household customers and small enterprises are not charged any switching related fees when switching market participant engaged in aggregation.”.

Aggregation Contract

7. (1) The Commission shall ensure that -

- (a) All customers are entitled to purchase and sell electricity services, including aggregation, other than supply, independently from their electricity supply contract and from an electricity undertaking of their choice;
- (b) Where a final customer wishes to conclude an aggregation contract, the final customer shall be entitled to do so without the consent of the final customer's electricity undertakings;
- (c) Market participants engaged in aggregation fully inform customers of the terms and conditions of the contracts that they offer to them;
- (d) Upon request, final customers shall be entitled to receive all relevant demand response data or data on supplied and sold electricity free of charge at least once every billing period;

- (e) Final customers shall be entitled to exercise the rights referred to in subparagraphs (b), (c) and (d) in a non-discriminatory manner as regards cost, effort or time;
- (f) Suppliers shall not subject customers to discriminatory technical and administrative requirements, procedures or charges on the basis of whether they have a contract with a market participant engaged in aggregation.

Demand response through aggregation

8. (1) The Commission shall ensure that –

- (a) Suppliers allow and foster participation of demand response through aggregation;
- (b) Final customers, including those offering demand response through aggregation are entitled to participate alongside producers in a non-discriminatory manner in all electricity markets;
- (c) The transmission system operator, and the distribution system operator, when procuring ancillary services, treat market participants engaged in the aggregation of demand response in a non-discriminatory manner alongside producers on the basis of their technical capabilities;
- (d) Each market participant engaged in aggregation, including independent aggregators, are entitled to enter electricity markets without the consent of other market participants;
- (e) Market Participants engaged in aggregation are financially responsible for the imbalances that they cause in the electricity system;
- (f) Market Participants engaged in aggregation are balance responsible parties or delegate their balancing responsibility in accordance with Article 5 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity⁴;
- (g) Suppliers do not subject final customers who have a contract with independent aggregators to undue payments, penalties or contractual restrictions.

(2) The Commission shall develop a framework which sets out –

- (a) non-discriminatory and transparent rules that clearly assign roles and responsibilities to all electricity undertakings and customers;
- (b) non-discriminatory and transparent rules and procedures for the exchange of data between market participants engaged in aggregation and other electricity undertakings that ensure easy access to data on equal and non-discriminatory terms while fully protecting commercially sensitive information and customers' personal data.

(3) Any dispute between market participants engaged in aggregation and other market participants, including in relation to responsibility for imbalances, shall be resolved by the Commission.

⁴ OJ L 158, 14.6.2019, p. 54–124

- (4) (a) Market Participants shall comply with and be bound by any directions issued by the Commission in the course of making a determination in respect of the conflict resolution process provided under paragraph (3);
- (b) The Commission shall issue the determination referred to in paragraph (a) within 2 months from the date of the receipt of the complaint made by the market participant.
 - (i) The period referred to in subparagraph (b) may be extended by 2 months where the Commission seeks additional information in the matter, and such further extension as may be consented to by the applicant.
- (5) (a) The Commission may require electricity undertakings or participating final customers to pay financial compensation to other market participants or to the market participants' balance responsible parties, if those market participants or balance responsible parties are directly affected by demand response activation;
- (b) Such financial compensation, as mentioned in subparagraph (a) shall not create a barrier to market entry for market participants engaged in aggregation or a barrier to flexibility;
- (c) In such cases, the financial compensation shall be strictly limited to covering the resulting costs incurred by the suppliers of participating customers or the suppliers' balance responsible parties during the activation of demand response;
- (d) The method for calculating compensation may take account of the benefits brought about by the independent aggregators to other market participants, and where it does so, the aggregators or participating customers may be required to contribute to such compensation but only where and to the extent that the benefits to all suppliers, customers and their balance responsible parties do not exceed the direct costs incurred;
- (e) The calculation method shall be subject to approval by the Commission.
- (6) (a) The Commission, acting in close cooperation with market participants and final customers, shall establish the technical requirements for participation of demand response in all electricity markets on the basis of the technical characteristics of those markets and the capabilities of demand response;
- (b) Such requirements shall cover participation involving aggregated loads.

Amendment of Regulation 7 of the 2011 Regulations

- 9. (1) Regulation 7 of the 2011 Regulations is amended -
 - (a) In paragraph (1) by the insertion after "intermediaries" of "or with a market participant",
 - (b) In paragraph 4(a)(i) by the insertion after "energy undertaking" of "or market participant",
 - (c) In paragraph 4(a)(ii) by the insertion after "undertaking" of "or market participant",

- (d) In paragraph 4(b) by the insertion after “energy undertaking” of “market participant”,
- (e) In paragraph 8 by the insertion after “energy undertaking” of “or a market participant”,
- (f) In paragraph (10) by the insertion after “undertaking” of “or market participant”,
- (g) In paragraph (11) by the insertion after “undertaking” of “or market participant”,
- (h) In paragraph (12) by the insertion after “energy undertaking” of “or market participant.”.

Amendment of Regulation 14 of the 2022 Regulations

10. (1) The 2022 Regulations are amended in Regulation 14 by the insertion of the following paragraph after paragraph (6):

“(7) Any tool comparing the offers of market participants shall be eligible to apply for a trust mark in accordance with this Regulation on a voluntary basis.”.

Amendment of Regulation 8 of the 2011 Regulations

11. (1) The 2011 Regulations are amended in Regulation 8 (1) -

- (a) In subparagraph (i) by the deletion of ‘and’;
- (b) By the substitution of the following subparagraph for subparagraph (j):
“(j) the applicable law, and”;
- (c) By the insertion of the following subparagraph after subparagraph (j):
“(k) any other issues which the Commission may consider to be of importance to final customers.”.

Amendment of Regulation 22 of the 2000 Regulations

12. (1) Regulation 22 of the 2000 Regulations is amended -

- (a) In paragraph (2)(a) by the substitution of, “that all reasonable demands for electricity are met” with “the long term ability of the distribution system to meet reasonable demands for the distribution of electricity” ;
- (b) in paragraph (11) by the insertion of “and publish” after “establish.”.

(2) Regulation 22C is substituted for the following –

“22C. (a) The distribution system operator shall not own, develop, manage or operate energy storage facilities;

(b) The Commission shall perform, at regular intervals, or at least every five years, a public consultation on the existing storage facilities in order to assess the potential availability and interest in investing in such facilities;

(c) Paragraph (b) shall not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until 4 July 2019, provided that such battery storage facilities are:

- (i) connected to the grid at the latest two years thereafter;
- (ii) integrated into the distribution system;
- (iii) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and
- (iv) not used to buy or sell electricity in the electricity markets, including balancing.”.

Amendment of Regulation 8A of the 2000 Regulations

13. (1) Regulation 8A of the 2000 Regulations is amended by the substitution of the following for paragraph (1):

- “(1) The transmission system operator shall not own, develop, manage or operate energy storage facilities;
- (2) The Commission shall perform, at regular intervals, or at least every five years, a public consultation on the existing energy storage facilities in order to assess the potential availability and interest of other parties in investing in such facilities;
- (3) Paragraph (2) shall not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until 2024, provided that such battery storage facilities are:
- (i) connected to the grid at the latest two years thereafter;
 - (ii) integrated into the transmission system;
 - (iii) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and
 - (iv) not used to buy or sell electricity in the electricity markets, including balancing”.

Amendment of Regulation 8 of the 2000 Regulations

14. (1). Regulation 8 of the 2000 Regulations is amended by substituting paragraph (1H) with the following:

- “(1H) The Transmission System Operator when carrying out its tasks under Article 40 of the Directive shall primarily facilitate market integration.”.

Amendment of Regulation 28 of the 2005 Regulations

15. (1) Regulation 28(2) of the 2005 Regulations is amended –

- (a) in subparagraph (e), by the deletion of “, and”
- (b) in subparagraph (f) by the insertion of “, and” after “suppliers”
- (c) by the insertion of the following after subparagraph (f):
“(g) investment in generation and storage capacities.”.



GIVEN under my Official Seal,
18 July, 2022.

EAMON RYAN,
Minister for the Environment,
Climate and Communications.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
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