



STATUTORY INSTRUMENTS.

S.I. No. 704 of 2020

EUROPEAN UNION (INTERNAL MARKET IN ELECTRICITY)
(REGULATORY AUTHORITY MATTERS) REGULATIONS 2020

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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 to Article 40(1)(j) and (3) and Articles 57 to 64 of Directive (EU) 2019/944 of the European Parliament and Council of 5 June 2019¹ on common rules for the internal market in electricity and amending Directive 2012/27/EU, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Internal Market in Electricity) (Regulatory Authority Matters) Regulations 2020.
- (2) These Regulations shall come into operation on 1 January 2021.

Definition

2. In these Regulations, “Act of 1999” means the Electricity Regulation Act 1999 (No.23 of 1999).

Amendment of section 2 of Act of 1999

3. Section 2(1) of the Act of 1999 is amended –
 - (a) by the insertion of the following before the definition of “Agency”;
“‘2019 ACER Regulation’ means Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019² establishing a European Agency for the Cooperation of Energy Regulators;”,

‘2019 Internal Electricity Market Directive’ means Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019³ on common rules for the internal market for electricity and amending Directive 2012/27/EU;

¹ OJ L 158, 14.6.2019, p.125

² OJ L 158, 14.6.2019, p. 54

³ OJ L 158, 14.6.2019, p. 22

‘2019 Internal Electricity Market Regulation’ means Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019² on the internal electricity market;”,

(b) by the substitution of the following for the definition of “Agency”:

“ ‘Agency’ means the European Agency for the Cooperation of Energy Regulators established under the 2019 ACER Regulation;”,

(c) by the insertion of the following after the definition of “energy undertaking”:

“ ‘ENTSO for Electricity’ means the European Network of Transmission System Operators for Electricity referred to in Article 28 of the 2019 Internal Electricity Market Regulation;”,

(d) by the insertion of the following after the definition of “establishment day”:

“ ‘EU DSO entity’ means the European Entity for Distribution System Operators referred to in Article 52 of the 2019 Internal Electricity Market Regulation;”,

(e) by the insertion of the following after the definition of “grid code”:

“ ‘guidelines’, in relation to electricity, means guidelines adopted pursuant to Article 61 of the 2019 Internal Electricity Market Regulation;”,

(f) by the insertion of the following after the definition of "natural gas undertaking":

“ ‘network codes’ , in relation to electricity, means network codes established pursuant to Article 59 of the 2019 Internal Electricity Market Regulation;

‘non-frequency ancillary service’, in relation to electricity, means a service used by a transmission system operator or distribution system operator for steady state voltage control, fast reactive current injections, inertia for local grid stability, short-circuit current, black start capability and island operation capability;”,

(g) by the insertion of the following after the definition of “record”:

“ ‘regional coordination centre’ means a regional coordination centre established pursuant to Article 35 of the 2019 Internal Electricity Market Regulation;”,

- (h) by the insertion of the following after the definition of “supply”:

“‘system operation region’ means the system operation region to be approved by the Agency pursuant to Article 36 of the 2019 Internal Electricity Market Regulation;”, and

- (i) by the insertion of the following after the definition of “transmission system operator”:

“‘Union wide network development plan’ means the plan adopted pursuant to Article 30(1)(b) of the 2019 Internal Electricity Market Regulation;”.

Regional coordination centres

4. The Act of 1999 is amended by the insertion of the following after section 9N:

“9O. (1) It shall be a function of the Commission to approve a proposal for the establishment of one or more than one regional coordination centre in accordance with Article 35(1) of the 2019 Internal Electricity Market Regulation.

(2) In the event of the establishment of one or more than one regional coordination centre within the Commission’s system operation region, it shall be a function of the Commission –

- (a) to approve the costs related to the activities of each regional coordination centre, which are to be borne by the transmission system operators within the system operation region, and to be taken into account in the calculation of tariffs, provided that they are reasonable and appropriate,
- (b) to approve the cooperative decision-making process,
- (c) to ensure that each regional coordination centre is equipped with all the necessary human, technical, physical and financial resources for fulfilling its obligations under the 2019 Internal Electricity Market Directive and carrying out its tasks independently and impartially,
- (d) to propose jointly with other regulatory authorities of the system operation region additional tasks and additional powers that could be assigned to each regional coordination centre by the State, in coordination with other regulatory authorities in the system operation region,
- (e) to ensure compliance by each regional coordination centre with the obligations under the 2019 Internal Electricity Market

Directive and other relevant law of the European Union, in particular as regards cross-border issues, and jointly identify any failure of the regional coordination centre to comply with those obligations,

- (f) where the Commission has not been able to reach an agreement (with the other regulatory authorities in the system operation region), within a period of 4 months after the start of consultations, on the matter of whether a failure to comply, as referred to in paragraph (e), has occurred or as to the extent of any such failure, to refer, jointly with those other authorities, the matter to the Agency for a decision, pursuant to Article 6(10) of the 2019 ACER Regulation,
- (g) to monitor the performance of system coordination and report annually to the Agency in relation to such monitoring in accordance with Article 46 of the 2019 Internal Electricity Market Regulation.

(3) In performing its functions under this section, the Commission shall take all reasonable steps to ensure that such performance is closely coordinated with all relevant actions taken by other regulatory authorities in its system operation region.

(4) For the purposes of Article 62(2)(a) and (b) and (3) of the 2019 Internal Electricity Market Directive, section 55 shall be construed as if-

- (a) ‘improper conduct’ includes failure by a regional coordination centre (which has its seat in the State) to comply with an obligation under the 2019 Internal Electricity Market Directive or the 2019 Internal Electricity Market Regulation or with any decision referred to in subsection (5) or any relevant legally binding decision of the Agency, and
- (b) in circumstances of improper conduct referred to in paragraph (a), ‘specified body’ means such a regional coordination centre,

and Part IX and Schedule 4 shall apply in accordance with this subsection with any other necessary modifications.

(5) For the purposes of Article 62(2)(c) of the 2019 Internal Electricity Market Directive, the Commission, in conjunction with other regulatory authorities in its system operation region, may make and issue to a regional coordination centre a decision that the centre shall do, or shall refrain from doing, one or more things specified in the decision and the centre shall comply with any such decision.”.

Duties of transmission system operator with respect to regional coordination centres

5. Regulation 8 of the European Communities (Internal Market in Electricity) Regulations 2000 (S.I. No. 445 of 2000) is amended –

- (a) in paragraph (1) –
 - (i) in subparagraph (l)(iii), by the substitution for “aggregators.” of “aggregators;”,

and

- (ii) by the insertion of the following after subparagraph (l):
 - “(m) to adopt a framework for cooperation and coordination between the regional coordination centres (within the meaning of the Act of 1999).”, and
- (b) by the insertion of the following after paragraph (1B):
 - “(1C) In performing the functions referred to in paragraph (1), the transmission system operator shall take into account the recommendations issued by the regional coordination centres pursuant to Article 42 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal electricity market.”.

Amendment of section 9(4) of Act of 1999

6. Section 9(4) of the Act of 1999 is amended –

- (a) by the substitution, in paragraph (a), for all the words beginning with “In carrying out” down to and including “have regard to the need”, of the following:

“In carrying out the duty imposed by subsection (3) and the functions specified in Article 59 of the 2019 Internal Electricity Market Directive and Article 41 of the Natural Gas Market Directive, the Minister and the Commission shall, in close consultation with the authorities specified in paragraph (aa) and without prejudice to their competence, have regard to the need”,

- (b) in paragraph (a) –
 - (i) in subparagraph (vii), by the deletion of “and”,
 - (ii) in subparagraph (viii), by the substitution of “gas, and” for “gas.”, and
 - (iii) by the insertion of the following after subparagraph (viii):
 - “(ix)to promote flexibility in the internal market for electricity within the Union.”,

- (c) by the insertion of the following after paragraph (a):
 - “(aa) The authorities referred to in paragraph (a) are every other relevant authority in the State, including the Competition and Consumer Protection Commission, and, as regards Article 59 of the 2019 Internal Electricity Market Directive, including every authority, including regulatory authority, in neighbouring Member

States and neighbouring third countries, as appropriate, together with the European Commission and the Agency.”,

(d) in paragraph (b) –

- (i) in subparagraph (i) by the insertion after “way” of “and facilitating their operation in relation to other energy networks of gas or heat”,
- (ii) by the substitution of the following for subparagraph (ii):
 - “(ii) to develop –
 - (I) competitive and properly efficient and reliable functional regional cross border electricity markets, and
 - (II) competitive and properly efficient and reliable functional regional gas markets;”,
- (iii) by the substitution of the following for subparagraph (v):
 - “(v) to facilitate access to the network for new electricity generation capacity, energy storage facilities and for gas production, in particular removing barriers that could prevent access for new market entrants and of electricity and gas from renewable sources;”,
- (iv) in subparagraph (vi)(I) by the insertion after “efficiencies” of “, and, in relation to electricity especially energy efficiency,”,
- (v) in subparagraph (vi)(IV) by the substitution of “activities;” for “activities.”, and
- (vi) by the insertion of the following after subparagraph (vi):
 - “(vii) to ensure that customers benefit through the efficient functioning of the market in the State, promoting effective competition and helping to ensure a high level of consumer protection, and in relation to duties under the 2019 Internal Electricity Market Directive in close cooperation with the Competition and Consumer Protection Commission;
 - (viii) to contribute to the compatibility of necessary data exchange processes for customer switching.”.

Other amendments of section 9, and amendments of sections 9A, 34 and 35 of, Act of 1999

7. Section 9(1) of the Act of 1999 is amended –

(a) in paragraph (da) –

- (i) in subparagraph (vii) by the substitution of “customers,” for “customers, and”, and

- (ii) by the insertion of the following after subparagraph (viii):
 - “(ix) the impact of dynamic price contracts and of the use of smart metering systems,

 - (x) the relationship between household and wholesale prices,
 - (xi) the evolution of grid tariffs and levies,
 - (xii) the availability of comparison tools that meet the requirements set out in Article 14 of the 2019 Internal Electricity Market Directive, and
 - (xiii) the removal of unjustified obstacles to and restrictions on the development of consumption of self-generated electricity and citizen energy communities,”,
- (b) in paragraph (dj) by the substitution for “Article 3 of the Electricity Market Directive” of “Article 5 of the 2019 Internal Electricity Market Directive”,
- (c) in paragraph (dk) by the substitution for “Electricity Market Regulation” of “2019 Internal Electricity Market Regulation”,
- (d) in paragraph (dm) by the deletion of “large non-household”,
- (e) by the insertion of the following after paragraph (do):
 - “(dp) to monitor and assess the performance of transmission system operators and distribution system operators in relation to the development of a smart grid that promotes energy efficiency and the integration of energy from renewable sources, based on a limited set of indicators, and publish a national report every two years, including recommendations,
 - (dq) to contribute to the compatibility of data exchange processes for the most important market processes at regional level,
 - (dr) to cooperate, where appropriate with the Competition and Consumer Protection Commission, other regulatory bodies and the European Commission, as necessary, when conducting an investigation relating to competition law,”,
- (f) in paragraph (f) by the insertion after “cross-border issues,” of “in particular through participation in the work of the Agency's Board of Regulators pursuant to Article 21 of the 2019 ACER Regulation”,
- (g) in paragraph (fb)(iv) by the insertion after “capacity and congestion management” of “except where the Agency is competent to fix and approve the terms and conditions or methodologies for the implementation of network codes and guidelines under Chapter VII of the 2019 Internal Electricity Market Regulation pursuant to Article 5(2) of the 2019 ACER Regulation because of their coordinated nature”,
- (h) by the insertion of the following after paragraph (fd):

“(fda) to ensure that transmission system operators make available interconnector capacities to the utmost extent pursuant to Article 16 of the 2019 Internal Electricity Market Regulation,”,

(i) by the substitution of the following for paragraph (l) :

“(l) to ensure compliance by electricity and gas undertakings, including transmission system operators, distribution system operators and system owners, and other market participants, with their obligations under the Natural Gas Market Directive, the 2019 Internal Electricity Market Directive, the 2019 Internal Electricity Market Regulation, the network codes and the guidelines adopted pursuant to Articles 59, 60 and 61 of the 2019 Internal Electricity Market Regulation, and other relevant law of the European Union, including as regards cross-border issues, as well as with decisions of the Agency, in accordance with their statutory functions,

(la) in close cooperation with the other regulatory authorities, to ensure the compliance of the ENTSO for Electricity and the EU DSO entity with their obligations under the 2019 Internal Electricity Market Directive, the 2019 Internal Electricity Market Regulation, the network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of the 2019 Internal Electricity Market Regulation, and other relevant law of the European Union, including as regards cross-border issues, as well as with the Agency’s decisions, and jointly identify any failure of the ENTSO for Electricity and the EU DSO entity to comply with their respective obligations,

(lb) where the Commission has not been able to reach an agreement (with the other regulatory authorities), within a period of 4 months after the start of consultations, on the matter of whether a failure to comply, as referred to in paragraph (la), has occurred or as to the extent of any such failure, to refer, jointly with those other authorities, the matter to the Agency for a decision, pursuant to Article 6(10) of the 2019 ACER Regulation,

(lc) to implement the network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of the 2019 Internal Electricity Market Regulation through national measures or, where so required, coordinated regional or Union-wide measures,”,

(j) in paragraph (r), by the deletion of “and”;

(k) in paragraph (s), by the substitution for “projects.” of “projects,” and

(l) by the insertion of the following after paragraph (s):

“(t) to approve products and procurement process for non-frequency ancillary services, and

(u) to require any information from electricity undertakings relevant for the fulfilment of its tasks, including the justification for

any refusal to grant third-party access, and any information on measures necessary to reinforce the network.”.

(2) Section 9 of the Act of 1999 is amended –

(a) in subsection (1B) –

(i) in paragraph (e) by the insertion of “or other electricity and non-electricity activities” after “supply activities,”, and

(ii) by the deletion of paragraph (j),

(b) by the insertion of the following after subsection (1B):

“(1BA) The Commission shall ensure compliance of electricity undertakings, including transmission and distribution system owners and operators, with transparency obligations.”,

(c) in subsection (1C), by the substitution of “Articles 59 and 60 of the 2019 Internal Electricity Market Directive” for “Article 37 of the Electricity Market Directive”,

(d) by the insertion of the following after subsection (1C):

“(1CA) The Commission shall report annually on its activity and the fulfilment of its duties to the European Commission and the Agency, including on the steps taken and the results obtained as regards each of the tasks listed in Articles 59 and 60 of the 2019 Internal Electricity Market Directive.”,

(e) by the substitution of the following for subsection (1E):

“(1E) The Commission, when carrying out the monitoring of compliance referred to in paragraph (k) of subsection (1B), may formulate proposals, by way of recommendations to be included by it in its report referred to in subsection (1C), for the amendment or modification of investment plans referred to in that paragraph (k) so as to ensure their consistency with the Union wide network development plan referred to in Article 30(1)(b) of the 2019 Internal Electricity Market Regulation and Article 8(3)(b) of the Natural Gas Market Regulation.”.

(3) Section 9A of the Act of 1999 is amended by the substitution of the following for subsection (1):

“(1) Subject to subsection (1A), the Commission shall be responsible for –

(a) determining or approving prior to their entry into force, at least the methodologies used to calculate the terms and conditions for the provision of balancing ancillary services in relation to electricity and gas systems,

(b) providing in the most economic manner ancillary services, with the appropriate incentives for network users to balance the input and off-take of gas in the system, and

(c) providing ancillary services in a fair and non-discriminatory manner and based on objective criteria.

(1A) Subsection (1) shall not apply where the Agency is competent to fix and approve the terms and conditions or methodologies for the implementation of network codes and guidelines under Chapter VII of the 2019 Internal Electricity Market Regulation pursuant to Article 5(2) of the 2019 ACER Regulation because of their coordinated nature.”.

(4) Section 34 of the Act of 1999 is amended –

(a) by the insertion of the following after subsection (1B):

“(1C) The Commission shall publish directions that are given by it to the Board under this section.”, and

(b) by the insertion of the following after subsection (2):

“(2A) In a case where the Agency is competent to fix and approve the terms and conditions or methodologies for the implementation of network codes and guidelines under Chapter VII of the 2019 Internal Electricity Market Regulation pursuant to Article 5(2) of the 2019 ACER Regulation because of their coordinated nature, then subsection (1), in so far as it provides for the giving of directions by the Commission to the Board, and subsection (2) shall not apply and, in such a case, the terms and conditions to be specified in the agreement referred to in subsection (1) shall be those fixed and approved by the Agency.”.

(5) Section 35 of the Act of 1999 is amended by the insertion of the following after subsection (5):

“(6) Subsections (1) to (5) shall not apply in a case where the Agency is competent to fix and approve the terms and conditions or methodologies for the implementation of network codes and guidelines under Chapter VII of the 2019 Internal Electricity Market Regulation pursuant to Article 5(2) of the 2019 ACER Regulation because of their coordinated nature.

(7) The Commission shall publish the statement referred to in subsection (1).

(8) With a view to increasing transparency in the market and providing all interested parties with all necessary information and decisions or proposals for decisions concerning transmission and distribution tariffs, as referred in Article 60(3) of the 2019 Internal Electricity Market Directive, the Commission shall make publicly available the detailed methodology and underlying costs used for the calculation of the relevant network tariffs, while preserving the confidentiality of commercially sensitive information.”.

Amendment of Statutory Instrument No. 463 of 2011

8. Regulation 9 of the European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations of 2011 (S.I. No. 463 of 2011) is amended –

- (a) in paragraph (1) by the insertion of “, in a manner that is non-discriminatory,” after “have access”, and
- (b) in paragraph (2) by the insertion of “pursuant to Articles 23 and 24 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 amending Directive 2012/27/EU” after “timeframe”.

Amendments of sections 9, 34 and 36 of Act of 1999 related to tariffs, methodologies, etc

9. The Act of 1999 is amended –

- (a) In section 9 by the insertion of the following after subsection (1H):

“(1I) The Commission may, if necessary, direct a transmission system operator or a distribution system operator to modify the terms and conditions, including tariffs or methodologies referred to in Article 59 of the 2019 Internal Electricity Market Directive, so as to ensure that they are proportionate and applied in a non-discriminatory manner, in accordance with Article 18 of the 2019 Internal Electricity Market Regulation.”,

- (b) in section 34 –

- (i) in subsection (6)(a) by the substitution for “is obliged to make an offer for connection to and use of the transmission system or distribution system, as the case may be,” of the following:

“is obliged –

- (i) to make an offer for connection to and use of the transmission system or distribution system, or
- (ii) to consult with regarding proposed charges in accordance with section 36(2),

as the case may be,” and

- (ii) in subsection (6)(b) by the substitution of “2019 Internal Electricity Market Directive” for “Electricity Market Directive”, and

- (c) in section 36 by the insertion of the following after subsection (4):

“(5) In the event of delay in the fixing of transmission or distribution tariffs or methodologies (the ‘final transmission or distribution tariffs or methodologies’), the Commission shall have the power to fix or approve transmission or distribution tariffs or methodologies which shall have effect on a provisional basis and to decide on, and implement, the appropriate compensatory measures if the final transmission and distribution tariffs or methodologies

differ from those provisional tariffs or methodologies in any respect.”.

Miscellaneous amendments of sections 9 and 14 of Act of 1999

10. (1) Section 9(1) of the Act of 1999 is amended –
 - (a) in paragraph (fa) by the insertion after “Agency” of “and, in particular, to share information within the Agency”,
 - (b) in paragraph (faa) by the substitution of “2019 Internal Electricity Market Directive” for “Electricity Market Directive”,
 - (c) in paragraph (fb)(iii) by the insertion of “and guidelines” after “network codes”.
 - (d) In paragraph (fb) –
 - (i) in subparagraph (vi) by the deletion of “and”,
 - (ii) in subparagraph (vii)(III) by the substitution of “assistance, and” for “assistance”, and
 - (iii) by the insertion of the following after subparagraph (vii):

“(viii) coordinate the joint oversight of entities performing functions at regional level, and
 - (ix) coordinate, in cooperation with other involved authorities, the joint oversight of national, regional and European resource adequacy assessments,”.
- (2) Section 9(1) of the Act of 1999 is amended –
 - (a) in paragraph (fe) by the insertion of “network codes and” after “trade issue, with” and the substitution of “2019 Internal Electricity Market Directive” for “Electricity Market Directive”, and
 - (b) in paragraph (ff) by the insertion of “network codes or” after “comply with the”.
- (3) Section 14 of the Act of 1999 is amended –
 - (a) in subsections (2J) and (2L) by the substitution of “Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014” for “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 ”, and
 - (b) by the deletion of subsection (2K).

Amendment of Schedule 1 to Act of 1999

11. Schedule 1 to the Act of 1999 is amended –
 - (a) by the insertion of the following after paragraph 1:

- “1A. The members of the Commission shall be appointed –
- (a) by means of an independent and impartial procedure, and
 - (b) on the basis of objective, transparent and published criteria,

which ensure that candidates for appointment to membership of the Commission have the necessary skill and experience for such membership.”, and

- (b) in paragraph 5, by the substitution of the following for subparagraph (b):
- “(b) be removed from office by the Minister, if in his or her opinion the member has become incapable through ill-health of effectively performing his or her duties, or for stated misbehaviour, being misbehaviour that is established by reference to transparent criteria that have been put in place prior to the act or default concerned, and in case a member is removed from office under this paragraph, the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for the removal.”.

Amendment of Schedule 1A to Act of 1999

12. Schedule 1A to the Act of 1999 is amended –

- (a) in paragraph 5 –
- (i) in subparagraph (b) by the insertion after “Department” of “and those terms shall include a term that an appointee is not to disclose information which is subject to a duty of confidentiality either while holding office or after holding office”, and
 - (ii) by the insertion of the following after subparagraph (b):
- “(c) The members of the SEM Committee shall be appointed –
- (i) by means of an independent and impartial procedure, and
 - (ii) on the basis of objective, transparent and published criteria,

which ensure that candidates for appointment to membership of the SEM Committee have the necessary skill and experience for such membership.”,

- (b) in paragraph 8 by the insertion after “misbehaviour” of “, being incapacity or misbehaviour that is established by reference to transparent criteria that have been put in place prior to the incapacity coming to the Minister’s notice or the act or default concerned, as the case may be”,

- (c) in paragraph 9(a)(i) by the insertion after “misbehaviour” of “, being incapacity or misbehaviour that is established by reference to transparent criteria that have been put in place prior to the incapacity coming to the Minister’s notice or the act or default concerned, as the case may be”, and
- (d) in paragraph 10(a)(i) by the insertion after “misbehaviour” of “, being incapacity or misbehaviour that is established by reference to transparent criteria that have been put in place prior to the incapacity coming to the Minister’s notice or the act or default concerned, as the case may be”.

GIVEN under my Official Seal,
30 December, 2020.

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

L.S.

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