



STATUTORY INSTRUMENTS.

S.I. No. 37 of 2022



EUROPEAN UNION (INTERNAL MARKET IN ELECTRICITY) (NO. 2)
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 to Articles 19 to 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/EU¹ hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Internal Market in Electricity) (No. 2) Regulations 2022.

Definitions

2. (1) In these Regulations –

“2008 Regulations” means the European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008 (S.I. No. 280 of 2008);

“2014 Regulations” means the European Union (Energy Efficiency) Regulations 2014 (S.I. No. 426 of 2014);

“active customer” means a final customer, or a group of jointly acting final customers, who consumes or stores electricity generated within its premises located within confined boundaries or within other premises or who sells self-generated-electricity or participates in flexibility or energy efficiency schemes, provided that those activities do not constitute its primary commercial or professional activity;

“Authority” means Sustainable Energy Ireland — The Sustainable Energy Authority of Ireland;

“Commission” means Commission for the Regulation of Utilities;

“conventional meter” means an analogue or electronic meter with no capability to both transmit and receive data;

“Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC²;

“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,

¹ OJ L 158, 14.6.2019, p 125

² OJ L 119, 4.5.2016, p. 1

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 1348/2014³, 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/EU¹;

“distributed generation” means generating installations connected to the distribution system;

“distribution system operator” means the holder of a licence granted pursuant to section 14(1)(g) of the Electricity Regulation Act 1999;

“eligible parties” means persons authorised under the Smart Meter Data Access Code to access smart meter data, in accordance with the provisions of that Code;

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

“instrumentation data” means data recorded via a smart metering system in relation to electricity power quality on the network;

“interoperability” means, in the context of smart metering, the ability of two or more energy or communication networks, systems, devices, applications or components to interwork to exchange and use information in order to perform required functions;

“SEMO” means Single Electricity Market Operator;

“smart meter data”, in relation to final customers, includes –

- (a) metering and consumption data, and
- (b) data required for customer switching, demand response and other services,

“Smart Meter Data Access Code” means the code referred to in Regulation 6;

“smart metering system” means an electronic system that is capable of measuring electricity fed into the grid or electricity consumed from the grid, providing more information than a conventional meter, and that is capable of transmitting and receiving data for information, monitoring and control purposes, using a form of electronic communication; and

“transmission system operator” means the holder of a licence granted under section 14(1)(e) of the Electricity Regulation Act 1999.

(2) In these Regulations, a reference to “Article” is a reference to an Article of the Directive and a reference to “Annex” is a reference to an Annex of the Directive.

(3) 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.

³ OJ L 363, 18.12.2014, p. 121

Functions of the Commission

3. (1) In order to promote energy efficiency and empower final customers and without prejudice to the functions of the Authority, the Commission shall strongly recommend that electricity undertakings and other market participants optimise the use of electricity, including by –

- (a) providing energy management services,
- (b) developing innovative pricing formulas, and
- (c) introducing smart metering systems that are interoperable, in particular with consumer energy management systems and smart grids.

(2) It shall be a function of the Commission to ensure the deployment of smart metering systems by the distribution system operator that assist the active participation of the customer in the electricity market.

(3) Subject to paragraph (4), the distributor systems operator shall install smart metering systems in all premises –

- (a) in which a conventional electricity meter is installed, and
- (b) to which a new electricity connection is to be made,

in accordance with a design and installation plan developed by it and approved by the Commission.

(4) The distribution system operator is not obliged to install a smart metering system in any premises or place to which it is unable to access or to which it has not been granted access for the purposes of carrying out such an installation.

(5) The Commission shall require the distribution system operator to adopt and publish minimum functional and technical requirements for smart metering systems in accordance with European standards, Annex 2 and the requirements specified in Regulation 4.

(6) The Commission shall ensure that smart metering systems are interoperable and have the ability to provide output for consumer energy management systems.

(7) For the purposes of paragraph (6), the Commission shall have due regard to –

- (a) the use of the relevant available standards, including those enabling interoperability,
- (b) best practices, and
- (c) the importance of the development of –
 - (i) smart grids, and
 - (ii) the internal market for electricity.

(8) The Commission shall regularly monitor the deployment of smart metering systems by the distribution system operator, in addition to the requirements specified in Regulations 4 and 5, in order to track the delivery of benefits to consumers.

(9) In the course of monitoring the deployment of smart metering systems, the Commission shall ensure that final customers contribute to the associated costs of the deployment of smart metering systems, while taking into account the long-term benefits to the whole value chain.

(10) The provisions of this Regulation and of the Directive that relate to smart metering systems apply to future installations of smart metering systems and installations that replace older systems, as well as to smart metering systems that have already been installed or for which the ‘start of works’ began before 4 July 2019.

(11) Smart metering systems that have already been installed, or for which the ‘start of works’ began before 4 July 2019, may remain in operation over their lifetime.

(12) Smart metering systems that do not meet the requirements of Article 20 and Annex II shall not remain in operation after 5 July 2031.

(13) Subject to paragraph (14), in this Regulation, ‘start of works’ means –

- (a) the start of construction works on an investment, or
- (b) the first firm commitment to order equipment or other commitment that makes the investment irreversible,

whichever is the earlier.

(14) For the avoidance of doubt, the purchase of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as ‘start of works’ and in respect of take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment.

Functionalities of smart metering systems

4. (1) The deployment of smart metering systems shall meet the following requirements:

- (a) the smart metering systems shall accurately measure actual electricity consumption and shall be capable of providing to final customers information on actual time of use;
- (b) validated historical consumption data shall be collected by the distribution system operator and shall be made easily and securely available and visualised to final customers on request and at no additional cost;
- (c) non-validated near real-time consumption data shall be made easily and securely available to final customers at no additional cost, through a standardised interface or through remote access, in order to support automated energy efficiency programmes, demand response and other services;
- (d) the security of smart metering systems and data communication shall comply with relevant European Union security rules, having due regard of the best available techniques for ensuring the highest level of cybersecurity protection while bearing in mind the costs and the principle of proportionality;

- (e) the privacy of final customers and the protection of their data shall comply with relevant European Union data protection and privacy rules;
- (f) the distribution system operator shall ensure that the meters of active customers who feed electricity into the grid can account for electricity fed into the grid from the active customers' premises;
- (g) at the request of final customers, data on the electricity which they have fed into the grid and their electricity consumption data shall be made available to them, in accordance with the implementing acts adopted pursuant to Article 24, through a standardised communication interface or through remote access, or to a third party acting on their behalf, in an easily understandable format allowing them to compare offers on a like-for-like basis;
- (h) appropriate advice and information shall be given to final customers prior to or at the time of installation of smart meters, in particular concerning their full potential with regard to the management of meter reading and the monitoring of energy consumption, and concerning the collection and processing of personal data in accordance with the applicable European Union data protection rules;
- (i) smart metering systems shall enable final customers to be metered and settled at the same time resolution as the imbalance settlement period in the national market.

(2) In relation to subparagraph (g) of paragraph (1), it shall be possible for final customers to retrieve their metering data or transmit those data to another party at no additional cost and in accordance with their right to data portability under European Union data protection rules.

Conventional meters

5. (1) Where final customers do not have smart meters, the Commission shall ensure that such customers are provided with individual conventional meters that accurately measure their actual consumption.

(2) The Commission shall ensure that conventional meters allow final customers to easily read their meters, either directly or indirectly through an online interface or through another appropriate interface.

Data management

6. (1) The Commission shall develop and publish a Smart Meter Data Access Code –

- (a) regarding the management and exchange of data, including smart meter data, and
- (b) access to data, including smart meter data, of final customers by eligible parties,

in an efficient and secure manner and in accordance with these Regulations, Article 23 and other relevant provisions of the Directive and the Data Protection Regulation.

(2) The Commission shall, insofar as the Smart Meter Data Access Code relates to the processing of personal data, consult with the Data Protection Commission in relation to the development and publication of the Code.

(3) Without prejudice to the generality of paragraph (1), the Smart Meter Data Access Code shall –

- (a) specify the point at which data shall no longer be considered personal data,
- (b) establish a clear definition of non-personal data, in accordance with the applicable European Union legal framework, that may be stored by eligible parties without the requirement for customer consent,
- (c) clearly specify the purposes for which the electricity distribution system operator shall collect and process smart meter data,
- (d) specify the rights of access to data for final customers and third parties acting on their behalf,
- (e) specify the basis for the provision of smart meter data to electricity suppliers, SEMO and the transmission system operator,
- (f) specify the smart meter data that may be transferred to eligible parties and the conditions under which such data may be stored by those parties,
- (g) require that suppliers obtain each final customer's consent before that customer is switched to a dynamic electricity price contract, in accordance with Article 11(3),
- (h) specify rules for the use of data by the distribution system operator for its systems planning and operational purposes, and
- (i) specify the manner in which eligible parties are to have access to data and the reasonable and duly justified charges which shall be payable by the eligible parties.

(4) Eligible parties shall have access to data in a non-discriminatory manner and simultaneously.

(5) The Smart Meter Data Access Code shall include provisions in relation to its enforcement.

Interoperability requirements

7. In order to promote competition in the retail market and to avoid excessive administrative costs for eligible parties, the Commission shall facilitate the full interoperability of energy services within the European Union.

Amendment of the 2008 Regulations

8. The 2008 Regulations are amended –
- (a) in Regulation 2, by the insertion of the following definition:

“ ‘smart metering system’ means an electronic system that is capable of measuring electricity fed into the grid or electricity consumed from the grid, providing more information than a conventional meter, and that is capable of transmitting and receiving data for information, monitoring and control purposes, using a form of electronic communication;”, and
 - (b) in Regulation 11, by the insertion of the following paragraph after paragraph (7):

“(8) With respect to its management of information provided through smart metering systems, the distribution system operator shall ensure that its compliance programme includes specific measures in order to exclude discriminatory access to data from eligible parties within the meaning of the 2019 Internal Electricity Market Directive and in accordance with the provisions of Article 23 of that Directive.”.

Amendments to the 2014 Regulations

9. The 2014 Regulations are amended –
- (a) in Regulation 2, by the substitution of the following definition for the definition of “Electricity Market Directive”:

“ ‘Electricity Market Directive’ means Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019¹;”,
 - (b) in Regulation 18 –
 - (i) in paragraph (1), by the deletion of “electricity and”,
 - (ii) in paragraph (2), by the insertion of “, in respect to natural gas,” after “A distribution operator shall”, and
 - (iii) in paragraph (3), by the substitution of “a final customer of natural gas” for “a final customer”, and
 - (c) in Regulation 19 –
 - (i) in paragraph (4), by the deletion of subparagraphs (c) and (d),
 - (ii) in paragraph (5), by the deletion of “the Electricity Market Directive and”,
 - (iii) in paragraph (6), by the insertion of “natural gas” before “energy suppliers”, and
 - (iv) in paragraph (7), by the insertion of “natural gas” before “energy consumption”.

Directions

10. (1) If, in the opinion of the Commission, the distribution system operator is not satisfactorily complying with the requirements of Regulation 3(3) or 4(1) or a supplier is not satisfactorily complying with Regulation 4(2), the Commission may issue a direction to the supplier or distribution system operator, as the case may be, specifying the remedial actions the supplier or distribution system operator shall take and the period of time for compliance with the direction.

(2) A supplier or distribution system operator may make representations to the Commission, within a period of 21 days beginning on the day on which the direction is served on it.

(3) On receiving representations (if any) under paragraph (2), the Commission shall consider them and reply within a reasonable period.

(4) A supplier or distribution system operator that is aggrieved by a direction under paragraph (1) may –

- (a) if no representations are made under paragraph (2), within the period of 30 days beginning on the day on which the direction is issued to it, or
- (b) if representations are made under paragraph (2), within the period of 30 days beginning on the day on which notification of the reply is served on it,

appeal to the High Court against the direction and, in determining the appeal, the judge may make any order he or she considers appropriate, including confirming the direction, with or without modification, or cancelling the direction.

(5) Where a supplier or distribution system operator fails to comply in full with a direction under paragraph (1) within the period specified or fails to cooperate with the Commission with regard to the direction, the Commission may apply to the High Court for an order directing the supplier or distribution system operator, as the case may be, to comply with the direction or to cooperate.

Service of directions

11. (1) Where the Commission issues a direction under Regulation 10, it shall be in writing, state the reasons on which it is based and be addressed to the supplier concerned or the distribution system operator, as the case may be, and as soon as practicable, be sent or given in any of the following ways –

- (a) by delivering it to the supplier or distribution system operator,
- (b) by leaving it at the address at which the supplier or distribution system operator carries on business,
- (c) by sending it by post in a pre-paid registered letter to the address at which the supplier or distribution system operator carries on business, or, in a case in which an address for service has been given, to that address, or
- (d) by electronic means, in a case in which the supplier or distribution system operator has given notice in writing to the person serving

or giving the direction of his or her consent to the direction being served on, or given to, him or her in that manner.

(2) In this Regulation “direction” includes a notification of a reply in respect of a direction under Regulation 10.



GIVEN under my Official Seal,
25 January 2022.

EAMON RYAN
Minister for the Environment, Climate and
Communications.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The Order forms the legal basis for the operation of the National Smart Metering Programme in Ireland. A legal basis had existed (Regulations 18 & 19 of SI 426 of 2014) but the relevant provisions of the Energy Efficiency Directive, (Articles 9 & 10) underpinning the application of those Regulations to the electricity market have been superseded by Article 70 of Directive 2019/944 EU, on common rules for the internal market in electricity and amending Directive 2012/27/EU.

The order provides for, inter alia, requirements in relation to the deployment of smart metering systems in Ireland, their functionalities, their need for compliance with EU data protection and privacy rules, the management of smart metering data and access to smart metering data (rules to be developed in a smart metering data access code).

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