



STATUTORY INSTRUMENTS.

S.I. No. 570 of 2011

EUROPEAN COMMUNITIES (INTERNAL MARKET IN
ELECTRICITY) (CERTIFICATION AND DESIGNATION OF THE
TRANSMISSION SYSTEM OPERATOR) REGULATIONS 2011

(Prn. A11/2030)

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I, PAT RABBITTE, Minister for Communications, Energy and Natural Resources, 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 Chapter IV of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Internal Market in Electricity) (Certification and Designation of the Transmission System Operator) Regulations 2011.

Interpretation

2. (1) In these Regulations—

“Act of 1999” means the Electricity Regulation Act 1999;

“Commission” means Commission for Energy Regulation;

“Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009¹;

“Regulation” means Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009²;

“third country” means a country which is not a member of the European Union;

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

“transmission system owner” means the holder of a licence granted under section 14(1)(f) of the Act of 1999.

(2) A word or expression which is used in these Regulations and is also used in the Directive or Regulation, has, unless the context otherwise requires, the same meaning as it has in the Directive or Regulation, as the case may be.

¹O.J. No. L211, 14.8.2009, p. 55

²O.J. No. L211, 14.8.2009, p. 15

Requirement to apply for certification

3. (1) Before an undertaking is designated and approved as a transmission system operator under these Regulations it shall be certified according to the procedures under these Regulations.

(2) A designated transmission system operator shall notify the Commission of any planned transaction which may require a reassessment of its designation by the Commission.

Certification of transmission system operator

4. (1) The Commission shall establish and operate a certification procedure to ensure compliance by the transmission system operator and the transmission system owner with the requirements of Article 9 of the Directive.

(2) The certification procedure shall apply:

(a) upon receipt of an application,

(b) upon notification by the transmission system operator or the transmission system owner pursuant to Regulation 3(2),

(c) on the Commission's own initiative where it has knowledge that a planned change in rights or influence over transmission system operators may lead to an infringement of Article 9 of the Directive or where it has reason to believe that such an infringement may have occurred, or

(d) upon a reasoned request from the European Commission.

Decision in respect of certification

5. (1) The Commission shall adopt, in accordance with its procedures, a preliminary decision on the certification of a transmission system operator within the time period set out in Article 10 of the Directive.

(2) Where, following expiry of the time period, the Commission has not adopted an explicit preliminary decision, a preliminary decision to grant certification shall be deemed to have been made.

(3) The preliminary decision of the Commission shall not become effective until the procedure referred to in paragraphs (5) and (6) has been completed.

(4) The Commission shall notify its preliminary decision on the certification of a transmission system operator promptly to the European Commission and shall provide the European Commission with all relevant information with respect to that decision.

(5) The Commission shall adopt and publish a final decision on the certification:

- (a) within two months of the receipt of an opinion of the European Commission with respect to its decision on the certification pursuant Article 3(1) of the Regulation, or
 - (b) where the European Commission does not provide an opinion with respect to its decision on the certification pursuant Article 3(1) of the Regulation, within two months of the expiry of the process set out in that Regulation.
- (6) Save in the case of a notification pursuant to Article 9(10) of the Directive, the Commission shall have regard to any opinion provided by the European Commission with respect to its decision on the certification pursuant to Article 3(1) of the Regulation.
- (7) The Commission and the European Commission may request from the transmission system operator and undertakings performing any of the functions of generation or supply any information relevant for the fulfilment of their tasks under this Regulation, in accordance with Article 10(7) of the Directive.
- (8) The transmission system operator and undertakings performing any of the functions of generation or supply shall comply with any request for information from the Commission or the European Commission pursuant to paragraph (9) in accordance with Article 10(7) of the Directive.
- (9) The Commission shall preserve the confidentiality of commercially sensitive information received by it pursuant to this Regulation.

Certification in relation to third countries

6. (1) Where certification is requested by a transmission system owner or a transmission system operator, which is controlled by a person or persons from a third country or third countries, the Commission shall notify the European Commission and the certification procedure in this Regulation shall apply.
- (2) The Commission shall notify to the European Commission, without delay, any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system or a transmission system operator.
- (3) The transmission system operator shall notify the Commission of any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator.
- (4) The Commission shall adopt a draft decision on the certification of a transmission system operator to which this Regulation applies within 4 months from the date of notification by the transmission system operator.
- (5) The Commission shall refuse the certification if it has not been demonstrated that:
- (a) the entity concerned complies with the requirements of Article 9 of the Directive, and

- (b) granting certification will not put at risk the security of energy supply in the State or in the European Union, having regards to—
 - (i) the rights and obligations of the European Union with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the European Union is a party and which addresses the issues of security of energy supply,
 - (ii) the rights and obligations of the State with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with European Union law, and
 - (iii) other specific facts and circumstances of the case and the third country concerned.

(6) The Commission shall notify the draft decision to the European Commission without delay, together with all the relevant information with respect to that decision.

(7) The Commission shall, before it adopts a final decision on the certification to which this Regulation applies, request an opinion from the European Commission on whether—

- (a) the entity concerned complies with the requirements of Article 9 of the Directive, and
- (b) granting certification will not put at risk the security of energy supply to the European Union.

(8) The Commission shall adopt a final decision on the certification:

- (a) within two months of the receipt of an opinion of the European Commission with respect to its decision on the certification pursuant Article 3(1) of the Regulation, or
- (b) where the European Commission does not provide an opinion with respect to its decision on the certification pursuant to Article 3(1) of the Regulation, within two months of the expiry of the process set out in that Regulation.

(9) The Commission shall have regard to any opinion provided by the European Commission with respect to its decision on the certification pursuant to Article 3(1) of the Regulation.

(10) The Commission has the right to refuse certification where granting certification puts at risk the State's security of energy supply or the security of energy supply of another Member State of the European Union.

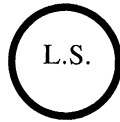
(11) The Commission shall publish its final certification decision and the European Commission's opinion together.

(12) Where the Commission's final certification decision diverges from the European Commission's opinion, the Commission shall provide and publish, together with that decision, the reasoning underlying such decision.

Designation of transmission system operators

7. (1) As soon as practicable after the Commission has published a final certification decision in accordance with Regulation 5(5) or 6(11), the Commission shall approve and designate the undertaking concerned as a transmission system operator. Notice of this shall be published in the *Iris Oifigiúil*.

(2) The designation of the transmission system operator shall be notified by the Commission to the European Commission and published in the Official Journal of the European Union.



GIVEN under my Official Seal,
4 November 2011.

Pat Rabbitte,
Minister for Communications, Energy and Natural Resources.

EXPLANATORY NOTE

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

These Regulations transpose the certification provisions of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity. They set out the certification procedure to be applied by the Commission for Energy Regulation in considering an application for certification of the electricity transmission system operator.

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