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Submission to
SEM Committee
on
Energy Trading Arrangements Detailed
Design
in response to
Building Blocks Consultation Paper
SEM-15-011
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Prepared by Ierne¹



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"Wind does not cause curtailment any more than power stations cause constraint."

¹ Ierne Ltd is an energy policy specialist company, also involved in renewable energy project development and consulting. Details of its activities, publications and the author's bio are at www.ierne.ie. The author would like to thank Joanne Finn, Partner, of Eugene F. Collins for her assistance provided during the preparation of this submission.

Introduction & Summary

The purpose of this submission is to focus on the Irish implementation of Article 16 of EU Directive 2009/28/EC ("the Directive"), and specifically on the ongoing failure of the Department, the CER and the SEM Committee (together the "Irish Authorities") to address the position of renewables on the Irish market as it is required to do under this Directive and EU law. This failure is causing ongoing loss to IWFA members, losses for which the Irish Authorities are responsible.

The submission calls for the authorities to take immediate action, to discharge their obligations under the new transposition of the Directive, and in particular, following the appropriate consultations:

- CER to require the TSO and TAO to develop the grid in full accordance with Article 16.1 of the Directive,
- CER to set out the transparent and non-discriminatory criteria for the application of Article 16.2 without any further delay,
- and having done so, CER must set about implementing the three obligations therein,
- SEMC must also fully implement Article 16 in its decisions, not the least of which is the design and implementation of I-SEM, and if necessary the legislative base of the SEMC should be strengthened by the two Governments to ensure this is achieved without delay,
- Eirgrid as the Irish TSO must report on curtailment in accordance with Article 16.2(c) of the Directive.

Background to this Submission

Having set out its position quite clearly in its earlier response to the RLG on the various 'Building Blocks' issues now being consulted upon, IWFA now proposes to focus on one point only. That is, the failure by the Irish Authorities to properly implement Article 16 of the Directive. EU directives, are binding on all of the Member States², a factor evidenced by the European Commission's instigation of legal proceedings against the State in 2014. This proceedings have subsequently been withdrawn, undoubtedly on the basis that the Irish Authorities agreed to repeal the previous transposition of the Directive (SI 147/2011) and replace it with new, more complete implementation legislation committing to fully implement the Directive. The IWFA is disappointed to note that little has changed from the perspective of it's members since the discontinuance of legal proceedings in January 2015. We are now requesting the Irish authorities to immediately proceed with the items set out in this submission and adequately discharge their obligations under the Directive as set out in SI 483/2014.

The first two paragraphs of Article 16 of the Renewables Directive confer certain rights on renewable generators, and obligations on the authorities, as follows:

"1. Member States shall take the appropriate steps to develop transmission and distribution grid infrastructure, intelligent networks, storage facilities and the electricity system, in order to allow the secure operation of the electricity system as it accommodates the further development of electricity production from renewable energy sources, including interconnection between Member States and between Member States and third countries.

² including Ireland and the UK, and thereby the SEM Committee

Member States shall also take appropriate steps to accelerate authorisation procedures for grid infrastructure and to coordinate approval of grid infrastructure with administrative and planning procedures.

2. Subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria defined by the competent national authorities:

(a) Member States shall ensure that transmission system operators and distribution system operators in their territory guarantee the transmission and distribution of electricity produced from renewable energy sources

(b) Member States shall also provide for either priority access or guaranteed access to the grid-system of electricity produced from renewable energy sources;

(c) Member States shall ensure that when dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources in so far as the secure operation of the national electricity system permits and based on transparent and non-discriminatory criteria. Member States shall ensure that appropriate grid and market-related operational measures are taken in order to minimise the curtailment of electricity produced from renewable energy sources. If significant measures are taken to curtail the renewable energy sources in order to guarantee the security of the national electricity system and security of energy supply, Members States shall ensure that the responsible system operators report to the competent regulatory authority on those measures and indicate which corrective measures they intend to take in order to prevent inappropriate curtailments." [emphasis added]

These two paragraphs of Article 16 contains seven broad obligations on the Irish authorities:³

1. The Irish Authorities are obliged to take the necessary measures, to ensure that the grid owners and operators develop the grid in a manner compliant with the requirements of paragraph 1;
2. The Irish Authorities, and in this case specifically the CER, must set out transparent and non-discriminatory criteria for the obligations in sub paras 2(a), (b), and (c);
3. The Irish Authorities must ensure that the grid operators guarantee the transmission of renewable electricity, subject only to safety and reliability of the grid;
4. The Irish Authorities must ensure, that the grid operators provide either priority or guaranteed access to the grid for renewable electricity, subject only to safety and reliability of the grid;
5. The Irish Authorities must ensure that TSO(s) give priority dispatch to electricity from renewables, insofar as the secure operation of the national electricity system permits and based on transparent and non-discriminatory criteria, and again subject to safety and reliability of the grid;

³ In S.I. 483/2014, Regulation 4(5) states provides that the CER is specifically tasked with taking "the appropriate" steps to implement Article 16 of the Directive in its entirety

6. The Irish Authorities must also ensure that appropriate grid and market-related operational measures are taken in order to minimise the curtailment of electricity produced from renewable energy sources;
7. Finally, if significant measures are taken to curtail the renewable energy sources in order to guarantee the security of the national electricity system and security of energy supply, then the Irish Authorities must ensure that the TSO(s) report to the Regulator(s) on this, while also indicating what actions they propose to take to prevent 'inappropriate' curtailments.

It is worth noting that a number of these obligations were originally imposed on the Irish Authorities for the first time in Article 7(1) of the 2001 Directive on Electricity from Renewable Sources (2001/77/EC). In any case, obligations such as priority dispatch and guaranteed transmission are not new, and the Irish Authorities have had more than adequate time to prepare for their introduction. Ireland included references to priority dispatch in the 1999 Electricity Act and the CER, as well as the SEMC, have set about implementing this element of Article 16. However, as will be further elaborated on below many elements of Article 16 are not adequately implemented, nor are they properly taken into account in the decision making of the Irish Authorities.

Transposition

Ireland originally transposed parts of the 2009 Directive, including some parts of Article 16, on 28th March 2011, with Statutory Instrument 147 of 2011. This legislation was repealed in October 2014, as its inadequate implementation gave rise to infringement proceedings from the European Commission against Ireland. Some of the following issues arose from that Statutory Instrument:

1. Not all of the obligations arising from Article 16 were transposed. No reference at all was made to the detailed obligation to develop the grid, as set out in Article 16.1, and the specific obligation to implement either priority or guaranteed access, as set out in Article 16.2(b) was also omitted;
2. The transposition appears to qualify all of the obligations in Article 16(2) with the phrase, "*In order to achieve the target addressed to the state in Annex 1 to the Directive..*", which could be interpreted as meaning that the obligations no longer apply when the target is achieved, which is not the intent of the Directive, and this problem appears to be duplicated in the new implementing Regulations. However, the IWFA is advised that in light of the obligation to interpret legislation implementing EU law as consistent with its parent Directives (the 'consistency obligation'), arguably the new SI should not be read as further qualifying the obligations in any way;
3. The transposition failed to adequately reflect certain obligations in the Directive, inserting discretionary language where obligatory language would be more consistent with the Directive;
4. Neither of the terms 'priority' or 'guarantee' appear at all in the transposition of the access obligation in Article 16(2)b. It appears that that obligation was instead combined with the transmission obligation in Article 16.2(a), so that "*a generator of electricity from renewable sources that is connected to the electricity system shall be able to sell and transmit such electricity at all times, whenever the source becomes available*". This appears more like a 'guarantee' than a 'priority'.

This transposition subjected the combined "access" and "guarantee" to a number of separate qualifications, including:

- the maintenance of the reliability and safety of the grid;
- the transparent and non discriminatory criteria defined and published by CER (should they be produced);
- Part V of the 1999 Electricity Act⁴; and,
- the Single Electricity Market Trading and Settlement Code (TSC)⁵.

Only two of these appear in the Directive but all of them are maintained in the new transposition of the Directive. Given the consistency obligation outlined above, it is reasonable to take a minimalist interpretation of the last two qualifications, thus requiring the generator in question to comply with the grid code and the Trading and Settlement Code (which is normal and reasonable) and not that the access right *per se* is qualified by these two sets of rules.

As noted above, the European Commission initiated infringement proceedings against Ireland for inadequate transposition of the Directive on 21st January 2014⁶, including for example a reference to the non-transposition of 16.1. The proceedings were removed from the ECJ on 20th January 2015 on foot of new transposition instruments adopted by Ireland⁷.

One of those, SI 483/2014, repeals SI 147 of 2011 and instead provides for more complete transposition of the Renewables Directive. As regards Article 16, there are some small changes, though paragraph 5 has been changed quite significantly and now reads:

CER shall take the appropriate steps required by Article 16 of the Directive.

The IWFA continue to have concerns in relation to the adequacy of the transposition of some of the seven obligations in Article 16.1 & 16.2:

1. The detailed grid development obligation that was originally ignored, is now covered by Paragraph 5 of Regulation 4, and is therefore fully binding on CER;
2. The transposition of the 'criteria' obligation has remained in place since 2011, and CER was then identified as the 'competent national authority' to specify them, though these criteria are still lacking;
3. The rewording of the 'guaranteed transmission' obligation remains; however, given the consistency obligation, arguably the transposition should not be read as weakening the obligations in any way;
4. The terms 'priority' and 'guaranteed' are still completely omitted from the transposition of the 'access' obligation, and instead we still have what looks

⁴ Part V of the Electricity Act provides for grid codes, terms and charges for connection, contestability, provisions for direct lines when connection is refused and the TSO Forecast statement on grid capacity; since the clause in question assumes connection, the only relevant section is the grid code

⁵ The TSC is huge complex set of administrative rules governing the overall operation of the market, including the sale of power by all generators, including renewables.

⁶ which went to the ECJ on 12th May 2014, case C-236/14

⁷ SI 482 and 483 of 2014, both dated 23rd October 2014 (not yet at the DCENR website, but available at www.irishstatutebook.ie)

like guaranteed access combined with the transmission obligation, apparently subjected to further qualification, but again the consistency obligation applies; in the view of the IWFA, the NREAP may well require amendment to reflect this apparent selection of guaranteed access;

5. The priority of dispatch obligation is relatively faithfully transposed;
6. While the more general grid and market obligation has been transposed reasonably faithfully, it has been addressed to the TSO and DSO only; since neither of these operate the market, while SEMC/SEMO do, there seems to be an important omission here, and again the consistency obligation is relevant;
7. The obligation to report on curtailment has been reasonably well transposed, except that *'measures they intend to take'* has been changed to *'measures it is intended to take'*, which weakens the TSO responsibility, and once again, the consistency obligation is relevant.

Implementation

As Regulation 4(5) of SI 483 Of 2015 now imposes an obligation on CER to implement all of Article 16, IWFA contends this has the following consequences as regards paragraphs 1 & 2:

- (i) CER must now require the grid authorities to implement Article 16.1 concerning development of the grid;
- (ii) the transmission guarantee requires implementation;
- (iii) there needs to be a clear decision of the CER on the application of either priority or guaranteed access, though the transposition instrument suggests the latter, which must then be implemented by the CER and the grid authorities;
- (iv) that there is now a specific market obligation on the SEMC/SEMO to minimise curtailment;
- (v) the TSO must report to CER on curtailment and the measures to minimize it; and
- (vi) The CER must specify and publish the criteria concerning guaranteed transmission, priority of dispatch and access.

These obligations are clearly specified in the implementing legislation and it is now incumbent on the CER to engage in that exercise and publish those criteria, specifically referencing Articles 16.1 & 2, without further delay.

As regards the actual implementation to date by the authorities of the seven obligations in the RES Directive the IWFA has the following comments:

1. Eirgrid's Grid 25 and DS3 programmes, may constitute partial implementation of the obligation in Article 16(1), however there appear to be gaps. In particular, storage facilities have not been seriously considered to date, and these would not only allow for the variability of renewable energy sources, but would also provide the inertia and similar services that Eirgrid has argued are lacking from the renewable generators. Such arguments have led to increasing levels of 'curtailment' (which only applies to wind generation, and as such, is discriminatory). It may not be entirely irrelevant that Eirgrid itself proposes to provide such services from its interconnector. Furthermore, no serious consideration has been given by the authorities to an AC

interconnector with the UK (eg: over the shortest distance from the North to Scotland), which would also help solve the various stability concerns that the TSO has expressed (eg: inertia), and such consideration is required now given how long such projects take. Clearly Ireland has failed to: *"accelerate authorisation procedures for grid infrastructure and to coordinate approval of grid infrastructure with administrative and planning procedures"*, as evidenced by the endless delays in the consenting of such infrastructure, once again leading to a continuing lack of firm access for and an increase in constraint/curtailment of renewables. Such failures would seem to indicate that the current approach of the Irish Authorities is wrong for Ireland, but the authorities seem bent on continuing with the current policy. Finally, these programmes and decisions have at no stage expressly indicated that they seek to implement Article 16(1) of the Directive, which in the interests of transparency they ought to.

2. As far as the IWFA is aware, the CER has still not published a specific decision dealing with the criteria for the application of Article 16(2) of the Directive.
3. There is an ongoing failure to address the 'transmission guarantee' in clear and concrete language. The IWFA is concerned that this concept is not given proper, or any, consideration by the Irish Authorities. In the IWFA's view, this provision requires express implementation as the regulatory decisions dealing with curtailment and 'tie-breaks', are decisions effectively undermining the guarantee, but without setting out a full and reasoned approach to the matter, so that renewable generators can appraise and fully understand the decisions being made and crucially how these decisions are likely to affect the medium and long-term commercial viability of their projects.
4. It appears that the regulators believe that the Gate 3 decisions amount to implementation of the access rules of the Directive; however, these decisions amount to a discrimination against renewables, allowing fossil plant to jump the connection queue, on the questionable grounds of 'security of supply', which is not a qualification provided for in Article 16.2(b); several recent decisions on firm access came after the Directive, and yet allocated firm access to fossil plant ahead of renewables; in fact the Gate 3 decisions never even mention either priority or guaranteed access, and they do the opposite of providing either of them to renewables, so that it is not possible to consider these decisions as implementation of this obligation.
5. Priority of dispatch has been broadly implemented and notably the CER & SEMC have agreed that economic considerations cannot compromise it, in line with the Renewables Directive; while it is apparently to be maintained in the new I-SEM market, criteria have still not been clearly specified by CER as required by the Directive.
6. The position in relation to curtailment to date has been unsatisfactory. Had the Directive been fully implemented in a timely fashion by the grid authorities, the level of curtailment would not be as significant as it is today, and the prospects of hugely increased curtailment, which has direct and immediate implications for operators seeking financing would not hover over the whole sector as it currently does. Furthermore, it is not clear that the government(s) require the regulators to manage the electricity market design and operation in the same way, as required by Article 16.2(c). IWFA believes there is a considerable risk of increased curtailment, given the I-SEM model design that has been chosen and the inadequacy of measures to avoid curtailment; it is therefore essential that the I-SEM design now fully reflect the requirements of Article 16.2 of the Directive, as it is legally obliged to do,

and that it specifies exactly how the SEMC and the CER propose to reflect those obligations in order to be compliant with Regulation 4(5).

7. Curtailment has become quite significant over recent years, in particular for some larger controllable renewable generators participating in the market. These losses, resulting as they do from a failure to properly implement the Directive, are attributable to the inaction of the Irish Authorities. As curtailment is expected to increase, possibly quite dramatically, the IWFA considers it is well past time for the TSO to report fully on what has happened to date, why it has happened, and what it proposes to do to fix the problem, while also indicating such reporting is in compliance with this legal obligation; and presumably the CER should publish those reports; IWFA is not aware of any such reports.

Conclusions

It is apparent from the above that the implementation of Article 16 of the Renewables Directive by Ireland remains incomplete and inadequate, and that the failure to implement it properly is having a detrimental effect of renewable generators.

In light of the recent adoption by the Minister for Communications, Energy And Natural Resources of SI 483 2014, which significantly changes the transposition of the Directive, it is time for CER to meet its legal obligation to properly specify the transparent and non-discriminatory criteria for the application of Article 16.2, as a prelude to full implementation of that paragraph, and to otherwise fully implement the remainder of that Article as now required by Irish law.

A related point is that the legal framework under which the SEMC operates needs to be considerably strengthened in such a way that expressly recognises and incorporates the SEMC's obligations under the Directive and implements them fully in all decisions. It is imperative that this be done prior to completion and implementation of the new all-island electricity market, I-SEM.

IWFA is seeking the following outcomes:

1. CER must now, following a full consultation process, see to it that the TSO (and TAO) make a quantum leap in grid planning, taking "*the appropriate steps to develop transmission and distribution grid infrastructure, intelligent networks, storage facilities and the electricity system, in order to allow the secure operation of the electricity system as it accommodates the further development of electricity production from renewable energy sources, including interconnection..*", in particular adding storage and AC interconnection to their list of options. While doing so, they also ought to reconsider their overall approach, in order to see whether a more decentralised electricity system, with greater local balance and control, would avoid the need for the very large-scale infrastructure, which is proving difficult to consent, despite the upgrading of the planning system.
2. Having first set out the transparent and non-discriminatory criteria for their application, following a full consultation process, the CER should set about delivering on its obligations in Article 16.2. In doing so, it would have to wrestle with the overall qualification where actions are '*subject to requirements relating to the maintenance of the reliability and safety of the grid*', which cannot mean that no action is required (broadly the approach to date), as that cannot be consistent with the obligations in the Directive. Rather, measures should be adopted to develop the grid under the full scope of Article 16.1, and to enable the

three obligations in Article 16.2, but not to the extent of compromising the safety or reliability of the grid.

3. As to specifics:

- IWFA does not expect every kWhr to be transmitted, since the infrastructure required to transmit the last kWhr, while also maintaining the safety and reliability of the grid, would be too expensive. But where the guarantee is not honoured, IWFA would expect that the lost output would be compensated as normal constraint in the market, thus ending SEMC's proposed discriminatory removal of compensation for curtailment. Indeed, in order to more efficiently support renewables, the full support should be paid on the lost output. The significantly reduced risk and cost for projects resulting from such an approach would more accurately reflect the intent of the support mechanism, and would reduce the overall cost of supports for renewables paid by consumers.

- a clear decision is now required from CER, following a full consultation process, as to whether renewables are to have priority or guaranteed access to the grid, though the transposition instrument strongly indicates the latter. Priority access suggests the preferential allocation of limited grid capacity to renewables ahead of other generators, but what we have had to date has been the opposite. Spare grid capacity is the key to competition in the electricity market, and the fact that the TSO allocates grid on a marginal basis, allegedly to minimize cost, actually prevents competition in the market, and indeed establishes local market power for certain generators. IWFA would prefer a less 'marginal' approach to grid capacity allocation, which would restore competition, shorten lead times, and dispense with the need for priority access. We need complimentary plant to connect in order to provide ramping capability and other services, so they also require access. A guaranteed access approach therefore seems preferable for all of these reasons.

- the SEMC needs to recognise its obligation to minimise curtailment, and implement the necessary rules in all of its decisions, not the least of which is the I-SEM, and if necessary the legislative base of the SEMC should be strengthened by the two Governments to ensure this is achieved without delay.

- Eirgrid as TSO must now fully and transparently report to CER, preferably annually, on curtailment to date, detailing its extent, explaining its underlying causes, and setting out the measures it intends to adopt over what time period in order to minimise it.