

Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing  
a Network Code on Demand Connection (Text with EEA relevance)

TITLE I

GENERAL PROVISIONS

*Article 4*

**Application to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems and existing demand units used to provide demand response services**

1 Existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems and existing demand units that are or can be used by a demand facility or a closed distribution system to provide demand response services to a relevant system operator or relevant TSO, are not subject to the requirements of this Regulation, except where:

- a an existing transmission-connected demand facility, an existing transmission-connected distribution facility, an existing distribution system, or an existing demand unit within a demand facility at a voltage level above 1 000 V or a closed distribution system connected at a voltage level above 1 000 V, has been modified to such an extent that its connection agreement must be substantially revised in accordance with the following procedure:
  - (i) demand facility owners, DSOs, or CDSOs who intend to undertake the modernisation of a plant or replacement of equipment impacting the technical capabilities of the transmission-connected demand facility, the transmission-connected distribution facility, the distribution system, or the demand unit shall notify their plans to the relevant system operator in advance;
  - (ii) if the relevant system operator considers that the extent of the modernisation or replacement of equipment is such that a new connection agreement is required, the system operator shall notify the relevant regulatory authority or, where applicable, the Member State; and
  - (iii) the relevant regulatory authority or, where applicable, the Member State shall decide if the existing connection agreement needs to be revised or a new connection agreement is required and which requirements of this Regulation shall apply; or
- b a regulatory authority or, where applicable, a Member State decides to make an existing transmission-connected demand facility, an existing transmission-connected distribution facility, an existing distribution system, or an existing demand unit subject to all or some of the requirements of this Regulation, following a proposal from the relevant TSO in accordance with paragraphs 3, 4 and 5.

2 For the purposes of this Regulation, a transmission-connected demand facility, a transmission-connected distribution facility, a distribution system, or a demand unit that is, or can be, used by a demand facility or a closed distribution system to provide demand response services to a relevant system operator or relevant TSO, shall be considered as existing if:

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**Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EU) 2016/1388. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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- a it is already connected to the network on the date of entry into force of this Regulation; or
- b the demand facility owner, DSO, or CDSO has concluded a final and binding contract for the purchase of the main demand equipment or the demand unit by two years after the entry into force of the Regulation. The demand facility owner, DSO, or CDSO must notify the relevant system operator and relevant TSO of the conclusion of the contract within 30 months after the entry into force of the Regulation.

The notification submitted by the demand facility owner, DSO, or CDSO to the relevant system operator and the relevant TSO shall at least indicate the contract title, its date of signature and date of entry into force, and the specifications of the main demand equipment or the demand unit to be constructed, assembled or purchased.

A Member State may provide that in specified circumstances the regulatory authority may determine whether the transmission-connected demand facility, the transmission-connected distribution facility, the distribution system, or the demand unit is to be considered existing or new.

3 Following a public consultation in accordance with Article 9 and in order to address significant factual changes in circumstances, such as the evolution of system requirements including penetration of renewable energy sources, smart grids, distributed generation or demand response, the relevant TSO may propose to the regulatory authority concerned, or where applicable, to the Member State to extend the application of this Regulation to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems, or existing demand units used by a demand facility or a closed distribution system to provide demand response services to a relevant system operator or relevant TSO.

For that purpose a sound and transparent quantitative cost-benefit analysis shall be carried out, in accordance with Articles 48 and 49. The analysis shall indicate:

- a the costs, in regard to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems and existing demand units, of requiring compliance with this Regulation;
- b the socioeconomic benefit resulting from applying the requirements set out in this Regulation; and
- c the potential of alternative measures to achieve the required performance.

4 Before carrying out the quantitative cost-benefit analysis referred to in paragraph 3, the relevant TSO shall:

- a carry out a preliminary qualitative comparison of costs and benefits;
- b obtain approval from the relevant regulatory authority or, where applicable, the Member State.

5 The relevant regulatory authority or, where applicable, the Member State shall decide on the extension of the applicability of this Regulation to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems, or existing demand units, within six months of receipt of the report and the recommendation of the relevant TSO in accordance with paragraph 4 of Article 48. The decision of the regulatory authority or, where applicable, the Member State shall be published.

6 The relevant TSO shall take account of the legitimate expectations of demand facility owners, DSOs and CDSOs as part of the assessment of the application of this Regulation to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems, or existing demand units.

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7 The relevant TSO may assess the application of some or all of the provisions of this Regulation to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems, or existing demand units, every three years in accordance with the requirements and process set out in paragraphs 3 to 5.

**Changes to legislation:**

There are outstanding changes not yet made to Commission Regulation (EU) 2016/1388. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- Regulation revoked by S.I. 2019/533 reg. 5(b) (This amendment not applied to legislation.gov.uk. Reg. 5 revoked on the day before IP completion day by S.I. 2019/1104, regs. 1(2), 2)
- Art. 4(2) words substituted by S.I. 2020/1006 Sch. 2 para. 3(3)(b)
- Art. 4(3) word substituted by S.I. 2020/1006 Sch. 2 para. 3(4)(a)
- Art. 4(3) words inserted by S.I. 2020/1006 Sch. 2 para. 3(4)(b)
- Art. 4(3) words inserted by S.I. 2020/1006 Sch. 2 para. 3(4)(c)
- Art. 4(5) word omitted by S.I. 2020/1006 Sch. 2 para. 3(6)(a)
- Art. 4(5) words omitted by S.I. 2020/1006 Sch. 2 para. 3(6)(b)

**Changes and effects yet to be applied to the whole legislation item and associated provisions**

- Title 6 omitted by S.I. 2020/1006 Sch. 2 para. 22
- Signature words omitted by S.I. 2020/1006 Sch. 2 para. 24
- Annex 1 word substituted by S.I. 2020/1006 Sch. 2 para. 25(c)(i)
- Annex 1 word substituted by S.I. 2020/1006 Sch. 2 para. 25(c)(ii)
- Annex 1 word substituted by S.I. 2020/1006 Sch. 2 para. 25(c)(iii)
- Annex 1 word substituted by S.I. 2020/1006 Sch. 2 para. 25(c)(iv)
- Annex 1 word substituted by S.I. 2020/1006 Sch. 2 para. 25(c)(v)
- Annex 1 word substituted by S.I. 2020/1006 Sch. 2 para. 25(c)(vi)
- Annex 1 word substituted by S.I. 2020/1006 Sch. 2 para. 25(c)(vii)
- Annex 1 words omitted by S.I. 2020/1006 Sch. 2 para. 25(a)
- Annex 1 words omitted by S.I. 2020/1006 Sch. 2 para. 25(b)
- Annex 1 words omitted by S.I. 2020/1006 Sch. 2 para. 25(d)
- Annex 1 words omitted by S.I. 2020/1006 Sch. 2 para. 25(e)
- Annex 2 word substituted by S.I. 2020/1006 Sch. 2 para. 26(a)(iii)(aa)
- Annex 2 word substituted by S.I. 2020/1006 Sch. 2 para. 26(a)(iii)(bb)
- Annex 2 word substituted by S.I. 2020/1006 Sch. 2 para. 26(b)(iii)(aa)
- Annex 2 word substituted by S.I. 2020/1006 Sch. 2 para. 26(b)(iii)(bb)
- Annex 2 word substituted by S.I. 2020/1006 Sch. 2 para. 26(b)(iii)(cc)
- Annex 2 words omitted by S.I. 2020/1006 Sch. 2 para. 26(a)(i)
- Annex 2 words omitted by S.I. 2020/1006 Sch. 2 para. 26(a)(ii)
- Annex 2 words omitted by S.I. 2020/1006 Sch. 2 para. 26(a)(iv)
- Annex 2 words omitted by S.I. 2020/1006 Sch. 2 para. 26(a)(v)
- Annex 2 words omitted by S.I. 2020/1006 Sch. 2 para. 26(b)(i)
- Annex 2 words omitted by S.I. 2020/1006 Sch. 2 para. 26(b)(ii)
- Annex 2 words omitted by S.I. 2020/1006 Sch. 2 para. 26(b)(iv)
- Annex 2 words omitted by S.I. 2020/1006 Sch. 2 para. 26(b)(v)
- Art. 2(5) words substituted by S.I. 2020/1006 Sch. 2 para. 1(4)(b)(i)
- Art. 2(5) words substituted by S.I. 2020/1006 Sch. 2 para. 1(4)(b)(ii)
- Art. 3(2)(a) words substituted by S.I. 2020/1006 Sch. 2 para. 2(3)
- Art. 4(1)(a)(iii) word omitted by S.I. 2020/1006 Sch. 2 para. 3(2)(b)(i)
- Art. 4(1)(a)(iii) words omitted by S.I. 2020/1006 Sch. 2 para. 3(2)(b)(ii)
- Art. 4(1)(a)(ii) word omitted by S.I. 2020/1006 Sch. 2 para. 3(2)(a)(i)
- Art. 4(1)(a)(ii) words omitted by S.I. 2020/1006 Sch. 2 para. 3(2)(a)(ii)
- Art. 4(1)(b) words substituted by S.I. 2020/1006 Sch. 2 para. 3(2)(c)
- Art. 4(2)(b) words substituted by S.I. 2020/1006 Sch. 2 para. 3(3)(a)(i)
- Art. 4(2)(b) words substituted by S.I. 2020/1006 Sch. 2 para. 3(3)(a)(ii)

- Art. 4(2)(b) words substituted by S.I. 2020/1006 Sch. 2 para. 3(3)(a)(iii)
- Art. 4(4)(b) word omitted by S.I. 2020/1006 Sch. 2 para. 3(5)(a)
- Art. 4(4)(b) words omitted by S.I. 2020/1006 Sch. 2 para. 3(5)(b)
- Art. 6(3)(d) words omitted by S.I. 2020/1006 Sch. 2 para. 4(4)(b)
- Art. 6(3)(f) word substituted by S.I. 2020/1006 Sch. 2 para. 4(4)(c)
- Art. 19(1)(c)(i) word substituted by S.I. 2020/1006 Sch. 2 para. 11
- Art. 29(2)(f) word substituted by S.I. 2020/1006 Sch. 2 para. 12(b)
- Art. 29(2)(g) word substituted by S.I. 2020/1006 Sch. 2 para. 12(c)(i)
- Art. 29(2)(g) word substituted by S.I. 2020/1006 Sch. 2 para. 12(c)(ii)
- Art. 42(3)(a) words substituted by S.I. 2020/1006 Sch. 2 para. 13
- Art. 48(3)(b) words omitted by S.I. 2020/1006 Sch. 2 para. 14(2)
- Art. 49(2)(c) words substituted by S.I. 2020/1006 Sch. 2 para. 15