

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

TITLE V

APPLICATIONS AND DEROGATIONS

CHAPTER 1

Cost-benefit analysis

Article 48

Identification of costs and benefits of application of requirements to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems and existing demand units

1 Prior to the application of any requirement set out in this Regulation to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems and existing demand units in accordance with Article 4(3), the relevant TSO shall undertake a qualitative comparison of costs and benefits related to the requirement under consideration. This comparison shall take into account available network-based or market-based alternatives. The relevant TSO may only proceed to undertake a quantitative cost-benefit analysis in accordance with paragraphs 2 to 5, if the qualitative comparison indicates that the likely benefits exceed the likely costs. If, however, the cost is deemed high or the benefit is deemed low, then the relevant TSO shall not proceed further.

2 Following a preparatory stage undertaken in accordance with paragraph 1, the relevant TSO shall carry out a quantitative cost-benefit analysis of any requirement under consideration for application to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems and existing demand units that have demonstrated potential benefits as a result of the preparatory stage according to paragraph 1.

3 Within three months of concluding the cost-benefit analysis, the relevant TSO shall summarise the findings in a report which shall:

- a include the cost-benefit analysis and a recommendation on how to proceed;
- b include a proposal for a transitional period for applying the requirement to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems and existing demand units. That transitional period shall not be more than two years from the date of the decision of the regulatory authority or where applicable the Member State on the requirement's applicability;
- c be subject to public consultation in accordance with Article 9.

4 No later than six months after the end of the public consultation, the relevant TSO shall prepare a report explaining the outcome of the consultation and making a proposal on the applicability of the requirement under consideration to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems and existing demand units. The report and proposal shall be notified to the regulatory authority

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or, where applicable, the Member State, and the demand facility owner, DSO, CDSO or, where applicable, third party shall be informed on its content.

5 The proposal made by the relevant TSO to the regulatory authority or, where applicable, the Member State pursuant to paragraph 4 shall include the following:

- a an operational notification procedure for demonstrating the implementation of the requirements by the existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems and existing demand units used by a demand facility or a closed distribution system to provide demand response services to relevant system operators and relevant TSOs;
- b a transitional period for implementing the requirements which shall take into account the classes of transmission-connected demand facilities, transmission-connected distribution facilities, distribution systems and demand units used by a demand facility or a closed distribution system to provide demand response services to relevant system operators and relevant TSOs and any underlying obstacles to the efficient implementation of the equipment modification/refitting.

Article 49

Principles of cost-benefit analysis

1 Demand facility owners, DSOs and CDSOs shall assist and contribute to the cost-benefit analysis undertaken according to Articles 48 and 53 and provide the necessary data as requested by the relevant system operator or relevant TSO within three months of receiving a request, unless agreed otherwise by the relevant TSO. For the preparation of a cost-benefit-analysis by a demand facility owner or prospective owner, or by a DSO/CDSO or prospective operator, assessing a potential derogation pursuant to Article 52, the relevant TSO and DSO shall assist and contribute to the cost-benefit analysis and provide the necessary data as requested by the demand facility owner or prospective owner, or by the DSO/CDSO or prospective operator, within three months of receiving a request, unless agreed otherwise by the demand facility owner or prospective owner, or by the DSO/CDSO or prospective operator.

2 A cost-benefit analysis shall be in line with the following principles:

- a the relevant TSO, demand facility owner or prospective owner, DSO/CDSO or prospective operator, shall base its cost-benefit analysis on one or more of the following calculating principles:
 - (i) the net present value;
 - (ii) the return on investment;
 - (iii) the rate of return;
 - (iv) the time needed to break even;
- b the relevant TSO, demand facility owner or prospective owner, DSO/CDSO or prospective operator, shall also quantify socioeconomic benefits in terms of improvement in security of supply and shall include at least:
 - (i) the associated reduction in probability of loss of supply over the lifetime of the modification;
 - (ii) the probable extent and duration of such loss of supply;
 - (iii) the societal cost per hour of such loss of supply;

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- c the relevant TSO, demand facility owner or prospective owner, DSO/CDSO or prospective operator, shall quantify the benefits to the internal market in electricity, cross-border trade and integration of renewable energies, including at least:
 - (i) the active power frequency response;
 - (ii) the balancing reserves;
 - (iii) the reactive power provision;
 - (iv) congestion management;
 - (v) defence measures;
- d the relevant TSO shall quantify the costs of applying the necessary rules to existing transmission-connected demand facilities, existing transmission-connected distribution facilities, existing distribution systems, or existing demand units, including at least:
 - (i) the direct costs incurred in implementing a requirement;
 - (ii) the costs associated with attributable loss of opportunity;
 - (iii) the costs associated with resulting changes in maintenance and operation.

CHAPTER 2

Derogations

Article 50

Power to grant derogations

1 Regulatory authorities may, at the request of a demand facility owner or prospective owner, and a DSO/CDSO or prospective operator, relevant system operator or relevant TSO, grant demand facility owners or prospective owners, and DSOs/CDSOs or prospective operators, relevant system operators or relevant TSOs derogations from one or more provisions of this Regulation for new and existing transmission-connected demand facilities, transmission-connected distribution facilities, distribution systems and demand units in accordance with Articles 51 to 53.

2 Where applicable in a Member State, derogations may be granted and revoked in accordance with Articles 51 to 53 by other authorities than the regulatory authority.

Article 51

General provisions

1 Each regulatory authority shall specify, after consulting relevant system operators, demand facility owners, DSOs, CDSOs, and other stakeholders whom it deems affected by this Regulation, the criteria for granting derogations pursuant to Articles 52 and 53. It shall publish those criteria on its website and notify them to the Commission within nine months of the entry into force of this Regulation. The Commission may require a regulatory authority to amend the criteria if it considers that they are not in line with this Regulation. This possibility to review and amend the criteria for granting derogations shall not affect the derogations already granted

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which shall continue to apply until the scheduled expiry date as detailed in the decision granting the exemption.

2 If the regulatory authority deems that it is necessary due to a change in circumstances relating to the evolution of system requirements, it may review and amend at most once every year the criteria for granting derogations in accordance with paragraph 1. Any changes to the criteria shall not apply to derogations for which a request has already been made.

3 The regulatory authority may decide that transmission-connected demand facilities, transmission-connected distribution facilities, distribution systems and demand units for which a request for a derogation has been filed pursuant to Articles 52 or 53 do not need to comply with the requirements of this Regulation from which a derogation has been sought from the day of filing the request until the regulatory authority's decision is issued.

Article 52

Request for a derogation by a demand facility owner, a distribution system operator or a closed distribution system operator

1 Demand facility owners or prospective owners, and DSOs/CDSOs or prospective operators, may request a derogation to one or several requirements of this Regulation for transmission-connected demand facilities, transmission-connected distribution facilities, distribution systems, or demand units used by a demand facility or a closed distribution system to provide demand response services to a relevant system operator and a relevant TSO.

2 A request for a derogation shall be filed with the relevant system operator and include:

- a an identification of the demand facility owner or prospective owner, the DSO/CDSO or prospective operator, and a contact person for any communications;
- b a description of the transmission-connected demand facility, the transmission-connected distribution facility, the distribution system, or the demand unit for which a derogation is requested;
- c a reference to the provisions of this Regulation from which a derogation is requested and a detailed description of the requested derogation;
- d detailed reasoning, with relevant supporting documents and cost-benefit analysis pursuant to the requirements of Article 49;
- e demonstration that the requested derogation would have no adverse effect on cross-border trade.

3 Within two weeks of receipt of a request for a derogation, the relevant system operator shall confirm to the demand facility owner or prospective owner, or to the DSO/CDSO or prospective operator, whether the request is complete. If the relevant system operator considers that the request is incomplete, the demand facility owner or prospective owner, or the DSO/CDSO or prospective operator, shall submit the additional required information within one month from the receipt of the request for additional information. If the demand facility owner or prospective owner, or if the DSO/CDSO or prospective operator, does not supply the requested information within that time limit, the request for a derogation shall be deemed withdrawn.

4 The relevant system operator shall, in coordination with the relevant TSO and any affected adjacent DSO, assess the request for a derogation and the provided cost-benefit analysis, taking into account the criteria determined by the regulatory authority pursuant to Article 51.

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5 Within six months of receipt of a request for a derogation, the relevant system operator shall forward the request to the regulatory authority and submit the assessment(s) prepared in accordance with paragraphs 4. That period may be extended by one month where the relevant system operator seeks further information from the demand facility owner or prospective owner, or from the DSO/CDSO or prospective operator, and by two months where the relevant system operator requests the relevant TSO to submit an assessment of the request for a derogation.

6 The regulatory authority shall adopt a decision concerning any request for a derogation within six months from the day after it receives the request. That time limit may be extended by three months before its expiry where the regulatory authority requires further information from the demand facility owner or prospective owner, or from the DSO/CDSO or prospective operator, or from any other interested parties. The additional period shall begin when the complete information has been received.

7 The demand facility owner or prospective owner, or the DSO/CDSO or prospective operator, shall submit any additional information requested by the regulatory authority within two months of such request. If the demand facility owner or prospective owner, or if the DSO/CDSO or prospective operator, does not supply the requested information within that time limit, the request for a derogation shall be deemed withdrawn unless, before its expiry:

- a the regulatory authority decides to provide an extension; or
- b the demand facility owner or prospective owner, or the DSO/CDSO or prospective operator, informs the regulatory authority by means of a reasoned submission that the request for a derogation is complete.

8 The regulatory authority shall issue a reasoned decision concerning a request for a derogation. Where the regulatory authority grants a derogation, it shall specify its duration.

9 The regulatory authority shall notify its decision to the relevant demand facility owner or prospective owner, the DSO/CDSO or prospective operator, the relevant system operator and the relevant TSO.

10 A regulatory authority may revoke a decision granting a derogation if the circumstances and underlying reasons no longer apply or upon a reasoned recommendation of the Commission or reasoned recommendation by the Agency pursuant to Article 55(2).

11 For demand units within a demand facility or a closed distribution system connected at a voltage level of or below 1 000 V, a request for a derogation under this Article may be made by a third party on behalf of the demand facility owner or prospective owner, or on behalf of the CDSO or prospective operator. Such a request may be for a single demand unit or multiple demand units within the same demand facility or closed distribution system. In the case of the latter, and provided the cumulative maximum capacity is specified, the third party may substitute the details required by point (a) of paragraph 2 with their details.

Article 53

Request for a derogation by a relevant system operator or relevant TSO

1 Relevant system operators or relevant TSOs may request derogations for transmission-connected demand facilities, transmission-connected distribution facilities, distribution systems, or demand units within a demand facility or a closed distribution system connected or to be connected to their network.

2 Relevant system operators or relevant TSOs shall submit their requests for a derogation to the regulatory authority. Each request for a derogation shall include:

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- a identification of the relevant system operator or relevant TSO, and a contact person for any communications;
 - b a description of the transmission-connected demand facility, the transmission-connected distribution facility, the distribution system, or the demand unit for which a derogation is requested and the total installed capacity and number of transmission-connected demand facilities, transmission-connected distribution facilities, distribution systems, or demand units;
 - c the requirement or requirements of this Regulation for which a derogation is requested, with a detailed description of the requested derogation;
 - d detailed reasoning, with all relevant supporting documents;
 - e demonstration that the requested derogation would have no adverse effect on cross-border trade;
 - f a cost-benefit analysis pursuant to the requirements of Article 49. If applicable, the cost-benefit analysis shall be carried out in coordination with the relevant TSO and any adjacent DSO.
- 3 Where the request for a derogation is submitted by a relevant DSO, the regulatory authority shall, within two weeks from the day after receipt of that request, ask the relevant TSO to assess the request for a derogation in the light of the criteria determined by the regulatory authority pursuant to Article 51.
- 4 Within two weeks from the day after the receipt of such request for assessment, the relevant TSO shall confirm to the relevant DSO whether the request for a derogation is complete. If the relevant TSO considers that it is incomplete, the relevant DSO shall submit the required additional information within one month from the receipt of the request for additional information.
- 5 Within six months of receipt of a request for a derogation, the relevant TSO shall submit to the regulatory authority its assessment, including any relevant documentation. The six-month time limit may be extended by one month where the relevant TSO seeks further information from the relevant DSO.
- 6 The regulatory authority shall adopt a decision concerning a request for a derogation within six months from the day after it receives the request. Where the request for a derogation is submitted by the relevant DSO, the six-month time limit runs from the day following receipt of the relevant TSO's assessment pursuant to paragraph 5.
- 7 The six-month time limit referred to in paragraph 6 may, before its expiry, be extended by an additional three months where the regulatory authority requests further information from the relevant system operator requesting the derogation or from any other interested parties. That additional period shall run from the day following the date of receipt of the complete information.
- The relevant system operator shall provide any additional information requested by the regulatory authority within two months from the date of the request. If the relevant system operator does not provide the requested additional information within that time limit, the request for a derogation shall be deemed withdrawn unless, before expiry of the time limit:
- a the regulatory authority decides to provide an extension; or
 - b the relevant system operator informs the regulatory authority by means of a reasoned submission that the request for a derogation is complete.
- 8 The regulatory authority shall issue a reasoned decision concerning a request for a derogation. Where the regulatory authority grants derogation, it shall specify its duration.

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9 The regulatory authority shall notify its decision to the relevant system operator requesting the derogation, the relevant TSO and the Agency.

10 Regulatory authorities may lay down further requirements concerning the preparation of requests for a derogation by relevant system operators. In doing so, regulatory authorities shall take into account the delineation between the transmission system and the distribution system at the national level and shall consult with system operators, demand facility owners and stakeholders, including manufacturers.

11 A regulatory authority may revoke a decision granting a derogation if the circumstances and underlying reasons no longer apply or upon a reasoned recommendation of the Commission or reasoned recommendation by the Agency pursuant to Article 55(2).

Article 54

Register of derogations from the requirements of this Regulation

1 Regulatory authorities shall maintain a register of all derogations they have granted or refused and shall provide the Agency with an updated and consolidated register at least once every six months, a copy of which shall be given to ENTSO for Electricity.

2 The register shall contain, in particular:

- a the requirement or requirements for which the derogation is granted or refused;
- b the content of the derogation;
- c the reasons for granting or refusing the derogation;
- d the consequences resulting from granting the derogation.

Article 55

Monitoring of derogations

1 The Agency shall monitor the procedure of granting derogations with the cooperation of the regulatory authorities or relevant authorities of the Member State. Those authorities or relevant authorities of the Member State shall provide the Agency with all the information necessary for that purpose.

2 The Agency may issue a reasoned recommendation to a regulatory authority to revoke a derogation due to a lack of justification. The Commission may issue a reasoned recommendation to a regulatory authority or relevant authority of the Member State to revoke a derogation due to a lack of justification.

3 The Commission may request the Agency to report on the application of paragraphs 1 and 2 and to provide reasons for requesting or not requesting derogations to be revoked.

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