

Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators (Text with EEA relevance)

TITLE V

DEROGATIONS

Article 60

Power to grant derogations

1 Regulatory authorities may, at the request of a power-generating facility owner or prospective owner, relevant system operator or relevant TSO, grant power-generating facility owners or prospective owners, relevant system operators or relevant TSOs derogations from one or more provisions of this Regulation for new and existing power-generating modules in accordance with Articles 61 to 63.

2 Where applicable in a Member State, derogations may be granted and revoked in accordance with Articles 61 to 63 by other authorities than the regulatory authority.

Article 61

General provisions

1 Each regulatory authority shall specify, after consulting relevant system operators and power-generating facility owners and other stakeholders whom it deems affected by this Regulation, the criteria for granting derogations pursuant to Articles 62 and 63. 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 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 power-generating modules for which a request for a derogation has been filed pursuant to Articles 62 or 63 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.

Status: Point in time view as at 14/04/2016.

Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EU) 2016/631. 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)

Article 62

Request for a derogation by a power-generating facility owner

1 Power-generating facility owners, or prospective owners, may request a derogation to one or several requirements of this Regulation for power-generating modules within their facilities.

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

- a an identification of the power-generating facility owner, or prospective owner, and a contact person for any communications;
- b a description of the power-generating module or modules 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 39;
- 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 power-generating facility owner, or prospective owner, whether the request is complete. If the relevant system operator considers that the request is incomplete, the power-generating facility owner, or prospective owner, shall submit the additional required information within one month from the receipt of the request for additional information. If the power-generating facility owner, or prospective owner, 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 or DSOs, 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 61.

5 If a request for a derogation concerns a type C or D power-generating module connected to a distribution system, including a closed distribution system, the relevant system operator's assessment must be accompanied by an assessment of the request for a derogation by the relevant TSO. The relevant TSO shall provide its assessment within two months of being requested to do so by the relevant system operator.

6 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 and 5. That period may be extended by one month where the relevant system operator seeks further information from the power-generating facility owner, or prospective owner and by two months where the relevant system operator requests the relevant TSO to submit an assessment of the request for a derogation.

7 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 power-generating facility owner, or prospective owner, or from any other interested parties. The additional period shall begin when the complete information has been received.

Status: Point in time view as at 14/04/2016.

Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EU) 2016/631. 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)

8 The power-generating facility owner, or prospective owner, shall submit any additional information requested by the regulatory authority within two months of such request. If the power-generating facility owner, or prospective owner, 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 power-generating facility owner, or prospective owner, informs the regulatory authority by means of a reasoned submission that the request for a derogation is complete.

9 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.

10 The regulatory authority shall notify its decision to the relevant power-generating facility owner, or prospective owner, the relevant system operator and the relevant TSO.

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 65(2).

12 For Type A power-generating modules, a request for a derogation under this Article may be made by a third party on behalf of the power-generating facility owner, or prospective owner. Such a request may be for a single power-generating module or multiple, identical power-generating modules. 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 63

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

1 Relevant system operators or relevant TSOs may request derogations for classes of power-generating modules connected or to be connected to their network.

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

- a identification of the relevant system operator or relevant TSO, and a contact person for any communications;
- b a description of the power-generating modules for which a derogation is requested and the total installed capacity and number of power-generating modules;
- 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 39. If applicable, the cost-benefit analysis shall be carried out in coordination with the relevant TSO and any adjacent DSO or DSOs.

3 Where the request for a derogation is submitted by a relevant DSO or CDSO, 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 61.

Status: Point in time view as at 14/04/2016.

Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EU) 2016/631. 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)

4 Within two weeks from the day after the receipt of such request for assessment, the relevant TSO shall confirm to the relevant DSO or CDSO whether the request for a derogation is complete. If the relevant TSO considers that it is incomplete, the relevant DSO or CDSO 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 or from the relevant CDSO.

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 or CDSO, 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.

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 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, power-generating 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 65(2).

Article 64

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.

Status: Point in time view as at 14/04/2016.

Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EU) 2016/631. 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)

- 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 65

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 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.

Status:

Point in time view as at 14/04/2016.

Changes to legislation:

There are outstanding changes not yet made to Commission Regulation (EU) 2016/631. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.