

Bird & Bird & Brexit: electricity arrangements

Trade and cooperation agreement between the EEA and the UK

Energy arrangements to apply until 30 June 2026, but may be extended

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"Non-discriminatory"

Means "most-favoured nation treatment" and "national treatment" (no less favourable than treatment of third country undertakings/ own undertakings) and treatment no less favourable than treatment of any other comparable entity.

Article ENER.2(2)

Glossary

SO	System operation
TSO	Transmission system operator
CRM	Capacity remuneration mechanism
TPA	Third party access
RES-E	Energy from renewable sources
SoS	Security of supply
DA/ID	Day-ahead/intraday
BZ	Bidding zone

NI remains part of the SEM and the IEM – as far as wholesale markets are concerned – by virtue of the NI protocol in the withdrawal agreement

Market principles

Competitive markets

General

Each party must ensure that regulatory framework for electricity is non-discriminatory.

Retail customers must be free to choose and switch suppliers.

Parties may regulate for legitimate public policy goals based on objective and non-discriminatory criteria.

Parties may regulate consumer prices only for public policy reasons, and any regulated price must be clearly defined, transparent, non-discriminatory and proportionate.

Reflects Articles 3, 4 and 5 of Dir 944

Wholesale markets

Wholesale market rules must:

- encourage free price formation and not set technical limits on pricing that restrict trade;
- enable efficient dispatch, storage, DSR and system use; and
- enable integration of RES-E and efficient and secure system operation.

Reflects elements of Articles 3(b), (f) and (m) of Reg 943

Balancing markets

Must ensure:

- non-discriminatory participation and access;
- transparent definition and market-based procurement of balancing services; and
- reasonable non-discriminatory terms for procurement of products and services by RES-E producers.

Reflects elements of Article 6(1) of Reg 943

Capacity markets

Must be clearly defined, transparent, proportionate and non-discriminatory. Neither party required to permit cross-border participation in CRMs.

Note departure from Article 26(1) of Reg 943; also CRM need not be last resort (cf. Article 21(1) of Reg 943)

Articles ENER.5 and ENER.6

Third party access

Each party must ensure TPA within reasonable period of request (except where insufficient capacity), based on published tariffs, cost-reflective and transparent connection/reinforcement charges etc and other necessary info, applied objectively and in a non-discriminatory manner.

Reflects Article 6 of Dir 944
Article ENER.8

System operation and TSO unbundling

Each party must ensure that TSOs carry out functions in a transparent, non-discriminatory way. Each party to implement effective unbundling arrangements.

Cf. Articles 40 and 41 of Dir 944; unbundling rules less prescriptive than Articles 43 to 48 of Dir 944
Article ENER.9

Exemptions from TPA, unbundling and market rules

Exemptions only where necessary for legitimate public policy objective and based on objective criteria:

- from TPA and unbundling for emergent or isolated markets or systems;
- from rules on competition and wholesale markets for small or isolated markets or systems; and
- from TPA and unbundling for infrastructure meeting the conditions set out in Annex ENER-3 (new/significantly expanded infrastructure, risk of no investment without exemption, enhances competition or SoS, legal separation from TSO, capacity rules decided in advance).

Rules for infrastructure reflect Article 63(1)(a) to (c) and (4), 4th indent, of Reg 943 (which apply only to interconnectors)

Exemptions previously granted under Article 63 of Reg 943 will continue to apply.
Articles ENER.10(2) and ENER.11

Independent regulator(s)

Each party to designate and maintain independent regulator(s) with powers and duties to:

- fix or approve network tariffs and charges;
- ensure compliance with rules on unbundling and derogations; and
- issue binding decisions and impose effective remedies.

Cf. Articles 57 to 59 of Dir 944
Article ENER.12

Market integrity

Each party must prohibit market manipulation and insider trading on wholesale markets.

Each party must monitor trading. The parties must cooperate in detection and prevention, and may exchange information, including on monitoring and enforcement.

Definition of wholesale markets does not include derivatives or transport.

GB will continue to apply REMIT (and infringement may be a criminal offence) and will take account of ACER guidance.
Article ENER.7

Support for RES-E

Each party must promote energy efficiency and the use of RES-E.

Each party must ensure that support for RES-E facilitates the integration of RES-E into the market.

Subsidies for RES-E and CRMs must not undermine competitive markets, or efficient use of interconnectors and should preferably be determined by competitive process.

Article ENER.22(1); Annex ENER-2

Interconnectors and trading

Efficient use of interconnectors

Capacity allocation and congestion management

With the aim of ensuring the efficient use of interconnectors and reducing barriers to trade between UK and EU, each party must ensure that:

- capacity allocation and congestion management are market-based, transparent and non-discriminatory; info on capacity calculation is published;
- maximum capacity is made available, respecting secure SO and efficient system use;
- curtailment only in emergency situations and in a non-discriminatory manner;
- no network charges on individual transactions, and no reserve prices for the use of interconnectors;
- capacity allocation and congestion management is coordinated between EU and UK TSOs across forward, DA, ID and balancing timeframes; and
- UK TSOs will not participate in EU capacity/congestion procedures (under FCA, CACM and EB GLs).

No 70% minimum capacity rule (cf. Article 16(4) and (8) of Reg 943)

Article ENER.13(1) and (2)

Inter-TSO compensation for XB flows

EU and UK must conclude asap an agreement that in effect extends ITC mechanism to UK TSOs, ensuring equivalent but not more favourable treatment. Until agreement is concluded, transmission use fee may be charged on scheduled imports and exports between EU and UK.

Article ENER.13(3) to (5)

Electricity trading

Specialised Committee on Energy will ensure that TSOs develop technical procedures for DA trading. It may take decisions/recommendations itself if it doesn't recommend implementation of TSOs' proposals.

DA trading to be based on multi-region loose volume coupling, calculating net positions between UK and directly connected BZs (SEM, FR, BE, NL) using the following inputs:

- commercial DA bids/offers from UK and SEM, FR, BE, NL;
- network capacity data, under agreed procedures;
- data on expected commercial flows between SEM, FR, BE, NL and other EU BZs, as determined by EU TSOs; and
- DC interconnector characteristics, including losses and ramping requirements.

Market coupling function will provide reliable and repeatable results in time to use as inputs into each party's DA markets, using distinct and separate algorithm from the algorithm used under CACM, and using only bids and offers from directly connected EU BZs.

Procedures will include a fall-back process.

Timetable:

- CBA and outline proposals within 3 months;
- proposals for technical procedures within 10 months; and
- entry into operation within 15 months.

Specialised Committee on Energy may recommend that TSOs prepare technical procedures for other timeframes.

Article ENER.14 and Annex ENER-4

Cooperation

The Specialised Committee on Energy

Representatives of each party. Monitors implementation and functioning, adopts decisions, exchanges information.
Article INST.2

Cooperation on networks

Cooperation on network development

The parties must cooperate on development of infrastructure connecting their territories. Network development plans must be drawn up, published and updated.

Article ENER.16

Cooperation on security of supply

The parties must cooperate on security of supply, preparing and exchanging plans and information on risk preparedness and emergencies. They must inform each other of threatened or actual disruptions or other crises, with a view to possible coordinated mitigation and restoration measures. They must share best practices on adequacy assessments. They must develop frameworks for cooperation on SoS.

Risk preparedness plans must be established and regularly updated, and must contain transparent, non-discriminatory etc measures to reduce likelihood and impact of risks.

Non-market based measures may be used only as a last resort.

Articles ENER.17 and ENER.18

Cooperation between TSOs

TSOs must develop working arrangements. Where recommended by the Specialised Committee on Energy, these arrangements must include technical procedures to implement arrangements for:

- Efficient use of interconnectors
- Network development
- Electricity trading
- Security of supply

Working arrangements between TSOs must also include frameworks for cooperation between ENTSO-E and UK TSOs for:

- Markets
- Network access
- Security of supply
- Efficient use of interconnectors
- Infrastructure planning
- Offshore energy

Specialised Committee on Energy must agree guidance on working arrangements and frameworks for cooperation asap.

UK TSOs will not be members, or have status comparable to membership, of ENTSO-E.

TSOs may be asked to prepare draft of the technical procedures.

TSOs must obtain opinion of ACER (for EU) and UK regulators (for UK) on proposed technical procedures.

Specialised Committee will review draft procedures and may recommend implementation.

Article ENER.19

Cooperation between regulators

ACER and UK regulators must develop contacts and enter into arrangements covering at least:

- Efficient use of interconnectors
- Infrastructure planning
- Security of supply
- Cooperation between TSOs
- Market abuse
- Network access
- Markets
- Offshore energy

UK regulator will not be a member or have status comparable to membership of ACER.

Article ENER.20

Cooperation in offshore RES-E

The parties will cooperate in the development of offshore RES-E and will create a forum for technical discussions between governments, regulators, TSOs and stakeholders, on:

- Hybrid/joint projects
- Maritime spatial planning
- Support and finance
- Grid planning
- New technologies
- Best practice on regulation

Article ENER.20

Information exchange



Technical procedures



Non-discrimination



Cooperation/coordination



Agreements/arrangements

