

EirGrid Market Operator Annual Compliance & Assurance Officer Report 2022

Period 1st January 2022 to 31st
December 2022

31st May 2023



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Contents

Contents	2
1 Background & Scope	3
1.1 Background	3
1.2 Objectives & Scope	3
2 Detailed Observations	4
2.1 Condition 9 - Duty of Non Discrimination	4
2.2 Condition 12 - Restriction on Use of Certain Information	4
2.3 Condition 14 - Prohibition of Subsidies and Cross Subsidies	7
2.4 Condition 17 - Code of Conduct	7
2.5 Additional Assurance Related Activities	8

1 Background & Scope

1.1 Background

Condition 9(3) of EirGrid's Market Operator Licence (the Licence) requires the licensee to report to the Commission annually specifying the measures taken and the level of compliance to ensure that discriminatory conduct by it or its employees is prevented. Additionally, the following Conditions are also included within the annual report:

- 12 Restriction on the Use of Certain Information;
- 14 Prohibition of Subsidies and Cross-Subsidies; and
- 17 Code of Conduct.

1.2 Objectives & Scope

The objectives of this review are to provide assurance over compliance with the following Conditions of the EirGrid Market Operator Licence in the reporting period 1st January 2022 to 31st December 2022, specifically:

- Compliance with Condition 9 - Duty of Non-Discrimination;
- Compliance with Condition 12 - Restriction on the Use of Certain Information;
- Compliance with Condition 14 - Prohibition of Subsidies and Cross-Subsidies; and
- Compliance with Condition 17 - Code of Conduct.

2 Detailed Observations

2.1 Condition 9 - Duty of Non Discrimination

Condition 9

1. In respect of the Market Operation Activity and the NEMO Activity, the Licensee shall not discriminate unduly between persons or classes of persons, or between system users or classes of system users, particularly in favour of its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders.
2. The Licensee shall establish a compliance programme on the measures taken to ensure that discriminatory conduct by it or its employees is prevented, which shall include specific obligations imposed on its employees to prevent discrimination.
3. The Licensee shall report to the Commission at intervals of not more than one year, in such form as the Commission determines, specifying the measures taken and the level of compliance in relation to paragraph 2. The report shall be published by the Licensee in such manner as shall be determined by the Commission.

EirGrid has a number of reporting and monitoring obligations under EU regulations. The goal is to increase integrity and transparency of wholesale energy markets. This fosters open and fair competition in wholesale energy markets, benefitting final consumers of energy.

With regard to our duty of non-discrimination within the SEM independent audits of the Trading and Settlement Code are performed on an annual basis and reported to the Regulatory Authorities¹.

The Compliance & Assurance Officer maintains an Annual Compliance Monitoring Plan which continually assesses whether the compliance framework operates as intended and includes a review of licence obligations to keep commercial information confidential and to ensure that it does not discriminate unfairly/unduly in operating its business. An element of this framework includes ensuring that the above reporting requirements are honoured, which has been the case during this reporting period.

EirGrid is not aware or been advised of any incident/occasion where it has been accused of or found to have acted in an unduly discriminatory fashion.

2.2 Condition 12 - Restriction on Use of Certain Information

Condition 12

1. The Licensee shall preserve the confidentiality of commercially sensitive information held and/or obtained by it in carrying on the SMO & NEMO Business.
2. The Licensee shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.
3. The Licensee shall implement such measures and procedures and take all such other steps as it shall reasonably consider and/or shall be specified in directions issued by the Commission from time to time to be necessary for the purpose of securing compliance by the Licensee with its obligations under paragraph 1.
4. The Licensee shall ensure that confidential information is only disclosed to authorised recipients, classes of authorised recipients or authorised advisers.
5. Paragraphs 1, 2 and 4 shall not apply to: (a) any confidential information which, before or after it is furnished to the Licensee's employees, is in the public domain; or (b) the disclosure of any confidential information: (i) in compliance with the duties of the Licensee under the Act, the Single Market Regulations or any other requirement of a competent authority; or (ii) in compliance with the Conditions granted in this Licence or any document referred to in this Licence with which the Licensee is required by virtue of the Act, the Single Market Regulations

¹ As the Trading and Settlement Code audits are carried out jointly by EirGrid plc as licensed Market Operator for Ireland and SONI Ltd as licensed SEM Operator for Northern Ireland –single reports in respect of these activities are submitted to the Commission for Regulation of Utilities in Ireland and the Utility Regulator Northern Ireland (together the 'Regulatory Authorities').

or this Licence to comply; or (iii) in compliance with any other requirement of law; or (iv) pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; or (v) necessary in order to enable the Licensee and Northern Ireland Market Operator Licensee to carry on the SMO & NEMO Business; or (c) any confidential information to the extent that the Licensee is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Grid Code, the Distribution Code, the Metering Code and the Single Electricity Market Trading and Settlement Code) with the relevant person to whose affairs such confidential information relates.

6. Without prejudice to the other provisions of this Condition, the Licensee shall procure that any additional copies made of the confidential information, whether in hard copy or computerised form, will clearly identify the confidential information as confidential.
7. The Licensee shall take all reasonable measures to prevent (so far as the Licensee can so require) any person who is or ceases to be employed by the Licensee, whether that person is or was employed part time or full time in the Market Operation Activity and / or in the NEMO Activity, from disclosing confidential information.
8. The Licensee shall take all reasonable steps to ensure that every authorised adviser, consultant, director or member of staff to whom the Licensee discloses confidential information does not:
(a) use that confidential information for any purpose other than that for which it was provided; and
(b) disclose that confidential information otherwise than in accordance with the provisions of this Condition, such authorised adviser, consultant, director or member of staff of the Licensee having first been duly authorised by the Licensee to disclose the confidential information.
9. This Condition is without prejudice to the duties at law of the Licensee towards outside persons.

General

SEMOpX, the contractual joint venture between SONI Ltd and EirGrid plc, provides NEMO services to both Northern Ireland and Ireland through the use of common systems, processes and resources. The trading systems are operated by EPEX Spot for the SEMOpX day-ahead, intraday auctions and intraday continuous markets and performs the European market coupling functions on behalf of SEMOpX. European Commodity Clearing (ECC) assumes the clearing and settlement services for SEMOpX. There are specific secure data transfer arrangements in place including interface security.

A range of policies are in place within EirGrid to protect confidential information, namely:

- **Information Security**

Our Acceptable Use Policy is mandatory for all employees, business partners and contractors and covers access controls, information confidentiality, non-disclosure of data requirements and data transfer restrictions. The Compliance & Assurance Officer can confirm that all employees of the licensee received mandatory training in relation to Information Security during the reporting period.

Additionally, all new employees/business partners/contractors are required to complete information security awareness training immediately following commencement.

- **Confidentiality Policy**

This policy sets out EirGrid Group's position on confidentiality and provides guidance on protecting and safeguarding such information as required by the statutory obligation to preserve the confidentiality of commercially sensitive information obtained.

- **Codes of Conduct**

The Directors' Code of Conduct establishes a set of ethical principles underpinning Directors' conduct, promotes and maintains confidence and trust in EirGrid, prevents the development, continuance or acceptance of unethical practices and provides a frame of reference for decision-making. The Directors' Code of Conduct is applicable to all directors of EirGrid plc, to all directors of subsidiary companies of EirGrid plc and to all EirGrid appointed directors to Joint Venture entities and was reviewed and approved by the EirGrid Board in April 2022.

The Employee Code of Conduct forms part of the terms of employment of all employees. The general principles underlying the code, which applies to all employees of the EirGrid Group, irrespective of level or location, are integrity, loyalty, legal & regulatory compliance,

confidentiality, and fairness. The Employee Code of Conduct was reviewed and approved by the EirGrid Board in April 2022².

- **Anti-Corruption**

The Protected Disclosures Policy documents EirGrid's commitment to conducting its business to the highest standards of integrity, fairness, honesty and in compliance with statutory and regulatory obligations. It addresses the requirements as laid out in Protected Disclosures (Amendment) Act 2022. The Protected Disclosures Policy was reviewed and approved by the EirGrid Board in October 2022.

The Fraud Policy documents the Group's zero tolerance commitment to fraudulent or attempted fraudulent activity, in line with its core values of being transparent, collaborative, accountable and ambitious. It lays out the Group's commitment to investigate all frauds which are discovered or suspected, and take appropriate action against all parties involved in, or assisting with, committing fraudulent activity. The Fraud Policy was reviewed and approved by the EirGrid Board in March 2022.

Additionally, each employee signing a contract of employment that includes a section of confidentiality must sign a confidentiality agreement as part of contract of employment.

As far as EirGrid is aware, there are no compliance issues in relation to the use of information and the preservation of the confidentiality of Commercially Sensitive information held/obtained in the discharge of its functions as Market Operator licensee.

Restrictions Regarding Personnel & Advisors

A protocol for staff movements is in operation which applies to all staff movements into or out of the EIDAC business operations to ensure that the above licence condition is met in the context of the management of conflicts of interest.

Specifically, prior to the appointment of any EIDAC resource (recruitment process, internal transfer or agency staff selection) the Compliance & Assurance Officer shall determine if Condition 12 has been satisfactorily met.

To facilitate the decision-making process, the Compliance & Assurance Officer shall be furnished with:

- CV of proposed candidate;
- Role profile of relevant EIDAC post; and
- Role profile of relevant TSO post.

If required, the Compliance & Assurance Officer may also request the attendance of the relevant EIDAC or MO recruiting manager.

The Compliance & Assurance Officer will seek to determine:

- i. Could the transfer result in an unfair commercial advantage or what may be perceived an unfair commercial advantage to either or both businesses?
- ii. Does the transfer involve a member of staff that has been involved in the establishment or operation of the Capacity market?

If the Compliance & Assurance Officer determines that the response to both the above questions is "no", then Condition 12 has been met and HR shall be notified to progress the recruitment/transfer.

If the Compliance & Assurance Officer determines that the response to either the above questions is "yes", then Condition 12 has not been met and two options shall be offered:

Option 1 - the recruitment/transfer of the proposed resource is cancelled; and

Option 2 - in line with Condition 12, Group Regulation notify the Regulatory Authorities of the proposed recruitment/transfer and provide details of steps/mitigations being taken to ensure that no unfair

² The Employee Code of Conduct is reviewed on a two-yearly basis - no significant amendments were made in the reporting period.

commercial advantage accrues or in the case of Capacity market involvement, a request for the determination of an appropriate cooling-off period.

The role of the protocol is to ensure an independent assessment of licence compliance specifically in relation to Condition 12 further to a decision being taken by the business. Should the Compliance & Assurance Officer consider the decision taken by the business to result in breach of Condition 12 the he shall recommend the transfer not be progressed. Should the business dispute the Compliance & Assurance Officer's recommendation, the issue shall be escalated to the EirGrid CEO.

During the reporting period no transfers took place.

2.3 Condition 14 - Prohibition of Subsidies and Cross Subsidies

Condition 14

1. The Licensee shall procure that neither the Market Operation Activity nor the NEMO Activity shall give any subsidy or cross-subsidy (direct or indirect) to any Separate Business of the Licensee and/or any affiliate or related undertaking of the Licensee nor shall there be any subsidy or cross-subsidy (direct or indirect) given between the Market Operation Activity and the NEMO Activity.
2. For the purposes of this Condition, the Commission shall determine whether or not subsidisation or cross-subsidisation is taking place. Where the Commission determines that a subsidy or cross-subsidy is taking place, the Commission may issue a direction to that effect and require the cessation of same.
3. Nothing which the Licensee is obliged or permitted to do or not do pursuant to this Licence shall be regarded as a subsidy or cross-subsidy for the purposes of this Condition.

EirGrid Plc is structured on a group basis and contains a number of business units, operating under different licencing arrangements. To ensure that costs are appropriately incurred by each licence and business unit, EirGrid allocate costs to the correct business units and licences on a monthly basis.

The methodology for the reallocation of costs is outlined in the Cost Allocation & Recharge Policy, established in April 2014 and reviewed regularly. The policy identifies the following overarching principles, which apply to initial cost allocation:

1. Where costs are clearly incurred on a licensee basis, they are charged directly as such;
2. Where costs are incurred in providing for more than one licensee, cost allocation arrangements apply, as detailed in the policy; and
3. Market Operator costs are split 75:25 EirGrid MO:SONI MO, as per Specified Proportions in the Market Operator Agreement.

On an annual basis an Internal Audit is performed to assess the application of the corporate recharging policy operating within the Group, as documented in the Implementation of Cost Allocation & Recharge Policy. Substantive testing is performed on a sample of recharges across the six categories identified in the policy:

- Corporate Centre;
- Executive Directors;
- Managers
- Staff;
- Specific Items; and
- EWIC.

The most recent Internal Audit of the Application of Corporate Recharging Policy (issued in September 2022) applied an overall rating for the report as **SATISFACTORY**.

2.4 Condition 17 - Code of Conduct

Condition 17

1. The Licensee shall prepare a code of conduct, for approval by the Commission, which shall apply to every director and to every person employed by the Licensee under a contract of employment.
2. The code of conduct shall be consistent with this Licence and, in particular, the requirements in relation to preserving the confidentiality of confidential information.
3. The Licensee shall ensure that the code of conduct be included as part of every contract of employment with the Licensee. 4 In this Condition: "confidential information" has the meaning as defined in Condition 12.

S.I. No. 445/2000 - European Communities (Internal Market in Electricity) Regulations, 2000, requires the following:

“(1) EirGrid shall prepare a code of conduct, for approval by the Commission, which shall apply to every director of EirGrid and to every person employed by EirGrid under a contract of employment.

(2) The code of conduct shall be consistent with these Regulations, in particular, with the requirements in relation to preserving the confidentiality of commercially sensitive information.

(3) The code of conduct shall be included as part of every contract of employment with EirGrid.”

The EirGrid Board approved a revised Employee Code of Conduct at its meeting of May 2020. The Employee Code of Conduct was also reviewed and approved by the CRU in July 2021 in line with S.I. 445/2000 and Condition 17 of the EirGrid Market Operator Licence. The general principles underlying the Code, which applies to all employees of EirGrid Group, irrespective of level or location, are:

- Integrity;
- Loyalty;
- Legal & Regulatory Compliance;
- Confidentiality; and
- Fairness.

The Employee Code of Conduct was reviewed and approved by the EirGrid Board in April 2022³.

The Code is supported by a range of corporate policies and procedures which are referenced within the document and these supporting policies and procedures are maintained on the Group’s intranet site. The Code forms part of the terms of employment of all employees and employees are expected to comply with the Code at all times. Breaches of the Code will constitute a breach of the terms of employment and may result in disciplinary action being pursued in accordance with agreed procedures.

2.5 Additional Assurance Related Activities

The Internal Control Framework in operation within the business is subject to an annual review of effectiveness by the Head of Governance, Risk & Compliance.

The scope of the internal control framework operating within EirGrid comprises of but is not restricted to:

- Governance framework;
- Internal Audit activity;
- External Audit activity; and
- Group Risk Management Framework.

Internal Audit Assurance

An Annual Internal Audit Plan is created to ensure maximum value is driven from the assurance process and each individual engagement links directly to strategic objectives and key risks facing the Group and its entities. The Head of Internal Audit reported on all issues arising from engagements to each Audit & Risk Committee and provided a summary of key issues within the quarterly progress reporting process.

³ The Employee Code of Conduct is reviewed on a two-yearly basis - no significant amendments were made in the reporting period.

Each individual internal audit report was uploaded to the Diligent Boards platform Resource Centre enabling visibility to all Board Members throughout the year.

External Audit Assurance

External Audit assurance relates specifically to the annual report and financial statements of EirGrid plc. During the 2021/2022 financial year, external audit attended all Audit & Risk Committee meetings and provided updates on key matters as follows:

- 2021/2022 Audit Plan;
- Update on key financial regulations; and
- Audited financial statements for 2021/2022.

Group Risk Management Framework

The Group Risk Management Framework has been developed to ensure that risks are identified, assessed and managed effectively and in line with risk appetite. Effective reporting of risk throughout the Group is a fundamental element of the Risk Management Framework. The Framework specifies high-level, minimum requirements and processes for risk management across all risk types. The requirements are implemented through the risk policies and procedures that govern the management of individual risk types and/or risk management processes.