



An Coimisiún
um Rialáil Fóntais
**Commission for
Regulation of Utilities**

An Coimisiún um Rialáil Fóntais
Commission for Regulation of Utilities

Decision Paper: Licence for an Interconnector operating with a Cap and Floor regime

Decision Paper

Reference: CRU/202217

Date Published: 18 February 2022

CRU Mission Statement

The CRU's mission is to protect the public interest in Water, Energy and Energy Safety.

The CRU is guided by four strategic priorities that sit alongside the core activities we undertake to deliver on the public interest. These are:

- Deliver sustainable low-carbon solutions with well-regulated markets and networks
- Ensure compliance and accountability through best regulatory practice
- Develop effective communications to support customers and the regulatory process
- Foster and maintain a high-performance culture and organisation to achieve our vision

Executive Summary

In November 2021, the CRU published CRU21132 “*Consultation Paper: Draft Licence for an Interconnector operating with a Cap and Floor regime*”. That consultation set out CRU’s proposed Interconnector Operator Licence for an interconnector operating under a cap and floor regime, such as the regime described in CRU/21/114 for the Greenlink Interconnector.

CRU received five responses to the consultation, which it considered in coming to its final decision as set out in this Paper. The resultant template for an Interconnector Operator Licence is published alongside this Decision Paper.

It is anticipated that the first issuance of a licence based on this template will be to Greenlink Interconnector Limited.

Public/ Customer Impact Statement

- The CRU deemed the construction of the proposed Greenlink Interconnector to be in the public interest, and subsequently developed a cap and floor funding regime that will apply to the interconnector. This funding regime was subject to extensive public consultation by CRU prior to this licence development.
- The existing CRU interconnector operator licence template was used as a basis for this Cap and Floor licence template. The existing interconnector does not operate under a Cap and Floor regime, so the relevant provisions were updated to reflect the associated differences and consulted upon in CRU/21/132.
- A number of changes to the draft licence template were proposed by respondents to the consultation, and the decisions of the CRU on these proposals is presented here, along with the final licence template.

Table of Contents

Glossary of Terms and Abbreviations.....	4
1. Introduction.....	5
1.1 Background.....	5
1.1.1 Legislative background.....	5
1.1.2 The Consultation Paper.....	5
1.1.3 Related Documents.....	6
1.1.4 Structure of Paper.....	6
2. CRU Response to Consultation Comments Received	7
2.1 General comments received	7
2.2 Condition 1 – Comments and CRU Response	7
2.3 Condition 14 – Comments and CRU Response	8
2.4 Condition 19 – Comments and CRU Response	9
2.5 Condition 22 – Comments and CRU Response	11
2.6 Condition 16 – Editorial update	13
3. Next Steps	14

Glossary of Terms and Abbreviations

Abbreviation or Term	Definition or Meaning
ACER	Agency for the Cooperation of Energy Regulators
CJEU	Court of Justice of the European Union
ERA	Electricity Regulation Act 1999 (as amended)
EIDAC	EirGrid Interconnector Designated Activity Company
ENTSO-E	European association for the cooperation of transmission system operators for electricity
EU	European Union
TSO	Transmission System Operator
TUoS	Transmission Use of System
UK	United Kingdom

1. Introduction

1.1.1 Background

1.1.1 Legislative background

Under Article 16A(b) of the Electricity Regulation Act 1999 (as amended) (ERA), the CRU can secure the construction of an interconnector by three separate means:

- a. *a competitive tender;*
- b. *an authorisation granted to a person without a prior competitive tender where the person demonstrates, to the satisfaction of the Commission, that the granting of an authorisation, subject to such conditions as the Commission deems necessary and appropriate, is in the long term interests of final customers; or*
- c. *requesting the transmission system operator to provide for the construction of an interconnector in its development plan.*

Article 14(1)(i) gives the CRU the power to grant a licence to a person to transport electricity across and maintain an interconnector. The existing CRU Decision Paper on interconnector licences, CER/11/055 “*Interconnector Operator Licence*” states that,

“The CER will grant this licence upon application to those that already have been issued with an authorisation to construct an interconnector pursuant to Section 16 of the 1999 Act, who by this process, would be automatically eligible to receive a licence to operate the same interconnector.”

1.1.2 The Consultation Paper

In October 2018, the CRU determined that the proposed 500 MW Greenlink Interconnector linking the electricity grids in Ireland and Wales, would provide a net benefit to Irish consumers and Ireland as a whole ([CRU/18/216](#)). Subsequently, the CRU worked to establish the regulatory framework for a Cap and Floor financing regime for the proposed Greenlink Interconnector. This regime is set out in [CRU/21/114](#).

In November 2021, the CRU published CRU21132 “*Consultation Paper: Draft Licence for an Interconnector operating with a Cap and Floor regime*”. That consultation set out CRU’s proposed Interconnector Operator Licence for an interconnector operating under a cap and floor regime. The draft licence template was based on the existing EIDAC licence, where appropriate, and had regard to the regulatory framework set out in CRU/21/114. In drafting the licence template, the

CRU was also cognisant of its function to “*foster operational arrangements that enable an adequate level of interconnection capacity within the region and between regions, to allow the development of effective competition and improvement of security of supply.*”¹ This in part led to the inclusion of elements of the licence template, in particular Condition 22, that would support the progression of the project including its financeability, whilst not limiting the CRU’s capacity to protect the consumer.

This paper outlines the CRU’s response to comments received on the draft licence template and the final decision on the licence conditions. The resultant template for an Interconnector Operator Licence is published alongside this Decision Paper.

1.1.3 Related Documents

1. *Draft Electricity Interconnector Operator Licence* [CRU21132b](#)
2. *Consultation Paper: Draft Licence for an Interconnector operating with a Cap and Floor regime* [CRU21132](#)
3. Existing EIDAC Licence: [CRU18051](#) “*Electricity Interconnector Operator Licence*”
4. Decision and Consultation Response paper on EIDAC [EWIC] Interconnector operator licence: [CER/11/055](#) “*Interconnector Operator Licence*”
5. Greenlink Cost-Benefit Analysis determination: [CRU/18/216](#) “*Greenlink Electricity Interconnector Determination*”
6. Greenlink Cap and Floor Decision paper: [CRU/21/114](#) “*Greenlink Electricity Interconnector “Cap and Floor Regulatory Framework”*”

Information on the CRU’s role and relevant legislation can be found on the CRU’s website at www.cru.ie

1.1.4 Structure of Paper

Section 1 provides a short introduction to the background of the newly developed licence.

Section 2 contains descriptions on the comments received during the consultation period and details the CRU response to these comments and any consequent updates made to the draft licence template.

¹ Section 9 (fb) (v) of the ERA as inserted by Regulation 40 of S.I. 630 of 2011

2. CRU Response to Consultation Comments Received

CRU would like to thank all respondents for the contribution to this licence template development process. In all, five responses were received to the consultation on the draft licence, including two confidential responses. The non-confidential responses were received from:

1. EirGrid
2. EIDAC
3. MaresConnect

The non-confidential responses are published alongside this paper. This section provides a summary of the comments received and the CRU responses to the key points raised.

It is anticipated that the first issuance of a licence based on the licence template published alongside this Decision Paper will be to Greenlink Interconnector Limited. In line with this, responses were received that were specific to that licence development and to related documents and processes. Where appropriate, the CRU responses below have sought to be general and not project specific. However, in certain circumstances the CRU responses have appropriately had regard to the ongoing Greenlink Interconnector project progression and licence development.

2.1 General comments received

A number of general comments were made by the respondents that did not require specific responses. They included:

- welcoming the commitment of the CRU to further interconnection and progress on the regulatory environment for interconnectors; and
- welcoming the consistency with the EIDAC licence and acknowledging the appropriate removal of legislative references to the current licence template that are no longer applicable following the UK's departure from the EU.

2.2 Condition 1 – Comments and CRU Response

A proposal was made to change the text of part (b) in the definition of Interconnector Revenue to clarify the position with respect to physical and financial transmission rights. The CRU agreed that a change was appropriate and has updated the text in the final licence template.

The condition has been updated in the licence template.

2.3 Condition 14 – Comments and CRU Response

A respondent has stated that the change from the standard Change of Control term in CRU licenses may be inconsistent with a statement in the Cap and Floor Decision, and also that it is potentially discriminatory, differing from the EIDAC licence and the standard generation licence at present.

The respondent also stated that ‘Control’ is not defined, and it is possible that a Licensee may not be aware of a (possibly confidential) upstream transaction which could trigger this condition and it may unknowingly be in breach. They also claim that the 30 days’ notice requirement creates a limitation on the ability of lenders to act quickly in the event of a default, imposing a risk to the lenders’ security.

The respondent suggested that preferably, the condition should revert to the CRU standard condition, otherwise ‘control’ must be defined and apply only at the level of the licensee.

CRU Response

The CRU does not consider that there is an inconsistency between this condition and the Cap and Floor Decision. The Cap and Floor Decision states that (underlined emphasis added here),

“The CRU was satisfied following the review of consultation responses that it would not be proportionate to introduce specific change of control measures linked to the Temporary Financial Support mechanism. In particular, the CRU notes that the requirement to repay Temporary Financial Support would survive a change of control and that the existing interconnector licence included provisions to notify the CRU of such cases, also affording the right to revoke the licence in certain cases of non-compliance.”

As per Condition 14 of the draft licence template, there remains a provision to notify the CRU, and no specific mechanism has been added related to Temporary Financial Support.

As set out in the consultation paper, this licence template is intended to apply to all future interconnectors that will operate under a Cap and Floor regime. It is the view of the CRU that the risk to the consumer in the situation where a Cap and Floor regime is in place is such that prior notice of a change of control of the Licensee is required.

Control is already defined in the Licence in Schedule 2 part 2(b):

“There is a change in the control of the Licensee for the purposes of paragraphs 1(f) and (g) of this Schedule whenever a person has control of the Licensee who did not have control of the Licensee when this Licence was granted.”

No change has been made to this condition.

2.4 Condition 19 – Comments and CRU Response

Condition 19(1) and (2)

A respondent expressed concern that the use of revenues restriction in Condition 19(1) of the draft licence may be inconsistent with Condition 22 (Cap and Floor regime) and could preclude the use of interconnector revenues for purposes that are permitted under the Cap and Floor framework. The respondent also suggests that this Condition 19 does not permit revenues to be used consistent with the interpretation of Article 19(2)(b) of 2019/943 by the Court of Justice of the European Union (CJEU) in the Baltic Cable case.

The respondent wishes to see this condition disapplied.

CRU Response

The CRU is satisfied that the use of revenues restriction set out in Condition 19(1) of the licence is consistent with Condition 22 of the licence and with the cap and floor framework.

The wording of the permitted uses described in Condition 19(2) of the licence reflects the use of revenues restriction contained in Article 19(2)(a) and (b) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (the “Regulation”). Condition 19(1) therefore aligns with the EU regulatory framework on the use of revenues that applies to interconnectors across the European Union.

The CRU also notes that the Licensee is required to comply with the use of revenues restriction outlined in Article 19(2) and (3) of the Regulation in the connected jurisdiction, pursuant to Condition 9 of the [Electricity Interconnector Licence: Standard Conditions](#) published by the UK regulator, Ofgem. Condition 19(1) therefore also aligns with the licence conditions on use of revenues that are already applicable to the Licensee’s interconnector in the UK. The CRU understands that Standard Condition 9 of the Ofgem licence applies to licensees that benefit from a cap and floor regime in the UK, alongside the specific provisions relating to the licensee’s cap and floor regime.

In relation to the Baltic Cable case and the interpretation of the provisions of Article 19(2) of the Regulation, the CRU notes that, subsequent to the judgment in Baltic Cable, the Transmission

System Operators (TSOs) and ACER engaged in a consultation and decision process on a methodology for the use of congestion income in accordance with Article 19(4) of the Regulation. The cap and floor regime in the UK and its compatibility with that methodology and with Article 19 of the Regulation was expressly discussed in Annex 4 to the [Explanatory Document](#) to the TSO's [proposed methodology](#) and in the [consultation response](#) on that methodology published by European Association for the Cooperation of Transmission System Operators for Electricity (ENTSO-E). The CRU also notes the subsequent [ACER Decision](#) approving the TSOs' methodology and the summary and assessment of the comments provided by Baltic Cable AB at Annex II to that decision.

As regards the request that Condition 19(1) be disapplied or 'switched off' for the duration of the cap and floor regime period, the CRU considers that it would not be appropriate to disapply or 'switch off' the use of revenues condition in circumstances where the Licensee will benefit from a regulated cap and floor regime. The CRU notes that, at EU level, an exemption from the use of revenues restriction is the subject of a specific exemption application procedure which interconnectors must comply with in order to obtain any exemption from Article 19 of the Regulation. Similarly, the CRU understands that, in the connected jurisdiction, the regulated cap and floor regime and the exemption process are separate alternative routes to interconnector development. Under the exemption route in the UK, developers would face the full upside and downside of the investment, which is not the case where an interconnector benefits from a regulated cap and floor framework.

Moreover, in light of our view that Condition 19(1) of the licence is already consistent with Condition 22 of the licence and with the cap and floor framework, it is not necessary to disapply or 'switch off' Condition 19(1) in order to ensure such consistency. For the avoidance of doubt, a clarification has been added to the Interpretation and Construction condition in the Licence (Condition 1), which states that Conditions 19(1) and 19(2) of the Licence are to be construed and applied in a manner that is consistent with Conditions 19(5), 19(6) and 22 (Cap and Floor regime) of the Licence.

No change has been made to this condition.

19(3) Requirement to allocate revenues to third parties:

One respondent stated that it is not acceptable that, under this condition, the CRU can direct a Licensee to allocate revenues below the Cap to a third party. The respondent argues that revenues up to the Actual Floor will be used for operational expenses and debt repayment; revenues between Floor and Cap will be used for return on investment; and only those revenues above the Cap will go to the TSO.

This respondent wishes to see this condition disapplied.

CRU Response

On further review, the CRU has determined that this condition is not required.

The condition has been deleted from the licence template.

Condition 19(6) Making distributions

One respondent has indicated that the definition of ‘Distributions’ (which is currently defined in 19(7) as per the Companies Acts) should be qualified to ensure that ‘upstreaming cash for the purposes of debt repayment’ is not prohibited as repayment of intra-group loans to the parent company may be required as part of financing arrangements.

CRU Response

Condition 19(6) and (7) (in the final Licence Condition 19(5) and (6)) have been re-drafted to make clear the circumstances in which distributions may not be made under the Licence while the Licensee is in receipt of Temporary Financial Support.

The condition has been updated in the licence template.

2.5 Condition 22 – Comments and CRU Response

One respondent has emphasised that under a Cap and Floor regime, certainty around the ‘floor’ element of the regime is required to make the project financeable and that this needs to be reflected in the Licence conditions. They believe that the lenders require comfort that any changes to certain features of the Cap and Floor regime will be subject to the licence change regime including the associated appeals mechanism, so that protection would be ‘aligned with the level of protection offered by the UK regime’.

The respondent understands there to be an unacceptable risk associated with Condition 22(1), which states that the retention of revenues above the Floor is conditional on the Licensee’s compliance with the Cap and Floor Decision (which would include any future changes made to the Decision). Additionally, they have requested recognition of the entitlement of the Licensee to receive Floor payments, i.e., the benefit of the Cap and Floor Decision and that the Actual Floor is defined as per the 2021 Cap and Floor Decision, not the more general Cap and Floor Decision.

The respondent also requested that the required timings of the CRU direction to EirGrid and the payments (in the 'TUoS² year' 6 months after the assessment period) be reflected in Condition 22(4) of the Licence.

The respondent has thus proposed some changes to the text of Condition 22.

One respondent indicated some concern relating to the differences in the Ofgem regulatory framework in the UK and that the Irish framework provides less certainty, thereby incurring higher financing costs on the Irish side.

CRU Response

The CRU operates a different regulatory regime to the UK regulator, Ofgem, and the draft and final licence templates developed are reflective of the CRU approach.

Future proposed changes to the CRU Cap and Floor Decision will be publicly consulted upon in line with the standard CRU approach, with all parties encouraged to participate in the development of an associated final decision. A change to a Licence issued by the CRU is required to go through an amendments process, which has an associated statutory appeals mechanism. As mentioned in the Cap and Floor Decision, Licences issued by the CRU do not represent a comprehensive reference for the implementation of any regime. A licence is not intended to capture entitlements, nor obligations upon any other party than the Licensee.

In regard to the proposed modifications, the CRU will include the additional part (b) in Condition 22(1) to address the concerns raised by the respondents with respect to project financeability.

The CRU has not made the requested changes to Condition 22(1) to refer to the **2021** Cap and Floor Decision. This is based on there being a number of required updates to determine an Actual Floor, which is currently provided for in the Cap and Floor Decision paper. Potential further updates are expected following financial close and the post-construction review, which can only be captured by reference to the general Cap and Floor Decision.

On review, the CRU accepts the proposal to change the references in Condition 22(3)(a) to the **2021** Cap and Floor Decision as changes to these aspects of the 2021 Cap and Floor Decision are not anticipated.

The CRU does not accept the proposal to remove the '*Subject to its compliance...*' text in Condition 22(4). The Cap and Floor Decision includes other features of the regime with which the Licensee

² Transmission Use of System

must be in compliance, such as maintaining a minimum level of availability and the repayment of Temporary Financial Support. Retention of this text captures this requirement.

The CRU does not accept the proposal for additional text in part 4(a): the details referred to in the proposal are already set out in the Cap and Floor Decision; the Floor is referred to in Condition 3(a); and the entitlements are implicitly included in the reference already added to Condition 22(1).

The CRU does not accept the proposal for additional text in part 4(b). The referenced timings are expected to be incorporated in the Interface Agreement that is referenced in the licence template. Furthermore, inclusion of this term would potentially place obligations on third parties, whose operation is not governed by this Licence.

The amendment made to the existing Condition 22(4)(b) in the draft Licence is considered to be reasonable and will be incorporated in the final Licence text.

The condition has been updated in the licence template.

2.6 Condition 16 – Editorial update

An editorial error was identified in the text of Condition 16 which referred to a non-existent paragraph 16(2). This reference has now been removed.

3. Next Steps

The CRU has published the final text of the Electricity Interconnector Operator Licence alongside this Decision paper.

In accordance with the methodology set out in CER/11/055 and as referred to in Section 1.1.1 of this Decision Paper, the CRU, upon application, will grant an Interconnector Operator Licence to those that already have been issued with an Authorisation to Construct an Interconnector pursuant to Section 16 of the ERA.

It is anticipated that the first issuance of a licence based on this licence template will be to Greenlink Interconnector Limited, which currently holds an Authorisation to Construct an Interconnector from the CRU.