



**Integrated Single Electricity Market
(I-SEM)**

**Modifications to the Intermediary Arrangements for
the Integrated Single Electricity Market (I-SEM)**

Decision Paper

SEM-17-025

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1. INTRODUCTION

On 20 January 2017, the SEM Committee published a consultation paper on “Modifications to the Intermediary arrangements for the Integrated Single Electricity Market (I-SEM)” (SEM-17-006) to consider the approach to the transition of existing Intermediary arrangements from the current market to I-SEM.

Comments were invited on the proposals contained within the consultation paper and were received from twelve participants. This decision paper sets out an overview of these comments and the Regulatory Authorities’ (RAs) response to these. The purpose of this paper is to identify the key issues and present the RAs’ conclusions on how Intermediary arrangements, including RA consents, should transition to the I-SEM, and conclusions on what eligibility criteria will be used for any new I-SEM Intermediary applications.

The structure of this paper is as follows:

Section 2 outlines the current Intermediary process and identifies the key aspects of those arrangements.

Section 3 gives a brief description of the RAs’ original proposal as set out in the consultation paper.

Section 4 considers the responses from various parties on the key issues.

Section 5 sets out the RAs’ conclusions and decisions.

2. BACKGROUND

2.1 Current Arrangements

The role of an Intermediary is to act for the Generator owner in relation to specific Generator Units under the Trading and Settlement Code (TSC). This involves taking on all their rights and responsibilities under the TSC, including, for example, bidding, settlement and provision of credit cover. These arrangements are used by a wide range of mainly renewable units to allow other TSC Parties (mainly suppliers) to interact with the market on their behalf. It is also a mechanism used by REFIT-supported generators to avoid the need to interact with a supplier that is not part of the same company, allowing a supply company to act on behalf of a generator owned by the same parent company.

Intermediary arrangements were set out in version 1.0 of the SEM Trading and Settlement Code published on 15 February 2006. On 26 September 2006, the RAs published a consultation document proposing the criteria to be applied by the RAs in their consideration of whether a party should be permitted to register an Intermediary to act on its behalf in relation to one or more Generator Units.

Intermediaries were originally proposed as a means of dealing with exceptional circumstances under which pre-existing bilateral arrangements could not readily be transitioned to the Single Electricity Market (SEM), but subsequently became used for a wider range of purposes. The original criteria were decided upon in the “Decision Paper on the Criteria for Approval of Intermediary Applications under the Trading and Settlement Code” on 28 February 2007 (AIP/SEM/07/029). Since that time the criteria have been reassessed on a number of occasions but the basic need for, purpose of, and risks associated with Intermediary arrangements have not been fully reconsidered. Indeed, even the criteria have not been reviewed since the decision on the extension of the criteria (SEM/11/014) published on 30 March 2011.

There are currently over 100 approved Intermediary arrangements which have been put in place in the context of the current SEM arrangements where both energy trading and capacity payments are set out in the TSC. These Intermediary arrangements will need to be

reassessed by the participants in relation to the I-SEM where energy is traded ex-ante through a Designated Nominated Electricity Market Operator (NEMO) and traded in the Balancing Market under the TSC, while capacity payments are determined through auctions governed under the Capacity Market Code (CMC). It is therefore important that both parties to all of the current Intermediary arrangements consider the arrangements and the contracts that they have in place and whether they wish similar arrangements to apply under I-SEM. This reassessment of these contracts will have to be completed before I-SEM go-live if any such arrangements are to operate fully in the new markets. The current arrangements can continue up to the point of I-SEM go-live.

There are three key aspects to existing Intermediary arrangements:

- 1) Private commercial arrangements between the Generator owner and Intermediary: The Generator owner and the Intermediary must reach an agreement to govern their relationship. An example of such an arrangement might be a Power Purchase Agreement (PPA). Any such contract is likely to require contractual renegotiation by the parties as part of the transition to I-SEM.
- 2) Regulatory Consent: Under the terms of the TSC the Generator owner and the Intermediary must receive the RAs' consent for the appointment of the Intermediary. The current consents are granted in accordance with the criteria that are framed within the context of the SEM. The generation licence also requires licensees to ensure that any Intermediary complies with the terms of the generator's licence in relation to compliance with the TSC.
- 3) Once both parties (the Intermediary and the Generator) have received RA consent they must submit a Form of Authority (FoA) (together with evidence of the RA consent) to the Market Operator (MO). The purpose of the FoA is to provide evidence that both parties understand and have agreed to the arrangement.

3. ORIGINAL SEM COMMITTEE PROPOSAL

Under the new market design it will be necessary for the Intermediary to register the Generator Unit under both the TSC and the CMC. This is obligatory for two reasons:

- a) all Generator Units will need to be registered under the CMC; and,
- b) settlement of capacity, including tracking performance against a unit's Awarded Capacity (as defined in the CMC), is settled through the TSC.

It is expected that the majority of units represented by Intermediaries will not be obliged to participate in the capacity auction. What is important to note however, is that while a unit is not obliged to participate in the auction, there will still be a registration obligation which must be fulfilled. This registration process, even where no participation in the capacity auction is foreseen, is a new activity that Intermediaries will need to fulfil on behalf of the Generator owner.

As stated in the SEM Committee's consultation paper: *Modifications to the Intermediary arrangements for the Integrated Single Electricity Market (SEM-17-006)*, due to the need for an additional registration process, and the potential change in risk profile faced by units where capacity market participation occurs, it is the RAs' view that a simple "grandfathering" or transfer of SEM intermediary arrangements to I-SEM is not appropriate.

The consultation paper discussed proposals on how to manage Intermediary agreements under the new market design. In particular, the paper discussed the extent to which existing arrangements could continue to operate with a minimum of disruption across industry.

As part of the amendments to the market design, there were three aspects to the Intermediary arrangements which the RAs considered:

- 1) the mechanism by which current Intermediary consents (by the relevant Regulatory Authority) can transition to the I-SEM;

- 2) the need for the redrafting and resubmission of the Form of Authority to the MO; and,
- 3) establishing eligibility criterion for the RAs' consent to any new I-SEM Intermediary applications.

These are now considered individually.

3.1 Regulatory Consent

The SEM Committee proposed in their consultation paper that in order to simplify transitional processes for market participants the RA consent for an intermediary to represent a generator could be “grandfathered” from the SEM to the I-SEM.

The SEM Committee is of the view that “grandfathering” the RA consents for all existing Intermediary arrangements (i.e. maintaining the existing RA consents into I-SEM) will be helpful and effective. This approach would minimise the burden on all parties. The “grandfathering” process does not mean that all such Intermediary arrangements will have to endure. The consent is only one of the three necessary elements of the Intermediary set out above. The other two elements (the underlying contract changes, and the Form of Authority) would have to be continued also to enable the Intermediary arrangement to endure into the I-SEM arena. Both of these additional elements ensure that all generators have to give explicit consent to the Intermediary, both through a (probably amended) contract and through a new FoA, to act on their behalf in the Capacity Market.

In the consultation, the SEM Committee proposed that all grandfathered consents might be time limited to provide for the possibility of review or extension by the RAs at a later date.

3.2 Form of Authority

Once the Intermediary and the licensed generator have the relevant RA's consent, they must submit a Form of Authority to the MO. This form must be signed by the Intermediary and the licensed generator in order to bring these arrangements into effect.

As previously mentioned, under the new market arrangements applicable generators will be required to register their Generator Unit under the TSC and under the CMC. The current SEM does not involve bidding into a capacity market. The existing FoAs therefore cannot be read as authorising Intermediaries to participate in the I-SEM Capacity Market.

While the registrants of all TSC-registered units are obliged to register and sign Framework Agreements to the CMC, it is expected that the majority of units represented by Intermediaries will not be obliged to participate in the capacity auction. It is important to note that while a unit is not obliged to participate in the auction, there will still be a registration obligation which must be fulfilled. It is during this registration process that the generator and Intermediary will sign the complete new FoA which will explicitly state whether consent to participate in the CMC has been granted.

A template for the new FoA is published with this paper. This will also be contained within Part B of the Trading and Settlement Code which will be published in April 2017.

3.3 Eligibility Criteria

The current criteria by which Generator Units may be subject to an Intermediary Agreement are set out in full in SEM-11-014 but in summary are:

- A. Any generator with an existing Public Service Obligation (PSO) contract (such as Intermediary arrangements will cease on termination or expiry of the underlying contract);

- B. Where a Generator Unit has registered as a Price Taker Generator Unit in accordance with the TSC and where the said Generator Unit is contracted to a Supplier Unit that is a Party to the TSC; and,
- C. Where a Generator Unit has registered as a Price Maker Generator Unit and where the Generator Unit is contracted to a Supplier Unit that is a Party to the TSC and the Generator Unit has a Maximum Export Capacity that is less than 100 MW which is contracted to a supplier in order to qualify for a support payment.

In line with the general approach across the I-SEM project that only areas that need to change should be changed as part of the transition to I-SEM, the SEM Committee proposed that current SEM criteria was still generally applicable but that there was a requirement to translate the current criteria into more relevant I-SEM terminology. On that basis, the following criteria were proposed for I-SEM:

The RAs may grant consent for an Intermediary arrangement:

- A. Where a party's participation in a bilateral agreement is under a PSO contract then the use of an Intermediary will be permitted for the duration of that contract;
- B. Where a Generator Unit has Priority Dispatch for the whole of its output and is contracted to a Supplier that is a Party to the TSC;
- C. Where a Generator Unit is non-controllable and non-dispatchable for the whole of its output and is contracted to a Supplier that is a Party to the TSC; or
- D. Where a Generator Unit is contracted to a Supplier that is a Party to the TSC and the following criteria are satisfied:
 - The Generator Unit has been allocated to a support-scheme, where to access payments the requirements of the scheme are that such an Intermediary must be appointed to receive the support-scheme payments, and where no alternative method of receiving support-scheme payments in the SEM exists;

- The generator's Maximum Export Capacity is less than 100MW; and
- Subject to applicable licence conditions, the Intermediary appointed will only act on behalf of a generator in the SEM with which it has a related undertaking or affiliate as set out in the relevant jurisdictional Generation Licences.

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4. RESPONSES TO THE CONSULTATION PAPER

The SEM Committee received twelve responses to the consultation. The respondents are listed below.

ABO Wind	Bord na Mona
Brookfield Renewable	Coillte
ElectroRoute	Energia
ESB Group	Gaelectric Holdings Plc.
Irish Wind Energy Association	Power NI
Power Procurement Business	SSE

Responses from market participants to the SEM Committee Consultation focussed on a number of key issues. Five specific questions were asked in the consultation:

- Do you have views on the proposed process for how current intermediary arrangements should be transitioned to I-SEM?
- Do you agree that the transfer of the RA consent should be time-limited and, if so, how long that time should be?
- Are the new criteria accurate as possible translations of the core concepts underlying the existing SEM approvals?
- Were the RAs to consult at some point in future on new or amended criteria for intermediary approvals, what criteria do you think might be required in I-SEM?

Do you have views on the proposed form for the new, single FoA shown in Annex 1?

These questions are each dealt with in turn in this section.

4.1 General Comments

One respondent questioned whether Intermediary approval for the Balancing Market and Capacity Market is still necessary, given the proposed day ahead and intraday market models under development. They also sought a commitment from the RAs that they are prepared to process the potential influx of intermediary applications in a timely manner.

Another respondent requested that clarity be provided on the issue of REFIT compatibility with I-SEM.

One respondent considered that, as in Great Britain, all market participants who do not wish to accede to the TSC or CMC and who would rather entrust the responsibility to another party should be allowed to do so. One response was of the view that there should be no limit to the size of a unit that can avail of intermediaries and that appropriate market power mitigation strategies should identify parties capable of influencing market outcomes. Some responses called for the below 100MW limit to be reviewed.

One respondent proposed that the SEM Committee should consider removing the limit on an intermediary contracting with up to 10 export MPRNs¹, in order to encourage liquidity in the market. Fears of market power should be assuaged by the restrictions of generator types that can enter into intermediary arrangements.

4.2 Do you have views on the proposed process for how current intermediary arrangements should be transitioned to I-SEM?

Most respondents provided commentary on this point. One response supported the proposed process. Another response agreed with the proposed format for grandfathering of RA consent between current parties to intermediary agreements.

¹ Meter Point Reference Numbers

One respondent was of the view that grandfathering of FoA is not appropriate given the need to sign up to both the TSC and CMC.

One respondent voiced their disappointment that the FoA applies to both the capacity and energy markets; units registering in the capacity market need not be registered with the same unit in the energy market.

Alternatively another respondent would prefer if transitional approval for intermediary consent was granted automatically to facilitate market registration timelines.

One participant requested that the existing FoA and approval should be considered effective by SEMO for the transitional registration processes in the I-SEM. Another participant requested that existing contractual arrangements be allowed to run their course.

Another participant stated that it would welcome greater clarity on the types of generators that can avail themselves of intermediary arrangements and a list of non-ambiguous and mutually-exclusive criteria for each type of generator. The same participant said it was assuming that it is the intention of the RAs that '[W]here a party's participation in a bilateral agreement is under a PSO contract then the use of an Intermediary will be permitted for the duration of that contract' in the I-SEM irrespective of the MEC of the Generator Unit, i.e. mirroring the situation that exists today in the SEM.

One respondent was of the view that the consultation proposals don't appear to reflect any of the new needs of market participants under I-SEM, but instead attempt to replicate the current SEM criteria and restrict intermediaries to PSO or priority dispatch generator units. It proposed that intermediary arrangements be extended to suppliers.

One respondent noted that the RAs have proposed that the current arrangements should be transitioned as much as possible. However in reality this still requires contractual renegotiation, a new FOA and registration. In reality therefore there remains a significant registration requirement placed on participants. This respondent stated that it is important

that this requirement is not downplayed or portrayed as a simplistic transition as this will mislead participants to the level of activity that will be required.

One respondent requested that existing arrangements be transferred automatically where possible without creating new administrative registration burdens.

4.3 Do you agree that the transfer of the RA consent should be time-limited and, if so, how long that time should be?

Many respondents did not believe that RA consent should be time limited, and one stated that the necessity for time limits is unclear.

One respondent stated that grandfathering should be time-limited up to the point of I-SEM go-live. Post I-SEM go-live, no grandfathering of existing arrangements should be actioned.

4.4 Are the new criteria accurate as possible translations of the core concepts underlying the existing SEM approvals?

The majority of respondents agreed that the proposed updates are appropriate.

One response highlighted the necessity for clarity on criteria applicable to the individual type of generator. This is based on the assumption that each of the criteria are mutually exclusive. One respondent expressed the view that clarity is needed as to whether a wind farm which chooses to participate as price making and forego priority dispatch can be represented in the market by a third party intermediary where it is not under a PSO contract.

Another response stated that the I-SEM approval criteria should be sufficiently broad to allow any project to achieve a FoA once it is in line with the RAs' underlying objectives to promote market efficiency, non-discriminatory access, renewable energy etc., while also addressing concerns around market power etc.

4.5 Were the RAs to consult at some point in future on new or amended criteria for intermediary approvals, what criteria do you think might be required in I-SEM?

A number of respondents felt that the Intermediary arrangements should be extended to suppliers.

One respondent called for the current intermediary structure to be re-evaluated in the context of the exploration and development of corporate PPAs in the energy market.

Another respondent suggested avoiding the imposition of proscriptive criteria in favour of general principles followed by a case-by-case assessment.

One respondent also wanted intermediaries for suppliers to be considered. It also suggested an approach whereby an expansion of the intermediary structure would allow a company to take title to the power and sell on to a future energy market licensed entity which would sell on the power on its behalf.

Other comments called for the approval criteria to be sufficiently broad to allow any project to achieve a form of authority once it is in line with the RAs' underlying objective.

One respondent considered that:

- Criterion A should be broadened to allow the SEMC to approve a FOA where it is implementing a PSO type contract where it is implementing a previous policy decision.
- There should be an additional criterion which allows a case for a specific registration not in line with the published criteria to be approved when it satisfies the RAs' objectives and addresses their concerns.

Another response stated that any future changes should only take place if there is a clearly identifiable problem and should be subject to a consultation. Another stated that the need for further change is unclear; introducing restrictions, time-limits etc. is therefore likely to be counterproductive.

4.6 Do you have views on the proposed form for the new, single FoA shown in Annex 1?

One respondent felt that the possible revocation of RA consent before the PPA has completed is of significant concern, and that clauses such as 2.2 and 2.3 should be removed. Some respondents noted that the inclusion of an 18 month time limit is inappropriate in the context of the PPA contracts and proffered that this would be similarly unhelpful for wider intermediary arrangements by creating regulatory risk and uncertainty.

Another respondent stated that the wording in the transitional FoA may unduly force competition of PPA negotiations prior to all relevant info being to hand, and recommended that changes are made to reflect the existence of a current agreement only.

One respondent did not agree that it is necessary for Intermediary Participants in a bilateral agreement under a PSO contract to have a sunset clause in the FoA. They noted that for other participants a three year period is a more appropriate period.

Support was expressed by one respondent to the RAs' addition of clauses in the FoA to enable participants to exit an intermediary arrangement over the course of the I-SEM transition.

One participant noted that the wording on Restricted Authority under the Capacity Market Code is to be finalised in parallel with the Capacity Market Code, and requested an opportunity to comment on this in advance of the wording being finalised.

5. SEM COMMITTEE DECISION

The SEM Committee welcomes the range of comments received and notes the general support for the short term action proposed. The SEM Committee also notes the views that the implementation of the new markets in I-SEM provides a framework within which the whole of the current approach to Intermediaries might be reconsidered. The SEM Committee believe this is a significant topic which warrants careful consideration both in terms of the support that is likely to be needed by the smaller participants (and possibly new small suppliers) in the new markets and in terms of the risks of undue concentration of market power.

The SEM Committee takes the view, however, that transitioning existing intermediary arrangements should take priority, especially given the current registration timeline as noted by many of the respondents. The SEM Committee is therefore of the view that the Intermediary Arrangements transition to I-SEM may be disrupted or seriously delayed by a full reconsideration of the Intermediary concept at this time. It should be noted that the SEM Committee is not minded to narrow the application of intermediary arrangements as part of a future review, instead the SEM Committee may consider broadening the eligibility criteria in line with the new market and cognisant of the comments set out in Section 4. It should also be noted that no substantial change to criteria would happen without due regulatory process and that any consultation process prior to I-SEM go-live would run the risk of diverting resources and of disrupting the activities of all parties from the work required to effect I-SEM go-live.

In view of the considerations set out in Section 4, the SEM Committee have reached the following decisions regarding the immediate changes to the Intermediary arrangements for the Integrated Single Electricity Market (I-SEM):

- **RAs will “grandfather” the Regulatory Authority consents for all existing Intermediary arrangements; that is to maintain the existing RA consent into the I-SEM.**

- **Regulatory Authority consents will not be time limited.**

- **The eligibility criteria for the consideration of Intermediary applications in I-SEM will be:**
 - A. Where a party's participation in a bilateral agreement is under a PSO contract then the use of an Intermediary will be permitted for the duration of that contract;

 - B. Where a Generator Unit has Priority Dispatch for the whole of its output and is contracted to a Supplier that is a Party to the TSC;

 - C. Where a Generator Unit is non-controllable and non-dispatchable for the whole of its output and is contracted to a Supplier that is a Party to the TSC; or

 - D. Where a Generator Unit is contracted to a Supplier that is a Party to the TSC and the following criteria are satisfied:
 - The Generator Unit has been allocated to a support-scheme, where the requirements of the scheme are such that in order to access payments an Intermediary must be appointed to receive the support-scheme payments and where no alternative method of receiving support-scheme payments in the SEM exists;
 - The generator's Maximum Export Capacity is less than 100MW; and
 - Subject to applicable licence conditions, the Intermediary appointed will only act on behalf of a generator in the SEM with which it has a related undertaking or affiliate as set out in the relevant jurisdictional Generation Licences.

The Regulatory Authorities are of the view that arguments made by respondents regarding the expansion of eligibility criteria; that is, that it should be less prescriptive and more principle-based, warrants further consideration. A consultation considering the future of the intermediary arrangements in the new markets will be conducted after I-SEM go-live.

6. NEXT STEPS

Applicable licensed Generators and their associated Intermediaries need to submit a new Form of Authority along with a copy of the “old” regulatory consent to SEMO before the Intermediary can fulfil all the associated requirements under the CMC and TSC. This confirms:

- the licensed Generator permits the Intermediary to continue to act as the Participant under the TSC;
- the licensed Generator permits the Intermediary to act under the CMC; and
- where the Generator Unit is such that under the CMC it may be, but is not obliged to be, bid into Capacity Auctions, whether the Intermediary can bid in capacity to the Capacity Market.

A new version of the Form of Authority has been published in conjunction with this decision paper. This Form of Authority is also published in Appendices to Part B of the TSC Amendments as set out in SEM-17-024.

This new Form of Authority along with the “old” regulatory consent needs to be submitted to SEMO by the **28 July 2017** to meet the CMC deadline.

The RAs will update the standard application form for regulatory consents to reflect this decision and publish on the RAs’ websites in the coming weeks. This form should be used for all new intermediary applications under the I-SEM TSC.