

To: Greenlink Interconnector Limited
Cc: Department for Energy Security and Net Zero

Email: cap.floor@ofgem.gov.uk

Date: 18 August 2023

To Whom It May Concern,

Certification under the ownership unbundling requirements of the Electricity Act 1989: Decision of the Gas and Electricity Markets Authority (the Authority)

1. Greenlink Interconnector Limited (the **Applicant**) submitted an application under section 10B(2) of the Electricity Act 1989 (the **Electricity Act**) on 20 April 2023¹, requesting to be certified pursuant to the ownership unbundling requirements (as set out in section 10F of the Electricity Act).
2. The ownership unbundling requirements are set out in sections 10A to 10O of the Electricity Act.
3. The Applicant holds an Electricity Interconnector Licence granted under Section 6(1)(e) of the Electricity Act to operate the Greenlink interconnector. This licence authorises the Applicant to participate in the operation of the Greenlink interconnector between Great Britain (Pembrokeshire) and a place within the jurisdiction of another country or territory, being the Republic of Ireland (County Wexford). The Applicant is ultimately controlled by Partners Group Holding AG (**Partners Group**), a Swiss listed company.
4. Under section 10B(3) of the Electricity Act, if the Applicant is controlled by a person from a country outside the United Kingdom, the Authority must, as soon as is reasonably practicable, notify the Secretary of State that an application from such a person has been made. The Authority must also enclose with the notification to the

¹ The Applicant submitted the original application on 30 September 2022, following which the Authority issued a request for information on 7 December 2022 and updated versions of the application were then submitted by the Applicant on 1 March 2023 and 20 April 2023.

Secretary of State any further information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of energy supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.

5. This letter sets out the Authority's decision on the Applicant's application for certification under section 10D of the Electricity Act.

Application for certification

6. The Applicant requested certification on the first certification ground, which is set out in section 10E(3) of the Electricity Act. The first certification ground is that the Applicant meets the ownership unbundling requirements in section 10F of the Electricity Act.
7. The Authority is required to apply five tests as set out in section 10F of the Electricity Act, to determine whether the Applicant meets the ownership unbundling requirements.

The first test

8. The **first test** is that the applicant—
 - a) does not control a relevant producer or supplier (**RPoS**);
 - b) does not have a majority shareholding in an RPoS; and
 - c) will not, on or after the relevant date, exercise shareholder rights in relation to an RPoS.
9. The Applicant has confirmed that it does not control, nor hold shares in, any other company. Furthermore, the Applicant has provided a signed undertaking that, during the term of its interconnector licence, it will not exercise, or cause to be exercised on its behalf, any shareholder rights in relation to an RPoS that it might acquire during the currency of the undertaking. Therefore, the Applicant meets the requirements of the first test and this first test is therefore passed.

The second test

10. The **second test** is that, where the Applicant is a company, partnership, or other business, none of its senior officers has been, or may be, appointed by a person who:
 - a) controls an electricity undertaking which is an RPoS; or

- b) has a majority shareholding in an electricity undertaking which is an RPoS.
11. The Applicant has provided details of the process for appointing directors, which made clear that the appointment of senior officers of the Applicant can be influenced by Partners Group (their ultimate controller). Partners Group controls and has a majority shareholding in RPoSs both in Europe and outside of Europe. The Applicant has confirmed that Partners Group does not currently own any RPoSs in the United Kingdom (UK) or Ireland.
12. Section 10F(9A) of the Electricity Act provides that the Authority may use its discretion to treat one or more of the five tests as passed in certain circumstances. Based on our assessment of information provided by the Applicant, we consider that the RPoSs outside of Europe controlled by Partners Group do not give rise to a risk of discrimination or a conflict of interest, particularly due to their lack of geographical proximity to the Greenlink interconnector. Furthermore, whilst Partners Group owns generation interests that are considered RPoSs in Europe, the total generating capacity of the RPoSs located in Europe, in which Partners Group holds investments, is de minimis relative to the total European Union electricity generation capacity (less than 0.1%). As such, we are satisfied that this does not pose a risk of discrimination.
13. The Applicant has also provided a copy of their implemented Commercially Sensitive Information (**CSI**) Exchange Protocol, which provides guidance to the Applicant's board members on how CSI is governed by the Applicant, including details of who is responsible for managing CSI and relevant policies and procedures in place. The CSI Exchange Protocol provides strict rules with respect to the directors of the Applicant, who can be appointed by Partners Group. The Applicant has provided information on the procedures in place, and we deem these measures appropriate in dealing with potential breaches of the CSI Exchange Protocol. As such, we consider that the directors of the Applicant are deterred from discriminating in favour of any RPoS undertakings that could give rise to a conflict of interest. We have reviewed the CSI Exchange Protocol and consider it sufficient to manage potential conflict of interests, provided it is adhered to by the Applicant. Therefore, by applying the test contained in section 10F(9A) of the Electricity Act, the Authority considers it is appropriate to treat the second test as passed.

The third test

14. The **third test** is that, where the Applicant is a company, partnership or other business, none of its senior officers is also a senior officer of an electricity undertaking which is an RPoS.

15. The information provided by the Applicant confirms that three of its senior officers are also senior officers of electricity undertakings which meet the definition of an RPoS. These RPoSs are sited in Europe.
16. Currently, there are no directors of the Applicant that are directors of RPoS undertakings that are sited in the UK or Ireland.
17. Section 10F(9A) of the Electricity Act provides that the Authority may use its discretion to treat one or more of the five tests as passed in certain circumstances. Based on our assessment of information provided by the Applicant, we consider that the directorships held by the senior officers of the Applicant do not give rise to a risk of discrimination or a conflict of interest. The Applicant has provided information on the procedures in place and we deem these measures appropriate in dealing with potential breaches of the CSI Exchange Protocol. As such, we consider that the directors of the Applicant are deterred from discriminating in favour of any RPoS undertakings that could give rise to a conflict of interest. Provided that it is adhered to by the Applicant, we deem the Applicant's CSI Exchange Protocol adequate to ensure that the Applicant adheres to its standard licence conditions at all times, such that it will not discriminate.
18. We are further satisfied that, in conjunction with the Protocol, the de minimis generating capacity of the RPoSs in Europe relative to the total European Union electricity generation, in which three directors of the applicant are senior officers of, does not pose a risk of discrimination or a conflict of interest.
19. Therefore, by applying the test contained in section 10F(9A) of the Electricity Act, the Authority considers it is appropriate to treat the third test as passed.

The fourth test

20. The **fourth test** is that the applicant is not controlled by a person who controls an RPoS.
21. The information provided by the Applicant confirms that it is controlled by a person (Partners Group) which controls RPoSs both in Europe and outside of Europe. The Applicant has confirmed that Partners Group, as the ultimate controller, does not currently own any RPoSs in the UK or Ireland.
22. Section 10F(9A) of the Electricity Act provides that the Authority may use its discretion to treat one or more of the five tests as passed in certain circumstances. Based on our assessment of information provided by the Applicant, we consider that the RPoSs outside of Europe controlled by Partners Group do not pose a risk of discrimination or a conflict of interest, particularly due to their lack of geographical proximity to the

Greenlink Interconnector. Furthermore, we note that the total generating capacity of the RPoSs located in Europe, in which Partners Group control, is de minimis relative to the total European Union electricity generation capacity (less than 0.1%). As such, we are satisfied that this does not pose a risk of discrimination.

23. Therefore, by applying the test contained in section 10F(9A) of the Electricity Act, the Authority considers it is appropriate in these cases to treat the fourth test as passed.

The fifth test

24. The **fifth test** is that the applicant is not controlled by a person who has a majority shareholding in an RPoS.
25. As with the fourth test, the information provided by the Applicant confirms that it is controlled by a person (Partners Group) which has a majority shareholding in RPoSs both in Europe and outside of Europe. The Applicant has confirmed that the ultimate controller does not currently have a majority shareholding in RPoSs in the UK or Ireland.
26. Based on our assessment of information provided by the Applicant, we consider that the RPoSs outside of Europe in which Partners Group holds investments and/or majority shareholding do not pose a risk of discrimination or a conflict of interest, particularly due to their lack of geographical proximity to the Greenlink Interconnector. Furthermore, we note that the total generating capacity of the RPoSs located in Europe, in which Partners Group holds investments and/or majority shareholding, is de minimis relative to the total European Union electricity generation (less than 0.1%). As such, we are satisfied that this does not pose a risk of discrimination.
27. Therefore, by applying the test contained in section 10F(9A) of the Electricity Act, the Authority considers it is appropriate in these cases to treat the fifth test as passed.

Certification decision

28. Based on the information contained in the application and further information provided by the Applicant, the Authority considered that each of the five tests were met (or treated as met) by the Applicant.
29. Partners Group is registered in Switzerland and is a controller from a country outside the United Kingdom for the purposes of section 10O of the Electricity Act and this certification assessment. We notified the Secretary of State on 30 November 2022 in accordance with section 10B(3) of the Electricity Act. On 11 January 2023, the Secretary of State concluded that certifying the Applicant would not put the security of electricity supplies in the United Kingdom at risk.

30. Our decision is that the Applicant is certified as independent on the basis that it has met the ownership unbundling requirement under section 10F(1) of the Electricity Act, as each of the five tests set out in section 10F has either been met by the Applicant or considered as passed in accordance with section 10F(9A) of the Electricity Act by the Authority.
31. In accordance with sections 10H(1) and 10H(2) of the Electricity Act, the Applicant, being an interconnector licence holder pursuant to section 10H(1) of the Electricity Act and certified on the first certification ground, is designated as an electricity transmission system operator.
32. In accordance with section 10D(4) and 10H(4) of the Electricity Act, the Authority hereby notifies the Applicant and the Secretary of State of the certification of the Applicant.
33. In accordance with section 10I of the Electricity Act, the Authority will monitor whether the basis on which it decided to certify the Applicant continues to apply following the Authority's final decision and, if appropriate, will review its certification decision. This would include any supplementary documentation in support of this application.
34. Attached to this letter is a copy of the certification decision made by the Authority. If you have any questions on this cover letter or our certification decision, please get in touch with David Bell at: David.Bell@ofgem.gov.uk.

Yours sincerely,



Stuart Borland

Deputy Director, Offshore Network Regulation

Duly authorised on behalf of the Gas and Electricity Markets Authority

18 August 2023

ELECTRICITY ACT 1989

SECTION 10D

CERTIFICATION – Greenlink Interconnector Limited

Pursuant to section 10D of the Electricity Act 1989 (the **Act**) the Gas and Electricity Markets Authority hereby grants Greenlink Interconnector Limited² certification as independent under the ground set out in section 10E(3) of the Act, subject to the attached Schedule.



Stuart Borland

Deputy Director, Offshore Network Regulation

Duly authorised on behalf of the Gas and Electricity Markets Authority

18 August 2023

² This is a company incorporated in Ireland with company registration number 536954 whose registered address is Unit 3, 4075 Kingswood Road, Citywest Business Campus, Saggart, Co. Dublin D24 KF85.

SCHEDULE

PERIOD, CONDITIONS AND WITHDRAWAL OF CERTIFICATION

A. Interpretation and Definitions

In this certification

'the Authority'	means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000, as amended from time to time
'the Act'	means the Electricity Act 1989, as amended from time to time
'the certified person'	Greenlink Interconnector Limited in its capacity as a person certified as independent under section 10D of the Act
'control'	has the same meaning as in section 10O of the Act
'person from a country outside the United Kingdom'	has the same meaning as in section 10O of the Act
'the relevant date'	has the same meaning as in section 10M of the Act
'shareholder right'	has the same meaning as in section 10O of the Act

B. Period

Subject to section D below, and pursuant to section 10D of the Act, this certification shall come into effect on the date that it is issued and will continue until it is withdrawn in accordance with section D.

C. Conditions

This certification is made subject to the following conditions:

1. The material provided by the certified person to the Authority in respect of its application for certification is true and complete.
2. If at any time the certified person knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the certified person shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the

reasons it considers that the event or circumstance may affect its eligibility for certification.

3. If at any time the certified person knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the certified person is or may become a person from a country outside of the United Kingdom, or that a person from a country outside the United Kingdom has or may take control of the certified person, the certified person shall as soon as reasonably practicable notify the Authority in writing.
4. If at any time from the relevant date the certified person exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the certified person shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.
5. By 31 July of each year, the certified person shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the certified person and signed by a director of the certified person pursuant to that resolution, setting out:
 - a) Whether any event or circumstance has occurred in the previous 12-month period, or such part of that 12-month period since the certified person was certified, that may affect the certified person's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
 - b) Whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the certified person has become a person from a country outside the United Kingdom, or that a person from a country outside the United Kingdom has taken control of the certified person, in the previous 12-month period or such part of that 12-month period since the certified person was certified; and
 - c) Whether the certified person has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12-month period or such part of that 12-month period since the certified person was certified and, if so, the effect of exercising that right, provided that the certified person is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.

6. The certified person furnishes the Authority in such manner and at such times as the Authority may reasonably require, with such information as the Authority may reasonably require, or as may be necessary, for the purpose of:
 - a) performing the functions assigned to it by or under the Act, the Gas Act 1986, the Utilities Act 2000, the Energy Act 2004, the Energy Act 2008, or the Energy Act 2011, each as may be amended from time to time; or
 - b) monitoring and reviewing of the certification under section 10I of the Act; or
 - c) reporting by the Authority as to any connection of the licensee with a country outside the United Kingdom under section 10K of the Act.
7. Should any of the grounds for withdrawal arise under section D of this certification, the Authority may amend rather than withdraw this certification.

D. Withdrawal

Pursuant to section 10L of the Act, this certification may be withdrawn in the following circumstances:

1. This certification may be withdrawn by the Authority by giving a notice of withdrawal to the certified person not less than four months before the coming into force of the withdrawal in any of the following circumstances where:
 - a) the Authority considers that condition contained in paragraph C1 above is not met;
 - b) the Authority considers that the basis on which the Authority decided to certify the certified person does not continue to apply and has made a final decision that the certification should be withdrawn;
 - c) the certified person has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986, as amended from time to time) of the whole or any material part of its assets or undertaking appointed;
 - d) the certified person has entered into administration under section 8 of Schedule B1 to the Insolvency Act 1986;
 - e) the certified person is found to be in breach of any national competition laws, such breach relating to the licensed activity of the certified person;

- f) the certified person has failed to provide a declaration to the Authority pursuant to paragraph C5 above and the Authority has written to certified person stating that the declaration has not been provided and giving the certified person notice that if the declaration remains outstanding past the period specified in the notice the certification may be withdrawn;
 - g) the certified person has failed to comply with a request for information issued by the Authority under paragraph C6 above and the Authority has written to the certified person stating that the request has not been complied with and giving the certified person notice that if the request for information remains outstanding past the period specified in the notice the certification may be withdrawn.
2. This certification may be withdrawn if the certified person notifies the Authority that it does not require to be certified and the Authority considers that the certified person is not a person who is required to be certified.