



STATUTORY INSTRUMENTS.

S.I. No. 578 of 2014



EUROPEAN COMMUNITIES (REPORTING OF ELECTRICITY AND
NATURAL GAS PRICES CHARGED TO INDUSTRIAL CUSTOMERS)
REGULATIONS 2014

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EUROPEAN COMMUNITIES (REPORTING OF ELECTRICITY AND
NATURAL GAS PRICES CHARGED TO INDUSTRIAL CUSTOMERS)
REGULATIONS 2014

I, ALEX WHITE, Minister for Communications, Energy and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 2008/92/EC of the European Parliament and of the Council of 22 October 2008¹, hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Communities (Reporting of Electricity and Natural Gas Prices charged to Industrial Customers) Regulations 2014.

Interpretation

2. (1) In these Regulations—

“Act of 1999” means the Electricity Regulation Act 1999 (No. 23 of 1999);

“Act of 2002” means the Gas (Interim) (Regulation) Act 2002 (No. 10 of 2002);

“Authority” means the Sustainable Energy Authority of Ireland;

“Commission” means the Commission for Energy Regulation;

“data and information” means the data and information to be provided to the Authority under Regulation 3(1);

“Directive” means Directive 2008/92/EC of the European Parliament and of the Council of 22 October 2008 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users¹;

“Eurostat” means the Statistical Office of the European Union;

“industrial customer” means—

- (a) in regard to electricity, a business customer buying electricity for its own use, and

¹OJ No. L 298, 07.11.2008, p. 9

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 26th December, 2014.*

- (b) in regard to natural gas, means a business customer buying natural gas, distributed through the natural gas network, for its own use, other than a natural gas customer who—
- (i) uses natural gas for electricity generation in power plants or in combined heat and power plants,
 - (ii) uses natural gas in non-energy uses (including the chemical industry), and
 - (iii) whose use of natural gas is above 4,000,000 gigajoules (GJ) per year;

“semester” means January to June or July to December in each year;

“supplier” means—

- (a) in relation to electricity, the holder of a licence under section 14(1)(b) or (h) of the Act of 1999, and
- (b) in relation to natural gas, the holder of a licence under section 16(1)(d) of the Act of 2002;

“VAT” means value-added tax.

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

PART 2

SUPPLIERS’ DATA AND INFORMATION

Obligations on suppliers to provide data and information to the Authority

3. (1) Electricity and natural gas suppliers shall provide data and information, in regard to electricity and natural gas prices charged to their industrial customers, to the Authority to enable the Authority to carry out its functions under Part 3 of these Regulations.

(2) Suppliers shall provide the data and information to the Authority twice per annum not later than the 31st day of January and the 31st day of July of each year relating to—

- (a) the average prices and terms of sale of electricity charged to industrial customers,
- (b) the average prices and terms of sale of natural gas charged to industrial customers, and
- (c) the price systems in use.

(3) The data and information shall reflect prices paid by customers in each of the electricity and natural gas consumption bands listed in the Schedule during the periods January to June and July to December of each year.

(4) The Authority may issue written instructions to suppliers in regard to the form and content of data and information to be provided and the methodologies to be applied.

(5) Suppliers shall comply to the satisfaction of the Authority with all reasonable instructions issued by the Authority, under paragraph (4), in regard to the data and information to be provided.

PART 3

DESIGNATION OF SUSTAINABLE ENERGY AUTHORITY OF IRELAND AS COMPETENT AUTHORITY AND REPORTING OBLIGATIONS TO EUROSTAT

Competent authority

4. The Authority is designated as the competent authority in the State for the purposes of the Directive.

Obligations on the Authority to provide Data and Information to Eurostat

5. (1) Subject to Regulation 6, the Authority shall provide the data and information, in such form as may be specified by Eurostat, and as and when required by Eurostat, relating to—

- (a) the average prices and terms of sale of electricity charged to industrial customers,
- (b) the average prices and terms of sale of natural gas charged to industrial customers, and
- (c) the price systems in use.

(2) The data and information provided by the Authority under paragraph (1) shall—

- (a) reflect electricity and natural gas prices charged during the periods January to June and July to December of each year,
- (b) be recorded as national average electricity and natural gas prices, and
- (c) be categorised according to the consumption bands listed in the Schedule.

(3) In providing data and information under this Regulation, the Authority shall include the following taxes, levies, non-tax levies, licences, fees and fiscal charges:

- (a) VAT;

- (b) concession fees, including licenses and fees for the occupation of land and public or private property by networks or other electricity or natural gas devices;
- (c) environmental taxes or levies;
- (d) nuclear and other inspection taxes;
- (e) public service obligations;
- (f) levies to finance the Commission;
- (g) any other taxes and levies not linked with the energy sector including national, local or regional fiscal taxes on energy consumed and taxes on electricity and natural gas distribution.

Methodology and other obligations

6. (1) Electricity prices shall be expressed in euro per kilowatt and, subject to paragraph (2), natural gas prices shall be expressed in euro per gigajoule.

(2) With regard to natural gas, the unit of energy shall be measured on the basis of the gross calorific value.

(3) Prices shall include all charges payable including electricity and natural gas network charges plus energy consumed minus any rebates or premiums, plus other charges as appropriate including meter rental, standing charges, capacity charges and commercialisation.

(4) To ensure a representative data compilation system, the Authority shall develop and implement cost effective procedures based on the following rules:

- (a) prices shall represent weighted average prices, using the market shares of suppliers as weighting factors to industrial customers;
- (b) arithmetic average prices shall be provided only when weighted figures cannot be calculated;
- (c) in either case, under subparagraph (a) or (b), the Authority shall ensure that a representative share of the national market is provided;
- (d) market shares shall be based on the quantity of electricity or natural gas invoiced by suppliers to industrial customers;
- (e) the Authority shall separately calculate the market shares for each consumption band;
- (f) data relating to prices charged to industrial customers shall be provided only where there are at least 3 customers in any of the categories listed in the Schedule.

(5) The data and information provided by the Authority shall include—

- (c) prices excluding taxes and levies,
- (b) prices excluding VAT and other recoverable taxes, and
- (c) prices including all taxes, levies and VAT.

(6) In pursuing its obligation to provide timely data and information to Eurostat, the Authority shall provide all relevant data and information on average prices paid during—

- (a) the first semester of each year, not later than 1 September of the same year, and
- (b) the second semester of each year, not later than 1 March of the following year.

Data and information on compilation system

7. (1) Once every 2 years, the Authority shall provide data and information to Eurostat concerning the compilation system applied which shall include—

- (a) a description of the survey and its scope including the number of suppliers surveyed,
- (b) the aggregated percentage of the market represented,
- (c) the criteria used to calculate weighted average prices, and
- (d) the aggregated consumption volumes represented by each consumption band.

(2) The data and information under paragraph (1) shall be provided to Eurostat together with the second semester data and information, referred to in Regulation 6(6)(b).

Data and information on prices in each consumption band

8. (1) Once per annum, the Authority shall provide data and information to Eurostat regarding the main characteristics and factors affecting prices in each consumption band which shall include—

- (a) in regard to both electricity and natural gas, average load factors for industrial customers corresponding to each consumption band calculated on the basis of the total energy supplied and the average maximum demand,
- (b) in regard to both electricity and natural gas, information concerning standing charges, meter rentals or any other charges relevant at national level,
- (c) in regard to natural gas, information concerning discounts given for interruptible supplies, and
- (d) in regard to electricity, a table indicating the national voltage limits.

(2) The data and information under paragraph (1) shall be provided with the second semester data and information, referred to in Regulation 6(6)(b).

Data and information on rates, methods of calculation and taxes

9. (1) Once per annum, the Authority shall provide data and information to Eurostat concerning rates and method of calculation as well as information concerning the taxes levied on electricity and natural gas sales to industrial customers which shall include any non-tax levy covering system costs and public service obligations.

(2) The information on taxes under paragraph (1) shall separately distinguish—

- (a) prices excluding taxes and levies,
- (b) prices excluding VAT and other recoverable taxes, and
- (c) prices including all taxes, levies and VAT.

(3) The data and information under paragraph (1) shall be provided with the second semester data and information, referred to in Regulation 6(6)(b).

Breakdown of main components of electricity prices

10. (1) Once per annum, the Authority shall provide to Eurostat a breakdown of the main components of electricity prices.

(2) The breakdown under paragraph (1) shall be based on the methodology that the complete price for electricity per consumption band can be considered as the global sum of network prices, energy and supply prices, and all taxes and levies.

(3) The data and information under paragraph (1) shall be provided with the second semester data and information, referred to in Regulation 6(6)(b).

(4) In this Regulation—

- (a) “network prices” means the ratio between the revenue related to transmission and distribution tariffs and the corresponding volume of kWh per consumption band. Where separate volumes of kWh per band are not available estimates shall be provided;
- (b) “energy and supply prices ” means the total price minus the “network price” and minus all taxes and levies;
- (c) “taxes and levies ” means a breakdown of—
 - (i) taxes and levies on network prices,
 - (ii) taxes and levies on energy and supply prices, and
 - (iii) VAT and other recoverable prices.

Confidentiality

11. The Authority shall preserve the confidentiality of commercially sensitive information received by it including data and information used for calculating weighted average prices.

Authority to Co-operate with Eurostat

12. Where, following a notification by Eurostat to the Authority that it has noted statistically significant anomalies or inconsistencies in data and information transmitted to it, Eurostat has submitted a request to the Authority to inspect relevant prices data and the methods of calculation or evaluation upon which the aggregated data are based, the Authority shall cooperate with any such request made to it in order that Eurostat may assess or amend any data or information noted by it to contain anomalies or inconsistencies.

*PART 4**DIRECTIONS**Directions*

13. (1) Where, in the opinion of the Authority, a supplier to whom these Regulations apply, has not complied, or is not complying, satisfactorily with the requirements of Regulation 3, the Authority may issue a direction to a supplier to comply with that Regulation.

(2) A direction issued by the Authority under paragraph (1) shall—

- (a) state that the Authority is of the opinion referred to in paragraph (1),
- (b) state the reason for that opinion,
- (c) be served in accordance with Regulation 14,
- (d) direct the supplier to remedy the non-compliance with Regulation 3 not later than a date specified in that direction,
- (e) include such matters (if any) as the Authority considers appropriate, and
- (f) advise the supplier of its right of appeal pursuant to paragraph (4).

(3) A supplier that is of the opinion that Regulation 3 has been complied with may make written representations to the Authority within a period of 21 days beginning on the day the direction is served on it and the Authority shall upon receiving such representations consider them and reply not later than 21 days after receipt.

(4) A supplier that is aggrieved by a direction may—

- (a) where no representations are made under paragraph (3), within the period of 21 days beginning on the day on which the direction is given to it, or

- (b) where representations are made under paragraph (3), within the period of 21 days beginning on the day on which the Authority's reply is given to it,

appeal to the High Court against the direction and, in determining the appeal, the judge may make any order he or she considers appropriate, including confirming the direction, with or without modification, or cancelling the direction.

(5) The bringing of an appeal against a direction under paragraph (4) shall not have the effect of suspending the operation of the direction, but the appellant may apply to the court to have the operation of the direction suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(6) A person who—

- (a) brings an appeal under paragraph (4), or
- (b) applies for the suspension of the operation of a direction under paragraph (5),

shall at the same time notify the Authority in writing of the appeal or application, and the grounds for the appeal or application.

(7) Where an undertaking fails to comply in full with a direction within the period specified by the Authority, or fails to cooperate with the Authority with regard to the direction, the Authority may apply to the High Court for an order directing the undertaking to comply with the direction or to cooperate.

(8) Where, on application by the Authority to the High Court, the court is satisfied that an undertaking has failed to comply in full with a direction or a requirement of these Regulations, the court may by order—

- (a) direct the person to comply with the direction of the Authority, and
- (b) make such other provision, including provision in relation to the payment of costs, as the court considers appropriate.

(9) An application for an order under this Regulation shall be by motion, and the High Court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

Service of Directions

14. (1) Where a direction is issued by the Authority under Regulation 13(1), the direction shall be addressed to the supplier concerned and shall be sent or given to the supplier—

- (a) by delivering it to the supplier,
- (b) by leaving it at the address at which the supplier carries on business,

- (c) by sending it by pre-paid registered post addressed to the supplier at the address at which the supplier carries on its business,
- (d) if an address for the service of a direction has been furnished by the supplier to the Authority, by leaving it at, or sending it by pre-paid registered post addressed to the supplier, to that address, or
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the supplier ordinarily carries on business or, if an address for the service of a direction has been furnished by the undertaking, that address, provided that the sender's—
 - (i) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
 - (ii) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction,

and the direction is also given in one of the other ways mentioned in any of the preceding subparagraphs.

(2) For the purposes of paragraph (1) a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(3) A copy of a direction, which has endorsed on it a certificate purporting to be signed by an officer of the Authority authorised in that behalf by the Authority stating that the copy is a true copy of the direction or reply may, without proof of signature of that person, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or reply.

Schedule

Regulations 3(3), 5(2) and 6(4)(f)

Electricity Consumption Bands

Industrial Customer	Annual electricity consumption (MWh)
Band IA	<20
Band IB	20 < 500
Band IC	500 < 2,000
Band ID	2,000 < 20,000
Band IE	20,000 < 70,000
Band IF	70,000 <= 150,000

Natural Gas Consumption Bands

Industrial Customer	Annual Natural Gas Consumption (GJ)
Band I1	< 1,000
Band I2	1,000 < 10,000
Band I3	10,000 <100,000
Band I4	100,000 <1,000,000
Band I5	1,000,000 <= 4,000,000



GIVEN under my Official Seal,
17 December 2014.

ALEX WHITE TD,
Minister for Communications, Energy and Natural Resources.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations give further effect to Directive 2008/92/EC concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users. The Regulations designate the Sustainable Energy Authority of Ireland (SEAI) as the competent body with responsibility for providing data to Eurostat on electricity and gas prices charged by suppliers to their business customers. The Regulations oblige electricity and gas suppliers to provide the requisite data and information to the SEAI on prices charged by them to their business customers. SEAI is provided with powers to direct suppliers it considers have not complied, or are not complying with data reporting obligations, to provide requisite data.

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