



STATUTORY INSTRUMENTS.

S.I. No. 579 of 2014



EUROPEAN UNION (NOTIFICATION OF INVESTMENT PROJECTS IN
ENERGY INFRASTRUCTURE) REGULATIONS 2014

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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 full effect to Regulation (EU) No 256/2014 of the European Parliament and of the Council of 26 February 2014¹, hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Notification of Investment Projects in Energy Infrastructure) Regulations 2014.

(2) These Regulations shall come into operation on the 1 January 2015.

2. (1) In these Regulations—

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

“Electricity Market Regulation” means Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009²;

“Natural Gas Market Regulation” means Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009³;

“Minister” means the Minister for Communications, Energy and Natural Resources;

“EU Regulation” means Regulation 256/2014 of the European Parliament and of the Council of 26 February 2014 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union, replacing Council Regulation (EU, Euratom) No 617/2010 and repealing Council Regulation (EC) No 736/961;

“reporting year” means 2015 and each successive alternate year after 2015;

¹OJ No. L 84, 20.03.2014, p. 61

²OJ No. L 211, 14.08.2009, p. 15

³OJ No. L 211, 14.08.2009, p. 36

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

“undertaking” means any natural or legal private or public person, deciding or implementing investment projects of the types listed in the Annex on which construction or decommissioning work has started, or on which a final investment decision has been taken.

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

(3) In these Regulations, a reference to an Annex is a reference to Annex I to the EU Regulation.

PART 2

PROVISION OF DATA

Obligations on undertakings to provide data and information to Minister

3. (1) On and from 1 January 2015, undertakings planning or implementing investment projects of the types listed in the Annex shall, not later than 1 June of each reporting year, provide to the Minister data and information, in such form as may be specified by the Minister, in regard to investment projects.

(2) The data and information shall reflect the position at 31 March of that reporting year.

(3) The data and information shall include the following:

(a) the volume of the capacity planned or under construction;

(b) the type and main characteristics of infrastructure or capacity planned or under construction, including the location of cross-border transmission projects, where applicable;

(c) the likely year of commissioning;

(d) the type of energy sources used;

(e) the installations capable of responding to security of supply crises, such as equipment enabling reverse flows or fuel switching;

(f) the equipment of carbon capture systems or retrofitting mechanisms for carbon capture and storage.

(4) Data and information provided by undertakings in regard to any proposed decommissioning of capacities of the types listed in the Annex shall include the following:

(a) the character and the capacity of the infrastructure concerned;

(b) the projected year of decommissioning.

(5) Where, in the opinion of the Minister, data and information falls within the scope of Regulation 4(4), undertakings that have been informed in writing by the Minister of that opinion shall not be required to provide such data and information to the Minister.

Notification of Data to EU Commission

4. (1) For the purposes of the EU Regulation, the Minister shall notify the European Commission of data and information, in such form as may be specified by the European Commission, relating to the investment projects of the types listed in the Annex.

(2) The data and information referred to in paragraph (1) shall be notified in respect of a reporting year—

- (a) not later than 31 July, and
- (b) reflect the position at 31 March,

of the reporting year concerned.

(3) Other than in respect of data and information relating to cross-border projects the notification made by the Minister shall be made in aggregated form.

(4) Where, in regard to investment projects—

- (a) data or information that is equivalent to that required pursuant to these Regulations has already been notified to the European Commission, and the Minister has indicated to the European Commission the date of that notification and the specific legal obligation concerned, or
- (b) data and information equivalent to that required pursuant to these Regulations is compiled by ENTSO-E or ENTSO-G in accordance with their respective obligations under the Electricity Market Regulation or the Natural Gas Market Regulation as relevant, and notified by those bodies to the European Commission,

the Minister shall not be required to notify such data and information.

(5) The Minister shall aim to ensure the quality, relevance, accuracy, clarity, timeliness and coherence of data and information notified under this Regulation.

(6) The Minister shall preserve the confidentiality of commercially sensitive information received by him or her.

PART 3

DIRECTIONS

Directions

5. (1) Where, in the opinion of the Minister, an undertaking to whom these Regulations apply, has not complied, or is not satisfactorily complying, with the

requirements of Regulation 3, the Minister may issue a direction in writing to an undertaking to comply with that Regulation.

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

- (a) state that the Minister is of the opinion referred to in paragraph (1),
- (b) state the reason for that opinion,
- (c) be served in accordance with Regulation 6,
- (d) direct the undertaking to remedy the non-compliance with Regulation 3 not later than a date specified in the direction,
- (e) include such matters (if any) as the Minister considers appropriate, and
- (f) advise the undertaking of its right of appeal pursuant to paragraph (4).

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

(4) An undertaking 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 Minister'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 High 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 Minister 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 Minister, or fails to cooperate with the Minister with regard to the direction, the Minister 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 Minister to the court under paragraph (7), 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 Minister, 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

6. (1) Where a direction is issued by the Minister under Regulation 5(1), the direction shall be addressed to the undertaking concerned and shall be sent or given to the undertaking—

- (a) by delivering it to the undertaking,
- (b) by leaving it at the address at which the undertaking carries on business,
- (c) by sending it by pre-paid registered post addressed to the undertaking at the address at which the undertaking carries on its business,
- (d) if an address for the service of a direction has been furnished by the undertaking to the Minister, by leaving it at, or sending it by pre-paid registered post addressed to the undertaking 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 undertaking 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 Minister authorised in that behalf by the Minister 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.



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 EU Regulation 256/2014 concerning the notification to the European Commission of investment projects in energy infrastructure within the European Union. The Minister for Communications, Energy and Natural Resources is designated as the competent body with responsibility for providing investment data to the European Commission. Energy companies are obliged to provide the requisite data and information to the Minister. The Minister is provided with powers to direct energy companies he considers have not complied, or are not complying with data reporting obligations, to provide the requisite data.

The information to be provided every two years to the European Commission relates to investments in the production, storage and transport of oil, gas transmission and storage and LNG terminals, electricity generation and transmission (including from renewable sources), biofuels production and the capture and storage of carbon dioxide. Investment decisions relating to the decommissioning of energy infrastructure in the same categories must also be reported.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.05



Wt. (B31030). 305. 12/14. Clondalkin. Gr 30-15.