

## **S.I. No. 147/2011 — European Communities (Renewable Energy) Regulations 2011.**

*Notice of the making of this Statutory Instrument was published in*

*“Iris Oifigiúil” of 1st April, 2011.*

I, PAT RABBITTE, 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 effect to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009<sup>1</sup>, hereby make the following regulations:

### *Citation*

1. These Regulations may be cited as the European Communities (Renewable Energy) Regulations 2011.

### *Interpretation*

2. (1) In these Regulations—

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

“aerothermal energy” means energy stored in the form of heat in the ambient air;

“biomass” has the meaning assigned to it by section 44A(1) (inserted by section 3 of the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (No. 11 of 2010)) of the National Oil Reserves Agency Act 2007 (No. 7 of 2007);

“CER” means Commission for Energy Regulation;

“Directive” means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009<sup>1</sup> on the promotion of the use of energy from renewable sources;

“distribution” has the meaning assigned to it by section 2(1) of the Act of 1999;

“distribution system operator” means the holder of a licence under section 14(1)(g) of the Act of 1999;

“energy from renewable sources” means energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

“final customer” has the meaning assigned to it by section 2(1) of the Act of 1999;

“geothermal energy” means energy stored in the form of heat beneath the surface of solid earth;

“generator” means the holder of a licence under section 14(1)(a) of the Act of 1999;

“generating station” has the meaning assigned to it by section 2(1) of the Act of 1999;

“generating unit” means a unit of a generating station;

“guarantee of origin” means an electronic document which has the sole function of providing proof to a final customer that a given share or quantity of energy was generated from renewable sources;

“guarantee of origin for high efficiency CHP” means a guarantee that electricity is produced from high efficiency cogeneration, as defined by section 7 of the Act of 1999;

“hydrothermal energy” means energy stored in the form of heat in surface water;

“Internal Market Regulations” means the European Communities (Internal Market in Electricity) Regulations 2005 ( S.I. No. 60 of 2005 );

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

“PSO generator” means a generator that is party to a REFIT or AER Power Purchase Agreement listed in Schedule 1, Part 3; Schedule 1A; Schedule 1B; or Schedule 3 to the Electricity Regulation Act 1999 (Public Service Obligations) Order 2002 ( S.I. No. 217 of 2002 );

“public body” has the meaning assigned to it by Regulation 10 of the European Communities (Energy End-Use Efficiency and Energy Services) Regulations 2009 ( S.I. No. 542 of 2009 );

“public building” means a building, or that part of a building, to which members of the public generally have access and which is occupied, managed or controlled by a public body;

“SEAI” means Sustainable Energy Authority of Ireland;

“SEMO” has the meaning assigned to the Single Electricity Market Operator by section 2(1) of the Act of 1999;

“Single Electricity Market Trading and Settlement Code” means the code of that name established pursuant to section 9BA(1) of the Act of 1999 and so designated pursuant to Regulation 4 of the Single Electricity Market Regulations, as from time to time revised, amended, supplemented or replaced;

“supplier” means a person licensed under section 14(1)(b), (c) or (d) of the Act of 1999;

“support scheme” means any instrument, scheme or mechanism introduced by the Government, that promotes the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased. This includes, but is not restricted to, investment aid, tax exemptions or reductions, tax refunds, renewable energy obligation support schemes including those using green certificates, and direct price support schemes including feed-in tariffs and premium payments;

“transmission” has the meaning assigned to it by section 2(1) of the Act of 1999;

“transmission system operator” means the holder of a licence under section 14(1)(e) of the Act of 1999.

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

*Exemplary role of public bodies regarding public buildings*

3. (1) A public body shall take such steps as it consider appropriate to ensure that a public building—

(a) constructed after 31 December 2011, or

(b) subject to major renovation after that date,

fulfils an exemplary role in the context of the Directive.

(2) A public body may consult with SEAI for the purposes of ensuring public buildings fulfil an exemplary role in the context of the Directive.

#### *Access to and operation of the grid*

4. (1) In order to achieve the target addressed to the state in Annex 1 to the Directive and based on transparent and non discriminatory criteria defined and published by CER—

(a) the transmission system operator and distribution system operator shall ensure that electricity generated from renewable sources may be transmitted and distributed,

(b) when dispatching generating units, the transmission system operator shall give priority to generating units using energy from renewable sources in so far as the secure operation of the electricity system permits,

(c) subject to Part V of the Act of 1999 or the Single Electricity Market Trading and Settlement Code or both, as the case may be, a generator of electricity from renewable sources that is connected to the electricity system shall be able to sell and transmit such electricity at all times, whenever the source becomes available.

(2) The implementation of paragraph (1) shall be at all times subject to the maintenance of the reliability and safety of the grid.

(3) CER shall ensure that the transmission system operator or the distribution system operator, as appropriate, takes appropriate grid and market related operational measures in order to minimise the curtailment of electricity from renewable sources on the electricity system.

(4) If significant measures are taken to curtail the renewable energy sources in order to guarantee the security of the electricity system and security of energy supply, the transmission system operator shall report to CER on those measures and indicate which corrective measures it is intended to take in order to prevent inappropriate curtailments.

(5) CER shall implement Article 16(4) of the Directive.

#### *Supervision and Issuance of Guarantees of Origin*

5. (1) Guarantees of origin shall be issued by SEMO in accordance with the supervisory framework established by CER and these Regulations.

(2) CER shall, after consultation with SEMO and other relevant persons, design, establish and publish a supervisory framework for the issuance, registration, transfer and cancellation by electronic means, of guarantees of origin to generators of electricity from renewable energy sources.

(3) CER and SEMO shall ensure that guarantees of origin are accurate, reliable and fraud-resistant.

(4) SEMO shall report annually to CER on the operation of system for the issuance, registration, transfer and cancellation of guarantees of origin.

(5) The framework referred to in paragraph (2) shall provide for, but shall not be limited to, the management of the system for the issuance, registration, transfer and cancellation of guarantees of origin.

(6) CER may amend the framework referred to in paragraph (2) from time to time.

#### *Functions of the Guarantee of Origin*

6. (1) A guarantee of origin shall have no function in terms of the state's compliance with Article 3 of the Directive.

(2) CER may introduce objective, transparent and non discriminatory criteria for the use of guarantees of origin in complying with the obligations laid down in the Internal Market Regulations.

(3) A supplier may use a guarantee of origin as proof of the share or quantity of energy from renewable sources in its energy mix for the purposes of compliance with the requirements of Regulation 25 of the Internal Market Regulations.

(4) The amount of energy from renewable sources corresponding to guarantees of origin transferred by a supplier to a third party shall be deducted from the share of energy from renewable sources in the energy mix of the supplier furnished under Regulation 25 of the Internal Market Regulations.

(5) Where suppliers market energy from renewable sources to consumers with a reference to environmental or other benefits of energy from renewable sources, CER may require those suppliers to comply with Article 15(12) of the Directive.

#### *Eligibility and characteristics of a guarantee of origin*

7. (1) A guarantee of origin shall be of the standard size of one megawatt hour (hereinafter referred to as a "renewable energy unit").

(2) No more than one guarantee of origin shall be issued in respect of each renewable energy unit.

(3) The same renewable energy unit shall be taken into account only once.

(4) Where a PSO generator receives a guarantee of origin for a renewable energy unit, no support scheme payment for the same unit of electricity shall be made.

(5) Any use of the guarantee of origin shall take place within 12 months of the generation of the corresponding renewable energy unit.

(6) A guarantee of origin shall be cancelled once it has been used.

(7) A guarantee of origin shall specify at least:

- (a) that the guarantee of origin relates to electricity from renewable sources,
- (b) the energy source from which the electricity was produced and the start and end dates of production,
- (c) the identity, location, type and capacity of the generating station where the electricity was produced,
- (d) whether and to what extent the generating station has benefitted from investment support, whether and to what extent the unit of energy has benefited in any other way from a national support scheme and the type of support scheme, and
- (e) the date and country of issue and a unique identification number.

*Request for issue of guarantee of origin and information required*

8. (1) A guarantee of origin shall be issued by SEMO in response to a request from a generator of electricity from renewable energy sources.

(2) A guarantee of origin may not be requested for electricity generated outside the State.

(3) A request for the issuance of a guarantee of origin shall not be considered properly made until SEMO has been provided with at least the following information from the applicant—

- (a) the energy source from which the electricity was generated,
- (b) the start and end dates of generation covered by the request,
- (c) the name, address, location, type and capacity of the generating station where the energy was generated,
- (d) whether and to what extent the generating station has benefited from investment support,
- (e) whether and to what extent the unit of energy has benefited in any other way from a support scheme, and the type of support scheme, and
- (f) the date on which the generating station became operational.

(4) SEMO may request further information from a requester for the purpose of determining eligibility for the guarantee of origin and ascertaining the accuracy of the information submitted in accordance with paragraph 3.

(5) SEMO shall, in accordance with the supervisory framework, establish an electronic register of issued guarantees of origin which shall include, at a minimum, the following information:

- (a) the date of issue of the guarantee of origin;
- (b) the name and address (if a body corporate its registered place of business) of the person to whom the guarantee has been, or was originally, issued;
- (c) a unique identification number for each guarantee of origin;

(d) the energy source or sources from which the electricity to which the guarantee of origin relates was generated;

(e) the start and end dates of generation to which the guarantee of origin relates;

(f) the type and capacity of the generating station where the energy was generated to which the guarantee of origin relates;

(g) where the guarantee of origin has been transferred, the name and address (if a body corporate its registered place of business) of the last person to whom it has been transferred;

(h) where a guarantee of origin has been issued to a PSO generator, a statement to this effect;

(i) a list of any guarantees of origin revoked pursuant to Regulation 9.

(6) SEMO may refuse a request for a guarantee of origin where—

(a) it is not satisfied that the requester is a generator of electricity from renewable sources, and

(b) the application is incomplete or ineligible.

#### *Revocation of a guarantee of origin*

9. (1) SEMO, after consulting with CER, may revoke a guarantee of origin where:

(a) it is satisfied that the information provided in accordance with paragraphs (3) and (4) of Regulation 8 and on the basis on which that guarantee of origin was issued is substantively incorrect,

(b) it is satisfied that the guarantee of origin was issued on the basis of any fraudulent behaviour, statement or undertaking, or

(c) it is satisfied for another stated reason that the guarantee of origin should not have been issued, is inaccurate or was issued to the wrong person.

(2) SEMO shall give notice in writing as soon as is practicable to a holder of a guarantee of origin that it has been revoked.

#### *Recognition of guarantees of origin*

10. (1) The supervisory framework established by CER shall provide for the recognition of guarantees of origin issued by other Member States in accordance with Article 15(9) of the Directive.

(2) SEMO, acting in accordance with the supervisory framework may refuse to recognise a guarantee or origin issued by another Member State only where it has well-founded doubts about the accuracy, reliability or veracity of the guarantee of origin and in such a case shall notify the Minister and the European Commission of such a refusal and its justification.

#### *Recoupment of costs*

11. (1) The issuance, transfer, or cancellation of a guarantee of origin under these Regulations may be accompanied by such reasonable and proportionate fee, if any, as is determined appropriate by SEMO and approved by CER to cover administrative costs.

(2) SEMO shall make information on fees publicly available.

*Repeal*

12. Paragraphs (c) and (d) of section 14(1) of the Act of 1999 are repealed.

*Saver*

13. A holder of a licence under paragraphs (c) or (d) of Section 14(1) of the Act of 1999 which is in force immediately before the date making of these Regulations is deemed to be a licence granted by CER under paragraph (b) of section 14(1) of the Act of 1999.

*Guarantee of origin for High Efficiency CHP*

14. These Regulations are not applicable in respect of guarantees of origin for high efficiency CHP.

GIVEN under my Official Seal,

28 March 2011.

PAT RABBITTE,

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.)*

This S.I. pertains to the implementation of Directive 2009/28/EC on the promotion of the use of energy from renewable sources. Elements of the Directive are transposed including the provisions relating to access to and operation of the grid; guarantees of origin and the exemplary role of public bodies regarding public buildings.

1 OJ No. L140, 5.6.2009, p.16