An Coimisiún um Rialáil Fóntais

Commission for Regulation of Utilities

CRU Administrative Sanctions Regime – Approach to Setting Financial Penalties

Decision Paper

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CRU Strategic Plan 2025-27

Vision, Purpose, and Values

OUR VISION:

Resilient, efficient, sustainable, and safe energy and water services for Ireland.

OUR PURPOSE:

We actively serve the public interest by regulating the provision of energy and water to Irish homes and businesses, while supporting the transformation to net zero.

OUR VALUES:

- Integrity
- Professionalism
- Openness
- Accountability

Executive Summary

This decision paper sets out the Commission for Regulation of Utilities' ("CRU") approach to determining financial penalties under Part IX of the Electricity Regulation Act 1999 ("the Act") where regulated entities engage in improper conduct. It follows two rounds of public consultation and reflects the CRU's consideration of submissions received from interested parties. The CRU would like to thank all respondents for their input.

The Act empowers the CRU, following an investigation, to impose administrative sanctions, including financial penalties of up to 10% of a specified body's turnover, subject to confirmation by the High Court. As provided for in section 64 of the Act, any amount confirmed or decided by the High Court shall be paid into or disposed of for the benefit of the Exchequer.

The now established framework for imposing administrative sanctions, including financial penalties, on licensees significantly enhances the CRU's regulatory toolkit, strengthening its ability to deter non-compliance and protect the interest of energy customers.

In exercising these statutory powers, the CRU considers that a clear, structured, and transparent approach to calculating financial penalties is necessary to ensure that outcomes are fair, proportionate, consistent, and effective in deterring non-compliance.

For clarity, the approach is only relevant where the CRU has decided to impose a financial penalty on a specified body. It does not address, for example, when or how the CRU decides to pursue administrative sanctions as opposed to other enforcement actions, or when or how the CRU decides to impose a major sanction rather than a minor sanction. Procedural matters relating to investigation and enforcement considerations are governed by the relevant legislation and are outlined in the CRU Investigation and Enforcement Guidelines (CRU2023132).

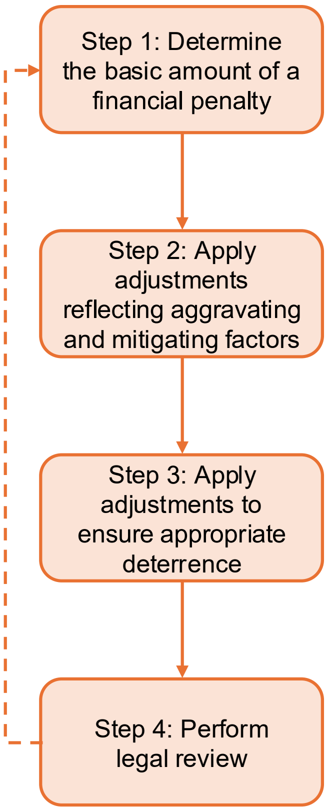
Having considered consultation responses, the CRU has decided to adopt a "formula-lite" approach to setting financial penalties. This approach combines a predefined calculation framework with an appropriate degree of discretion, allowing the CRU to take account of the specific circumstances of each case while promoting consistency across decisions.

The approach comprises two methodologies:

- The **Gain Methodology** is the default methodology and applies where a monetary value of financial gain from the improper conduct can be assigned.

- The **Relevant Fine Methodology** applies in cases where financial gain cannot be reliably quantified, where no financial gain has arisen but customer harm has occurred, or where use of the Gain Methodology would be disproportionately resource-intensive, such as in certain procedural or administrative breaches.

Under each methodology, financial penalties are determined through a four-step process, as outlined below.



Gain Methodology	**Relevant Fine Methodology**
Financial gain x Gravity level x Duration	**Weekly fine x Gravity level x Duration**
0.1% ~ 10% *weeks*	*€10,000* *1% ~ 100%* *weeks*

+ Adjustment reflecting aggravating factors
- Adjustment reflecting mitigating factors

- *Adjustment as a proportion of the Step 1 basic amount.*
- *In principle, no single factor should increase or reduce the Step 1 basic amount by more than 10%. Exceptions may be permitted on a case-by-case basis.*

+ Adjustment to ensure appropriate deterrence

- *Adjustment as a proportion or, where necessary and appropriate, multiples of the provisional amount calculated in Step 2.*

✓ **To review any precedents set by a court, the CRU or another person in respect of previous improper conduct. In cases of inconsistencies, where necessary, reapply the previous steps to adjust the figures in Step 1, 2 and / or 3.**
✓ **Not exceeding 10% of the turnover of the specified body.**

- *The proportionality and reasonableness of a financial penalty are ultimately determined by the circumstances of the improper conduct concerned (including the factors occasioning it) in a particular case.*

This decision paper, including the approach to setting financial penalties set out herein, is intended to enhance transparency around how financial penalties may be determined and to support a culture of compliance and early engagement by regulated entities. It does not replace and should not be construed as a substitute for any applicable law or regulation, nor does it constitute legal advice. It does not purport to limit or fetter the CRU's discretion in individual cases.

The CRU will keep the approach under review and consult on any substantive changes to ensure it remains effective and responsive to evolving market conditions.

Public/Customer Impact Statement

The approach to setting financial penalties set out in this decision paper is intended to support the CRU's statutory function of protecting the interests of energy customers. By establishing a clear, structured, and transparent framework for determining financial penalties, the approach seeks to promote compliance by regulated entities and to deter improper conduct that may result in customer harm or undermine confidence in regulated markets.

The approach places strong emphasis on proportionality and fairness, ensuring that financial penalties appropriately reflect the seriousness, duration, and impact of improper conduct, including the extent of harm to final customers. In particular, the consideration of customer harm, vulnerability, and market impacts as part of the assessment of gravity, as well as the recognition of timely remediation and compensation as mitigating factors, is intended to encourage regulated entities to address issues promptly and to minimise adverse effects on customers when non-compliance occurs.

For customers, the approach is designed to reinforce standards of service and customer protection, while promoting transparency around how enforcement outcomes are determined. By encouraging early engagement, self-reporting, and cooperation with investigations, the framework also aims to facilitate quicker resolution of compliance issues and reduce the likelihood of prolonged customer detriment.

More broadly, the approach supports public confidence in regulatory oversight by ensuring that financial penalties are applied in a consistent, evidence-based, and legally robust manner. Through the inclusion of deterrence considerations and alignment with statutory caps, the framework seeks to ensure that penalties are sufficiently dissuasive to prevent future non-compliance, without imposing disproportionate burdens that could ultimately be borne by customers.

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Glossary of Terms and Abbreviations

Abbreviation / Term	Definition / Meaning
the Act	Electricity Regulation Act 1999
BGE	Bord Gáis Energy
CRU	Commission for Regulation of Utilities
DSO	Distribution System Operator
EAI	Electricity Association of Ireland
ESB	Electricity Supply Board (Group)
the first proposed decision paper	Proposed Decision Paper: Approach to Setting Financial Penalties (CRU2023160)
GNI	Gas Networks Ireland
the Guidelines	Information Paper: CRU Investigation and Enforcement Guidelines (CRU2023132)
the Policy Statement	Information Paper: Compliance and Enforcement Policy Statement (CRU/19134)
SoP	Standard of performance
TSO	Transmission System Operator
the updated proposed decision paper	Proposed Decision Paper: Approach to Setting Financial Penalties (updated) (CRU2025164)

Lists and Tables

1 Introduction

1.1 Context

1.1.1 Background

The Commission for Regulation of Utilities ("**CRU**") is Ireland's independent energy and water regulator. The CRU's purpose is to actively serve the public interest by regulating the provision of energy and water to Irish homes and businesses, while supporting the transformation to net zero.

The Energy Act 2016 amended the Electricity Regulation Act 1999 ("**the Act**") to provide the CRU with powers to impose administrative sanctions, which include major sanctions and minor sanctions. As defined under section 55 of the Act, "major sanction" means:

(a) a direction to a specified body that the specified body pay a sum, as specified in the direction, but not exceeding €50,000, to the Commission, being the whole or a part of the cost to the Commission of an investigation of the specified body,

(b) a direction to a specified body that the specified body pay a sum, as specified in the direction, but not exceeding 10 per cent of the turnover of the specified body, to the Commission by way of a financial penalty for improper conduct, by the specified body, specified in the direction, or

(c) any combination of the sanctions specified in paragraphs (a) and (b).

Where, following an investigation, the CRU is satisfied that a relevant regulated entity (referred to as "specified body" in the Act) has committed or is committing improper conduct as specified by the Act, the CRU may impose a financial penalty of up to 10 per cent of the entity's turnover. Any such decision is subject to confirmation by the High Court in accordance with Part IX of the Act. Any amount confirmed or decided by the High Court shall be paid into or disposed of for the benefit of the Exchequer.

The now established framework for imposing administrative sanctions, including financial penalties, on licensees significantly enhances the CRU's regulatory toolkit, strengthening its ability to deter non-compliance and protect the interest of energy customers.

Where the CRU decides to impose financial penalties in individual cases, it considers a clear and structured approach to calculating such penalties is necessary to ensure fairness and proportionality. Accordingly, the CRU has proposed an approach and invited submissions from interested parties.

For clarity, the approach is only relevant where the CRU has decided to impose a financial penalty on a specified body. It does not address, for example, when or how the CRU decides to pursue administrative sanctions as opposed to other enforcement actions, or when or how the CRU decides to impose a major sanction rather than a minor sanction. Procedural matters relating to investigation and enforcement considerations are governed by the relevant legislation and are outlined in the CRU Investigation and Enforcement Guidelines (CRU2023132) ("**the Guidelines**").

1.1.2 Public consultation

The CRU published a proposed decision paper (CRU2023160) ("**the first proposed decision paper**") on 9 January 2024. The first proposed decision paper set out a "formula-lite" approach comprising two methodologies: the Gain Methodology and the Relevant Fine Methodology. The consultation closed on 21 February 2024. During the consultation, the CRU received submissions from ten interested parties.

Following its review of the consultation responses, the CRU updated its proposal and published a proposed decision paper: *Approach to Setting Financial Penalties (updated)* (CRU2025164) ("**the updated proposed decision paper**"), on 30 October 2025. The updated proposed decision paper further elaborated on, and revised, certain elements of the proposed methodologies. This consultation closed on 11 December 2025.

During the second consultation, the CRU received submissions from the following seven interested parties:

(1) Bord Gáis Energy ("**BGE**")
(2) EirGrid
(3) Electricity Association of Ireland ("**EAI**")
(4) Energia
(5) ESB Group ("**ESB**", on behalf of ESB Group businesses/entities)
(6) Flogas (on behalf of Flogas Enterprise Solutions Ltd. and Flogas Natural Gas Ltd.)
(7) Gas Networks Ireland ("**GNI**")

Responses received – which were not marked confidential – in respect of the updated proposed decision paper are available on the CRU's online consultation portal here.

1.1.3 Related documents

The following documents provide further context to this decision paper:

- Proposed Decision Paper: Approach to Setting Financial Penalties (updated) (CRU2025164)
- Proposed Decision Paper: Approach to Setting Financial Penalties (CRU2023160)
- Information Paper: CRU Investigation and Enforcement Guidelines (CRU2023132)
- Information Paper: Compliance and Enforcement Policy Statement (CRU/19134)

1.2 Structure of this paper

This decision paper sets out the CRU's consideration of the responses received and its decisions regarding the approach to setting financial penalties. It is structured as follows:

- Section 1 provides the context for this decision paper.
- Section 2 details the CRU's consideration of the responses received.
- Section 3 sets out the CRU's decision on the approach to setting financial penalties.
- Section 4 outlines the next steps following publication of this decision paper.

1.3 Status of this paper

The primary purpose of establishing an approach to setting financial penalties is to guide the CRU's decision-making, with a view to ensuring that financial penalty decisions are fair and reasonable. While the Act does not require the CRU to specify its approach in advance, the publication of this approach is intended to enhance clarity and transparency for interested parties regarding how the level of a financial penalty may be determined in a given case, including the factors taken into account. The CRU considers that such transparency may encourage early engagement by regulated entities where compliance issues arise and support a culture of compliance.

This decision on the approach to setting financial penalties is not intended to substitute regulation or law. It does not constitute legally binding rules or legal advice, nor does it limit or fetter the CRU's discretion in the performance of its statutory functions. The CRU remains committed to ongoing engagement with regulated entities and to upholding due process in all cases.

2 Responses and Considerations

In the updated proposed decision paper, the CRU further elaborated on and revised certain components of the proposed methodologies – the Gain Methodology and the Relevant Fine Methodology – developed under the overarching formula-lite approach.

Respondents provided comments on each of the proposed components. Overall, respondents welcomed a number of key changes, including the introduction of gravity levels within both methodologies, the updated aggravating and mitigating factors and their expressly non-exhaustive nature, and the removal of the 20 per cent cap on adjustments based on mitigating factors. Respondents also expressed differing opinions on certain aspects, including the treatment of the duration of improper conduct, the determination of gravity levels, and the 10 per cent cap applicable to any single aggravating or mitigating factor.

This section summarises these comments and explains the CRU's considerations. It is not intended to reproduce each individual submission. For reasons of transparency, all submissions have been published on the CRU's consultation portal.

Prior to addressing the comments, the CRU wishes to clarify that the examples included in the updated proposed decision paper were intended solely for illustrative purposes and were not indicative of how the CRU would assess individual cases in practice. Some respondents commented on, or relied upon, these examples in their submissions. The CRU will not respond to these comments insofar as they relate to the perceived fairness or reasonableness of the outcomes illustrated by those examples. Where relevant, the CRU will address these comments in a general context.

2.1 Applicability of the two methodologies

In the updated proposed decision paper, the CRU proposed that:

- the Gain Methodology be the default methodology in cases where a monetary value of financial gain can be assigned to the improper conduct under investigation.
- the Relevant Fine Methodology apply in the following circumstances:
  - a monetary value of financial gain cannot be assigned to the improper conduct,
  - there is no financial gain to the regulated entity, but there is inconvenience to final

customers, or

  - there is financial gain, but it would be disproportionately resource intensive to apply the Gain Methodology, such as in cases involving procedural or administrative breaches.

Summary of comments:

- GNI, BGE, ESB and EirGrid generally agreed with the proposal and provided the following comments.
  - Regarding the Gain Methodology, ESB raised a concern about potential double counting in relation to the number of impacted customers and related monetary value in determining gravity level.
  - Regarding the second circumstance in which the Relevant Fine Methodology is proposed to apply, EirGrid submitted that "inconvenience to financial customers" is a broad concept and could result in an excessively low threshold for application of penalties. It suggested that "customer harm" would be a more appropriate criterion recognising that harm is not necessarily confined to financial loss but can cover the circumstances outlined in the draft proposal.
  - Regarding the third circumstance in which the Relevant Fine Methodology is proposed to apply, BGE commented that this methodology should not become the de facto default methodology because it is complex to calculate a financial gain to the supplier.
- EAI, Energia and Flogas provided different opinions, as summarised below.
  - Flogas raised a concern that the proposed Gain Methodology generates disproportionate fines in certain circumstances and this is primarily driven from the use of the number of weeks in the calculation. It asserted that without changes being made to the formula in the Gain Methodology, the Relevant Fine Methodology should be the default mechanism.
  - EAI and Energia were of a similar opinion that the same set of facts should result in a similar fine under the two methodologies. Based on the proposal, they commented that under the same circumstances, the Gain Methodology results in a significantly higher fine than the Relevant Fine Methodology. Some regulated entities are more predisposed to the Relevant Fine Methodology than others. This causes a concern

that there would be unfair advantage to those entities which, due to the nature of their business, are unable to identify a financial gain.

- More specifically, Energia "tested" the two methodologies using Example 4 provided in the updated proposed decision paper and concluded that there are substantial discrepancies between the two methodologies.
- Energia submitted that it cannot provide an opinion on this question until such time as the calculations have been adequately formulated to produce fair, transparent and proportionate penalties.
- Energia additionally commented that any imposition of an administrative financial sanction must strike a reasonable and appropriate balance such that blatant misconduct is appropriately deterred whilst avoiding disproportionate penalties that could drive up the cost of supplying customers and deter the innovation required to promote competition and enable the energy transition. The approach must provide the CRU with sufficient flexibility and discretion to deal with a potential major sanction on a case-by-case basis.

CRU consideration:

The CRU notes that a majority of respondents agreed with the proposal.

With regard to potential double counting under the Gain Methodology, this issue relates to specific elements of the methodology and is addressed in section 2.2.1 below.

In relation to the second circumstance in which the Relevant Fine Methodology is proposed to apply, the CRU agrees that the concept of "customer harm", whether financial or otherwise, more accurately capture the relevant situations. This terminology is also aligned with the CRU's decisions on the specification of standards of performance.

As regards the third circumstance for application of the Relevant Fine Methodology, during an investigation, the CRU seeks to establish all relevant facts, including any financial gain arising from improper conduct. Through reasonable engagement with the relevant regulated entity, the CRU aims to clarify matters relating to the quantification of any financial gain and to reach a shared understanding. On the basis of such engagement, the CRU commits to making a sound and reasonable decision.

Concerns raised regarding potential "disproportionality" of financial penalties calculated under the Gain Methodology, arising from the use of the number of weeks, relate to specific elements of the methodology and are addressed in section 2.2.2 below.

In response to comments suggesting that the same facts should lead to a similar financial penalty under both methodologies, the CRU considers that proportionality and reasonableness are to be assessed by reference to the circumstances of the improper conduct concerned (including the factors occasioning it), rather than by comparison with an outcome calculated under another methodology. The CRU notes the "test" undertaken by Energia. The CRU wishes to clarify that the example replied upon was designed solely to illustrate the application of the Gain Methodology, with all factors tailored to that purpose. The CRU does not consider it appropriate to apply the identical assumptions across both methodologies.

Matters of proportionality and flexibility were addressed in the updated proposed decision paper as guiding principles underpinning the design of the approach to setting financial penalties.

Having considered the above, the CRU has decided to maintain its proposal, with the second circumstance under which the Relevant Fine Methodologies applies updated as follows: "*There is no financial gain to the specified body, but customer harm has arisen as a result of the improper conduct.*"

2.2 Calculation of the basic amount of a financial penalty

In the updated proposed decision paper, the CRU proposed the following way of calculating the basic amount of a financial penalty:

- Grain Methodology:

  Financial gain x Gravity level (1 to 10* per cent) x Duration in weeks (≥1)

- Relevant Fine Methodology:

  Weekly fine (€10,000) x Gravity level (10 to 100** per cent) x Duration in weeks (≥1)

** Whole number only*

*** Multiples of 10 only.*

BGE, EirGrid and GNI agreed with or did not raise objections to the proposal. EAI, Energia, ESB and Flogas provided different opinions on various matters.

2.2.1 Financial gain (Gain Methodology) / Weekly fine (Relevant Fine Methodology) and gravity level

In the updated proposed decision paper, the CRU proposed that:

- in the Gain Methodology,
  - the financial gain resulting from improper conduct be calculated as the sum of additional revenue, avoided costs and other undue advantages.
  - a gravity level between 1 and 10 (whole number only) per cent be assigned based on assessment of the impact of the improper conduct concerned, taking into consideration of a number of factors.
- in the Relevant Fine Methodology,
  - a weekly fine be set at €10,000
  - a gravity level between 10 and 100 (multiples of 10 only) per cent will be assigned based on assessment of the impact of the improper conduct concerned, taking into consideration of a number of factors.
- in both methodologies, the same set of gravity factors apply where applicable:
  1) Number of customers affected by harm,
  2) Nature of those affected by harm (e.g., vulnerable customers, customers in financial hardship, etc.),
  3) Impact on security of supply,
  4) Impact on the operation of network,
  5) Impact on the operation of market, in relation to market rules / processes / procedures that support and protect customers in the provision of regulated services, market competition, and/or overall level costs borne by the industry which could indirectly impact customers increased prices,

6) Monetary value concerning individual customers, where applicable,

7) Climate impact.

Summary of comments:

- Regarding financial gain in the Gain Methodology, EAI, ESB, and Flogas provided different opinions.
    - Regarding the monies returned by the regulated entity to the impacted customers, EAI and ESB submitted that any such monies should be taken into account when calculating the financial gain in step 1. ESB stated that any gain would have been returned by the regulated entity to the affected customers either voluntarily or through direction from the CRU. EAI was of the opinion that such monies will not be retained by the entity and that if there is any situation where the CRU allows a regulated entity to keep undue gains from a compliance breach, the CRU should set this out in its decision paper. Similarly, Flogas requested the CRU to confirm if the gain refers to gains already recognised in the profit and loss account/income statement and submitted that where any financial gain is promptly corrected, applying penalties that are multiples of a gain would be disproportionate.
    - ESB additionally commented that there is no mechanism to take account of compensatory charter payments and that the proposed methodologies appear to treat mitigation as a qualitative factor rather than a quantitative euro amount offset – this could unintentionally discourage proactive remediation. It proposed that for the Gain Methodology, any additional compensation be netted off from the financial gain in Step 1 and that for the Relevant Fine Methodology, additional compensation should be treated as mitigating factor in Step 2.
    - Flogas suggested that the term “improper conduct” should be interpreted to clearly separate intentional financial gain from unintentional errors.
- Regarding the Relevant Fine Methodology, BGE, GNI and Flogas welcomed the removal of the €10k fixed fine element.
- Regarding the proposed gravity factors, ESB submitted the following comments:
    - within the Gain Methodology, consideration of the number of impacted customers and monetary value in determining gravity level is double counting –

the same factor is being used on more than one occasion and acting as a multiplier which should only be used where it is warranted in particularly aggravating circumstances. It insisted that these factors should be removed from the list of gravity factors.

  - concerning climate impact and the example provided in the updated proposed decision paper, the nexus between CRU's obligations under section 15 of the Climate Action and Low Carbon Development Act 2015 and a supplier's obligation not to breach the licence condition prohibiting tariffs that create incentives that may unnecessarily increase the volume of distributed or transmitted energy is not clear – a supplier is not responsible for the CRU's obligations.

- Regarding gravity level,
  - GNI welcomed the inclusion of gravity level across both methodologies.
  - One stream of comments related to transparency and clarity surrounding determination of gravity levels. For example, EirGrid commented that the assessment of gravity factors is of utmost importance under both methodologies and it is critical that this is done in a transparent and proportionate manner with clear evidence to support (subject to the standards applied under civil law procedures) the finding of gravity factors. BGE, EAI and Energia sought greater clarity on the parameters for assigning gravity levels. Similarly, Flogas submitted that while the criteria cover important aspects some do involve judgment-based factors, such as the assessment of customer vulnerability, and requested further guidance on how these factors are to be interpreted, in order to ensure consistent outcomes across different cases.
  - Another stream of comments related to the range of gravity levels. ESB commented that the proposed approach is too blunt and that it should be any number between 0-10% (including decimals) for the Gain Methodology and any number between 0-100% (including decimals) for the Relevant Fine Methodology, so that a proportionate and precise fine amount can be reached in each case. Similarly, EAI and Energia submitted that a full range of 1-100% should be used under the Relevant Fine Methodology, as opposed to single blocs of 10% which is too blunt and does not accommodate the individual nature of different compliance breaches.

CRU consideration:

In relation to financial gain and any monies returned by the regulated entity to impacted customers, the CRU considers that financial gain is to be calculated by comparing the financial position resulting from the improper conduct with the position that would have prevailed had the improper conduct not occurred. It is not calculated by reference to the position after the improper conduct has occurred and subsequently been remedied.

Where monies are due to impacted customers – for example, as a result of overbilling – such monies should be returned as part of appropriate remedial action. As explained in the updated proposed decision paper (section 3.2.1.1), financial gain and the costs associated with remediation are related but separate matters, arising from different causes and serving different purposes. Accordingly, the CRU does not consider it appropriate to deduct monies returned to impacted customers from the calculation of financial gain. Instead, the CRU considers it more appropriate to treat such refunds as remedial actions, to be assessed as mitigating factors.

In respect of compensatory charter payments, a number of regulatory provisions require suppliers and distribution system operators to maintain and adhere to customer charters that provide for compensation or payments where contracted service quality levels are not met.[1] The CRU considers such payments to constitute customer redress. Similar to the treatment of refunds, the CRU considers it more appropriate to reflect such payments as mitigating factors, rather than deducting them from financial gain.

With regard to the term “improper conduct”, the CRU does not intend to limit its scope by reference to intent. Instead, intentional breach is treated as an aggravating factor in the calculation of a financial penalty.

The CRU notes the positive feedback received on the removal of the €10,000 fixed fine element from the Relevant Fine Methodology.

In relation to comments concerning potential “double counting”, as explained in the updated proposed decision paper (section 3.2.1.2), the number of impacted customers and the

[1] Section 5 of the European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations of 2011 (S.I. No. 463/2011), Condition 21 (Consumer Protection) of the Natural Gas Supply Licence, Condition 18 (Consumer Protection) of the Electricity Supply Licence, Section B.1.1.1 of the Electricity and Gas Suppliers’ Handbook.

associated monetary impact on individual customers provide an important dimension in assessing the scale of impact, which may not be adequately reflected by the total amount of financial gain. For example, the impact of overcharging a single large customer by €300,000 differs materially from overcharging 30,000 customers by €10 each. Consideration of the number of customers affected and the corresponding individual monetary impact allows for a more accurate assessment of gravity.

Additionally, in certain cases, other gravity factors may not be applicable. In such cases, absent consideration of the number of impacted customers and the related monetary value, the resulting gravity level could be understated. Accordingly, the CRU does not agree that inclusion of these factors results in "double counting", nor does it consider it appropriate to remove them from the list of gravity factors.

With regard to climate impact, the CRU does not comment on the specific example included in the updated proposed decision paper. For the purpose of general clarification, the CRU agrees that a supplier is not responsible for the CRU's obligations. When performing its investigation and enforcement functions, the CRU is required, *in so far as practicable,* to act *in a manner consistent with* the plans, strategies, and objectives referred to in section 15(1) of the Climate Action and Low Carbon Development Act 2015. The CRU must ensure that the outcomes of performing its functions are consistent with these requirements.

Accordingly, where the CRU will consider such plans, strategies, and objectives referred to in section 15(1) in determining the impact of any improper conduct and take such impacts into account as a gravity factor in determining an appropriate financial penalty, with a view to deterring the re-occurrence of similar improper conduct by the same or other regulated entity.

In relation to transparency and clarity in determining gravity levels, as explained in the updated proposed decision paper (section 2.2), both certainty – encompassing clarity, transparency and consistency – and proportionality – which necessitates an appropriate degree of flexibility – are guiding principles in the development of the approach to setting financial penalties. The CRU seeks to strike a reasonable balance between transparency and flexibility.

With respect to the consideration of gravity factors, as explained in the updated proposed decision paper, the assessment of these factors is not a binary exercise. Rather, each factor is considered along a spectrum (for example, the extent to which final customers have been impacted). As a general principle, the greater the impact associated with each factor, the more serious the improper conduct is considered to be, and the higher the resulting gravity level.

In relation to each of the gravity factors, the CRU considers them in the following manner:

1) **Number of customers affected by harm**: Without regard to other factors, improper conduct affecting a larger number of final customers is deemed more serious than conduct impacting a smaller number of customers.

2) **Nature of those affected by harm**: Without regard to other factors, improper conduct that impacts customers who are particularly vulnerable or sensitive to the resulting harm is deemed more serious than conduct that does not. The seriousness increases with the number of such customers impacted, resulting in a higher gravity level.

   For example, improper conduct relating to customer communications or disconnection is likely to have a more severe impact on customers with sensory impairments or other vulnerable customers[2] (as defined in section 4 of S.I. No. 463/2011) than on non-vulnerable customers and is therefore considered more serious. Similarly, customers experiencing financial hardship[3] are likely to be more sensitive to the impact of improper conduct relating to incorrect billing or pre-payment services.

3) **Impact on security of supply**: Without regard to other factors, improper conduct that impacts security of supply – such as serious failures to fulfil scheduling and dispatch obligations, depending on the actual effects in a particular case – is deemed more serious than conduct without such impact, or with such impact at a lower level.

4) **Impact on the operation of network**: Without regard to other factors, improper conduct that impacts the operation of the transmission or distribution systems at a higher level – such as serious failures to meet Distribution System Security and Planning Standards, depending on the actual effects in a particular case – is deemed more serious than conduct without such impact, or with such impact at a lower level.

5) **Impact on the operation of market, in relation to market rules / processes /**

[2] Section B.7.1.1 of the Electricity and Gas Suppliers' Handbook (CRU202324): *A vulnerable customer is defined in legislation as a household customer who is: a. critically dependent on electrically powered equipment, which shall include but is not limited to life protecting devices, assistive technologies to support independent living and medical equipment, or b. particularly vulnerable to disconnection during winter months for reasons of advanced age or physical, sensory, intellectual or mental health.*

[3] Section B.8.1.11.a of the Electricity and Gas Suppliers' Handbook (CRU202324): *A customer is taken to be in genuine financial hardship if s/he is unable to make payments against their bills without assistance and are finding himself / herself in regular arrears.*

procedures that support and protect customers in the provision of regulated services, market competition, and/or overall level costs borne by the industry which could indirectly impact customers increased prices: This factor is intended to capture customer harm underpinning the specification of standards of performance[4] that may not be reflected by the other factors listed, such as impediments to market competition arising from improper conduct relating to cross-subsidisation. Unlike the *ex-ante* assessment applied in that process, the impact here requires an *ex-post* assessment of actual harm.

6) **Monetary value concerning individual customers, where applicable**: Without regard to other factors, improper conduct resulting in a higher monetary impact on individual customers is deemed more serious than conduct resulting in a lower monetary impact, irrespective of whether the regulated entity has derived a financial gain from such conduct.

7) **Climate impact**: This factor relates to the plans, strategies and objectives set out in section 15(1) of the Climate Action and Low Carbon Development Act 2015. Without regard to other factors, the greater the climate impact, the higher the gravity level.

With respect to the range of gravity levels, for the avoidance of doubt, gravity is determined on the basis of a holistic assessment of all relevant factors and not by reference to any single factor in isolation. In order to strike an appropriate balance between flexibility and consistency, and having considered the responses received, the CRU has decided to apply a range of 0.1 to 10 per cent (inclusive) under the Gain Methodology and a range of 1 to 100 per cent (inclusive) under the Relevant Fine Methodology.

Having considered the above, the CRU has decided to maintain its proposal in respect of financial gain and the weekly fine, and to update the list of gravity factors and the applicable gravity level ranges as set out above.

2.2.2 Duration of improper conduct

In the updated proposed decision paper, the CRU proposed that the duration in both methodologies be measured in weeks with the minimum set at 1, starting from the date when

[4] Standards of performance related papers, including consultation papers and decision papers, are available on the CRU website https://www.cru.ie/publications/28733/

the improper conduct first occurs and ending on the date when the status of being non-compliant is corrected unless, in exceptional cases, confirmed otherwise by the CRU.

Summary of comments:

- One stream of comments was focused on the measurement of the duration.
  - BGE welcomed the measurement in weeks rather than years in the Gain Methodology, which brought it in line with the calculation for the Relevant Fine Methodology and is also more accurately reflective of how long breaches are likely to occur.
  - EAI, Energia, ESBN and Flogas raised concerns and objected measuring duration in weeks.
    - ESB and Flogas opposed to changing years to weeks under the Gain Methodology. The rationale was generally framed around proportionality. ESB compared the calculation under the previous proposal and the current one and concluded that the current proposal would result in disproportionate penalties, especially in cases where the financial gain was small but the duration was long.
    - EAI and Energia opposed the inclusion of duration in base formula in both methodologies. The rationale was similarly framed around disproportionality. Energia argued that the proposed approach gives far too much weight to duration above all other factors such as the seriousness of the misconduct, the impact on customers, the behaviour of the specified body or any other potential factor. EAI and Energia raised the concern that minor issues with little or no impact on customers, existing over a long period of time and resulting in minimal financial gain would attract a significantly heavier sanctions than a serious offence with immediate, significant customer impact. Both respondents also compared the previous and the updated proposals and concluded that the current proposal would result in highly disproportionate penalties.
    - Regarding a potential solution, Flogas proposed that it should be reverted to the previous calculation approach (duration measured in years, rounding up to the nearest half year). ESB proposed that duration should be included in Step 2 list of mitigating/aggravating factors and, where

required, Step 3 deterrence. EAI proposed that duration should be considered as a gravity factor or as a mitigating/aggravating factor. Energia proposed that the optimal approach is to consider duration as a gravity factor under both methodologies, similar to the practice of the Central Bank of Ireland, Utility Regulators and Ofgem. As alternatives, Energia proposed introducing a cap on the duration, or, under the Gain Methodology, incorporating a pro-rata factor into the calculation:

$$\left(\frac{\text{Financial Gain } \times \text{Gravity Level}}{52}\right) \times \text{Number of weeks} \pm \text{Adjustments for Mitigating \& Aggravating Factors}$$

or, under the Relevant Fine Methodology, applying a maximum upper limit – consistent with the ComReg's maximum upper limits of €500,000 for contraventions which do not involve a financial gain.

- The second stream of comments was focused on determination of the end date of the improper conduct or the "pause mechanism" introduced in the updated proposed decision paper. BGE welcomed the allowance for a proposed pause where breaches will take additional time to fix such as for an IT fix. Energia welcomed the approach to pause but requested greater flexibility – where specified bodies have made best endeavours to rectify the issue within the proposed timeframe and have done everything within their control to meet it, such efforts should be considered as mitigating factors to potentially reduce the duration. EAI submitted that the proposed "pause" approach would put significant pressure on regulated entities to determine highly accurate timelines at a point when the underlying issue such as an IT fault may not be yet fully scoped. Similarly, ESB requested clarification – what would happen in the event that additional time is required due to unforeseen issues and – some accommodation would be appropriate where the CRU would consider that a revision of the originally agreed timetable would be permitted by the CRU only where to do so would be reasonable in all the relevant circumstances.

CRU consideration:

Regarding the measurement of the duration in weeks rather than years, the CRU notes the positive feedback received.

With respect to proportionality, the CRU considers that this should be assessed by reference to the specific circumstances of each case, rather than by comparison with a previously proposed approach or with approaches adopted by other regulators.

- Section 65 of the Act sets out a number of factors that the CRU should consider in determining administrative sanctions. It does not prescribe how those factors are to be applied. As explained in the updated proposed decision paper, the CRU considers these factors generally within three sets (section 3.2.1.2) – gravity factors, aggravating and mitigating factors, and deterrence factors – with duration applied as a multiplying factor in calculating the basic amount of a financial penalty. The proposed approach provides a structured means by which the CRU may consider these factors. The CRU is of the opinion that the design of the approach should not undermine the credibility of the statutory maximum financial penalty, which is 10 per cent of the turnover of the specified body in the financial year ending immediately before the financial year in which the improper conduct took place.
- In relation to cases involving long-term minor breaches with little or no customer impact, the CRU notes the following.
    - First, prior to calculating any financial penalty, the CRU must make a number of determinations, including whether the breach constitutes improper conduct, whether it warrants an administrative sanction, and whether a major sanction by way of a financial penalty is appropriate. As explained in the CRU Compliance and Enforcement Policy Statement (CRU/19134) ("**the Policy Statement**") and the Guidelines, these decisions are informed by a range of factors, including those relating to the scale of the impact.
    - Second, in calculating a financial penalty in a particular case, the CRU does not consider it appropriate to assume that factors other than duration would carry the same weight across cases involving materially different impacts. For example, improper conduct resulting in 20,000 customers being overcharged by €100 on average for 52 weeks, and conduct resulting in 20,000 customers being overcharged by €1,000 on average for 20 weeks, would be likely to give rise to different assessments of relevant gravity and aggravating or mitigating factors. Such difference would necessitate and justify different decisions. Accordingly, the CRU does not consider it appropriate to presume that the proposed approach would result in disproportionate financial penalties for

long-term minor breaches with little or no customer impact.

- With regard to comparisons between the updated and earlier proposals, the CRU does not consider such comparison to be a valid basis for determining proportionality. Rather, proportionality should be assessed by reference to whether the approach enables the CRU to reach sound and reasonable decisions, having regard to all relevant factors in a particular case.
- The CRU notes that regulators may adopt different approaches to the treatment of duration and the calculation of the basic amount of a financial penalty. Such differences do not, of themselves, determine whether an approach is appropriate. The CRU has developed an approach suited to the performance of its statutory functions and which allows for full and effective consideration of all relevant factors.

The CRU acknowledges the alternative approaches proposed by respondents. Having considered the issues raised, the CRU does not consider there to be sufficient justification to change its proposal, to revert to the previous approach, to treat duration as a gravity, aggravating/mitigating or deterrence factor, or to apply a cap to duration. The CRU also does not consider the application of a pro-rata factor to be appropriate, particularly where improper conduct persists for only two or three months, as the application of a divisor of 52 weeks could unduly minimise the weight of the actual impact.

With regard to the end date of improper conduct, the CRU acknowledges that, in certain circumstances, it may not be feasible for a regulated entity to meet an originally proposed timeline due to unforeseen issues. Where supported by sound and sufficient evidence, the CRU may consider an extension to the relevant period. In such cases, the onus rests with the regulated entity to engage proactively with the CRU and to demonstrate a genuine necessity for the extension.

Having considered the above, the CRU has decided to maintain its proposal with respect to the measurement of duration as explained in the updated proposed decision paper. In relation to the end date of improper conduct, the CRU has decided to provide additional flexibility to ensure that regulated entities making genuine efforts to achieve compliance are not unfairly penalised.

2.3 Adjustments based on aggravating and mitigating factors

2.3.1 Aggravating and mitigating factors

In the updated proposed decision paper, the CRU proposed a non-exhaustive list of aggravating factors and a non-exhaustive list of mitigating factors.

Summary of comments:

- Respondents generally agreed with the updated proposal. More specifically, they welcomed a number of updates, for example, the nature of both lists being non-exhaustive, the inclusion of additional mitigating factors such as good internal governance and culture of compliance, and the change of the aggravating factor on intention from "appeared to be intentional" to "was intentional",
- On some specific aggravating or mitigating factors, several respondents provided additional comments, as outlined below:
    - Regarding the proposed aggravating factor 6 (repeated occurrence of improper conduct), Flogas requested further guidance – how older or different types of breaches influence assessments. It submitted that as issues may arise from limited resources rather than deliberate non-compliance, the CRU should consider a supplier's market share to ensure fairness.
    - Regarding the proposed mitigating factor 1 (self-reporting), BGE commented that self-reporting needs to be strengthened with guidance set by the CRU for suppliers about when a breach is material enough to be reported and requested introduction of a materiality threshold for self-reporting.
    - Regarding the proposed mitigating factor 2 (satisfactory cooperation), Flogas requested clarity on what constitutes satisfactory cooperation.
- Several respondents also proposed additional factors:
    - BGE commented that measuring duration in weeks now can disproportionately inflate penalties for more minor long-term breaches and, therefore, it should be taken into account as an adjustment factor where a more minor breach has gone on for a significant period of time.
    - BGE also submitted that in cases where complex IT fixes and system updates

result in extended timelines of breaches, if a “pause” has not been agreed with the CRU, then these should be considered as mitigating factors. Similarly, EAI submitted that in cases where complex IT fixes and system updated extend timelines despite best efforts, these should be recognised as mitigating factors.

- ESB submitted that duration of breach should be included in the list of mitigating or aggravating factors. A significantly long breach may warrant inclusion as an aggravating factor and, if necessary, adjustments could instead be made through Step 3 deterrence, whereas an IT fix being implemented faster than originally estimated by the regulated entity through the pause mechanism may warrant as a mitigant.
- On proactive additional compensation or charter payments, ESB submitted that if not subtracted from Step 1, they should be, at minimum, considered as a mitigating factor. EAI also requested the CRU to explicitly confirm how additional compensation provided to customers will be treated within the calculation.

CRU consideration:

The CRU notes the positive feedback received on the updated proposal.

In relation to proposed aggravating factor 6, the CRU considers that the more occurrences of improper conduct should attract greater weight. The CRU does not consider market share or resourcing constraints to be relevant, as each regulated entity is responsible for complying with its regulatory obligations and limited resources cannot justify non-compliance with the law.

With respect to proposed mitigating factor 1, the CRU notes the request for guidance on self-reporting and will address this matter separately in due course. Pending such guidance, the CRU encourages regulated entities to continue to self-report potential compliance issues to the CRU promptly upon identification and, in any event, without undue delay.

In relation to proposed mitigating factor 2, satisfactory cooperation requires, at a minimum, the regulated entity being investigated voluntarily provides sufficient, accurate and timely information relevant to the matter under investigation, either proactively or upon request, without the need for the CRU to exercise its statutory information-gathering powers. This is intended to facilitate the efficient and effective performance of the CRU’s investigation and enforcement functions in the public interest.

Regarding long-term minor breaches, the CRU expects the gravity level to reflect the nature of the breach, insofar as it relates to the scale of impact. Where relevant, aspects of the regulated entity's behaviour may be addressed through the non-exhaustive list of mitigating factors, for example, through factor 3 (credible excuse or explanation) or factor 7 (any other relevant factor).

In cases involving complex IT fixes or system updates that necessitates extended remediation timelines, the CRU expects the regulated entity to provide appropriate evidence demonstrating the genuine need for additional time. On this basis, the CRU may allow a "pause" in the relevant period. In all cases, remedial actions – whether complex IT fixes or otherwise – are considered under mitigating factor 4 (steps voluntarily taken).

With respect to duration, section 2.2.2 of this paper sets out the CRU's position.

In relation to additional compensation or charter payments, the CRU notes that some regulated entities make payments in accordance with their Customer Charters or provide good-will-gesture payments in certain circumstances. The CRU understands that such payments typically arise where customer service commitments set out in Customer Charters or related instruments (such as Codes of Practice) have not been met. The CRU welcomes such payments as part of efforts to remedy the consequences of improper conduct and considers them to fall within mitigating factor 4.

Having considered the above, the CRU has decided to maintain its proposal in relation to aggravating and mitigating factors.

2.3.2 Level of adjustments based on aggravating / mitigating factors

In the updated proposed decision paper, the CRU proposed that no cap be applied to the total adjustments other than the statutory maximum of 10% of turnover as set out in the Act. As guidance and to promote consistency, the CRU proposed that no single factor should, in principle, increase or reduce the basic amount of a financial penalty by more than 10%.

Summary of comments:

- Respondents generally welcomed the removal of the originally proposed 20% cap on reduction based on mitigating factors. BGE particularly noted that this would encourage supplier compliance by improving co-operation and self-reporting.

- Regarding the 10% limit, respondents provided different opinions:
    - BGE, EirGrid and Flogas agreed with the proposal. EirGrid additionally noted that, as proposed, the 10% limits should be followed as “in principle” guidance rather than a binding limit and that it is critical that proportionality is the guiding factor in CRU’s assessment of mitigation or aggravating factors rather than any particular guiding limit.
    - Energia and EAI did not agree with the 10% cap for any one single factor. They submitted that the proposed 10% cap is too restrictive and does not give the CRU the required flexibility to ensure a fair and proportionate penalty and therefore should be removed as other regulators (UR, Ofgem and CBI) do.

CRU consideration:

The CRU notes the positive feedback received on the removal of the previously proposed 20 per cent cap on reductions and the 10 per cent limit (in principle) applicable to a single factor.

In order to strike an appropriate balance between flexibility and clarity and consistency, the CRU considers it necessary to retain a 10 per cent limit, in principle, on the impact of any single aggravating or mitigating factor. The CRU notes that different regulators adopt different approaches. However, such differences do not, of themselves, render an approach unreasonable. As with the assessment of duration, proportionality is determined by the specific circumstances of each case.

As set out in the proposal, no single factor should, *in principle*, increase or reduce the basic amount of a financial penalty by more than 10 per cent. The CRU applies this limit as guidance. In exceptional circumstances, a percentage exceeding 10 per cent may be applied in respect of a particular aggravating or mitigating factor.

For example, in a case involving inaccurate billing, where a regulated entity has taken extensive voluntary steps to remedy the consequences of the improper conduct – including refunding customers, making full charter payments, not recouping any undercharges, updating IT systems, strengthening internal policies and procedures, and providing staff training – the CRU may consider applying a reduction in excess of 10 per cent under mitigating factor 4. Any such exception would be assessed on case-by-case basis, having regard to the specific circumstances of the case.

Having considered the above, the CRU has decided to maintain its proposal.

2.4 Adjustments for deterrence

In the updated proposed decision paper, the CRU proposed to increase the amount of a financial penalty in the following circumstances to achieve specific and general deterrence, with the maximum being subject to the limit permitted under the Act:

(1) where the financial penalty, as calculated through the previous steps, would leave the specified body no worse off than if it had not committed the improper conduct.

(2) where the financial gain or the weekly fine does not accurately reflect the specified body's level of involvement in the improper conduct, or the resulting harm to final customers, which was more substantial.

Summary of comments:

- BGE, EirGrid, ESB and GNI generally agreed with the proposal.
    - BGE agreed that the amount of a financial penalty should be significantly greater than the cost for the regulated entity concerned to be compliant in order to encourage suppliers to comply with regulations.
    - EirGrid requested further clarification on how the CRU would approach setting the adjustment – under circumstance (1), would the CRU apply an additional fee to bring the penalty to a level where the CRU calculates the specified body is now worse off than if it had not committed the improper conduct? Under circumstance (2), would the intention be that the additional adjustment be proportionate to the level of involvement in the improper conduct, or the resulting harm to final customers?
    - ESB commented that any "gain" earned by a regulated entity will first be returned to affected customers – the CRU should take this into account at this step and that the same should apply to cases where additional compensation has been / is being provided to customers proactively by the regulated entity.
    - ESB additionally submitted that any proposals by the CRU to introduce a deterrence amount in fine requires full engagement and discussion with the regulated entity during the investigation.

- Flogas raised concerns that there are no obvious criteria or basis detailed to justify a deterrent being applied. It argued that where the relevant revenue is not realised as gains in the profit and loss account, the premise of a financial gain does not accurately reflect the accounting treatment or operational practice.
- EAI and Energia did not agree with the proposed adjustment for deterrence. Both respondents were of the view that with an accurate base calculation and enhanced flexibility in the aggravating and mitigating adjustments, the sanction produced should be fair and proportionate with no need for this further adjustment step.
    - Both respondents submitted that at minimum, this additional step should be symmetrical and allow the CRU the flexibility to adjust the sanction if it is disproportionately high, not just disproportionately low. Flogas submitted a similar comment regarding such symmetrical approach.
    - In circumstances where the Relevant Fine Methodology applies, EAI and Energia submitted that there should be a cap similar to ComReg’s €500,000 limit for contraventions which do not involve a financial gain.
    - Energia urged that an adjustment for deterrence would only be used in blatant cases of improper conduct.

CRU consideration:

The CRU notes the positive feedback provided by respondents.

As guidance, in the first deterrence circumstance, the intention is to ensure that, for a regulated entity, the cost of engaging in improper conduct exceeds the cost of compliance. An adjustment may therefore be required in cases where, for example, it is not feasible for the regulated entity to fully return the financial gain to impacted customers, or where the financial gain takes the form of avoided costs.

In the second deterrence circumstance, the intention is to address any unreasonable imbalance between the amount calculated following the preceding steps and the regulated entity’s level of responsibility for the improper conduct or the resulting harm to customers. Such an adjustment may be required where, for example, the regulated entity has derived limited or no financial gain yet bears full responsibility for improper conduct that has resulted in significant direct or indirect harm to customers. For clarity, in cases where the actual harm can be quantified but no financial gain has accrued to the regulated entity, any deterrence adjustment will depend on the circumstances of the case and will not necessarily be equivalent to the quantum of harm.

The CRU considers the calculation of a financial penalty to be distinct from accounting practices – more specifically the net gain on a profit and loss account which reflects revenues net of expenses – except that the final amount of a financial penalty is constrained by law to a maximum of 10 per cent of the revenues shown in the profit and loss account for the relevant business. This distinction reflects the CRU's position on remediation costs, as explained in the updated proposed decision paper (section 3.2.1.1) and sections 2.2.1 and 2.3.1 of this paper.

The CRU considers these deterrence adjustments necessary because, in practice, the application of a maximum gravity level of 10 per cent under the Gain Methodology or a starting point of €10,000 weekly fine under the Relevant Fine Methodology, may unduly constrain the maximum level of a financial penalty in a given case. The CRU cannot anticipate all factual scenarios in advance. By contrast, given the minimum gravity level and the absence of a cap on adjustments based on mitigating factors, it remains possible, depending on the circumstances of a case, for the amount calculated following Steps 1 and 2 to be reduced to zero. Accordingly, the CRU considers it necessary to allow additional flexibility for deterrence purposes, without providing symmetrical flexibility to further reduce the calculated amount, whether in blatant cases of improper conduct or otherwise.

With respect to refunds and additional compensation, these matters are considered at Step 2 under mitigating factor 4, where they are assessed qualitatively for the purpose of reducing the basic amount calculated following Step 1. To avoid neutralising the mitigating effect already applied, and having regard to the intentions of deterrence, the CRU considers it reasonable to take account of the level of additional compensation – but not refunds which are monies due to the impacted customers rather than costs to the regulated entity – voluntarily provided by the regulated entity when considering Step 3 adjustments. For clarity, any reduction already applied under Step 2 on the same basis will be deducted from the amount of compensation taken into account at Step 3.

In relation to engagement with regulated entities, in accordance with the statutory procedures outlined below, consideration of deterrence arise only after the Commission has considered the investigation report. At any stage of an investigation, the regulated entity may submit evidence – for example, information relevant to gravity or mitigating factors – that it considers relevant to the Commission's decision-making.

- Section 59(1) of the Act provides that the regulated entity may comment on a draft investigation report. Section 59(3) prohibits the inspector from making any recommendations or expressing any opinions in the investigation report as to any major or minor sanction.

- Section 60(3) provides for further engagement after the Commission has considered the investigation report. This engagement is intended to assist the Commission in deciding on further action, including the imposition of a major sanction by way of a financial penalty. Upon receipt of a written notice from the Commission, the regulated entity may make submissions in writing within 30 days, subject to a possible extension of up to a further 30 days).

With regard to the application of a cap on financial penalties calculated under the Relevant Fine Methodology, as explained in the updated proposed decision paper (section 3.2.2), the CRU does not intend to apply such a cap, given the circumstances in which that methodology is envisaged to apply.

Having considered the above, the CRU has decided to maintain its proposal.

2.5 Legal review

In the updated proposed decision paper, the CRU proposed that, where a review of the relevant precedents identifies inconsistencies between the current decision and previous decisions, the CRU will compare the circumstances of the relevant cases and reapply the previous steps to determine the appropriate financial penalty.

Summary of comments:

- Respondents generally agreed with the proposed approach.

- EAI and Energia additionally submitted that the CRU should ensure that any comparison of circumstances takes account of nuances present in the ever-evolving energy landscape and the wider context of the market when assessing "similar" cases.

- EirGrid recognised the value in ensuring that precedents considered as part of legal review are relevant and appropriate. It additionally submitted that the wording of the Act provides for precedent to have persuasive effect rather than binding effect, whereas the wording of the Point 3, Proposal Box 10, implies that this precedent will be binding. It stated that the CRU should ensure that its each decision is assessed on its own facts, ensuring that differences and inconsistencies between similar cases are accounted for, rather than rigidly following past decisions, while taking into account previous approaches.

CRU consideration:

The CRU notes the positive feedback provided by respondents.

Section 65 of the Act provides that, in considering the minor or major sanction to be imposed on a specified body, the CRU "*shall take into account the circumstances of the improper conduct concerned*" and "*may have regard to – […] (xiv) any precedents set by a court, the Commission or another person in respect of previous improper conduct*".

The intention of the review at this stage is to promote consistency and ensure fairness. In comparing a current decision with previous decisions, the CRU will endeavour to take into account all relevant factors in order to assess the degree of similarity or distinction between the cases. As stated in section 2.1 of this paper, the CRU considers that the proportionality and reasonableness of a financial penalty are ultimately determined by the circumstances of the improper conduct concerned (including the factors occasioning it) in a particular case.

Having considered the above, the CRU has decided to clarify the consideration at this stage as follows: Where a legal review identifies inconsistencies between the current decision and previous decisions, the CRU will compare the circumstances of the relevant cases and may reapply Steps 1, 2, and/or 3 to revise the amounts determined at those stages, to ensure that the final financial penalty is appropriate and proportionate to the improper conduct concerned and achieves a reasonable deterrent effect.

2.6 Other comments

In addition to the feedback summarised in the previous sections, respondents submitted other comments in relation to regular review of the methodologies, settlement arrangements and a number of other matters. These comments are not directly related to the specific design of the proposed methodologies and are summarised here for information purposes.

2.6.1 Regular review of the methodologies

GNI and Flogas supported regular review of the methodologies. GNI suggested that a review be initiated three years – while Flogas suggested a review be initiated one year – after implementation to assess the effectiveness of the methodologies, analyse if they need further refining, and ensure that they are fit for purpose. GNI also suggested that any future changes be consulted upon.

CRU consideration:

As explained in the updated proposed decision paper, the CRU recognises the need to ensure that its policies and procedures remain reasonable, relevant and up to date. The CRU intends to keep the approach to setting financial penalties under regular review and update it as appropriate. Any proposed changes, other than those that are purely editorial, will be subject to consultation.

2.6.2 Settlement arrangements

BGE, EAI and Energia provided opinions on settlement arrangements.

- BGE submitted that the CRU should include alternative dispute mechanisms/settlement agreements within the financial penalties regime, as such arrangements can deliver cost and time efficiencies and may avoid the complex and expensive financial penalty regime.
- EAI and Energia requested the CRU to update the Guidelines to accommodate a settlement process or some form of alternative resolution before initiating the investigation process pursuant to Part IX of the Act. Energia was of the view that the CRU is given the power by the Act to investigate and impose sanctions on specified bodies subject to confirmation by the High Court and that entering into settlements is reasonably incidental to the exercise of that power – and, in any event, a regulator has an inherent ability to enter into an agreement or settlement in respect of non-compliance. Energia and EAI further suggested that willingness to engage in the settlement process be considered as a mitigating factor should the issue ultimately progress to the Part IX process.

CRU consideration:

In relation to alternative resolution and settlement arrangements, the CRU notes that similar comments were received during the first-round consultation and the CRU clarified its position in the updated proposed decision paper (section 4.4). The CRU reiterates its key points below.

First, the CRU has a range of options for concluding an investigation other than invoking administrative sanctions regime and imposing financial penalties. As set out in the Guidelines, having regard to the circumstances of a particular case – typically including the scale of the impact and the behaviour of the regulated entity – the CRU may close an investigation without taking statutory enforcement action (section 3.5), or may take statutory enforcement action, such as issuing a Determination or a Direction, where appropriate (section 4). In addition, pursuant to section 60 of the Act, following consideration of an investigation report, the CRU may decide to impose a minor sanction, defined in section 55 of the Act as the issue of advice, a caution, a warning and/or a reprimand.

In the CRU's enforcement practice to date, as reflected in the Compliance and Enforcement Annual Report published on the CRU's website, the majority of investigations have been closed without statutory enforcement action. In a limited number of cases, the CRU has issued a Determination or a Direction to the relevant regulated entity.

Second, in the context of enforcement, other than a major sanction as defined in section 55 of the Act, the CRU is not legally empowered to require a regulated entity to make payments beyond amounts properly due to customers. In accordance with the applicable legislation and CRU's experience to date, financial actions taken by regulated entities have been limited to customer redress measures, such as the correction of overcharged bills, charter payments and, where direct refunds are not possible due to the absence of customer contact details, payments to charity causes. Such measures do not involve payments to the CRU or the Exchequer.

In this context, the CRU considers that any financial action beyond the return of financial gains and the payment of compensation to affected customers, in addition to the major sanctions provided under Part IX of the Act, must be supported by clear statutory authorisation, as any such action would otherwise engage the relevant entity's rights to property.

2.6.3 Other comments

A number of respondents reiterated their view that financial penalties should remain a last resort. For example, EAI, Energia, ESB and Flogas submitted that the CRU should follow its current approach to enforcement as the primary method to achieve its objectives in the 2019 Compliance and Enforcement Policy Statement and that the use of financial sanctions should be seen as a last resort. BGE also asserted that the CRU should continue to encourage early engagement and cooperation with suppliers where compliance issues arise.

- On a related point, ESB, Flogas and EAI submitted that the CRU must consider the financial stability of a regulated entity when deciding on any fines and that any penalty must provide an appropriate deterrent without undermining the operational capacity of the entity. EAI stated that imposing a penalty of up to 10% of turnover could create substantial financial pressures for retail suppliers. ESB pointed out that any effective benchmarking should be considered in the round and assessed for appropriateness in the context of the market segment, the relevant profit margin in that market segment and customer impact.

Regarding the consideration of the "turnover", EirGrid welcomed the clarification that such turnover to be considered for the cap on potential financial penalties is that of the licensee and that turnover is the figure published in regulated account. EirGrid further stated that the majority of its revenue is pass-through and, in many cases, its accounts will include monies due to be returned to consumers through the established tariff arrangements and that the CRU would need to take this into consideration when assessing the financial penalty for proportionality and appropriateness.

CRU consideration:

The CRU notes the comments received. Regarding pass-through revenue, where applicable, the CRU intends to take this into account when determining "turnover" for the purpose of imposing financial penalties. As for the remaining comments, the CRU has addressed these in the updated proposed decision paper.

3 Decisions

Having regard to Part IX of the Act, whereas the CRU has conducted two rounds of consultation (CRU2023160 and CRU2025164) and considered all responses received, the CRU has made its decisions on the approach to setting financial penalties.

This section sets out the approach in full in order to provide a comprehensive explanation. It includes elements previously consulted on to which respondents either agreed or did not comment, as well as elements on which differing views were expressed and on which the CRU has now reached decisions. For clarity, the terms “improper conduct” and “specified body” are defined in section 55 of the Act. Unless otherwise stated in this paper, these terms are used interchangeably with “breach” and “regulated entity”.

The Formula-lite approach and two methodologies

The CRU follows a formula-lite approach to setting financial penalties in a particular case. This approach employs a pre-defined formula to calculate financial penalties, while allowing for a degree of regulatory discretion within its framework.

The formula-lite approach consists of the following two methodologies:

(1) Gain Methodology

This methodology constitutes the default approach for calculating financial penalties for improper conduct.

(2) Relevant Fine Methodology

This methodology applies in the following circumstances:

(a) **where a monetary value of financial gain cannot be assigned to the improper conduct in question.** This captures cases where the specified body has derived a financial benefit from the improper conduct, but the amount of such benefit cannot be reliably quantified.

(b) **where there is no financial gain to the specified body, but customer harm has arisen as a result of the improper conduct.** This captures cases in which final customers have suffered direct or indirect harm notwithstanding the absence of financial gain to the specified body.

(c) **where there is financial gain, but it would be disproportionately resource intensive to apply the Gain Methodology, such as in procedural or administrative breaches.** This captures cases where improper conduct has resulted in some financial gain to the specified body but, following reasonable engagement between the CRU and the specified body, the CRU determines that application of the Gain Methodology would impose a disproportionate administrative burden on the specified body and/or the CRU. Improper conduct in these cases is typically less serious than that to which the Gain Methodology would ordinarily apply, such as procedural or administrative breaches.

Under each methodology, financial penalties are determined through a four-step process, as detailed below.

Step 1: Determine the basic amount of a financial penalty

Step 1 Basic amount of a financial penalty	**=**	*1a. Gain Methodology:* Financial gain x Gravity level (0.1%-10%) x Duration
		1b. Relevant Fine Methodology: Weekly fine x Gravity level (1%-100%) x Duration

1a. Gain Methodology – Financial gain:

The financial gain resulting from improper conduct is calculated as the sum of:

(1) additional revenue (direct gains, with direct losses deducted if there is any),

(2) avoided costs that would have been incurred had the improper conduct not taken place, and

(3) any other undue advantages that are quantifiable and attributable to the improper conduct.

For clarity, financial gain is calculated by comparing the financial position resulting from the improper conduct with the position that would have prevailed had the improper conduct not occurred. It is not calculated by reference to the position after the improper conduct has occurred and subsequently been remedied.

- Accordingly, where improper conduct has resulted in both gains and losses to the specified body, such losses will be deducted for the purpose of determining financial gain. For example, in cases involving inaccurate billing where some customers were overcharged and others undercharged, and where the specified body has decided not to recover the undercharges, the value of those undercharges will be deducted when calculating the financial gain.
- By contrast, costs incurred in connection with remedial actions will not be deducted.

Such costs may include refunds, charter payments or other compensation paid to impacted customers, as well as expenditure on IT system remediation, staff training, or other corrective measures.

In determining financial gain, the CRU will have regard to the best available figures provided by the specified body. Where such figures are incomplete, or where the CRU has reason to consider them unreliable, the CRU may determine the financial gain on the basis of partial information and/or any other information it considers relevant and appropriate. Alternatively, where necessary and appropriate, the CRU may apply the Relevant Fine Methodology. In such cases, the CRU will commit to reasonable engagement with the regulated entity and will set out clear reasons for its decision.

1b. Relevant Fine Methodology – Weekly fine:

A weekly fine is currently set at €10,000.

Gravity level and gravity factors

Under both methodologies, a gravity level is determined on the basis of a holistic assessment of the relevant gravity factors.

These factors are generally framed around the impact and reflect the consequences of a specific instance of improper conduct. Their purpose is to assess the seriousness of the conduct so that any resulting financial penalty is proportionate to its impact.

In each case, the CRU will consider all relevant gravity factors. For clarity, the assessment of these factors is not binary; rather, each factor is considered along a spectrum. As a general principle, the greater the impact associated with a factor, the more serious the improper conduct is considered and the higher the resulting gravity level.

For clarity, only one final gravity level – in a form of a percentage – is assigned following a holistic assessment of all relevant factors. There is no individual gravity level for each factor. The following ranges of gravity levels apply:

- **Gain Methodology**: 0.1 to 10 (inclusive) per cent
- **Relevant Fine Methodology**: 1 to 100 (inclusive) per cent

For the purposes of clarity and transparency, List 1 below provides guidance on the consideration of gravity factors.

List 1: Gravity Factors

(1) **Number of customers affected by harm**. This factor captures the total number of final customers impacted by the improper conduct concerned.

Without regard to other factors, improper conduct impacting a larger number of customers is deemed more serious than conduct impacting a smaller number of customers.

(2) **Nature of those affected by harm.** This factor captures the special cohorts of customers who are particularly vulnerable or sensitive to the harm resulting from the improper conduct concerned. By way of example, customers with sensory impairments or other vulnerable customers[5] (as defined in section 4 of S.I. No. 463/2011) are likely to be more severely impacted by improper conduct relating to customer communication or disconnection. Customers experiencing financial hardship[6] are likely to be more sensitive to the effects of improper conduct relating to incorrect billing or pre-payment services.

Without regard to other factors, improper conduct impacting such special cohorts is deemed more serious than conduct that does not, or that impacts a smaller number of such customers.

(3) **Impact on security of supply.** Certain improper conduct – such as serious failures to fulfil scheduling and dispatch obligations, depending on the actual effects in a particular case – may adversely affect security of energy supply.

Without regard to other factors, improper conduct that impacts security of supply to a greater extent is deemed more serious than conduct that has no such impact, or that has such impact at a lower level.

(4) **Impact on the operation of network**. Certain improper conduct – such as serious failures to meet Distribution System Security and Planning Standards, depending on the actual effects in a particular case – may impact the operation of the transmission or distribution

[5] Section B.7.1.1 of the Electricity and Gas Suppliers' Handbook (CRU202324): *A vulnerable customer is defined in legislation as a household customer who is: a. critically dependent on electrically powered equipment, which shall include but is not limited to life protecting devices, assistive technologies to support independent living and medical equipment, or b. particularly vulnerable to disconnection during winter months for reasons of advanced age or physical, sensory, intellectual or mental health.*

[6] Section B.8.1.11.a of the Electricity and Gas Suppliers' Handbook (CRU202324): *A customer is taken to be in genuine financial hardship if s/he is unable to make payments against their bills without assistance and are finding himself / herself in regular arrears.*

systems.

Without regard to other factors, improper conduct that impacts network operations to a greater extent is deemed more serious than conduct that has no such impact, or that has such impact at a lower level.

(5) **Impact on the operation of market, in relation to market rules / processes / procedures that support and protect customers in the provision of regulated services, market competition, and/or overall level costs borne by the industry which could indirectly impact customers increased prices**. This factor is to reflect customer harm underpinning the specification of standards of performance[7] that may not be captured by other gravity factors, such as impediment to market competition arising from improper conduct relating to cross-subsidisation. Unlike the *ex-ante* assessment used in the specification of standards of performance, this factor involves an *ex-post* assessment of the actual harm.

Without regard to other factors, improper conduct resulting in such impacts at a larger scale is deemed more serious than conduct that has no such impact, or that has such impact at a smaller scale.

(6) **Monetary value concerning individual customers, where applicable.** This factor is to reflect the scale of monetary impact on individual final customers. Such impacts typically arise by way of overcharging or undercharging, irrespective of whether the specified body has derived a financial gain from the improper conduct.

Without regard to other factors, improper conduct resulting in a higher monetary impact on individual customers is deemed more serious than conduct resulting in a lower value.

(7) **Climate impact.** This factor relates to the plans, strategies and objectives set out in section 15(1) of the Climate Action and Low Carbon Development Act 2015. In performing its investigation and enforcement functions, the CRU shall, insofar as practicable, act in a manner consistent with those plans, strategies and objectives. Where the CRU considers that improper conduct has resulted in climate-related impacts, such impacts will be taken into account as a gravity factor in determining the appropriate financial penalty.

[7] Standards of performance related papers, including consultation papers and decision papers, are available on the CRU website https://www.cru.ie/publications/28733/

Without regard to other factors, improper conduct resulting in climate impact at a larger scale is deemed more serious than conduct that has no such impact, or that has such impact at a smaller scale.

Duration of improper conduct

The duration of improper conduct is measured in weeks, with any period of less than one week treated as one full week.

The start date is the date on which the improper conduct first occurs. The end date is the date on which the non-compliant status is corrected.

In exceptional circumstances where additional time is required to remedy the improper conduct (for example, to implement IT system fixes), the CRU encourages early engagement by the specified body. Where the CRU confirms that it is satisfied with the reasonableness of a proposed remediation timeline, the duration will be paused from the date of such confirmation. If the specified body subsequently fails to adhere to the proposed timeline, the CRU may assess the duration as though no such arrangement had been in place.

The CRU acknowledges that unforeseen issues may, in certain cases, prevent strict adherence to a proposed timeline. Where supported by robust and sufficient evidence, the CRU may consider extensions. The onus remains on the specified body to engage proactively with the CRU and to demonstrate the necessity for any extension.

Step 2: Apply adjustments reflecting aggravating and mitigating factors

Step 2 Provisional financial penalty	=	Step 1 Basic amount of a financial penalty	+	Adjustments based on aggravating factors
			-	Adjustments based on mitigating factors

Aggravating and mitigating factors are generally assessed by reference to the behaviour of the specified body. Their purpose is to describe the relevant circumstances of the specified body in a given case and to encourage the regulated entities to prevent non-compliance, to take remedial actions where non-compliance occurs, and to cooperate with the CRU in the investigation and timely resolution of issues.

For guidance, List 2 and List 3 below set out non-exhaustive examples of aggravating and mitigating factors that the CRU may consider. Such factors are assessed on a case-by-case basis, having regard to the best available evidence. Where a specified body believes that an aggravating factor arose for legitimate reasons, or that mitigating factors apply, the onus rests on the specified body to provide appropriate supporting evidence.

List 2: Aggravating Factors

Note: *Exceptions may be permitted where the specified body has provided appropriate evidence demonstrating a legitimate basis for the presence of an aggravating factor. In such circumstances, the CRU will acknowledge the factor and the specified body's explanation but not attribute weight to it.*

(1) Failure by the specified body to co-operate with the relevant investigation, including any attempt to conceal or avoid detection of the contravention by the CRU.

(2) Continuation of the improper conduct after the specified body has been notified of the relevant investigation.

(3) Absence or ineffectiveness of internal mechanisms or procedures of the specified body intended to prevent improper conduct from occurring.

(4) Weak internal governance arrangements or a poor culture of compliance within the specified body.

(5) The improper conduct was intentional.

(6) Repeated occurrence of improper conduct by the specified body within the six years preceding the date on which the current improper conduct first occurred. The scope of the previous improper conduct includes any failure that meets the definition of "improper conduct" under section 55 of the Act. Such improper conduct would have been investigated and determined by the CRU to have occurred.

(7) A sanction in respect of like improper conduct has already been imposed, within the previous six years, on the specified body by a court, the CRU or another person.

(8) Any other factors relating to the circumstances of the improper conduct concerned (including the factors occasioning it) that the CRU considers relevant.

List 3: Mitigating Factors

(1) Self-reported the breach to the CRU promptly upon its identification by the specified body.

(2) Satisfactory cooperation by the specified body with the CRU's investigation. At a minimum, this includes voluntary, timely, and complete disclosure of accurate information relevant to the matter, whether provided proactively or at the CRU's request, and without the need for the CRU to exercise statutory information-gathering powers.

(3) Credible explanation for the improper conduct, which reduces the specified body's level of responsibility, for example, factors beyond its reasonable control.

(4) Prompt and voluntary steps taken to remedy the consequences of the improper conduct (including transparent communication with impacted customers), to cease the improper conduct, and/or to prevent its re-occurrence. Such steps may include, but are not limited to, the provision of refunds or additional compensation to impacted customers, IT system fixes, internal policies or procedures update, and targeted staff training.

(5) Good internal governance and a sound culture of compliance, for example, effective quality control arrangements designed to mitigate the risk of contravention.

(6) A sanction in respect of the same improper conduct has already been imposed on the specified body by a court, the CRU, or another person.

(7) Any other factors relating to the circumstances of the improper conduct concerned (including the factors occasioning it) that the CRU considers relevant.

Step 2 adjustments are applied as a proportion of the basic amount of the financial penalty calculated under Step 1.

There is no overall cap on the cumulative level of adjustments. To promote clarity and consistency in decision-making while allowing for appropriate flexibility, as a general principle, no single aggravating or mitigating factor should increase or decrease the basic amount by more than 10 per cent.

In exceptional circumstances, an adjustment exceeding 10 per cent in respect of a single factor may be considered. Any such departure will be assessed on a case-by-case basis, having regard to the specific circumstances of the case.

Step 3: Apply adjustments to ensure appropriate deterrence

Step 3 Provisional financial penalty	=	Step 2 Provisional financial penalty	+	Adjustments required for deterrence

Factors considered for deterrence relate to the broader circumstances surrounding the improper conduct or the specified body. Their purpose is to ensure that the financial penalty achieves an appropriate deterrent effect, discouraging the specified body and, where relevant, other regulated entities from engaging in similar improper conduct in the future.

In the circumstances outlined in List 4 below, the CRU may increase the provisional amount of a financial penalty determined under Step 2 for deterrence purposes, in order to promote both specific deterrence (in respect of the specified body) and general deterrence (in respect of the other regulated entities).

List 4: Circumstances warranting further adjustments for deterrence

To achieve specific and general deterrence, the CRU may increase the amount of a financial penalty in the following circumstances:

(1) where the financial penalty calculated through the preceding steps would leave the specified body no worse off than if it had not engaged in the improper conduct. The objective is to ensure that, for regulated entities, the cost of engaging in improper conduct exceeds the cost of compliance.

Such an adjustment may be warranted, for example, where it is not feasible for the specified body to fully disgorge financial gains to impacted customers, or where the financial benefit arises from avoided costs.

(2) where the financial gain or weekly fine does not accurately reflect the specified body's level of involvement in the improper conduct, or the extent of harm suffered by final customers. The objective is to address any material imbalance between the amount calculated under the preceding steps and the specified body's responsibility for the improper conduct or its consequences.

This may arise, for example, where financial gain to the specified body is limited or absent, but the impact on final customers is significant, or where the specified body is fully responsible for conduct resulting in substantial harm. For the avoidance of doubt, even where actual harm can be quantified and no financial gain has accrued to the specified body, any adjustment will depend on the circumstances of the case and will not necessarily be equivalent to the quantified harm.

Where a specified body has voluntarily provided additional compensation to impacted final customers and this has been taken into account as a mitigating factor under Step 2, the CRU may, when considering deterrence, have regard to the amount of such compensation – net of any reduction already applied under Step 2.

Step 3 adjustments are applied to the provisional amount of the financial penalty calculated under Step 2. Such adjustments may be expressed as a proportion or, where necessary and appropriate, as a multiple of, the provisional amount.

Step 4: Perform legal review

At Step 4, the CRU considers relevant precedents set by a court, the CRU or another person in respect of previous instances of improper conduct. Such conduct is limited to the scope of "improper conduct" as defined under section 55 of the Act. The purpose of this step is to promote consistency and ensure fairness in decision-making.

For the avoidance of doubt, the review conducted at this step does not, of itself, result in a direct adjustment to the provisional amount of a financial penalty calculated under Step 3. Where the review identifies potential inconsistencies between the current decision and previous decisions, the CRU will compare the circumstances of the relevant cases and may reapply Steps 1, 2, and/or 3 to revise the amounts determined at those stages. The objective is to ensure that the final financial penalty is appropriate and proportionate to the improper conduct concerned and achieves a reasonable deterrent effect.

In comparing current and previous decisions, the CRU seeks to take into account all relevant factors in determining the degree of similarity or distinction between cases. The proportionality and reasonableness of a financial penalty are ultimately assessed by reference to the circumstances of the improper conduct (including the factors occasioning it) in case at hand.

The final amount of any financial penalty remains subject to the statutory maximum of 10% of the turnover of the specified body in the financial year ending immediately before the financial year in which the improper conduct occurred, as provided for in the Act.

Summary

Table 1 below provides an overview of the calculation of a financial penalty in a given case.

Table 1: Outline of the four-step financial penalty calculation

Step	Calculation
Step 1: Determine the basic amount of a financial penalty	**Gain Methodology** **Financial gain x Gravity level x Duration** *0.1% ~ 10%* *weeks* **Relevant Fine Methodology** **Weekly fine x Gravity level x Duration** *€10,000* *1% ~ 100%* *weeks*
Step 2: Apply adjustments reflecting aggravating and mitigating factors	**+ Adjustment reflecting aggravating factors** **- Adjustment reflecting mitigating factors** • *Adjustment as a proportion of the Step 1 basic amount.* • *In principle, no single factor should increase or reduce the Step 1 basic amount by more than 10%. Exceptions may be permitted on a case-by-case basis.*
Step 3: Apply adjustments to ensure appropriate deterrence	**+ Adjustment to ensure appropriate deterrence** • *Adjustment as a proportion or, where necessary and appropriate, multiples of the provisional amount calculated in Step 2.*
Step 4: Perform legal review	✓ **To review any precedents set by a court, the CRU or another person in respect of previous improper conduct. In cases of inconsistencies, where necessary, reapply the previous steps to adjust the figures in Step 1, 2 and / or 3.** ✓ **Not exceeding 10% of the turnover of the specified body.** • *The proportionality and reasonableness of a financial penalty are ultimately determined by the circumstances of the improper conduct concerned (including the factors occasioning it) in a particular case.*

4 Next Steps

As clarified in the updated proposed decision paper, where improper conduct relates to non-compliance with standards of performance ("SoPs"), the CRU may exercise its powers under Part IX of the Act from the date on which the SoPs are specified in the relevant licences (i.e., when the licences are modified to reflect the CRU's decisions on the specification of SoPs)[8]. In other cases of improper conduct,[9] the CRU may exercise such powers from date the relevant legal provisions came into operation.[10]

Any improper conduct occurring on or after these dates may be investigated under the administrative sanctions framework. Where the CRU determines that a financial penalty is warranted, it intends to apply the approach set out in this paper.

This decision paper, including the approach to setting financial penalties set out herein, does not replace and should not be construed as a substitute for any applicable law or regulation, nor does it constitute legal advice. It does not purport to limit or fetter the CRU's discretion in individual cases.

The CRU is committed to adhering to the approach outlined in this paper. In exceptional cases, where the relevant circumstances so warrant, the CRU may depart from this approach. In such instances, the CRU will engage with the specified body to ensure that due process is upheld.

Where the CRU has decided to impose a financial penalty in a particular case, the specified body may appeal the decision to the High Court in accordance with section 62 of the Act. Pursuant to section 61 of the Act, a decision to impose a financial penalty shall not take effect unless confirmed by the High Court, either following an appeal by the specified body or an application by the CRU.

The CRU will keep the approach to setting financial penalties under review and may amend it where appropriate. Any substantive changes, other than those of a purely editorial nature, will be consulted upon.

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[8] Modified TSO Licence granted to EirGrid; Modified DSO Licence granted to ESB Networks DAC; Modified Electricity Supply Licence; Modified Natural Gas Supply Licence.

[9] As defined in section 55 of the Act, these circumstances are 1) failure by an interconnector operator to comply with the determination of the Commission under section 34A(5) of the Act, and 2) failure, by the holder of a natural gas supply licence, under section 16(1F) of the Gas (Interim) (Regulation) Act 2002, to keep, and make available on a request being made, data relating to transactions in gas supply contracts and gas derivatives with wholesale customers, transmission system operators and storage and LNG operators.

[10] In accordance with Energy Act 2016 (Commencement of Certain Provisions) Order 2017 (S.I. No. 171/2017), Part IX of the Act came into operation on 28 April 2017.