

PROCEDURE of 29 May 2024 confirming the right of foreign legal entities having their registered office in a Member State of the European Union to participate in the electricity/natural gas markets in Romania

EMITENT • NATIONAL ENERGY REGULATION AUTHORITY

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Note

Approved by ORDER No 14 of 29 May 2024, published in the Official Gazette of Romania, Part I, No 505 of 31 May 2024.

## Chapter I General provisions

### Section 1 Purpose and scope

#### Article 1

This procedure sets out:

- a) the conditions under which ANRE confirms to a foreign legal person having its registered office in a Member State of the European Union other than Romania, hereinafter referred to as the applicant, the right to participate in the electricity or natural gas markets in Romania;
- b) the conditions to be met by the foreign legal person having its registered office in a Member State of the European Union, which has received from ANRE confirmation of the right to participate in the electricity markets or in the natural gas markets in Romania, during the exercise of the confirmed right;
- c) the conditions for amending/suspending/terminating the validity of the decision confirming the right to participate in the electricity or natural gas markets in Romania confirmed under the present procedure.

#### ARTICLE 2

(1) This procedure applies to any economic operator, legal person, registered in a Member State of the European Union other than Romania, if that operator meets, cumulatively, the following conditions:

- a) holds, in the State in which its registered office is registered, a valid licence or other similar document, under which it is entitled to carry out the activity of supplying electricity/natural gas or the activity of the electricity/natural gas trader, issued by the energy regulatory authority or, where applicable, by another public authority of that State entitled to issue such a document;
- b) asks ANRE to confirm the right to carry out the activity of supplying electricity/natural gas or the activity of the electricity/natural gas trader on the electricity/natural gas markets in Romania and meets the conditions for granting the confirmatory decision under this procedure;
- c) is not in bankruptcy proceedings;
- d) has not had a licence or other similar document issued in the field of electricity or natural gas withdrawn in the 5 years preceding the registration of the confirmatory application by the energy regulatory authority or, where applicable, by another public authority in a Member State entitled to issue such a document;
- e) has not been deprived by ANRE, in the last 5 years prior to the registration of the confirmatory application, of its right to participate in the electricity/natural gas markets in Romania, for reasons attributable to it;
- f) it does not have as controlling shareholders/associates, as well as, as the case may be, administrators/members of the Board of Directors, persons who held these qualities within economic operators holding a license/confirmatory decision who have not paid their payment obligations resulting from the transactions carried out on the electricity market or on the natural gas market in Romania.

(2) The responsibility for submitting to ANRE the documents referred to in paragraph (1) (a) shall lie with the applicant.

(3) ANRE grants the applicant, by decision, the confirmation of the right to carry out in Romania one of the following activities: the activity of supplying electricity/natural gas or the activity of the electricity/natural gas trader, corresponding to the type of activity covered by the licence or similar document issued by the public authority of that Member State of the European Union or, where applicable, by another public authority of that State entitled to issue such a document.

(4) Where the energy regulatory authority or, where applicable, another public authority in a Member State of the European Union entitled to issue a valid licence or other similar document, under which it has the right to carry out the activity of supplying electricity/natural gas or the activity of the electricity/natural gas trader, issues only digitally that document, it is necessary to submit to ANRE, instead of the document referred to in Article 6(1) (b), a document issued by the responsible entity confirming this fact, indicating the website where the

information can be consulted.

(5) If the regulatory authority or, where applicable, another public authority in the field of energy in the Member State of the European Union does not issue a licence or other similar document under which it has the right to carry out the activity of supplying electricity/natural gas or the activity of the electricity/natural gas trader, it is necessary to submit to ANRE, instead of the document referred to in Article 6(1)(b), a document issued by the responsible entity confirming this fact, indicating the field(s) for which it may carry out activities, the period for which it may carry out the activity(s) and indicating the place where this information can be verified.

### Article 3

Economic operators, foreign legal persons, registered in a Member State of the European Union, holding a licence granted by ANRE for the activity of supplying electricity/natural gas or for the activity of the electricity/natural gas trader may apply to ANRE for confirmation of the right to participate in the electricity/natural gas markets in Romania on the basis of this procedure, if they meet the conditions laid down in this procedure. Simultaneously with the confirmation of the right to carry out the above-mentioned activities in Romania, the license for the supply of electricity/natural gas or for the activity of the electricity/natural gas trader granted by ANRE is withdrawn.

### Section 2 Definitions and abbreviations

#### ARTICLE 4

(1) The terms used in these proceedings are defined in:

- a) Law No 123/2012 on electricity and natural gas, as amended;
- b) Regulation for granting licences and authorisations in the electricity sector, approved by Order No 12/2015 of the President of the National Energy Regulatory Authority, as amended;
- c) Regulation for granting establishment permits and licences in the natural gas sector, approved by Order No 199/2020 of the President of the National Energy Regulatory Authority, as amended.

(2) The abbreviations used in the text of the present proceedings are as follows: ANRE - National Regulatory Authority for Energy.

#### ARTICLE 5

For the purposes of the provisions of this procedure, annual contribution means the amount of money collected annually by ANRE from any economic operator, legal person, registered in one of the Member States of the European Union, which has been confirmed by ANRE the right to participate in the electricity/natural gas markets in Romania, under the terms of the ANRE President's order setting ANRE's tariffs and contributions.

### Chapter II Conditions for requesting and granting confirmation by ANRE

#### ARTICLE 6

(1) In order to obtain confirmation of the right to participate in the electricity/natural gas markets in Romania by a foreign legal person with its registered office in one of the other Member States of the European Union, the following documents will be taken into account: an application containing the particulars and information in the model set out in Annex I;

b) the licence or similar document issued by a public energy regulatory authority or, where applicable, by another public authority entitled to issue such a document from the State of the European Union, other than Romania, in which the applicant has its registered office, proving that it benefits from the right provided for in Article 2(1)(a), in copy, as well as an uncertified translation thereof into Romanian;

c) a declaration on honour, in accordance with the model set out in Annex II;

d) specifying the unique identification code allocated in the European Centralised Register of Energy Market Participants, requested as of 7 October 2015, in accordance with Article 12(2) of Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting, for the implementation of Article 8(2) and (6) of Regulation (EU) No 1.227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency;

e) proof of holding a separate account available in RON opened with the State Treasury units within the competent central tax bodies, coded with the payer's tax identification number;

f) a document issued by the energy regulatory authority of that State or, where applicable, another public authority, containing information on:

(i) trading relationships in the electricity/gas market of the Member State where the applicant is established;

(ii) whether penalties have been imposed on the applicant, arising from the infringement of the provisions of the legislation applicable to the field of electricity/natural gas in the Member

State, and if there have been such penalties for which infringements they have been applied;

g) proof of payment of the tariff for the approval of the confirmatory decision established in accordance with the Order of the President of ANRE approving the tariffs and monetary contributions levied by ANRE, as provided for in Article 8(2).

(2) ANRE shall start the process of solving the application referred to in paragraph (1) (a) only if the applicant has provided therein the complete contact details, namely the address of the registered office, the e-mail address, the telephone and fax numbers of the applicant at that office, as well as those of a legal representative thereof or of a person empowered under the law.

(3) The approval fee shall not be refunded to the applicant if ANRE refuses to grant the right to participate in the electricity/natural gas markets in Romania or if it classifies the documentation on the basis of Article 7(4).

#### ARTICLE 7

(1) The application and the documents attached to it shall be analysed by ANRE, in accordance with the provisions of this procedure, within 30 days from the date of registration of the application, and, where appropriate, a notification shall be sent to the applicant informing him of the additions or clarifications necessary for the resolution of his application.

(2) The application and the documents referred to in Article 6(1) (a), (c) and (d) and the correspondence between the applicant and ANRE shall be drawn up in Romanian.

(3) The documents referred to in paragraph (1) shall be signed on each page by the applicant's legal representative or by a person authorised by him.

(4) If, within 90 days from the date of registration of the application, the submitted documentation is not complete, it shall be closed and the applicant notified thereof.

(5) In the process of analysing the documentation, depending on the quality and complexity of the information submitted by the applicant, ANRE has the right to:

a) to convene at the headquarters of ANRE or to organize online meetings with the legal representatives of the applicant or the persons empowered by them, in order to clarify issues related to the submitted documents;

b) request information from the public authority issuing the documents referred to in Article 2(1) (a) in the Member State of the European Union in which the applicant is established; c)

request any other documents whose obligation to submit results from the normative acts subsequent to this procedure or whose verification is necessary in order to clarify the information contained in the documentation submitted by the applicant.

#### ARTICLE 8

(1) If it is found that the applicant meets the formal and content requirements laid down in Article 2(1) and Article 6, the specialised department of ANRE shall draw up the draft decision and the report proposing to the Regulatory Committee of ANRE the confirmation of the applicant's right to participate in the electricity/natural gas markets in Romania.

(2) The draft decision and the report referred to in paragraph (1) shall be placed on the agenda of the meeting of the Regulatory Committee of ANRE only after payment of the tariff for the approval of the decision confirming the applicant's right to participate in the electricity/natural gas markets in Romania to be paid by the applicant in accordance with the relevant ANRE regulations.

#### ARTICLE 9

(1) Based on the decision of the Regulatory Committee of ANRE, the President of ANRE issues a decision confirming the applicant's right to participate in the electricity/natural gas markets in Romania.

(2) The confirmatory decision referred to in paragraph 1 shall be issued no later than 60 days after the date on which the documentation attached by the applicant to his application is complete and complies with the provisions of this procedure.

(3) The confirmatory decision referred to in paragraph 1 shall contain, in particular:

a) data on the applicant for the right to participate in the electricity/natural gas markets in Romania;

b) subject matter of the decision: confirmation of the right to carry out the activity of supplying electricity/natural gas or the right to carry out the activity of the electricity/natural gas trader;

c) the period of validity of the decision;

d) the rights and obligations of the applicant to participate in the electricity/natural gas markets in Romania.

(4) The confirmatory decision referred to in paragraph (1) shall be communicated to the applicant within 5 days of its date of issue.

## ARTICLE 10

If the report drawn up by the specialised department of ANRE finds that the applicant does not fully or partially meet the formal and content requirements laid down in Article 2(1) and Article 6, on the basis of the decision of the Regulatory Committee of ANRE, the President of ANRE shall issue a decision refusing to grant the applicant the right to participate in the electricity/natural gas markets in Romania, containing the reasons for not granting the right and which may be challenged in administrative proceedings before the Bucharest Court of Appeal, in accordance with the law.

## ARTICLE 11

The confirmatory decision referred to in Article 9 shall have an initial period of validity not exceeding one year and may be extended successively for periods not exceeding five years, so that its total period of validity does not exceed the period of validity of the licence or similar document issued by the public energy regulatory authority or, where applicable, by another public authority entitled to issue such a document in the European Union State in which the applicant has its registered office.

## Chapter III Rights and obligations

## ARTICLE 12

(1) An economic operator, a foreign legal person, registered in a Member State of the European Union other than Romania, which has obtained from ANRE the confirmatory decision referred to in Article 9, shall be entitled to participate in the electricity/natural gas markets in Romania, throughout the period of validity of the document issued by ANRE, under the same conditions as any other holder of a licence granted by ANRE for carrying out the activity referred to in the confirmatory decision issued by ANRE, being subject to all the regulations approved by ANRE relating to that activity.

(2) The economic operator, a foreign legal person, no longer has the right to participate in the electricity/natural gas markets in Romania starting with:

- a) the date of withdrawal of the licence or similar document issued by a public energy regulatory authority or, where applicable, by another public authority entitled to issue such a document from the State of the European Union, other than Romania, in which it has its registered office;
- b) the date of suspension of the licence or similar document referred to in point (a), until the date of termination of such suspension;
- c) the date from which the condition relating to the existence of the registered office of the foreign legal person economic operator in a Member State of the European Union is no longer fulfilled;
- d) the date set by ANRE by the decision to suspend/withdraw the confirmatory decision, as a result of any violation of the law and regulations applicable to it.

## ARTICLE 13

(1) The economic operator referred to in Article 12 shall have all the obligations incumbent on a licence holder granted by ANRE for the activity of supplying electricity/natural gas or, as the case may be, for the activity of the electricity/natural gas trader.

(2) For the purposes of paragraph (1), the economic operator referred to in Article 12 shall:

- a) to comply, under the same conditions as any holder of a licence granted by ANRE to carry out the activity referred to in the confirmatory decision issued by the President of ANRE, throughout the period of validity of the confirmatory decision, with the General Conditions associated with the licence for the activity of electricity supply or, as the case may be, the General Conditions associated with the licence for the activity of electricity trader, respectively the Validity Framework Conditions associated with the licence for the activity of natural gas supply or, as the case may be, the Validity Framework Conditions associated with the licence for the activity of natural gas trader, approved by order of the President of ANRE, as well as with any technical and commercial regulation approved by ANRE or any legal provisions applicable to those activities;
- b) inform ANRE about the modification of any data or information of the applicant contained in the application in Annex no. 1, within the terms contained in the General Conditions associated with the license for the activity of electricity supply or, as the case may be, in the General Conditions associated with the license for the activity of electricity trader, respectively in the Validity Framework Conditions associated with the license for the activity of natural gas supply or, as the case may be, the Validity Framework Conditions associated with the license for the activity of natural gas trader, approved by order of the President of ANRE;
- c) to pay ANRE an annual contribution established and levied in accordance with the provisions of the Order of the President of ANRE approving the tariffs and monetary contributions levied by ANRE, relating to the turnover achieved in Romania or to the quantity of natural gas supplied in Romania, expressed in MWh;
- d) establish and maintain a financial guarantee in the form of a bank guarantee letter or

collateral cash, in the amount of EUR 1 million, equivalent in RON, where the economic operator is non-resident, in accordance with Article IV(5) of Government Emergency Order No 119/2022 amending Government Emergency Order No 27/2022 on measures applicable to final customers in the electricity and natural gas market during the period from 1 April 2022 to 31 March 2023, and amending and supplementing certain legislative acts in the field of energy, approved with amendments by Law No 357/2022, as amended;

e) submit annually on the portal of the National Regulatory Authority for Energy (<https://spv.anre.ro>), by the end of February, the declaration containing the basis for calculating the estimated financial contribution related to the activities subject to the confirmatory decision, in accordance with the Order of the President of the National Regulatory Authority for Energy setting ANRE tariffs and contributions.

#### ARTICLE 14

In addition to the obligations laid down in Article 13, the economic operator referred to in Article 12 shall inform ANRE, within 10 calendar days, of the amendment/suspension/withdrawal of the licence or similar document issued by the public energy regulatory authority or, where applicable, by another public authority entitled to issue such a document from the State of the European Union other than Romania, in which the applicant has its registered office, which was the basis for ANRE to issue the confirmatory decision.

#### Chapter IV Amendment/Suspension/Termination of the validity of the confirmatory decision

#### ARTICLE 15

(1) The economic operator who is a foreign legal person and who requests ANRE to amend the confirmatory decision in order to extend its validity period has the obligation to submit the request at least 60 days before the date of expiry of the confirmatory decision; the application shall be accompanied by the documents referred to in Article 6(1)(c) and (f).

(2) In addition to the situation referred to in paragraph (1), ANRE shall amend the confirmatory decision at the request of the holder, where one of the following situations has occurred: a) changing the name and/or legal form of the holder;

b) change of the registered/professional office of the holder or other elements provided in the confirmatory decision.

(3) The situations referred to in paragraph (2) shall be notified to ANRE by the economic operator referred to in Article 12, together with the request for amendment of the confirmatory decision, accompanied by documents confirming the changes occurred.

(4) If it is found that the applicant meets the formal and content requirements laid down in paragraphs (1) or (3), as the case may be, the specialised department of ANRE shall draw up the draft decision and the report proposing to the Regulatory Committee of ANRE the amendment of the decision confirming the applicant's right to participate in the electricity/natural gas markets in Romania.

(5) The draft decision and the report referred to in paragraph (4) shall be placed on the agenda of the meeting of the Regulatory Committee of ANRE only after payment of the fee for amending the decision confirming the applicant's right to participate in the electricity/natural gas markets in Romania, to be paid by the applicant in accordance with the relevant ANRE regulations.

(6) In justified cases, such as those caused by legislative or regulatory changes, ANRE may decide on its own initiative to amend the confirmatory decision, in which case no fee shall be charged.

#### ARTICLE 16

(1) Upon notification by the economic operator referred to in Article 12, upon notification by a third person or upon finding by ANRE ex officio, ANRE may decide, through the specialised department, to suspend a confirmatory decision in the following situations:

a) at the written, reasoned request of the economic operator;

b) during the period of suspension of the licence or similar document referred to in Article 2(1)(a), until the date of termination of such suspension;

c) if it is found that the holder of the confirmatory decision has breached an obligation applicable to it under the law or regulations issued by ANRE, and the situation created can be remedied;

d) in the event of repeated non-compliance by the economic operator supplying electricity with the obligations to pay penalties for non-fulfilment of quarterly and/or annual obligations to purchase green certificates, in accordance with the provisions of the law and ANRE regulations, ascertained by ANRE when notifying the Environmental Fund Administration;

e) for repeated non-fulfilment of payment obligations as a party responsible for balancing or for repeated non-payment of the cogeneration contribution, in accordance with ANRE regulations,

established by ANRE at the request of the administrator of the support scheme.

(2) In the suspension decision, ANRE may establish compliance measures for the economic operator, during the suspension, with deadlines for compliance.

(3) The decision ordering the suspension of the confirmatory decision shall set out the conditions under which the suspension shall end and/or the time limits within which the suspension shall end.

(4) During the suspension, the rights of the economic operator referred to in Article 12 shall be suspended.

#### ARTICLE 17

Upon notification by the economic operator referred to in Article 12, upon notification by a third person or upon finding by ANRE ex officio, ANRE may decide, through the specialised department, to terminate the validity of a confirmatory decision in the following situations:

- a) at the written, reasoned request of the economic operator;
- b) withdrawal of the licence or similar document referred to in Article 2(1)(a);
- c) if it is found that the holder of the confirmatory decision has breached an obligation applicable to it under the law or regulations issued by ANRE, and the situation created cannot be remedied;
- d) in the event of bankruptcy;
- e) where it is impossible to remedy the situations referred to in Article 16(1)(d) and (e);
- f) where the economic operator referred to in Article 12, an electricity supplier, infringes the legal prohibition laid down in Article 58(1<sup>1</sup>) of Law No 123/2012 on electricity and natural gas, as amended, by sending notices of withdrawal from contracts for the supply of electricity concluded with final customers;

g) if the economic operator referred to in Article 12 fails to pay the amounts owed to ANRE or cannot be contacted in order to pay the amounts owed to ANRE, within one year from the date of issue of the invoice.

#### Chapter V Final provisions

#### ARTICLE 18

(1) ANRE has the right to control the activity of economic operators, foreign legal persons, to whom it has confirmed the right to participate in the electricity/natural gas markets in Romania on the basis of the provisions of this procedure.

(2) If, as a result of the control action taken by ANRE, it is established that the economic operator, a foreign legal person referred to in paragraph (1), has not complied with the provisions of the confirmatory decision referred to in Article 9, ANRE shall apply, pursuant to the law, penalties, which may include the measure of suspending or withdrawing its right to participate in the electricity/natural gas markets in Romania.

#### ARTICLE 19

ANRE regularly updates on its website the list of economic operators, legal entities, whose right to participate in the electricity/natural gas markets in Romania has been confirmed on the basis of the provisions of this procedure.

#### ARTICLE 20

Decisions confirming the right to participate in the electricity/natural gas markets in Romania issued by ANRE before the date of entry into force of this procedure shall remain valid until the expiry of the period for which they were granted this right.

#### ARTICLE 21

(1) Within 3 months from the date of entry into force of this procedure, legal persons whose right to participate in the electricity/natural gas markets in Romania has been confirmed shall be required to prove that they meet the requirements laid down in Article 6(1)(e) and Article 13(2)(d).

(2) Failure to comply with Article 1 shall constitute grounds for suspending the decision confirming the right to participate in the electricity/natural gas markets in Romania and, where applicable, withdrawing it.

#### ARTICLE 22

The provisions of this procedure are supplemented by the provisions of the Regulation on granting licences and authorisations in the electricity sector, approved by Order No 12/2015 of the President of the National Energy Regulatory Authority, as amended, and by the provisions of the Regulation on granting authorisations for establishment and licences in the natural gas sector, approved by Order No 199/2022 of the President of the National Energy Regulatory Authority, as amended.

ARTICLE 23

Annexes 1 and 2 form an integral part of these proceedings.

Annex 1 to the procedure

Mr President, I, the undersigned, ..... (first name(s) .....and name), in its capacity as ..... (Director general/shareholder/associate controlling the applicant/administrator, etc.)of the economic operator registered with the Trade Register Office under the name (name of economic operator) ....., registered on ..... (similar institution to the trade register office of the country of origin) .. under No ....., tax code ....., with its registered office in ..... (full address of registered office) ....., telephone number ..... (phone number) ....., Fax No (fax no.) ..... and account ...(IBAN account number) .....,

opened at bank ... (name of bank) ..., holder of (licence/authorisation/other similar document) ..., for the activity (activity covered by the licence) ..., issued by (name of the issuer of the document, public institution/regulatory authority, etc.) ..... from (Member State of the European Union other than Romania) ..... I request confirmation by the National Energy Regulatory Authority of the right to carry out in Romania the activity of supplying electricity/natural gas or the activity of the electricity/natural gas trader, on the basis of the Procedure for confirming the right to participate in the electricity/natural gas markets in Romania of foreign legal persons having their registered office in a Member State of the European Union.

In order to communicate with the National Regulatory Authority for Energy, I would like to inform you of the following contact details:

- a) contact details of the economic operator: telephone (no. telephone) .., fax ... (no. fax) and e-mail address ..... (address ..... by e-mail) ;
- b) contact details of the legal representative of the economic operator or of a person empowered under the law: telephone (no. telephone) .., fax ... (no. fax) .. and e-mail address ..... (address by e-mail) ..... ;
- c) the unique identification code allocated in the European Centralised Register of Energy Market Participants\*).

\*) Information requested as of October 7, 2015.

The application shall be accompanied by the specific documents, a list of which is annexed hereto.

Knowing the provisions of Law No 286/2009 on the Criminal Code, as amended, on false statements, I certify on my own responsibility the veracity and authenticity of all the documents transmitted.

Date Signature

Annex 2 to the procedure  
STATEMENT ON OWN LIABILITY

I, the undersigned, ..... (forename and surname) ....., in its capacity as ..... (Director General/Shareholder/Controlling Associate/Administrator, etc.) ..... of the economic operator .. (name of economic operator) ..., registered on ..... (similar institution to the trade register office of the country of origin) ..... under no. ...., tax code ..... Knowing the provisions of Law No 286/2009 on the Criminal Code, as amended, on false declarations, I declare on my honour that the economic operator (name of economic operator) ....., of which I am the legal representative, will comply with the technical and commercial rules in Romania, issued by the National Regulatory Authority for Energy, as well as other regulations or legal provisions applicable to the activity for which it requests confirmation, throughout the validity period of this activity in Romania, based on the confirmation received from the National Regulatory Authority for Energy.

I declare that the licence or other similar document under which I request the right to carry out the activity of supplying electricity/natural gas or the activity of the electricity/natural gas trader, issued by the energy regulatory authority or, where applicable, by another public authority in a Member State entitled to issue such a document, is valid on the date of this declaration. \*) \*) This information is not required if the regulatory authority or, where applicable, another public authority in the field of energy in the Member State of the European Union does not issue a licence or other similar document under which it is entitled to carry out the activity of supplying electricity/natural gas or the activity of the electricity/natural gas trader. I declare that the economic operator, in whose name and on whose behalf I sign this declaration, is not in bankruptcy proceedings. I declare that the economic operator, in the name and on whose behalf I sign this declaration, does not have as shareholders/associates holding the control, as well as, where applicable, administrators/members of the Board of Directors, persons who held these qualities within economic operators who have not paid their payment obligations resulting from the transactions carried out on the electricity market or on the natural gas market in Romania.

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Signature

Date