

New licensing rules for activities in the energy field

1. Overview of licensing regulatory activity

The second part of the year 2020 was marked by a very intense regulatory activity carried out by the Romanian Energy Regulatory Authority (“ANRE”), aiming to implement in the secondary legislation the provisions of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market (the „**Internal Market Regulation**”) and the corresponding changes underwent earlier this year by the Energy and Gas Law no. 123/2012 (the “**Energy Law**”).

Among the matters falling within ANRE’s regulatory activity was the licensing of various new activities in the energy field such as activity of the electricity aggregator, the development and operation of electricity storage installations, as well as development and operation of new installations for hydrogen generation, thus paving the way for the performance of such activities.

ANRE has, thus, amended/replaced the existing regulations governing the licensing process of electricity and gas related activities and has issued conditions associated with various such activities, by adopting the following legal enactments:

- (i) Order no. 197/2020 amending and supplementing the Regulation for the issuance of licenses and authorizations in the electricity sector, approved by ANRE Order no. 12/2015 published in the Official Gazette no. 1037 of November 6, 2020;
- (ii) Order no. 199/2020 approving the Regulations for the issuance of setting-up authorizations and licenses in the gas sector, published in the Official Gazette no. 1067 of November 12, 2020;
- (iii) Order no. 196/2020 approving the General Conditions associated with the license for the aggregation activity, published in the Official Gazette no. 1055 of November 10, 2020 (the “**Aggregation Conditions**”);
- (iv) Order no. 198/2020 amending and supplementing ANRE Order no. 80/2013 approving the General conditions associated with the setting-up authorization and of the General conditions associated with the license for the commercial operation of the electricity generation capacities and of the electricity and thermal power cogeneration capacities, published in the Official Gazette no. 1043/2020 of November 7, 2020 (the “**Order no. 198/2020**”);
- (v) Order no. 200/2020 approving the Frame validity conditions associated with the setting-up authorization of new installations for the generation of hydrogen, published in the Official Gazette no. 1045 of November 9, 2020;
- (vi) Order no. 201/2020 approving the Frame validity conditions associated with the license for the commercial operation of new installations for the generation of hydrogen, published in the Official Gazette no. 1053 of November 10, 2020;
- (vii) Order no. 208/2020 approving the Frame validity conditions associated with the setting-up authorization for new installations for biogas/biomethane generation, published in the Official Gazette no. 1090 of November 17, 2020;
- (viii) Order no. 212/2020 approving the Frame validity conditions associated with the license for the supply of biogas/biomethane, published in the Official Gazette no. 1137 of November 26, 2020; and
- (ix) Order no. 209/2020 approving the frame validity conditions associated with the setting-up authorization of new LNG installation, published in the Official Gazette no. 1090 of November 17, 2020.

With the exception of Order no. 198/2020 which is of immediate application, all of the above legal enactments will enter into force starting January 1, 2021.

2. Special licensing requirements for the activity of electricity aggregators

The adoption of secondary regulations for carrying out the aggregator activity was very much expected by the market ever since the Internal Market Regulation became applicable at the beginning of this year.

The issuance by ANRE of the rules to be followed for obtaining such license and of the conditions to be observed by the license holder throughout its activity will, thus, allow entities interested in this activity to apply for the license as of beginning of next year.

2.1. Requirements for license issuance

As expected, the requirements to be fulfilled and documentation to be filed for issuing such license are more extensive as compared to the supply or trader license and mainly consist in the submission of the following specific information/documentation:

- (i) documents attesting the previous experience of the applicant or of several of its management personnel/higher education employees or of its shareholders (in case the applicant is a newly established company);
- (ii) a plan for collecting data regarding the clients' electricity consumption, for evaluating their consumption profile and for identifying opportunities for electricity saving or optimal use of the resources;
- (iii) an internal working procedure confirming the protection of commercially sensitive information and of the personal data of its clients;
- (iv) confirmation from the transmission and system operator ("TSO") validating the fulfilment of the requirements related to the communication and integration in the TSO computer systems, as well as in the dispatching and metering structures; such confirmation is issued based on a procedure that will be elaborated by TSO;
- (v) list of main software products and/or other elements of informational technology and communication infrastructure and / or other technical systems;
- (vi) statement attesting that it is not and it shall not be during the license period a related party to the supplier of its clients;
- (vii) a note regarding the electricity market(s) on which the it will participate.

As to the financial requirements to be met, the same requirements imposed to the supply or trading activities are applicable, namely the applicant should make evidence of financial resources at least equal to 25 per cent of the estimated turnover for the first 12 months of activity as aggregator, but not less than EUR 100,000 (as equity, bank loans or shareholder loans).

2.2. Cumulating the aggregation license with other electricity licenses

The applicants for or holders of electricity generation, storage, supply or trading activities may apply also for the aggregation license, in which case the right to carry out the activity as aggregator will be included as complementary right in the respective license applied for/already held.

On the contrary, TSO and the distribution operators (those holding concession over the distribution services, as well as other licensed distributors) may not engage in aggregation activity as the license for transmission/system/distribution services and that for balancing

market operation may not be cumulated with the aggregation license.

2.3. Duration

Similarly to the trading and supply, the license for the aggregating activity is issued for maximum 10 years. Upon the expiration of its validity, the license may not be renewed, the initiation of a new licensing procedure being required.

2.4. Activity of the aggregator

The aggregator may establish an aggregated entity (the “**Aggregated Entity**”) which will manage an aggregated unit (the “**Aggregated Unit**”) composed of a portfolio of generation units or consumption places or storage installations under the condition that (i) the cumulated maximum powers approved for being absorbed/evacuated into the grid by such portfolio is of a least 1 MW and (ii) the Aggregated Unit and its components have the technical capacity of answering to the dispatcher commands.

The activity as aggregator is conducted based on (i) aggregation contracts concluded with the participants to the Aggregated Entity and on (ii) the Operational Settlement Procedure elaborated by the aggregator.

The contract should contain, *inter alia*, the subject matter, duration, the flexibility usage price, prices on power use intervals, the variation range of electricity produced / consumed / stored, payment terms and termination clauses.

As to the Operational Settlement Procedure, unlike the first draft of Aggregation Conditions submitted by ANRE for public consultations according to which this procedure had to be approved by the TSO and the distribution operators concessionaires of the electricity distribution service in the areas where the consumption points / generation units / storage units are located, per the final version of Aggregation Conditions, the procedure must only be agreed with the Aggregated Entity’s participants.

The aggregators have the following main rights:

- (i) representing the Aggregated Entity in its relations with third parties;
- (ii) participating on the day-ahead market, intraday market, balancing market and system services market;
- (iii) entering into directly negotiated agreements with its clients (participants to the Aggregated Entity) and the suppliers thereof;
- (iv) provision of consultancy regarding the energy management and energy efficiency solutions; and
- (v) acquiring flexibility services from its clients (participants to Aggregated Entity);
- (vi) getting access to the specific data of its clients (participants in Aggregated Entity), such as commercial data regarding the available capacities, generations, consumptions, metering data available to the metering operator and distribution operators.

The aggregators should conclude an operation convention with the TSO and carry out the specific obligations set out under the Aggregation Conditions.

3. Special licensing requirements for electricity storage installations

The development/operation of electricity storage installations are authorized by ANRE through the issuance of a dedicated setting-up authorization/license. However, if the storage installations are added to electricity generation capacities/thermal power and electricity cogeneration capacities, a single setting-up authorization/license is issued for the development/operation of all such capacities and installations.

Irrespective of whether the operation of storage installations is licensed together or separately from the generation/cogeneration capacities, the license holder has the obligation to establish financial guarantees amounting to 1 per mille of the value of the assets corresponding to the licensed activities, but not less than 1 per cent of the annual turnover related to the licensed activities.

Similarly to the case where the storage installations are added to generation/cogeneration capacities, the holder of the license dedicated to the storage installations may be also granted a complementary right of performing (i) electricity aggregation, (ii) electricity supply to end customers directly connected to its electrical installations corresponding to the storage installations or (iii) electricity distribution, including by providing transformation / connection services for grid operators or for delivering electricity to end customers connected directly to its electrical installations corresponding to the storage installations.

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