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# Legal Bulletin



## Energy

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## New Regulation for the issuance of licenses and authorisations in the electricity field

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*The Regulation for the issuance of licenses and authorisations in the electricity field (the “Regulation”) approved by Order No. 12/2015 of the National Regulatory Authority for Energy (“ANRE”) was published in the Official Gazette of Romania, Part I, No. 180 of 17 March 2015. Such enactment came into force on its publication date, repealing ANRE Order No. 48/2013 approving the Regulation for granting licenses and authorisations in the electricity sector.*

In principle, the adoption of the new Regulation was due to the amendments made to the *Electricity and Natural Gas Law No. 123/2012*, introducing a new participant on the electricity market, namely, the electricity trader. Nevertheless, the Regulation also comprises several other amendments, the most important of which are summarized herein below.

1. **The license for the commercial operation of the generation capacities of electricity and/or heat in cogeneration grants its holders the right to carry out the operations specific to the electricity trader**

According to the new Regulation, the holder of a license for the commercial operation of the capacities for the generation of electricity and/or heat in cogeneration (the “**Generation License**”) may not simultaneously hold a license for the electricity trading activity. Such prohibition is grounded on the fact that the specific operations corresponding to the electricity trader (namely, sale and/or purchase operations on the

wholesale electricity market, as well as electricity import and/or export operations) are included in the Generation License.

This puts an end to the confusions generated by *ANRE Order No. 13/2015 approving the General terms related to the electricity trading license*, regarding the right of the holders of Generation License to close, under such license, electricity transactions on the wholesale market, other than those related to the fulfilment of the contractual obligations regarding the electricity generated by them. The contradictory interpretations were due to the fact that the abovementioned ANRE order expressly provided that the holder of an electricity trading license may not simultaneously hold a supply license, without making any reference to the simultaneous holding of an electricity trading license and of a Generation License.

**2. The financial means required in case of the applicant for the electricity trading license were established at half of the amount necessary for obtaining the supply license**

The documents to be submitted to ANRE in order to obtain the electricity trading license are similar to those required for the issuance of the supply license. However, the financial means required for the applicant in order to obtain the electricity trading license are of EUR 500,000, which is half of the amounts necessary for obtaining the supply license.

**3. The foreign legal entities headquartered in another Member State of the European Union are no longer under the obligation to establish a secondary office in Romania in order to obtain an authorization/license**

The requirement related to the establishment of a secondary office in Romania was limited only to foreign legal entities headquartered outside the European Union.

Such amendment may also be due to the decision of the European Commission of March 2014, whereby sanctions were applied (a fine of over EUR 1 million) to OPCOM S.A. and C.N.T.E.E. Transelectrica S.A. for breaching Article 102 of the Treaty on the functioning of the European Union, in the form of an abuse of dominant position by applying a discriminatory treatment (based on nationality/place of establishment criteria) to undertakings wishing to close electricity transactions on the short-term markets in Romania. Although the discriminatory treatment ascertained by the Commission consisted of the VAT registration requirement imposed by OPCOM S.A. to participants on the spot markets (and not of the requirement regarding the establishment of a secondary office in Romania, which does not automatically trigger the VAT registration obligation), the Commission's decision may have drawn the attention of the Romanian authorities on the necessity to observe the European rules, particularly with regard to the fundamental freedoms (such as the free movement of goods, services, capital) underlying the European Single Market.

**4. No setting-up authorizations are issued for the performance of development/retrofitting works regarding the electricity stations and lines**

Although the necessity to obtain the setting-up authorization for the performance of development/retrofitting works regarding the transmission and distribution stations and lines was removed from the legislation since 2010, the Regulation introduces an express provision according to which the development/retrofitting works to electricity stations and lines do not form the object of the setting-up authorization.

**5. It was increased from 30 days to 60 days the minimum period preceding the expiry of the authorizations/licenses, by which the application for the extension thereof must be filed**

As per the new Regulation, the application for the extension of the authorizations/licenses must be submitted at least 60 days before the expiry date thereof (unlike the old regulation, which provided for a minimum 30 day-term).

Also, as concerns the supply license, the validity extension documentation must be complete at least 20 days before the expiry of such license. Otherwise, ANRE shall be entitled to initiate the process whereby the last resort suppliers would take over the final customers of such license holder.

## Establishment of the National Registry of the Participants on the Wholesale Energy Market

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On 18 March 2015, the National Registry of the Participants on the Wholesale Energy Market (the “Registry”) was established, based on *ANRE Order No. 1/2015 establishing the National Registry of Wholesale Energy Market Participants and approving the Procedure for the registration of wholesale energy market participants*.

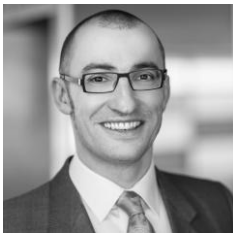
The participants on the wholesale energy market are under the obligation to register with the Registry or to submit to ANRE the written confirmation of the registration with similar registries, before closing a transaction on the wholesale energy market in Romania, which needs to be reported to the Agency for the Cooperation of Energy Regulators. The reporting obligation shall apply as of 7 October 2015, save for the non-standardized contracts, the reporting of which shall apply as of 7 April 2016.

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## Editors

Tuca Zbârcea & Asociații's Energy Practice Group provides the full range of legal services to major electric power producers, renewable and alternative energy companies. Our lawyers advise on the regulatory components of M&A and other transactional work arising from the energy sector, including restructuring/de-regulation arising out of the wholesale and retail electricity/power market, as well as development of energy projects (such as electric, nuclear and hydro-electric plants, etc). The team also covers financing, development and regulatory issues surrounding wind generation, solar, biomass energy generation and co-operates closely with the firm's Real Estate, Finance, Environment, and Corporate practice groups in relation to multi-billion large-scale investment projects.



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