

**EU- INO GATE programme , project “Support to Energy Market  
Integration and Sustainable Energy in the NIS” (SEMISE)**

# **European best practice regarding to the licensing in the energy sector**

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# 1. Introduction

The document describes the main purpose licensing serves in power sector and indicates two approaches under which the regulatory system primarily serves the legal dimension of the ability of a natural or a legal person to undertake any activity. The second part of the document provides summary of the EU legislative framework listing main elements, parties and their interrelation within power sector. In addition it gives overview of licensing, authorisation and permitting in the EU.

## 2. European review with regards to licensing in power sector

Licensing is a versatile tool that can be used to further a number of important energy policies and goals. Governments typically implement licensing programs as a means of maintaining some level of control over entities engaged in strategic industries and as part of a program for regulating industries that are not fully competitive. In the electricity sector, licensing is used as a method of overseeing the activities of companies engaged in the electricity business and of enforcing compliance with energy, environmental and other laws or regulations applicable to sector participants.

One of the most common purposes of licensing is to create a procedural mechanism that the government may use to exercise some degree of control over the construction of new power plants. The government may simply review new generating projects as they are proposed (authorization procedure), or the government may take a more active role in determining capacity needs, soliciting proposals for new projects and choosing the winner of the tendering procedure. In either case, the government may consider the economics, fuel source, and environmental impact of the plant, as well as other issues, before granting a license.

Licensing in power sector may also serve other purposes, including the following:

- The initial licensing process may be used to ensure that business enterprises participating in the power sector have adopted the appropriate corporate form and have demonstrated adequate financial resources and technical ability to carry out the licensed activity.
- The licensing process may include procedures for revoking or modifying licenses in order to enable the government to monitor and enforce compliance with applicable laws and regulations.

- License conditions may impose requirements regarding accounting practices and the right of the government to review and audit a company's books and records. These conditions may assist regulators when reviewing a company's tariffs and may help protect investors and consumers from improper business practices.
- As a condition of licensing, sector participants may be required to compile and make available information on their operations that will assist the government in developing long-term national energy policy. The licensing process may be used to establish the obligation of sector participants to comply with national and international technical and safety codes. If strategic investors have agreed to fund upgrades to existing facilities to improve performance or reduce pollution, the licensing process may be used to monitor compliance with these commitments.

## 2.1. License, authorisation, permitting and other regulatory instruments

There are two approaches under which the regulatory system primarily serves the legal dimension of the ability of a natural or a legal person to undertake any activity:

- The first one is best described as the situation where **anyone is allowed to undertake** any activity unless a special license is required;
- Contrarily, the second one refers to the situation where **no one is allowed to undertake** any specific activity unless it is granted an authorisation to do so.

Both depend on the context of the legal system of each jurisdiction (i.e. country), and the relevant regulatory framework which support it. The most important however feature of this procedure has to do with the competent authority that is empowered under the Law to grant, revoke or suspend the relevant authorisation. It is worthwhile to be noted that the terms "authorisation" and "license" are commonly used herewith in this text in shake of simplicity to denote the approval provided by an authority. Yet, the authorisation procedure should not be considered as a procedure which necessarily leads to the issuing of a license.

Perhaps the source of the ambiguity amongst the two terms derives from the transposition of the English legal context of the word "licence" to stand for the successful outcome of the participation of an entity to an authorisation procedure. In reality, the exact term is not explicit but each jurisdiction defines it by means of the relevant primary legislation.

Though the terminology is not explicitly set at an international level we may for the purposes of the present report distinguish three broad types of authorisations:

- Authorisation of a **business activity** which refers to the ability to undertake an economic activity in the electricity sector and can possibly be further broken down into:
  - Authorisation of **competitive activities** (i.e. generation, supply/retail), and
  - Licensing of **natural monopoly activities** (i.e. transmission/distribution ownership or operation);
- **Permitting activities related to energy infrastructure** which refer to the construction, renovation, operation and maintenance in whole or in part of the respective infrastructure (i.e. generation plants, transmission/distribution networks);
- **Licensing of professional competence** which refers to the technical capacity of certain entities to undertake, participate and hold responsibility in the construction, renovation, operation and maintenance in whole or in part of the respective infrastructure.

There is no exact discrimination of the definitions in the terms used above in order to describe the regulatory mechanism “allowing” one to carry out an activity (for instance, an economic, technical, other), an attempt to interrelate the terms commonly used in the EU with the respective context of activities is herewith presented in the table in Annex I “ *An analysis of authorisations, licenses and permits’ attributes in the EU context for the electricity sector* “

## 2.2. Status of EU wide regulation – latest provisions of EC electricity directive

In 1996, the European Union passed an Electricity Directive (96/92/EC) that required the 15 Member States to liberalise their electricity industries. This was replaced in 2003 by a new Directive (2003/54/EC) that places more stringent requirements on Member States to de-integrate their electricity industries and introduce competition in generation and retail supply. The latest revision of the Electricity Directive as part of the so-called 3rd Package has been effected by the adoption of the 2009/72/EC which is currently under implementation.

This Directive is aimed at introducing common rules for the generation, transmission, distribution and supply of electricity. It also lays down universal service obligations and consumer rights, and clarifies competition requirements.

### 2.2.1. Rules for the organisation of the sector

The rules for the organisation of the sector are aimed at developing a competitive, secure and environmentally sustainable market in electricity. Member States may impose on undertakings operating in the electricity sector public service obligations which cover issues of security and security of supply, regularity and quality of service, price, environmental protection and energy efficiency.

Member States shall ensure that all customers have the right to choose their electricity supplier and to change supplier easily, with the operator's assistance, within three weeks. They shall also ensure that customers receive relevant consumption data.

Electricity suppliers are obliged to inform final customers about:

- the contribution of each energy source;
- the environmental impact caused;
- their rights in the event of a dispute.

Member States shall put in place an independent mechanism (energy ombudsman or consumer body) to manage complaints or disputes efficiently.

Member States are also obliged to ensure the monitoring of security of supply. They shall define technical safety criteria to ensure the integration of their national markets at one or more regional levels. In addition, the national regulatory authorities ensure cooperation with the Agency for the Cooperation of Energy Regulators to guarantee the compatibility of regulatory frameworks between regions

### 2.2.2. Generation

Member States shall define criteria for the construction of generating capacity in their territory taking account of aspects such as:

- the security and safety of electricity networks;
- the protection of health and public safety;
- the contribution made towards the Commission's "20-20-20" objectives.

### 2.2.3. Transmission system operation

From 3 March 2012, Member States must unbundle transmission systems and transmission system operators.

An undertaking must first be certified before being officially designated as a transmission system operator. A list of transmission system operators designated by Member States shall then be published in the Official Journal of the European Union.

Transmission system operators are mainly responsible for:

- ensuring the long-term ability of the system to meet demands for electricity;
- ensuring adequate means to meet service obligations;
- contributing to security of supply;
- managing electricity flows on the system;
- providing to the operator of any other system information related to the operation, development and interoperability of the interconnected system;
- ensuring non-discrimination between system users;
- providing system users with the information they need to access the system;
- collecting congestion rents and payments under the inter-transmission system operator compensation mechanism.

#### 2.2.4. Distribution network operation

Member States shall designate distribution system operators or require undertakings that own or are responsible for distribution systems to do so.

Distribution system operators are mainly responsible for:

- ensuring long-term capacity of the system in terms of the distribution of electricity, operation, maintenance, development and environmental protection;
- ensuring transparency with respect to system users;
- providing system users with information;
- covering energy losses and maintaining reserve electricity capacity.

Member States have the option of putting in place a closed distribution system to distribute electricity within a geographically confined industrial, commercial or shared services site.

#### 2.2.5. Unbundling and transparency of accounts

Member States and the competent authorities have right of access to the accounts of electricity undertakings but shall preserve the confidentiality of certain information.

Electricity undertakings shall keep separate accounts for their transmission and distribution activities.

#### 2.2.6. Organisation of access to the system

Member States shall organise a system of third party access to transmission and distribution systems. The tariffs based on that system shall be published.

Member States shall also lay down criteria for the granting of authorisations to construct direct lines in their territory, on an objective and non-discriminatory basis.

#### 2.2.7. National regulatory authorities

Member States shall designate a regulatory authority at national level. It shall be independent and exercise its powers impartially. It is mainly responsible for:

- fixing transmission or distribution tariffs;
- cooperating in regard to cross-border issues;
- monitoring investment plans of the transmission system operators;
- ensuring access to customer consumption data.

#### 2.2.8. Retail markets

Member States shall ensure that contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility are defined.

Non-household customers may contract simultaneously with several suppliers.

### 2.3. Role of Regulator in licensing of business activities in power sector

Directive lay down the list of duties of the NRA. These duties constitute a minimum set of competences and Member States may give the NRA additional powers to those specified. This list of duties is substantially longer than the list of issues for which the NRA was responsible under the second Electricity Directive. These core duties include:

- duties in **relation to tariffs** for access to transmission and distribution networks: fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies;
- duties **in relation to unbundling**: ensuring that there are no cross-subsidies between transmission, distribution and supply activities;
- duties **in relation to the general oversight** of energy companies: ensuring compliance of transmission and distribution system operators, system owners (where relevant) and electricity undertakings with their obligations under the Directive and other relevant European Union legislation, including as regards cross-border issues;

- duties in **relation to consumer protection**: helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced; publishing recommendations, at least annually, ensuring access to customer consumption data.

The study which illustrate power of regulatory authorities covering also issues of licensing energy sector in EU is provided by ERGEG and extract of power sector is incorporated in Annex III

## 2.4. Licensing/authorisation of electricity sector business activities

In the context of the EU *Acquis Communautaire* for the energy sector and in particular in the Directive 96/92/EC in which it was introduced, the authorisation procedure comprises one of the two available options for allowing new generation in the restructured electricity sector. More specifically, resembling the two main approaches described above relevant to authorisations, the authorisation procedure for new generation capacity (as opposed to the tendering one) provides for the spontaneous development of new infrastructure (in our case generation plants) based on an informed investment decision (project feasibility).

This implies no central planning and allows the investors to compete for the “best” investment with only an obligation imposed by the state that needs to be satisfied, which is in turn provided for by a set of predefined criteria in the energy law. .

The regulatory framework essential stands for the set of terms, conditions and requirements under which a natural or legal person may undergo an activity. In turn, this activity may be of a diversified nature i.e. business, design, construction, planning, etc. Pursuant to the aforementioned, licenses, authorisations, permits, etc essentially comprise the central instruments of the regulatory system after legislative framework. Irrespectively of the exact use of the term (i.e. license, authorisation, permit, etc) it sets out, in a public document, the terms and conditions under which a utility may operate. It is the responsibility of the regulator (or as the case might be, the authority that grants the license) to monitor compliance with the license terms and be able to suggest modifications (of whatever severity, including revocation and or other sanctions).

For natural monopoly or dominant suppliers the license will include a condition controlling prices, as well as certain conditions relating to the supply of services, use of company’s network by competitors and provisions preventing unfair discrimination or anti-competitive practices.

## 2.5. Overview of licensing, authorisation and permitting in the EU

As also mentioned in section 2.1 above, perhaps the key issue relative to the licensing scheme as a regulatory instrument for controlling access or be able to set conditions on an undertaking is the authority that is empowered under the law to grant licenses. The following table presents the situation in the EU Member States as recorded in 2004 by a survey of Eurelectric<sup>1</sup> in respect to the available sector regulation models:

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<sup>1</sup> <http://www.eurelectric.org/Download/Download.aspx?DocumentID=14576>

**Table 1. Overview of competence allocation in the EU for licensing activities in the power sector**

Activities	Ministry	Energy Regulator	Competition Authority	Other Authority	Not regulated
<b>Natural Monopoly Activities</b>					
<b>Transmission Networks</b>					
Planning approval	FR, GR, PT, ES, UK, NL, TR, IT, RO, CZ	BE, FR, GR, HU, PL, ES, TR		DK, IE, TR, IT, DE	AUT, FIN
Authorisation for construction	AUT, BE, DK, FIN, FR, PT, GR, ES, UK, IT, CZ	FIN, HU, IE, ES		AUT, GR, PL, ES, NL, IT, RO, DE, TR	
Authorisation for operation	AUT, BE, DK, FR, GR, PT, ES, NL, IT	FIN, HU, IE, PL, ES, UK, RO, CZ		AUT, ES	TR, DE
<b>Distribution Networks</b>					
Planning approval	GR, PT, UK, NL, TR, IT, RO, CZ	BE, GR, HU, PL, TR		DK, FR, IE, TR, IT	AUT, FIN, DE
Authorisation for construction	AUT, BE, GR, PT, ES, UK, IT, CZ	HU, IE		AUT, GR, PL, ES, NL, IT, RO, DE, TR	DK, FIN, FR
Authorisation for operation	AUT, BE, DK, GR, PT, ES, NL, IT	FIN, HU, IE, PL, UK, RO, CZ		AUT, FR, ES, IT	TR, DE
<b>Competitive Activities</b>					
<b>Generation</b>					
Planning approval	FR, GR, PT, UK, TR, IT, RO, CZ	BE, GR, TR		AUT, DK, IE, PL, IT, DE	FIN, HU, ES, NL
Authorisation for construction	BE, DK, FR, GR, PT, ES, UK, IT, CZ	GR, HU, IE, ES, TR		AUT, GR, PL, ES, NL, IT, RO, DE	FIN
Authorisation for operation	BE, DK, FR, GR, PT, ES, IT	GR, HU, IE, PL, ES, UK, RO, CZ		AUT, ES, IT, DE	FIN, NL, TR
<b>Supply</b>					
<b>Setting</b> prices for captive customers	BE, FR, ES, NL	BE, GR, IE, PL, PT, ES, TR, IT, CZ	RO (?)		AUT, DK, FIN, UK, DE
<b>Approving</b> prices for captive customers	BE, FR, GR, ES	DK, IE, PL, PT, ES, TR, RO, CZ		DE	AUT, FIN, UK
Market share / competition issues	GR, PL, ES, RO	BE, GR, IE, PL, PT, ES, UK, TR	DK, FIN, FR, IE, PL, PT, ES, NL, DE, CZ	ES, IT	AUT
Trading	FR, GR, ES, IT	GR, IE, (IT)	DK, NL, (IT), RO, DE	PL, ES, IT	AUT, BE, FIN, PT, UK, TR, CZ
Marketing & selling	ES	DK, PT, UK, IT	NL, IT, RO	PL, ES, RO, DE	AUT, BE, FIN, FR, PT, TR, CZ
Billing & collection	BE, ES	DK, FIN, HU, PT, NL, IT	RO, DE	PL, ES, RO	AUT, FR, PT, UK, NL, TR, CZ

**Source:** EURELECTRIC report on Regulatory Models in a Liberalised European Electricity Market (Ref.: 2004-030-0052) - Annex 3 table excerpt

The following table provides an example of the licensing of electricity sector activities in the UK.

**Table 2. Licensing of electricity sector activities in the UK** Source: OFGEM

<b>Type of Licence</b>	<b>Licensable activity permitted under the Electricity Act 1989</b>	<b>Any licences that cannot be held in conjunction</b>
Generation <sup>13</sup>	Allows the licensee to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be given.	Electricity Interconnector
Transmission <sup>14</sup>	Allows the licensee to participate in the transmission of electricity for the purpose of enabling a supply to be given.	Any other type of electricity licence
Interconnector <sup>15</sup>	Allows the licensee to participate in the operation of an electricity interconnector. Participating in the operation on an electricity interconnector is defined as: <ul style="list-style-type: none"> <li>• co-ordinating and directing the flow of electricity into or through an electricity interconnector, or</li> <li>• making such an interconnector available for use for the conveyance of electricity.</li> </ul>	Any other type of electricity licence
Distribution <sup>16</sup>	Allows the licensee to distribute electricity for the purpose of enabling a supply to be given. Electricity is distributed from the National Grid Network through a low voltage network of wires to customers.	Any other type of electricity licence
Supply <sup>17</sup>	Allows the licensee to supply electricity to premises. An electricity supply licence can be for supply to either: domestic <sup>18</sup> and non-domestic premises, or non-domestic premises only.	Electricity Distribution Electricity Interconnector