

INSTRUCTIONS FOR PREPARING A DOSSIER TO APPLY FOR AN ELECTRICITY SUPPLY PERMIT

1 October 2017

This document is a translation. In case of doubt, the Dutch or French version prevails.

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1 Who needs to be the holder of an electricity supply permit?

Article 2 of the Royal Decree of 2 April 2003 on the authorisation for the supply of electricity by intermediaries and on the rules of conduct applicable to them¹ (hereafter referred to as the Royal Decree of 2 April 2003) stipulates that for the supply of electricity by an intermediary to customers established in Belgium and connected to the transmission network or to a direct line with a nominal voltage higher than 70,000 volts, a permit is required.

The necessary conditions to subject a supply to a permit, are discussed below.

a) Firstly, the supply must be made by an intermediary.

Article 2, 15° of the Law of 29 April 1999 on the organisation of the electricity market² (hereinafter referred to as the Electricity Act) defines the term "intermediary" as "any natural or legal person who purchases electricity for the purpose of resale with the exception of a producer or a distribution network operator".

From the above definition, it can be surmised that a producer or a distribution network operator cannot be considered an 'intermediary'.

The exception for distribution network operators would appear to be logical. On the other hand, the exception for producers is peculiar given that producers, in addition to producing electricity, can also purchase electricity for resale and therefore exercise the activity of an intermediary.

Article 18 of the Electricity Act, pursuant to which the Royal Decree of 2 April 2003 was adopted, provides, inter alia, that the King, after an advice of the CREG:

- can subject the supply of electricity in Belgium, via the transmission network or direct lines by intermediaries and suppliers, to a procedure of authorisation or prior notification;
- can determine the rules of conduct applicable to intermediaries and suppliers.

The term "supplier" is defined in Article 1, 15°bis of the Electricity Act as "any legal or natural person supplying electricity to one or more final customers; the supplier produces or purchases the electricity sold to the final customers". So, the definition of the term "supplier" does not rule out the producer.

Pursuant to Article 18 of the Electricity Act, the King "may" therefore establish an authorisation procedure or a prior notification procedure for supplies via the transmission network or direct lines by intermediaries and suppliers. In other words, this means that the King can decide whether or not to set up an authorisation procedure, but if he does actually set up an authorisation procedure, he must do so for supplies via the transmission network or direct lines by intermediaries and suppliers. The same reasoning applies for the King's establishment of the rules of conduct applicable to intermediaries and suppliers. The King "may" adopt such rules, but if he determines them, they should

¹ Koninklijk besluit van 2 april 2003 betreffende de vergunning voor de levering van elektriciteit door tussenpersonen en betreffende de gedragsregels die op hen van toepassing zijn / Arrêté royal du 2 avril 2003 relatif aux autorisations de fourniture d'électricité par des intermédiaires et aux règles de conduite applicables à ceux-ci

² Wet van 29 april 1999 betreffende de organisatie van elektriciteitsmarkt / Loi du 29 avril 1999 relative à l'organisation du marché de l'électricité

apply to both intermediaries and suppliers. The CREG therefore assumes that it was indeed the legislator's intention to subject supplies by intermediaries as well as supplies by suppliers to authorisation, where appropriate. However, a royal decree cannot limit the scope of a law; pursuant to article 108 of the Constitution, the King may only implement the law without ever being allowed to suspend the law itself or grant exemption from its implementation.

In view of the above and the fact that it would be completely illogical to exempt producers who are also suppliers from the authorisation obligation, the CREG believes that both supplies by intermediaries and supplies by suppliers should be subject to authorisation.

b) Supply must be made to customers established in Belgium who are connected to the transmission network or to a direct line with a nominal voltage higher than 70 kV.

The term used in the Dutch version of the Royal Decree of 2 April 2003 "*die verbonden zijn met*" (who are attached to) is not sufficiently precise and leaves room for interpretation.

Considering the French version of the Royal Decree of 2 April 2003, where the used term is "*qui sont raccordés au*" (who are connected to), the CREG assumes that this refers only to customers who are directly connected to the transmission network or to a direct line whose nominal voltage is higher than 70,000 volts.

c) Supply must be to customers established in Belgium.

The term "customer" is defined in Article 2, 13° of the Electricity Act as "any final customer, intermediary or distribution network operator".

The term "final customer" is defined in Article 2, 14° of the Electricity Act as "any natural or legal person who purchases electricity for their own use".

In other words, an intermediary supplying electricity to a natural or legal person established in Belgium who buys electricity for their own use and who is connected to the transmission network or to a direct line with a nominal voltage higher than 70,000 volts is subject to authorisation.

The term "distribution network operator" is defined in Article 2, 11°, of the Electricity Act as "any natural or legal person designated by the competent regional authority as being responsible for operating, maintaining and, if necessary, developing the distribution network in a given zone and, where appropriate, for their interconnectors with other networks. They are also responsible for ensuring the long-term capacity of the network to meet reasonable demand for electricity distribution".

In other words, an intermediary supplying electricity to a distribution network operator established in Belgium which is connected to the transmission network or to a direct line whose nominal voltage is higher than 70,000 volts is subject to authorisation provided that they use the supplied electricity for "their own use", in particular for the purpose of complying with the public service obligations and ancillary services imposed on them. From this perspective, the distribution network operator should also be considered as an "final customer".

The term "intermediary" is defined in article 2, 15°, as "any natural or legal person who purchases electricity for the purpose of resale with the exception of a producer or a distribution network operator".

In principle, an intermediary supplying electricity to a natural or legal person established in Belgium who buys electricity for the purpose of selling it on, except a producer or a distribution network operator, who is connected to the transmission network or to a direct line with a nominal voltage higher than 70.000 volts, is subject to authorisation.

However, the problem is that for its activity as an intermediary, in particular the resale of electricity, an intermediary does not require connection (to a network or a direct line). Only the customers of the intermediary who are final customers are connected to a network or a direct line.

As long as intermediaries are not connected to a network or direct line for their activity as intermediaries, no permit is required to supply them.

In other words, an intermediary supplying electricity to another intermediary is not subject to authorisation.

Conclusion

In conclusion, it can therefore be stated that the supply of electricity by an intermediary or supplier to final customers established in Belgium who are directly connected to the transmission network or to a direct line with a nominal voltage higher than 70,000 volts requires a permit.

2 Award procedure

2.1 CONDITIONS AS REGARDS PLACE OF ESTABLISHMENT

Article 4 of the Royal Decree of 2 April 2003 stipulates that the permit can only be applied for by a natural or legal person established in one of the States that are part of the European Economic Area.

The States which are part of the European Economic Area (EEA) are the following:

- Belgium (EU)
- Bulgaria (EU)
- Cyprus (EU)
- Denmark (EU)
- Germany (EU)
- Estonia (EU)
- Finland (EU)
- France (EU)
- Greece (EU)
- Hungary (EU)
- Ireland (EU)
- Iceland (EFTA)
- Italy (EU)
- Croatia (EU)
- Latvia (EU)
- Liechtenstein (EFTA)

- Lithuania (EU)
- Luxembourg (EU)
- Malta (EU)
- Netherlands (EU)
- Norway (EFTA)
- Austria (EU)
- Poland (EU)
- Portugal (EU)
- Romania (EU)
- Slovenia (EU)
- Slovakia (EU)
- Spain (EU)
- Czech Republic (EU)
- United Kingdom (EU)
- Sweden (EU)

2.2 TO WHOM SHOULD THE APPLICATION BE ADDRESSED AND IN HOW MANY COPIES?

The application must be sent by registered letter with acknowledgement of receipt to:

CREG
For the attention of Mr. Andreas Tirez
Directorate for the technical operation of the markets
Rue de l'Industrie 26-38
1040 Brussels

The application must be signed and dated by the applicant or their authorised representative. The authorisation of the person(s) signing the application must be presented, in particular the documents proving the signature authority of the signatories to the application. These may include the company's articles of association, an extract from the Belgian Official Journal or a written power of attorney.

The application must be submitted by the applicant in triplicate. If necessary, the CREG may request additional copies.

2.3 THE CONTENT OF THE APPLICATION FILE

2.3.1 The identity of the applicant, their full address and, where appropriate, the address where the operation will take place in Belgium; the applicant's articles of association if it is established in the form of a legal person, or the draft articles of association of the legal person to be set up.

With regards to applications for a permit to supply electricity for a legal entity which still needs to be set up, the CREG refers to article 60 of the Companies' Code, which states that (free translation): "Unless otherwise agreed, those who have entered into an obligation in any capacity, on behalf of a company being incorporated and before it has acquired legal personality, are jointly and severally liable, except where the company, within two years of the date on which the obligation was entered

into, has filed the extract referred to in Article 68 [extract from the deed of incorporation] and, in addition, has taken over this obligation within two months of such filing. In the latter case, the obligation shall be deemed to have been entered into by the company from the beginning".

In the context of such an application, the CREG considers it desirable to stipulate in the supply permit that the definitive details should be communicated to it as soon as the company is established (definitive articles of association, financial and management structure, etc.) so that the CREG can check whether these differ from the originally supplied details. If so, in accordance with article 12 of the Royal Decree of 2 April 2003, the CREG may, where appropriate, propose a suspension, review or revocation of the permit to the Minister.

2.3.2 The general and technical information regarding the applicant's organisation which should allow the CREG to assess whether the applicant is able to meet the award criteria.

The applicant should bear in mind that it must demonstrate or prove that it is able to comply with the commitments and obligations referred to in article 3 of the Royal Decree of 2 April 2003.

An applicant who is already active as an intermediary or supplier will be able to refer to their existing activities. However, an applicant who has not yet developed its supply activities will, where appropriate, be required to indicate the measures it intends to take to comply with the commitments and obligations.

For example, the application file must demonstrate that the applicant fulfils the following award criteria:

- 1) the applicant must demonstrate that it has sufficient resources to:
 - a) meet its financial obligations towards its producer, distributor, intermediary or customer, as well as towards the network operator and the public authorities;
 - b) ensure compliance with the public service obligations which it is entrusted to provide;
 - c) comply with the Grid Code;
- 2) in order to ensure a secure, reliable and efficient supply of electricity to the customers of the permit applicant and use of the transmission network, the applicant needs to demonstrate that it has:
 - a) sufficient staff with experience in the area of electricity supply;
 - b) a management structure as well as an administrative and accounting organisation which is suited to the activities it will carry out;
- 3) the permit applicant undertakes to have sufficient capacity and energy to supply their customers in accordance with the technical regulations and the contracts concluded and/or yet to be concluded with their customers, and to ensure compliance with the public service obligations imposed on them.

Remarks

Applicants will need to indicate or estimate here how much electricity they supply, or will supply, to customers connected to the transmission network or to a direct line with a nominal voltage

higher than 70,000 volts. In addition, they will need to indicate where they will obtain this electricity, taking into account the available import capacity of Belgium.

If they wish to purchase electricity from the Belgian hub, they will need to prove that they are entitled to do so, or will be.

In the context of the applicant's reasoning regarding the award criteria, the application file needs to include at least the following information:

- 1) a certified copy of the approved annual accounts for the last three financial years filed with the clerk of the Commercial Court and the Balance Sheet Office of the National Bank or any equivalent body abroad, if available;

Remarks

The applicant, if they are a Belgian company, must provide a copy of the filed statutory annual accounts for the last three financial years, if available, requested from the National Bank - references of the National Bank must be given. The documents to be filed with the National Bank comprise: the approved annual accounts, the annual report and the auditor's report. If the annual accounts requested from the National Bank are not numbered sequentially per page, the annual accounts included in the application file must be accompanied by a separate appended (original) document, in which it is certified by a person/persons who can legally bind the company.

- 2) a forecast of the balance sheets and accounts for the next five years;
- 3) a written declaration in which the applicant undertakes to comply with the Grid Code³;

Remarks

The declaration must be dated and signed by the applicant.

- 4) an accounting plan;
- 5) a detailed staff plan with organigram;
- 6) an overview of the measures taken to ensure the confidentiality of commercial data.

³ Koninklijk besluit van 18 december 2002 houdende een technisch reglement voor het beheer van het transmissienet van elektriciteit en de toegang ertoe / Arrêté royal établissant un règlement technique pour la gestion de réseau de transport de l'électricité et l'accès à celui-ci

2.4 A SCHEMATIC PRESENTATION OF THE AWARD PROCEDURE

