

Pawel Lont
Gas Committee Chair
Energy Traders Europe

Mr. George Niculescu
President

Autoritatea Națională de Reglementare în Domeniul Energiei (ANRE)

Subject: Potential Infringement of EU Law and Distortion of the Level Playing Field by ANRE Order No. 83/2025

22 April 2026

Dear Mr Niculescu,

On behalf of **Energy Traders Europe**, the representative body for energy traders across the European Union, I am writing to share our perspective regarding the revised licensing framework introduced by **ANRE Order No. 83/2025** that entered into force in January 2026.

Our members, as participants in the Romanian energy market, have consistently operated within the regulatory framework established by ANRE and remain committed to contributing to a transparent and stable energy sector. It is in the interest of maintaining this market's functionality that we wish to highlight several practical and legal challenges arising from the new Order. While we recognise ANRE's mandate to ensure high standards of market supervision, we believe that certain requirements regarding local infrastructure and staffing create barriers to entry and affect the level playing field for European market participants.

As we understand it, Order No. 83/2025 introduces several significant requirements for obtaining and maintaining natural gas trading and supply licenses in Romania. Notably, certain provisions could be interpreted as introducing the following requirements:

1. **Mandatory Local Presence:** The requirement for a permanent physical point of contact within Romania (which may also expose companies to being considered a taxable permanent establishment).
2. **Local Staffing Obligations:** The mandate to employ at least three individuals under Romanian employment contracts with specific sector experience.
3. **Financial Criterium:** A financial capacity requirement of EUR 200,000.

4. **Compliance Timeline:** A six-month transition period for existing license holders to align with these new criteria.

While our members respect ANRE's role as the national regulator and share the objective of maintaining market integrity, a legal analysis indicates that these requirements create systemic barriers to the Internal Energy Market and might therefore be in breach of the Treaty on the Functioning of the European Union (TFEU). These measures do not merely regulate the market; they fundamentally alter the conditions of competition that contradicts the European Union's legal acquis.

In the following sections, we outline the incompatibility of these measures with the TFEU, the distortion of the level playing field, and the conflict with the Gas Directive.

I. Breach of Fundamental Freedoms and the Proportionality Principle

The mandate for a permanent physical point of contact and the compulsory employment of three individuals under Romanian labour contracts constitute a direct restriction on the **Freedom to Provide Services (Art. 56 TFEU)** and the **Freedom of Establishment (Art. 49 TFEU)**.

1. **De Facto Requirement for Establishment:** Under the settled case-law of the Court of Justice of the European Union, CJEU – notably *Säger v Dennemeyer*, C-76/90 – national measures that make the provision of services subject to the requirement of establishment in the host Member State are prohibited. By requiring local infrastructure and local contracts for trading, an activity that is inherently digital and centralised, ANRE is imposing a "de facto" establishment requirement.
2. **Failure of the Proportionality Test:** Any restriction on EU freedoms must be suitable, necessary, and the least restrictive means to achieve a legitimate public interest (*Gebhard*, C-55/94).
 - o **Suitability:** Physical presence and local contracts do not inherently improve market oversight (which is the underlying reason for a licensing regime).
 - o **Necessity:** Market integrity is already fully guaranteed through the REMIT¹ transparency framework and the administrative cooperation between national regulators via ACER.

¹ Moreover, most EU Member States require only a simple registration for trading – a process recently harmonised under REMIT II – rather than a full licensing regime with burdensome requirements.

- **Proportionality:** Requiring three local experts with specific seniority is an arbitrary threshold that ignores the reality of modern energy trading, where technical expertise and risk management are managed via group-level, cross-border resources.

II. Distortion of the Level Playing Field and Market Fragmentation

Order 83/2025 creates a discriminatory market structure that penalises entities based on their administrative origin.

- **Discriminatory Impact of Indirect Establishment:** For domestic Romanian firms, these requirements align with their existing structure. For a cross-border trader, they act as an "entry prohibition". Forcing an EU trader to replicate its infrastructure in Romania creates an excessive burden that grants an unfair competitive advantage to local incumbents.
- **The Problem of Passporting Asymmetry:** Although the Romanian framework allows for the recognition of licenses from other Member States ("passporting"), which can technically provide a route to bypass these local requirements. However, as we understand it passporting is only allowed for licenses obtained in the country of legal establishment of a company, hence it still creates a **secondary distortion**:
 - **Exclusion of License-Free Jurisdictions:** Several EU Member States (such as Luxembourg² or Malta) do not require a specific license for gas trading. Operators from these jurisdictions are therefore legally unable to utilise the "passporting" workaround.

Consequently, these traders are left with no choice but to comply with the disproportionate local requirements or exit the market. This fragments the Single Market and reduces competition.

III. Incompatibility with Directive (EU) 2024/1788

Article 3(3) of the Gas Directive explicitly prohibits Member States from creating "undue barriers" to cross-border gas trading. Furthermore, Article 77(c) mandates that NRAs must work toward eliminating trade restrictions between Member States.

The cumulative effect of the Order serves to "re-nationalise" the Romanian market. This discourages the entry of specialised liquidity providers, reduces the number of

² In Luxembourg the Institut Luxembourgeois de Régulation (ILR) only issues a trading authorisation, not a license which would hence negate the option to use passporting.

market participants, and ultimately hampers price discovery to the detriment of Romanian consumers.

Proposed Next Steps

Energy Traders Europe remains committed to supporting a competitive and integrated European market. To ensure that the Romanian regulatory framework remains fully aligned with the EU Acquis while meeting ANRE's supervisory objectives, we respectfully propose the following:

- **Constructive Regulatory Review:** A temporary suspension of the specific requirements regarding local staffing and physical presence, followed by a review to align Order 83/2025 with the principles of the Freedom to Provide Services for EU-established entities.
- **Recognition of Equivalent Oversight:** An acknowledgment that technical and financial capacity may be effectively demonstrated through group-level resources and existing EU-level transparency frameworks, such as REMIT.

We would welcome the opportunity to discuss these points in **a bilateral meeting and look forward to your perspective by 22 May 2026**. While we are eager to find a mutually beneficial solution through proactive dialogue, we must emphasise the urgency of this matter. With the compliance deadline of June 2026 fast approaching, our members already operate as if the Order was fully implemented, thereby incurring **significant costs and resource commitments**.

Our members therefore require immediate legal certainty to make informed operational and investment decisions regarding their presence in the Romanian market.

In the interest of maintaining market stability, we must ensure these concerns are addressed at the appropriate institutional levels without delay. Should a constructive path forward not be established by the aforementioned date, we would feel compelled to seek further guidance from the Romanian Ministry of Energy and the European Commission to ensure the continued integrity of the Internal Energy Market.

Yours sincerely,

Pawel Lont

Gas Committee Chair
Energy Traders Europe