



**Assessment of Procedure for registration of
wholesale energy market participants approved by
the National Energy and Utilities Regulatory
Commission**

by the Energy Community Secretariat

April, 2024

PURPOSE STATEMENT

Assessment of the Procedure for registration of wholesale energy market participants, approved by the Resolution of the National Energy and Utilities Regulatory Commission No. 1812 of 04 October 2023 according to the Law of Ukraine “On Amendments to some laws of Ukraine regarding the prevention of abuse in the wholesale energy markets” (hereinafter - the “REMIT Law”).

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Ukraine Energy Market Observatory

Assessment 7/24

Assessment of Procedure for registration of wholesale energy market participants approved by the National Energy and Utilities Regulatory Commission

Introduction

The REMIT Law which transposed into Ukrainian legislation provisions of the Regulation of the European Parliament and Council (EU) No. 1227/2011 of October 25, 2011 on wholesale energy market integrity and transparency (hereinafter, REMIT Regulation)¹, amended, among others, Law of Ukraine “On electricity market”² and Law of Ukraine “On natural gas market”³ with the provision requiring that only persons who are registered as participants in the wholesale energy market in accordance with the procedure approved by the National Energy and Utilities Regulatory Commission (hereinafter “NEURC”) have the right to carry out transactions with wholesale energy products. NEURC shall approve the Procedure for registration of participants in the wholesale energy market within three months and ensure functioning of the Register of WEM participants (hereinafter “the Register”) within six months from the date of entry into force of REMIT Law.

NEURC developed the draft Procedure for registration of wholesale energy market participants (hereinafter, the Procedure) and published it for public consultations⁴ in July 2023. NEURC also requested the Secretariat to provide a compliance assessment of the draft Procedure with the REMIT Regulation. The Secretariat provided comments and recommendations⁵ to the draft Procedure, which were largely addressed in the approved Procedure⁶. In January 2024 NEURC amended the Procedure upon consultations with the Secretariat.

The present assessment follows the adoption of the Procedure and the amendments thereof⁷. The assessment summarizes the main provisions of the Procedure in order to provide general insight into the new regulatory requirements as regards entering into transactions with wholesale energy products in Ukraine to the international stakeholders (especially participants from the Energy Community Contracting Parties and the EU Member States).

¹ As adapted and adopted in the Energy Community

² Article 8¹

³ Article 9¹

⁴ <https://www.nerc.gov.ua/news/oprilyudnyuyetsya-proyekt-postanovi-poryadok-reyestraciyi-uchasnikiv-optovogo-energetichnogo-rinku>

⁵ Letter by Energy Community Secretariat of August 3, 2023, provided comments are summarized in the Annex to this assessment

⁶ Resolution of NEURC No.1812 of 04 October 2023.

⁷ <https://www.nerc.gov.ua/acts/pro-zatverdzhennya-poryadku-reyestraciyi-uchasnikiv-optovogo-energetichnogo-rinku>

Disclaimer: the present assessment is prepared only for information purposes. For the purpose of registration as wholesale energy market (hereinafter “WEM”) participant in Ukraine, the official legal act of NEURC shall be used.

Procedure for registration of WEM participants

The Procedure provides:

- 1) conditions and procedure for registration of WEM participants;
- 2) requirements for establishing and updating the NEURC’s register of WEM participants;
- 3) exchange of information from the national (Ukrainian) register with the ECRB for compiling the central register of WEM participants in the Energy Community Contracting Parties.

According to the Procedure, in order to be registered as WEM participant, the person intending to carry out transactions with wholesale energy products shall submit registration form to NEURC in Ukrainian and English as prescribed by the Procedure⁸.

The NEURC’s registration form is largely based on the registration format adopted by the decision of Agency for the Cooperation of Energy Regulators (ACER) No.01/2012⁹, with some adaptations to the Energy Community *acquis*. NEURC registration form goes beyond the minimum requirements of ECRB Procedural Act 01/2020 and requires information on corporate structure of the market participant and related undertakings¹⁰ who are WEM participants as required by the ACER. Those WEM participants that are registered before 1 April 2024 shall update the registration form with the information on the final beneficial owners (controllers), related¹¹ WEM participants and insider information platforms until 1 August 2024.

The means of submitting the registration form are specified separately for residents of Ukraine and non-residents. In particular the Procedure allows two approaches for registration for non-residents, to submit electronic registration form with electronic signature or to use registration form in paper and submit it in person or by post. Resident shall submit registration form only electronically. Details may be found on the REMIT dedicated page of the NEURC’s web-site¹² where information on registration is also available in English language.

NEURC registers the WEM participant by assigning to it an ECRB code within 10 working days, subject to correctness and completeness of the information in the registration form.

The registry of WEM participants is established by NEURC in Ukrainian and English language. In case of registration of a new WEM participant in the Register, the published part of the Register on the NEURC’s web-site is to be updated no later than 3 working days.

⁸ The template of registration form approved as an attachment to the Procedure

⁹ https://www.acer.europa.eu/General%20Decisions/ACER%20Decision%2001-2012_2.pdf

¹⁰ As defined by the Tax Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/2755-17#Text>

¹¹ Related – in the meaning of Tax Code of Ukraine

¹² <https://www.nerc.gov.ua/dobrochesnist-ta-prozorist-remit/revestraciya-uchasnikiv-optovogo-energetichnogo-rinku>

Information from the national register of WEM participants shall be submitted to the ECRB¹³ and updated no later than 3 working days after any change. The central register of WEM participants in the Energy Community Contracting Parties shall be updated accordingly.

Requirements for market participants (including non-residents)

According to the Resolution No.1812, as of 1 April 2024, only persons registered as WEM participants may enter into transactions with wholesale energy products¹⁴. The registration requirements are summarized on Figure 1.

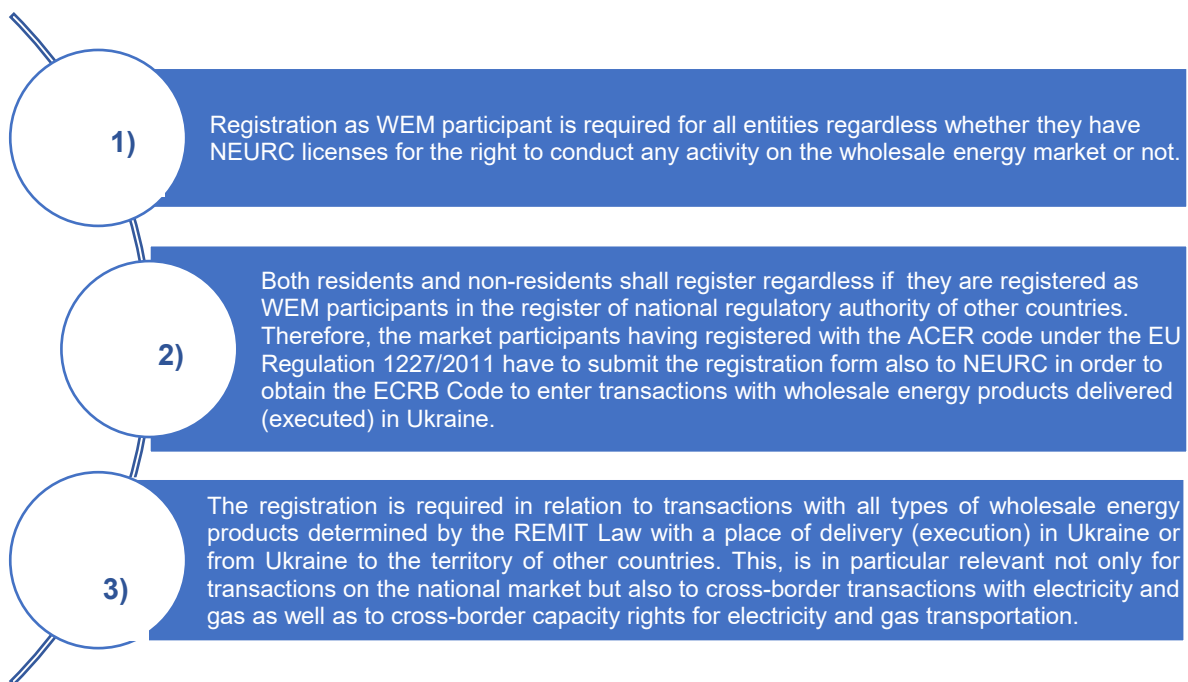


Figure 1. WEM participant registration requirements

It needs to be noted that, among other reasons¹⁵, registration of WEM participants may be refused in case an entity is controlled by the residents of states carrying out armed aggression against Ukraine.

The WEM participants are obliged to update the information in the registration form no later than 10 working days after any changes to the information specified in the registration form, were information on ultimate controllers (beneficiaries) shall be updated within 30 calendar days from the date of changes.

¹³ as required by the ECRB Procedural Act 01/2020

¹⁴ According to the REMIT Law: wholesale energy products - contracts (agreements) regardless of the place and time of their conclusion, in particular: electricity or natural gas purchase and sale contracts; derivative contracts whose underlying asset is electricity or natural gas; contracts for transmission of electric energy or transportation of natural gas, access to capacity/capacity allocation; derivative contracts for electricity transmission or natural gas transportation, access to capacity/capacity allocation; contracts for the supply or distribution of electric energy and/or natural gas to final consumers with the total nominal consumption capacity of the consumer's installations, which ensures the technical capacity of consumption of electric energy or gas in the amount of 600 GWh per year and above

¹⁵ For example, non-submission of all information required by the registration form

Establishment of the national registry of WEM participants in Ukraine

According to NEURC Resolution No.1812, the registration procedure enters into force as of 15 October 2023. Any person wishing to obtain the ECRB code may submit the registration form to NEURC starting from that date.

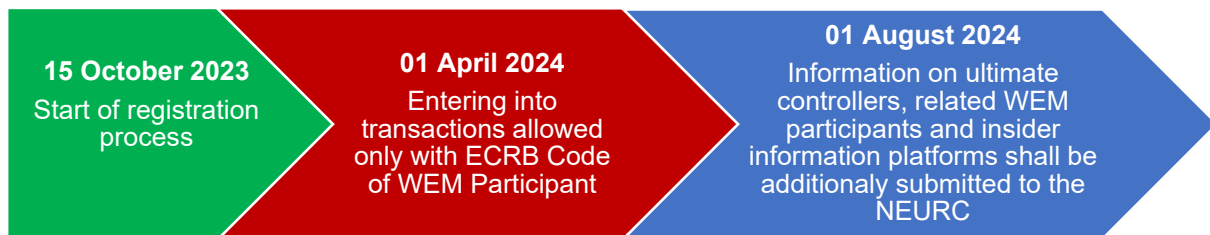


Figure 2. Timeline for establishment of the national registry

To streamline the registration process for existing market participants, NEURC recommended its licenses in the field of energy which already carry out transactions related to wholesale energy products in Ukraine to submit a registration form in accordance with the schedule attached to the resolution.

Conclusions

With the adoption of the Procedure, the practical implementation of REMIT Law and REMIT Regulation starts in Ukraine.

The requirement to be registered by the NEURC as WEM participant with the ECRB code shall be acknowledged by existing market participants as well as by those who intend to enter into transactions with wholesale energy products delivered (executed) in Ukraine as of 1 April 2024. It shall be also taken into account by persons professionally arranging transactions when performing their functions (e.g. organized trading of electricity or gas, cross-border capacity allocation, balancing etc.) and interactions with their clients.

Annex

Summary of the comments provided by the Secretariat to the draft Procedure

The Secretariat recommended the following improvements to the draft Procedure, in particular:

- to count on non-resident market participants (e.g. from Energy Community and EU Member States) in setting the requirements as regards provision of data and documents for registration purposes. In particular, the requirement to provide the electronic signature, issued in line with the national legislation, may represent a problem for the non-resident traders, due to the obstacles stemming from relevant legislation;
- to complete the list of market participants required to be registered before entering into transaction with the wholesale energy products with the persons (including non-residents) who conclude or apply for the conclusion of contracts relating to the transportation of electricity or natural gas in Ukraine (as required by the REMIT Regulation), as well as derivatives relating to electricity or natural gas, or their transportation (as required by the REMIT Law);
- to specify requirement for market participants to submit the registration form to the NEURC prior to entering into a transaction with wholesale energy products (as provided in Art.9(4) of REMIT Regulation);
- to design a registration process not requiring the decision of Regulator according to the formal procedure;
- design the registration procedure to ensure more frequent (than once a month) update of the national register of wholesale market participants in order to keep it up to date and transmit relevant information to Energy Community Regulatory Board (hereinafter ECRB) as required by the Article 9 of the REMIT Regulation;
- to align templates of register of wholesale market participants and registration form with the requirements of the ECRB Procedural Act No 1/2020¹⁶ on cooperation and coordination of Contracting Parties' national regulatory authorities under Regulation 1227/2011 on wholesale energy market integrity and transparency (without prejudice to information required in the register format developed by the Agency for the Cooperation of Energy Regulators under Article 9(3) of Regulation No 1227/2011);
- form of information exchange with market participants (proposed via email) needs to ensure information security. Ideally, NEURC needs to have an interface for a portal of data submission on its own website.

¹⁶ https://energy-community.org/dam/jcr:07a15679-d2f7-41d8-94be-8b3ca9507377/ECRB_PA_%2001_2020.pdf