

ENERGY REGULATORY OFFICE
DEPARTMENT OF LIQUID FUELS MARKETS

INFORMATION PACKAGE

FOR COMPANIES INTENDING TO CONDUCT BUSINESS ACTIVITIES
IN THE FIELD OF
FOREIGN TRADE IN LIQUID FUELS

WARSAW, July 2021

GENERAL INFORMATION

Pursuant to Article 32 item 1 section 4 subsection a of the Energy Law Act of 10 April 1997 – (Journal of Laws of 2021, item 716, as amended), business activity in the area of, among others, trading in liquid fuels (including foreign trading in liquid fuels), requires securing a licence, excluding trading in liquefied gas, if an annual value of trading does not exceed an equivalent of EUR 10,000.

According to Article 3 section 6 of the Energy Law Act trade is defined as business activity consisting in wholesale or retail trading in fuels or energy.

Pursuant to the provisions of the Ordinance of the Minister of State Assets dated 27 November 2019 on a specification of liquid fuels whose generation, storage or reloading, transmission or distribution, trading, including foreign trading, requires a licence and whose imports requires entering into a register of importers (Journal of Laws item 2332), amended by the Ordinance of the Ministry of Climate 7 August 2020 amending the ordinance on a specification of liquid fuels whose generation, storage or reloading, transmission or distribution, trading, including foreign trading, requires a licence and whose imports requires entering into a register of importers (Journal of Laws 2020 item 1431), **foreign trading in liquid fuels labelled with the following CN codes requires obtaining a licence:**

- 1) **Refinery semiproducts:** 2707 50 00, excluding products intended for purposes other than heating, propelling or shipping, 2710 12 11, 2710 12 15, 2710 19 11, 2710 19 15, 2710 19 31, 2710 19 35, 2710 19 51, 2710 19 55;
- 2) **Liquid petroleum gas LPG:**
 - a) 2711 12, 2711 13, 2711 14 00, 2711 19 00,
 - b) 2901 10 00, excluding products intended for purposes other than heating, propelling or shipping
- excluding propane-butane mixtures obtained in ore fluids treatment
- 3) **Heavy gasoline:** 2710 12 11, 2710 12 15;
- 4) **Engine petrol:** 2710 12 25, excluding white spirits and industrial spirits, 2710 12 41, 2710 12 45, 2710 12 49, 2710 12 50, 2710 12 90, 2207 20 00, excluding denatured ethyl alcohol and other denatured alcohol products intended for purposes other than heating, propelling or shipping;
- 5) **Aviation petrol:** 2710 12 31;
- 6) **Gasoline type jet fuels:** 2710 12 70;
- 7) **Naphta type jet fuels:** 2710 19 21;
- 8) **Diesel oils:** 2710 19 43, 2710 20 11;
- 9) **Light heating oils:** 2710 19 46, 2710 19 47, 2710 19 48, 2710 20 16, 2710 20 19;
- 10) **Heavy heating oils:** 2707 99 19, 2707 99 91, 2707 99 99, 2710 19 62, 2710 19 66, 2710 19 67, 2710 20 32, 2710 20 38, 2710 20 90;
- 11) **Liquid biofuels:**
 - a) 3826 00 10, excluding methyl esters which are additions to liquid fuels,
 - b) Liquid biofuels other than listed under a), regardless of the CN code, excluding liquid biofuels which are additions to liquid fuels.

The binding classification of the Combined Nomenclature (CN codes) is specified in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (EU OJ L 256 of 7 September 1987, p. 1). A review of this nomenclature is also available from the website of the Ministry of Finance: isztar.mf.gov.pl

I hereby inform you that the object and the scope of licence can specify only and exclusively those types of liquid fuels and only those CN codes, which are relevant to liquid fuels being in fact the object of licenced activities of an entrepreneur.

Moreover, the object and the scope of licence must be relevant to the character of the licenced activities performed by an entrepreneur, i.e. whether the activity performed by an concessionaire is based on fuels trading exclusively on the fuel station or whether just by the use of means of transport to transport fuels or rather an entrepreneur in close transactions exclusively performs as an intermediary, that is performing business activities without any technical infrastructure, and only relying on the so called „pure trading rule”.

Conditions which should be met by a future Licence Holder

Entrepreneurs applying for a licence for foreign trading in liquid fuels must meet the premises for obtaining it specified in Article 33 item 1 and 1b of the Energy Law Act. Pursuant to these provisions, the President of ERO grants a licence to an applicant that:

- 1) has its registered offices or place of residence in the territory of the European Union Member State, Swiss Confederation or a member state of the European Free Trade Agreement (EFTA) – a party to the European Economic Area agreement, or Turkey;
- 2) has sufficient financial means to ensure the correct performance of its activity or is capable of documenting the ability to acquire the same;
- 3) has the technical capabilities ensuring the correct performance of its activity (if the applicant foresees utilization of infrastructure);
- 4) will guarantee that it will employ staff with the adequate professional qualifications (if required);
- 5) has obtained a decision on the conditions of land development (an outline planning permission) (if the applicant was obliged to obtain such a decision under separate provisions);
- 6) is in no arrears with payment of taxes which constitute income of the state budget, except for cases when the applicant obtained tax release, deferral, rescheduling the payment of tax arrears or tax on instalments or withholding the execution of a decision issued by a relevant tax authority or fiscal control body, as stipulated by the legal provisions in force;
- 7) has its registered offices or place of residence in the territory of Poland and purchases liquid fuels for the purposes of conducting business activity in the territory of Poland, or conducts business activity in the territory of Poland as a branch with a seat in the territory of Poland, established under terms and conditions specified in the Act of 6 March 2018 on the rules of participation of foreign entrepreneurs and other foreign persons in the economic trade on the territory of Poland (Journal of Laws of 2021, item 994, as amended), and purchases liquid fuels for the needs of conducting business activity by this branch;
- 8) has established collateral referred to in Article 38a of the Energy Law Act;
- 9) is registered as a VAT payer, pursuant to Article 97 of the VAT Act of 11 March 2004 (Journal of Laws of 2021, item 685, as amended);
- 10) holds liquid fuels storage installations or has entered into a preliminary agreement referred to in Article 10 or Article 11 of the Act of 16 February 2007 on stocks of crude oil, petroleum products and natural gas, and on procedures applicable in circumstances of a threat to fuel security of the state and disruptions on the petroleum market (hereinafter: “Act on Stocks”);

Journal of Laws of 2020, item 411, as amended), guaranteeing maintenance of obligatory reserves of crude oil or fuels, in compliance with the scope of the conducted licensed activity.

Pursuant to Article 38a item 1 of the Energy Law Act, **granting a licence for foreign trade in liquid fuels requires the applicant to establish collateral of PLN 10,000,000** in order to secure receivables which have arisen or may arise in relation with the conducted activity, provided for in this legal regulation.

The collateral shall be established at the Head of the Customs Office, in one of the following forms:

- 1) a bank or insurance guarantee, while a guarantor may be a person entered into a register of guarantors referred to in Article 52 of the Customs Law Act of 19 March 2004 (Journal of Laws of 2020, item 1382, as amended); a current list of guarantors is available from the website of the Ministry of Finance: <http://www.mf.gov.pl/web/wp/clo/wykaz-gwarantow-celnych>;
- 2) bank suretyship, while a surety may be a person entered into the above mentioned list of guarantors;
- 3) a promissory note with a bank's aval;
- 4) a cheque confirmed by a national bank of the cheque issuer;
- 5) a registered pledge on the rights arising under securities issued by the State Treasury of the national Bank of Poland – according to their face value;
- 6) an irrevocable authorization made in writing by the head of the Customs Office, confirmed by a bank or a cooperative credit and savings union, to exclusively dispose of funds accumulated on a term deposit account.

Collaterals referred to in points 1, 2 and 6 shall be drawn up according to templates determined in Ordinance of Minister of Development and Finance of 12 April 2017 on templates for bank and insurance guarantees, suretyship and authorization to exclusively dispose of deposit account, established as collaterals on account of granting a licence for production of liquid fuels or licence for foreign trade in liquid fuels (Journal of Laws of 2017, item 821).

In addition, **a condition for granting a licence for foreign trading in liquid fuels is holding a licence for trading in liquid fuels.**

Circumstances preventing securing the licence

Pursuant to Article 33 item 3 of the Energy Law Act, the licence cannot be issued to the applicant:

- 1) that is in the course of bankruptcy or liquidation proceedings;
- 2) whose licence for the activity specified in the Act was revoked within the last three years for the reasons specified in Article 41 item 3 of the Energy Law Act or who within the last 3 years was deleted from the regulated activity register because of decision prohibiting the applicant from activities specified in the register entry due to:
 - a) submitting a declaration on compliance with legal requirements for conducting the activity, which was inconsistent with facts, or
 - b) non-remedying a breach of legal requirements for conducting the activity within the deadline specified by the authority, or
 - c) flagrant breach of legal requirements for conducting the activity;
- 3) convicted for a crime or fiscal crime related to the business activity conducted with a valid court decision;

- 4) that is not registered as VAT payer;
- 5) (repealed)
- 6) if another entity having a significant material impact on it or exercising or co-exercising control over it, within the meaning of Article 3 item 1 sections 34, 35 and 36 subsections a, b, e and f of the Accounting Act of 29 September 1994 (Journal of Laws of 2021, item 217), hereinafter referred to as “the Accounting Act”, within the last 3 years was convicted with a valid court decision for a crime or fiscal crime related to the business activity conducted, as determined in the Act, excluding section 7
- 7) in the case of a licence to perform business activity in the field of liquid fuels, if another entity having a significant material impact on it or exercising or co-exercising control over it, within the meaning of Article 3 item 1 sections 34, 35 and 36 subsections a, b, e and f of the Accounting Act of 29 September 1994 within the last 3 years was convicted with a valid court decision for a crime or fiscal crime related to the business activity conducted.

In the case of an applicant which is a legal person or an organizational unit without legal personality, or a foreign entrepreneur, or a foreign entrepreneur conducting activity in the territory of the Republic of Poland as a branch with a registered office in the territory of the Republic of Poland, established under the terms and conditions specified in the Act on the rules of participation of foreign entrepreneurs and other foreign persons in the economic trade on the territory of Poland, the condition referred to in section 3 also applies to persons authorized to represent them and members of supervisory boards.

It should also be borne in mind that pursuant to Article 33 item 3c of the Energy Law Act the President of ERO shall suspend the licence granting proceedings in case of an applicant with respect to which a decision was issued to present charges of committing a crime or a fiscal crime related to the business activity it conducts, or when such a decision was issued with respect to persons and members referred to in Article 33 item 3a until the preparatory and court proceedings are completed.

Promise of licence

Pursuant to Article 43 item 1 of the Energy Law Act, each person who intends to conduct activity involving, among others, trading in liquid fuels, which is subject to licensing, may apply for a promise of licence which is a form of a promise to grant a licence. The licence validity term specified in the promise may not be shorter than six months (Article 43 item 3 of the Energy Law Act). During the promise validity term, granting a licence for the activity specified in the promise cannot be denied unless the factual or legal status specified in the application to issue the promise has changed (Article 43 item 4 of the Energy Law Act). **The promise of licence does not give the right to conduct business activity** in the scope which requires the licence. Therefore, licensed activity involving foreign trading in liquid fuels may not be performed under a promise. The promise may, however, be the document which makes it easier for the company to acquire financing for the planned investment project and also to secure the licence in the future because the entrepreneur must gather the specified documents applying for the promise of licence. More details on this may be found below.

Modification and extension of the granted licence

Entrepreneurs applying for the modification of the licence should attach to the application documentation on the subject of change to the issued decision. Modifications to the licence in principle can be divided into two types, i.e. concerning formal legal situation of the licensee (e.g. change of the name, registered office address or company's partners, etc.) and concerning change in the scope of activity, which is associated with technical capabilities available to the licensee (e.g. intention to extend the scope of a licence to include a new type of fuel). In both cases, the Licensee shall provide relevant documents and explanations to support its application.

It should be highlighted that pursuant to Article 37 item 2c of the Energy Law Act, in the case of a change of the data referred to in Article 37 item 1 sections 1 and 7 of the Act (that is the designation of the entity, its registered office or place of residence and their address, the number assigned in the Register of Entrepreneurs kept by the National Court Register, provided that the entrepreneur has such a number, or a number of an equivalent register of the Member States of the European Union, Swiss Confederation, Member State of the European Free Trade Agreement (EFTA) – a party to the agreement on the European Economic Area, or Turkey, and the tax identification number - NIP), the energy company **shall apply for a modification of the licence not later than within seven days of the occurrence of these changes**. Documents confirming such modifications shall be attached to the application.

Pursuant to Article 39 the Energy Law Act, an entrepreneur should submit an application for an extension of the licence not later than 18 months before its expiration date. Extension of the licence is equivalent to recognition by the licensing authority that the entrepreneur meets specified conditions for the exercise of the licensed activity. This involves the necessity to examine whether the company which has applied for an extension of the licence still meets conditions for exercising activities covered by the licence, specified in Article 33 of the Energy Law Act and if the formal legal status has not changed.

After the expiration of the abovementioned deadline for submitting the application for an extension of a licence, an entrepreneur intending to continue the activities covered by the licence shall apply for reissuing the licence. It is important to note that such a request should be submitted in time allowing to process it and issue a decision on granting a new licence before the expiration date of the previous licence in accordance with the terms set out in the Act on the Administrative Proceedings Code of 14 June 1960 (Journal of Laws of 2021, item 735), hereinafter referred to as the "Administrative Proceedings Code".

Preparing the application

When preparing the application to grant a licence (promise of licence), the applicant should be aware of the fact that the more completely the application is prepared (it contains all the necessary exhibits), the smoother the licensing process (promise of licence) will run. The scope of the presented documentation should make it possible to determine that the applicant fulfils all of the conditions required for securing the licence and that there are no circumstances pertaining to the applicant which justify refusal of granting the licence.

THE APPLICATION TO GRANT A LICENCE FOR FOREIGN TRADING IN LIQUID FUELS (or a promise of licence, respectively) should contain in particular the following:

- 1) designation of the applicant and its registered office or the registered office of its branch in the territory of the Republic of Poland or its place of residence and their address, and if proxies are appointed to perform the legal duties on the entrepreneur's behalf, it should also include their first and last names and their correspondence addresses;
- 2) specification of the subject matter and scope of the conducted activity for which the licence is to be issued;
- 3) information about the applicant's previous activity, including its financial statements for the last three years if the entity is conducting business activity;
- 4) specification of the term for which the licence is to be granted and specification of the start date of the activity.

The licence is granted for a definite term not shorter than 10 years and not longer than 50 years unless the entrepreneur requests a licence for a shorter term (Article 36 of the Energy Law Act);

- 5) specification of the resources available to the entity applying for the licence, for the purpose of correct performance of the activity covered by the application;
- 6) number in the register of entrepreneurs kept by the National Court Register, provided that the entrepreneur has such a number and the tax identification number (NIP) or a number in an equivalent register of the European Union Member States, Swiss Confederation, EFTA member state – a party to the agreement on the European Economic Area or Turkey, and the tax identification number (NIP).

In addition, an application for a licence for foreign trading in liquid fuels should include the following items:

- 1) specification of the planned volume of imports of liquid fuels for at least 3 years;
- 2) a description of a manner of maintaining mandatory stocks of crude oil or fuels referred to in Article 5 of the Act Stocks, for at least 3 years;
- 3) a description of a manner of implementation of the National Target referred to in Article 23 of the Act of 25 August 2006 on biocomponents and liquid biofuels (Journal of Laws of 2020, item 1233, as amended), for at least 3 years;
- 4) data of persons authorized to represent the applicant, or being a member of a body authorized to represent the applicant, including first name and surname, date and place of birth, nationality, National Personal Identification Number (PESEL) - if assigned, series and number of a passport or another identification document, address of residence;
- 5) a list of partners or shareholders holding at least 20% of shares, in the case of an applicant that is not a natural person;
- 6) designation of a place of storage of stocks referred to in item 2 and the legal title to installations of liquid fuels storage or copies of agreements referred to in Article 10 or Article 11 of the Act on Stocks;
- 7) a certificate confirming registration of the applicant as a VAT payer;
- 8) a decision of the Head of Customs Office on acceptance of the collateral referred to in Article 38a of the Energy Law Act.

Appendices according to the specification presented in the following part of this compilation shall be attached to the application.

The President of ERO shall deny granting a licence/promise of a licence to an Applicant failing to meet the conditions prescribed by the law, pursuant to Article 35 item 3 of the Energy Law Act.

Furthermore, pursuant to Article 38 of Energy Law Act, granting the licence may depend on the submission of collateral on property by an applicant in order to satisfy any third party claims that may occur as a result of improper licensed business conduct, including damage to the environment. The detailed rules of establishing collateral property have been indicated in the Article 38 item 2 and the following of the Energy Law Act.

If the application to grant the licence/promise of licence or to change the licence does not contain all the necessary information required by the provisions of the Act or documents certifying compliance with legal requirements to perform specific business activity, the entrepreneur is called to complete the application within not less than 21 days from delivery date of the request (Article 35 item 2a of the Energy Law Act). Whereas failure to provide the missing documents for an application for granting a licence within a set deadline in the manner meeting all the conditions required by the Act shall result in the application not being processed (Article 35 item 2b of the Energy Law Act). This results in the procedure being closed and requires the application to be resubmitted with all the required documents, while the documents previously submitted to the Energy Regulatory Office may be used in that new procedure provided that they are still valid.

If the applicant's address is not specified in the application and it is not possible to determine that address on the basis of available data, the application will not be processed (Article 64 § 1 of the Code of Administrative Procedure).

Addressee of the application to grant a licence (promise of licence) for foreign trade in liquid fuels

The entrepreneur's written application to grant a licence (promise of licence) for foreign trade in liquid fuels should be sent to the address of the seat of the Energy Regulatory Office in Warsaw.

Additional information in this respect may be obtained from the Department of Liquid Fuels Market, phone: +48 22 487 57 90, e-mail: dpc@ure.gov.pl.

Duration of the procedure

The duration of the licensing procedure mostly depends on completeness of the submitted application, possibly the party's activity in supplementing the necessary documents and information. It is recommended to file applications duly in advance before the planned date of commencing the performance of licensed activity.

If the application contains all the necessary attachments or will be completed, the case will be processed in accordance with Article 35 § 1 of the Code of Administrative Procedure.

It is important that under Article 35 § 5 of the Code of Administrative Procedure, the deadlines envisaged in the provisions of law for performing the specified actions and the periods of delay resulting from a party's fault or from reasons beyond the regulatory authority's control are not included in the deadlines for handling the case. Therefore, a party's failure to take actions in

compliance with the regulatory authority's summons may cause the administrative case to be handled in a correspondingly longer period of time.

In the course of proceedings on granting the licence for foreign trade in liquid fuels, the President of ERO is obliged to obtain the opinion of President of the Material Reserves Agency, Minister of Finance, Head of National Tax Administration, Public Prosecutor and Commander-in-Chief of the Police, which also has an impact on the duration of the proceedings.

Fees associated with securing the licence (promise of licence)

Pursuant to Article 6 item 1 section 3 of the Stamp Fee Act of 16 November 2006 (Journal of Laws of 2020, item 1546, as amended), hereinafter referred to as the "Stamp Fee Act", the obligation to pay the stamp fee for issue of the licence (promise of licence) arises at the moment of **submitting the application** to issue the licence (promise of licence).

The stamp fee rates, determined in an exhibit to the aforementioned Act, for the activities associated with the scope of actions of the President of ERO, are as follows:

- for a promise to issue a consent (promise of licence) – **PLN 98**;
- for an extension of the validity term or change of conditions of the promise to issue a consent (promise of licence) – **PLN 44**;
- for issuing a consent (licence) – **PLN 4,244**;
- for an extension of the validity term or an extension of the scope of activity – **50%** of the rate for issuing a consent (licence) i.e. **PLN 2,122**.

If the document confirming the granting of a power-of-attorney or attorney-in-fact rights or its excerpt, extract or copy is submitted (which applies also to submitting a certificate of the National Court Register (KRS) confirming granting of a power-of-attorney or proxy), the stamp fee in the amount of **PLN 17** should be paid on each power of attorney or proxy under given administrative proceedings. That fee is not collected in the case of submitting a document confirming granting of a power-of-attorney as well as its excerpt, extract or copy:

- certified by a notary public or an authorized authority, authorizing to collect the documents;
- if the power-of-attorney is granted to a spouse, a descendant, an ancestor or a sibling;
- if the principal is the entity specified in Article 7 sections 1-5 of the Stamp Fee Act.

Pursuant to Article 12 item 2 of the Stamp Fee Act, the tax authority with geographic jurisdiction in stamp fee matters:

- a) on performance of an office duty, issuing a certificate, a licence (a promise of licence) – is the tax authority with geographic jurisdiction over the authority's seat;
Due to the fact that the seat of the central administration authority – the President of the Energy Regulatory Office – is the capital city of Warsaw, the stamp fee in the cases mentioned above should be paid to the tax authority with geographic jurisdiction – the Mayor of the capital city of Warsaw. If the payments are not made in cash, they should be paid to the bank account of the Municipal Office of the Capital City of Warsaw, Taxpayer Service Centre, ul. Obozowa 57, 01-161 Warsaw, account no: **21 1030 1508 000 0005 5000 0070**.
- b) on submitting a document confirming granting of a power-of-attorney or attorney-in-fact rights or its excerpt, extract or copy – is the tax authority with geographic jurisdiction over the place of submitting the document.

If the **original (or in respect of charges for the power-of-attorney - a certified copy)** of the stamp fee payment receipt is not attached to the application, the entrepreneur will be summoned to make the relevant payment. If the stamp fee payment receipt is not provided despite the fact that the summons to send it was dispatched, this will be a premise for returning the application pursuant to Article 261 item 2 of the Code of Administrative Procedure.

In case of missing confirmation of the stamp fee payment receipt for the power-of-attorney or proxy, pursuant to Article 11 items 1 and 3 of the Stamp Fee Act, the President of ERO shall provide information to the competent tax authority in order to initiate administrative enforcement due to non-payment of stamp duty for the power-of-attorney or proxy.

The confirmation of the stamp fee payment receipt may take a form of printout from the computer system (confirmation of the transaction execution).

Stamp duty exemptions

Pursuant to Article 3 of the Stamp Fee Act, the following actions are not subject to a stamp fee: performance of office duties, issuance of a certificate and consent (permit or license) if, pursuant to separate provisions, they are subject to other civil law fees or are exempt from those fees.

In addition, pursuant to Article 7 sections 2 and 3 of the Stamp Fee Act, the following entities are exempt from paying a stamp fee: state budget units, local self-government units.

The list of documents, which should be attached to the application to grant, modify or extend the licence for foreign trade in liquid fuels

I. Documents showing that the entrepreneur meets the **formal legal requirements:**

- 1) excerpt from the register of entrepreneurs kept by the National Court Register (KRS), obtained not earlier than 3 months prior to submitting to licensing authority¹ (C or O) (P);
- 2) certificate of assigning a tax identification number (NIP) – if there is no information about the NIP number in other provided documents (C or O) (P);
- 3) in the case of an applicant that is a legal person or an organizational unit without legal personality or a foreign entrepreneur or a foreign entrepreneur conducting activity in the territory of the Republic of Poland as a branch with its registered office in the territory of the Republic of Poland, established under the terms and conditions specified in the Act on the rules of participation of foreign entrepreneurs and other foreign persons in the economic trade on the territory of Republic of Poland:
 - a list of partners or shareholders holding at least 20% of shares (O) (P),
 - data of persons authorized to represent the entrepreneur, or being member of a body authorized to represent the entrepreneur², including first name and surname, date and place of birth, nationality, National Personal Identification Number (PESEL) - if assigned, series and number of a passport or another identification document, address of residence (O) (P),

¹ Applies to entrepreneurs on which the legal provisions impose an obligation of an entry to the National Court Register (KRS).

² Applies to persons authorized to represent the entrepreneur in line with the provisions of the Code of Commercial Partnerships and Companies

- a list of members of supervisory boards (O) (P),
 - current information from the National Criminal Register about lack of a criminal record of all persons authorized to represent the entrepreneur and supervisory boards members³ (O) (P),
 - current information from the National Criminal Register about the enterprise's lack of a criminal record (as a collective entity)⁴ (O) (P);
- 4) in the case of an applicant that is a natural person - current information from the National Criminal Register about the entrepreneur's lack of a criminal record⁴ (O) (P);
 - 5) in the case of partnerships – current information from the National Criminal Register about lack of a criminal record of all partners⁴ (O) (P);
 - 6) a list of all entities having a material influence on the applicant or exercising or co-exercising control over it, within the meaning of Article 3 item 1 sections 34, 35 and 36, subsections a, b, e and f of the Accounting Act (O) (P);
 - 7) current information from the National Criminal Register about the lack of a criminal record of the entities listed under item 6^{3 4} (O) (P);
 - 8) for civil law companies - current articles of association or statute (C) (P);
 - 9) entrepreneur's declaration that there is no pending application for declaring the entrepreneur's bankruptcy and that the enterprise is not in liquidation (for civil law partnerships – a declaration of every partner) (O) (P);
 - 10) entrepreneur's declaration that in the last 3 years the entrepreneur has not been deleted from the register of regulated activities because of decision prohibiting the applicant from activities specified in the register entry due to:
 - a) submitting a declaration on compliance with legal requirements for conducting the activity, which was factually inconsistent with facts, or
 - b) non-remedying a breach of legal requirements for conducting the activity within the time limit specified by the authority, or
 - c) flagrant breach of legal requirements for conducting the activity (in the case of civil partnerships – declaration of each partner) (O) (P);
 - 11) entrepreneur's declaration on planned volume of imports and exports of liquid biofuels for at least 3 years (O) (P);
 - 12) a description of a manner of maintaining mandatory stocks of crude oil or fuels referred to in Article 5 of the Act on Stocks, for at least 3 years (O) (P);
 - 13) a description of a manner of implementation of the National Target referred to in Article 23 of the Act on biocomponents and liquid biofuels, for at least 3 years (O) (P);
 - 14) designation of a place of storage of stocks referred to in item 12 and the legal title to installations of liquid fuels storage or copies of agreements referred to in Article 10 or Article 11 of the Act on Stocks (O) (P);
 - 15) a certificate confirming registration of the applicant as a VAT payer (C or O) (P);
 - 16) a decision of the Head of Customs Office on acceptance of the collateral referred to in Article 38a of the Energy Law Act (O) (P);

³ If an entrepreneur, partner or member of the management board is not a Polish citizen, it is also required to send an appropriate notice issued by the competent authority of the country of which the above person is a citizen, with a translation by a sworn translator into Polish.

⁴ All the documents mentioned above shall be obtained not earlier than three (3) months prior to submitting them to the licensing authority.

- 17) in the case of performing actions through a proxy, the power-of-attorney to perform legal actions on the applicant's behalf (along with the original receipt or its certified copy for payment of the stamp duty) (C or O) (P);
- 18) receipt for payment of the stamp duty due for issuing a licence /a promise of licence (O) (P).

II. Documents showing technical capability ensuring adequate performance of business activity in the area of foreign trade in liquid fuels:

- 1) detailed description of the activities within the scope of the licence, including precise types of liquid fuels (with CN codes) which will be the subject of foreign trading, and their trading manner, in particular with regard to the use of the operated infrastructure (O) (P);
- 2) evidence of the entrepreneur's legal title to the facilities and installations necessary for the activity covered by the licence (e.g. a notarial deed, a copy of the land and mortgage register, an extract of the land register, a lease agreement, a contract of lending for use, purchase invoices, etc.) (C) (P);
- 3) documents referred to in the Information Package on Trading in Liquid Fuels in item II (page 10 and subsequent pages), if they are relevant for conducting business activity in the form of foreign trading in liquid fuels.

Due to the fact that conducting activity in the area of foreign trading in liquid fuels is related to obligation of holding both a licence for trading in liquid fuels, and a licence for foreign trading in liquid fuels, the applicant holding a licence for trading in liquid fuels, in the course of the proceedings of granting a licence for foreign trading in liquid fuels, **may make reference to the documentation regarding its technical capability, submitted to the Energy Regulatory Office, in the course of the proceedings on issues related to a licence for trading in liquid fuels**, provided that this documentation remains up-to-date.

III. Documents confirming that the applicant has financial means ensuring adequate performance of the business activities covered by the licence or is capable of acquiring them:

- 1) financial statements for the last three years (annual PIT returns for natural persons or partners to civil law partnerships, balance sheets and profit & loss accounts for other entities), and should the entrepreneur be in business for less than three years – the same documents for the time period since launching the business (C) (P);
- 2) other documents confirming the possession or possibility to acquire the financial means sufficient for a proper conduct of a licensed business (such as guarantee agreements, bank guarantees, loan agreements etc.) (C) (P);
- 3) certificate from the bank maintaining the entrepreneur's main account, specifying the entrepreneur's volume of dr/cr turnover, payment and creditworthiness status, with information about loans extended to the entrepreneur and information whether the account is free of enforcement titles (C or O) (P);
- 4) certificate from the relevant branch of the Social Insurance (ZUS), issued no earlier than 3 months before submitting to the licensing authority, confirming that the entrepreneur is not in arrears with payment of social security premiums or that it does not appear in the records of contribution payers (in the case of the entrepreneur conducting business activity for which no obligation to report it to the Social Insurance (ZUS) has arisen) in the case of civil law partnerships, it is necessary to present the certificates from the Social Insurance separately for each shareholder and the partnership (O) (P);

- 5) current certificate from the relevant Tax Office, issued not earlier than 3 months prior to submitting to the licensing authority, confirming that the entrepreneur is not in arrears in payment of liabilities to the State Budget or stating the balance of possible arrears (in the case of civil law partnerships it is necessary to present certificates separately for every partner and for the partnership), containing also the following information:
 - a) on pending enforcement proceedings in administration and criminal or tax offence cases,
 - b) on titles and periods from which potential arrears arise (O) (P).
- 6) specification of current and planned revenues from foreign trading in liquid fuels for 3 years, in PLN, annually (O) (P).

IV. Additional comments for foreign entrepreneurs conducting business activity in the territory of Poland through a branch with a seat in the territory of Poland.

- 1) certificate of no criminal record for the persons authorized to represent a foreign entrepreneur and the members of the supervisory board, obtained not earlier than **3 months** before submitting to the licensing institution should be issued by
 - a) the Polish National Criminal Register and
 - b) its equivalent in the country where the company is registered or the National Criminal Register under ECRIS (O) (P);
- 2) additionally, if the above mentioned persons are not citizens of the country of the company's registration, it is **also** required to send an appropriate notice issued by the competent authority of the country of which the above persons are citizens, obtained **not earlier than three months** prior to submitting to the licensing authority (O) (P);
- 3) information regarding criminal record of **the company (as a collective entity)** should come from the Polish National Criminal Register and equivalent register from the country of registration of the company, obtained not earlier **than three months** prior to submitting to the licensing authority (O) (P);
- 4) information of no criminal record of **entities having material influence over the applicant or exercising or co-exercising control over it** within the meaning of Article 3 item 1 sections 34, 35 and 36, subsections a, b, e and f of the Accounting Act should come from the Polish National Criminal Register, an equivalent register from the country of registration of the applicant (if such records exist) and an equivalent register from the country of registration or citizenship of the above mentioned entities, obtained **not earlier than three months** prior to submitting to the licensing authority, along with a translation **by a sworn translator** into Polish (O) (P);
- 5) the accordance of the submitted documents with the law of the place of their issue should be confirmed in the manner specified in Article 3 sentence 1 of the Hague Convention of 5 October 1961 which abrogates the requirement to legalize foreign official documents, i.e. with the application of **the apostille clause**. Pursuant to Article 3 sentence 2 of the Convention, adding the apostille cannot be required when (...) the agreement between two or more countries abrogated or simplified the legalization or waived the legalization;
- 6) documents submitted in a foreign language **must be translated into Polish by a sworn translator**. All the pages of the submitted documentation should be signed by the persons authorized to represent the entrepreneur.

Documents necessary for obtaining a promise of a licence have been marked with "P".

In the case of an application for a licence by the entrepreneur who has a promise of licence, there is a need for forwarding the documents, which were not required when submitting an application for a promise of licence and re-submit the documents, which expired (e.g. copy of Certificate of

Legal Register of Companies (KRS), certificate of no-criminal record from National Criminal Register)

Documents submitted to ERO must be originals (additional designation of a document with the letter “O”) or certified (on each page of the document copy) as conforming with the original, copies of such documents (additional designation of a document with the letter “C”).

According to Article 76a section 2 of the Administrative Procedure Code, a party to the proceeding is allowed to provide certified copies, if their accordance with original document was confirmed by notary public or attorney acting on behalf of entrepreneur, legal advisor, patent attorney or tax advisor.

A photocopy of the document signed by the Entrepreneur or persons authorized to represent him may also be submitted as the evidence, with the exception of documents for which the authority has formulated a request for their submission in the original, where such evidence will be assessed in the light of all collected evidence. In case of doubt, the President of ERO may request a party to present the original document or its certified copy according to Article 76a § 1 or 2 of the Code of Administrative Procedure.

Caution

The documents directory included in this package does not have a closed character, which means that individual factual and formal legal situation of an applicant may require undertaking additional explanatory measures by the President of ERO; this may include summoning the entrepreneur during the proceedings to provide additional information and documentary evidence assuring that the entrepreneur meets the legal requirements to conduct business activity covered by application for licence.

According to Article 37 item 1 section 5 of the Energy law Act, licence determines inter alia detail requirements for conducting licensed activity, hence the licensing authority in the course of proceeding on granting a licence will provide an interested applicant with information on particular requirements of conducting business activity covered by licence, which will be determined by the President of ERO in the licence.

The annual licence fees

Entrepreneurs, who have been granted the licence are obliged to calculate and pay the annual fee to the state budget, which is included in the cost of their operations. This obligation arises under Article 34 item 1 of the Energy Law Act and the Ordinance of the Council of Ministers of 9 November 2018 on licence fee (Journal of Laws of 2018, item 2277).

The licence fee for each type of activities covered by licence may not be less than PLN 1,000 and not more than PLN 2,500,000 (Article 34 item 3 of the Energy Law Act).

Execution of business activity without a licence

Pursuant to Article 57g of the Energy Law Act, anyone conducting business activity in the area of production, storage or reloading, transmission or distribution, trading in liquid fuels, including

foreign trading in liquid fuels, without the required licence, is subject to a fine of up to PLN 5,000,000 or restriction of liberty from 6 months to 5 years.

Disclosure and reporting obligations

I

In accordance with Article 43e section 1 of the Energy Law, an energy enterprise carrying out activities consisting in the production of liquid fuels, storage or reloading of liquid fuels, transmission or distribution of liquid fuels, trade in liquid fuels, including trade with foreign countries, as well as entities entered in the register of importing entities, shall submit to the President of ERO information on the types and locations of liquid fuel infrastructure used for the carried out activities - within 7 days from the date of commencing operation of the infrastructure or permanent cessation of operation of this infrastructure.

Pursuant to Article 56 section 1 point 48 of the Energy Law Act, the one who fails to submit within the deadline an abovementioned information, or provides false information, is subject to a financial penalty. The amount of this fine is PLN 10,000 separately for each type and location of liquid fuel infrastructure (Article 56 (2h) (8) of the Energy Law).

II

According to Article 37 section 2c of the Energy Law Act, in the case of change in data concerning:

- designation of entity, its seat or place of residence and their addresses;
- number in the entrepreneur's register in the National Court Register, if the entrepreneur has such a number, or the number of the equivalent register of a Member State of the European Union, the Swiss Confederation, a Member State of the European Free Trade Agreement (EFTA) - parties to the agreement on the European Economic Area or Turkey, and an identification number tax (NIP),
- number by which the entity is identified in the liquid fuels trading for the VAT tax purposes, the energy company is obliged to submit an application for a licence modification at the latest within 7 days from the date of these changes.

Pursuant to Article 37 section 2d of the Energy Law Act, energy enterprise is obliged to inform the President of ERO about change in data concerning:

- data of persons authorized to represent the applicant, or being a member of a body authorized to represent the applicant, including:
 - a) first name and surname,
 - b) date and place of birth,
 - c) citizenship,
 - d) National Personal Identification Number (PESEL), if assigned
 - e) series and number of a passport or another identification document, address of residence,
 - f) place of residence;
- lists of partners or shareholders, holding at least 20% of shares, in the case of entrepreneur that is not a natural person,

within 14 days from the date of these changes.

In accordance with Article 56 section 1 point 49 of the Energy Law Act, the one who fails to fulfil the obligation referred to in Article 37 section 2c or section 2d, shall be subject to a financial penalty.

The amount of this fine ranges from PLN 10,000 to PLN 50,000 (Article 56 section 2h paragraph 9 of the Energy Law Act).

III

Pursuant to Article 37a item 1 of the Energy Law Act, any changes of capital structure of an energy enterprise holding a licence for liquid fuel production or for foreign trade in liquid fuels, that result in exceeding thresholds of 20%, 30%, 40%, 50%, 60%, 70%, 80%, 90% of the total number of votes on a general meeting or shares in the initial capital, require notification to the President of ERO **within 7 days** from the date of registration these changes in the National Court Register KRS. Additional information specifying the content of the above mentioned notification with the enclosed documents have been included in the Article 37a section 2 and 3 of the Energy Law Act.

According to Article 56 section 1 item 53 of the Energy Law Act the one who fails the required notification obligation within the deadline stipulated in Article 37a item 1 is subject to financial penalty, which ranges from 10,000 PLN to 50,000 PLN (Article 56 item 2h section 9 of the Energy Law Act).

IV

Pursuant to Article 43d section 1 of the Energy Law Act, energy enterprise holding a licence for liquid fuel production or for foreign trade in liquid fuels, as well as an importing entity according to its activity, submits to the President of ERO monthly reports on types and volume of produced, imported and exported liquid fuels, as well as on their purpose – within 20 days from the end of the reporting month.

According to Article 56 section 1 item 12b of the Energy Law Act, the one who fails to submit the above reports within the deadline is subject to financial penalty which amounts to 10,000 PLN (Article 56, item 2h section 4 of the Energy Law Act).

Article 56 section 1 item 12c of the Energy Law Act stipulates that anyone who reports false data is subject to financial penalty, which ranges from PLN 10,000 to PLN 50,000 (Article 56 section 2h item 5 of the Energy Law Act).

Information on processing of personal data

Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC⁵ (hereinafter: GDPR regulation), I inform that:

- 1) Personal data of natural persons, collected by the President of ERO, are processed by the President of ERO, 02-22 Warsaw, Al. Jerozolimskie 181, which is a personal data controller.
- 2) Personal data are processed on the basis of Article 6 item 1 letter b, c and e of GDPR regulation and other acts, wherein the obligations and duties of the President of ERO were enlisted, in particular: Energy Law Act, RES Act, Act on biocomponents and liquid biofuels, Energy Efficiency Act, Capacity Market Act, Act on stocks of crude oil, petroleum products and natural

⁵ OJ L 119, 4.5.2016, p. 1

gas, the principles of proceeding in circumstances of a threat to the fuel security of the State and disruption on the petroleum market, Act on electromobility and alternative fuels.

- 3) Personal data are processed in order to fulfil statutory duties by the President of ERO.
- 4) Personal data collected in relation to fulfilment of statutory duties by the President of ERO, will not be transferred to a third country or international organisation.
- 5) Personal data will be kept for time period resulting from Subject File Index and Office Procedures Manual, binding in the Energy Regulatory Office.
- 6) Natural person has a right to request from personal data controller an access to its personal data, their rectification and a right to lodge a complaint with national supervisory authority – President of the Personal Data Protection Office.
- 7) The recipients of the personal data will be solely entities entitled to obtain personal data on the basis of legal regulations.
- 8) Personal data will not be subject to profiling (automated processing consisting in using personal data for evaluating the personal aspects relating to a natural person).
- 9) In matters connected with personal data protection, please contact the Data Protection Officer by iod@ure.gov.pl or in writing, by sending correspondence to Energy Regulatory Office, Al. Jerozolimskie 181, 02-22 Warsaw, with a note: “Data Protection Officer”.
- 10) Provision of personal data is obligatory when resulting from above mentioned legal grounds.