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3rd energy package

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3rd package – background

- ★ Starting point – progress and benchmarking reports of the Commission and results of DG COMP Sector Inquiry in 2006 made clear that action was urgently required to remove obstacles to competition

Main shortcomings monitored

- ★ Vertical integration, lack of independence of system operators
- ★ Different powers and competences of national regulators
- ★ Lack of transparency
- ★ Lack of integrated operation of the networks (TSO cooperation)
- ★ High degree of market concentration



3rd package: main measures

Five main areas:

- ★ **Unbundling**
- ★ **Transparency**
- ★ **TSO cooperation**
- ★ **National regulators**
- ★ **EU Regulatory Agency**



(1) Effective Unbundling

Option 1: Ownership unbundling

- ★ any company that owns a transmission network has to be designated as a transmission system operator
- ★ system operator will own and control the network
- ★ No person or company that has direct or indirect control over a system operator may have any interest or control in a supply undertaking, and vice versa
- ★ In a nutshell: transmission network operators of electricity and gas grids can no longer be affiliated or be part of a group which is also active in supply, generation and production



(1) Effective Unbundling

★ EC impact assessment on the effects of ownership unbundling in countries with already ownership unbundled operators – results:

- ⇒ ownership unbundling is beneficial for network investment
- ⇒ share of congestion revenues that was reinvested in interconnection was twice as high for unbundled operators as for vertically integrated companies
- ⇒ no negative impact on share prices - – results suggest that the development of share prices for unbundled companies has been as good as or even better than their former parent companies



(1) Effective Unbundling

Option 2: Independent system operator

- ★ Possible second-best approach to unbundling: Member States may allow for derogation from ownership unbundling
 - ↳ provided that an independent system operator ISO is designated
- ★ Transmission assets remain with the vertically integrated company
- ★ But technical and commercial operation of those assets are put in an independent company → ISO
- ★ “Deep” ISO which has crucial say on investment decision
- ★ Option is coupled to increased regulatory control and specific additional rules to ensure the independence of network operation



(1) Effective Unbundling

- ★ ***Both options*** – ownership unbundling or the creation of an independent system operator
- ★ **Apply in the same way to gas and electricity**
- ★ **Applies equally to private and public companies, ensuring a level playing field for suppliers in private and public ownership**



(1) Effective Unbundling

★ Three measures to control unbundling in case of 3rd country investments

↪ Recital: gas/electricity transmission system sector is of high importance, therefore additional safeguards are necessary regarding the influence of third countries

➤ Without prejudice to international obligations

↪ Article 7(a) Without prejudice to the international obligations, transmission systems or TSOs shall not be *controlled* by persons from third countries.

↪ Article on certification: national regulator certifies TSO before designation, review by Commission

Article 7(b) §2: Reversal of proof for ownership unbundling



(2) Transparency

- ★ Scope: reinforce current transparency rules to enable effective network access on the basis of equally distributed and equally timely information
- ★ Important role of regulators in this context – European Regulatory Agency will be responsible for
 - ↳ oversight of the cooperation between TSOs
 - 1 – Setting of the work programme/priorities of the TSO cooperation
 - 2 – Review of the technical and market codes prepared by the TSO cooperation
 - 3 – Review of the Europe-wide network development plan



(2) Transparency

- ★ **Article on Record keeping**
- ★ **Supply undertakings need to keep at the disposal of regulators the relevant data relating to all transactions in gas/electricity supply contracts and gas/electricity derivatives**
- ★ **With respect to derivatives, Commission needs to adopt guidelines before requirement enters into effect**



(3) TSO cooperation

★ Scope:

⇒ require TSOs to cooperate in order to ensure an optimal management, planning and access facilitation of the European transmission networks (electricity and gas), both at EU and regional level

★ Main content: formalise the cooperation between TSOs

⇒ in order to ensure an optimal management of the European transmission network, both at EU and regional level

⇒ through the establishment of a European Network for TSOs



(3) TSO cooperation

3 core tasks

- ★ 1 – Legal obligation to develop draft standards and codes that will facilitate harmonisation or compatibility of operational procedures and access regimes
 - ↪ codes will have a voluntary character
 - ↪ Can be made binding under comitology

- ★ 2 – Responsible for the coordinated operation of the network
 - ↪ in accordance with the agreed standards and codes
 - ↪ through the development of common operational tools

- ★ 3 – Coordinate the planning of network investments and monitor the development of transmission network capacities



(3) TSO cooperation

★ **Precise form and modality of the cooperation are left to the transmission system operators**

↪ **Likely that they will build on existing structures such as GTE and ETSO**

↪ **EC will formally designate the organisation proposed (with the help of the Regulatory Agency)**



(4) National regulators

★ Background

- ↪ Current varying policy objectives regulators from different Member States
- ↪ Especially problematic in the field of investments in new capacity

★ Content

- ↪ Requirement on Member States to designate a single regulatory authority at the national level
- ↪ safeguarding the independence of the regulator by requiring that the regulatory authority is a legal person, with budgetary autonomy and adequate human and financial resources to carry out its duties



(4) National regulators

- ↪ **Regulatory authority must be functionally independent from any other private or public entity**
- ↪ **clear mandate to cooperate at the European level**
- ↪ **enhancing their statutory duties and powers**
 - E.g ensure compliance of transmission and distribution system operators
 - extended monitoring duties
 - review investment plans of the transmission system operators



(5) Regulatory Agency

□ BACKGROUND

- **Market and competition assessment showed that today a number of regulators do not have effective decision making powers regarding cross-border issues, or cannot take cross-border effects of their decisions into account**
- **Especially problematic in the field of investments in new capacity**
- **Mandate to cooperate at the European level will help to bridge this so-called regulatory gap**



(5) Regulatory Agency

□ CONTENT

- **Setting up a European Agency for the Cooperation of Energy Regulators**
- **Agency is not a substitute for the national regulators, nor is it a European regulator – it will complement at the European level the regulatory tasks performed at the national level**
- **Having a decision making power at the European level under certain conditions**
 - Individual decisions based on EU guidelines
 - Art. 22 exemptions of cross-border infrastructure



(5) Regulatory Agency

□ THE AGENCY SHALL ENSURE 4 GOALS

1. That national regulatory authorities have a framework within which they can cooperate - including

⇒ Possible review mechanism, on a case-by-case basis, decisions taken by national regulators that have a direct impact on the internal market

2. Appropriate oversight of the cooperation between transmission system operators

⇒ monitor and review the activities of the TSO cooperation



(5) Regulatory Agency

□ THE AGENCY SHALL ENSURE 4 GOALS [ff]

3. That individual decision making powers are established for specific cross-border issues
 - ↳ such as "Article 22" exemption requests for infrastructure projects involving more than one member state
4. That the current advisory role for regulators towards the Commission through ERGEG is preserved
 - ↳ Going beyond to the advisory role to the EC by providing recommendations to the EC



(5) Regulatory Agency

□ ORGANISATION

- Based on the standard rules and practices for Community regulatory Agencies
 - Headed by an Agency Director
 - However, will be unique in that it will have a separate Board of Regulators
 - to ensure the necessary independence of regulators also at the European level
 - Regulatory Board will be solely responsible for all regulatory matters and decisions
 - Will function beside an Administrative Board which will be responsible for the administrative and budgetary matters
 - own Board of Appeal
 - staff of around 40-50 people
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Solidarity cooperation

- ★ Only in gas Directive
- ★ It is proposed that Member States cooperate in order to promote regional and bilateral solidarity
- ★ Cooperation intended to cover situations which are likely to result in severe disruptions of gas supply
- ★ Examples of this coordination are
 - streamlining of national measures to deal with emergencies
 - elaboration of practical modalities for mutual assistance.



Timing

☐ NEXT STEPS

1. **new legislative proposals are finalised and scheduled to be adopted in the College meeting on 19 September**
2. **will then be sent to the European Parliament and the Council for first reading**