

Preparation for the competitive European electricity sector

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1. Introduction

Energy – alongside knowledge, creativity and capital – is one of the fundamental necessities of humankind. Modern life is indeed dependent on energy, especially electricity and natural gas, the grid-connected energies, for its power, heating, cooling and traffic. To ensure security in the supply of energy, world energy hunger must be taken into account. Competition for primary energy resources will increase and the processes for their transformation from raw materials into consumable energy will have to be made more efficient, environmentally friendly and sustainable. Research into new sources of energy has to continue. After the respectable results of the industrial sector to decouple growth and energy consumption in future the transport and building sectors will have to intensify their efforts to reduce energy use intensity.

2. The different levels

2.1. The primary level of law

With respect to the need for security of supply and in accordance with the Treaty of the European Community, Art.4 ECT, and the accession treaties (the primary level of law), the EU and its Member States are obliged to create “*an open market economy with free competition, favouring an efficient allocation of resources*”, and to abolish obstacles to the free movement of goods, persons, services and capital within the common market. The market must serve European citizens and undertakings in order to be competitive in a competitive world. Competitiveness of the energy market therefore means ensuring the most efficient and environment-friendly use of resources for the lowest possible price and with the best possible service to the customers. To ensure that this obligation will be met, EU primary law guarantees the free movement of goods and the freedom to provide services within the Community. In order to secure these rights, the national competition authorities and the European Commission have to investigate and where appropriate fine or order remedies for every practice which may be incompatible with the common competitive market and each distortion of competition e.g. state aid favouring certain undertakings, an abuse of a dominant position within the common market or by any concerted actions which have as their object or effect the restriction of competition. It has to

be kept in mind: in a competitive market the prices largely determine the costs – contrary to monopolies where the costs largely determine the prices.

At the moment, 35 European States are obliged to construct the world's largest competitive grid-connected energy market for electricity and natural gas: 27 EU Member States, as well as Norway as a member of the European Economy Area and 7 States which are members of the Treaty of Athens, the South East Europe Energy Community Treaty.

2.2. The secondary level of law

To achieve this Community energy market, Community laws (secondary law level) set detailed targets. These can be found in particular in the Directives 2003/54/EC and 2003/55/EC concerning common rules for the internal market in electricity and natural gas, the Regulations 1228/2003 and 1775/2005 on conditions for access to the network for cross-border exchanges in electricity and to the natural gas transmission networks and the Directives 2004/67/EC and 2005/89/EC concerning measures to safeguard security of natural gas supply and of electricity supply as well as various environment laws.

Recital 4 of both the Directives for common rules for the internal market for electricity and natural gas expresses very clearly:

“The freedoms which the Treaty guarantees European citizens – free movement of goods, freedom to provide services and freedom of establishment – are only possible in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.”

2.3. The implementation level

The construction of the competitive European grid-connected energy market is not yet completed, and all elements of the agenda designed to establish that aim are not yet fulfilled; there has not yet been a level playing field established in all Member States. We observe both infrastructure limitations and regulatory barriers between the national market segments. As guardian of the EC Treaty and as the EU competition watchdog, the European Commission, together with the Member States as members of the Treaty and their national competition and regulatory authorities, within the

auspices of ERGEG (European Regulatory Group of Electricity and Gas), CEER (the Council of European Energy Regulators) and ETSO (the Association of European Transmission System Operators) in the so-called Florence and Madrid forums, must observe and check that the system being implemented will be in line with EU law, inter alia:

2.3.1. Concerning national laws and authorities:

- Correct and timely implementation of EU-law, in order to abolish 35 distorted markets, to create the common competitive market and to avoid Community penalties or compensation for market participants.
- Competent and efficient regulating authorities which are capable of carrying out their duties and meeting all legal requirements included providing detailed annual reports to the Commission.

2.3.2. Concerning the supply, production, exchange, wholesale and retail levels of the market,

those levels which add value and which are in competition with one another:

- Member States monitor and report on the security of supply and market dominance of actors.
- The use of market powers to influence prices.
- Long term power purchase agreements.
- Functioning of balancing-energy-markets as well as the link between power exchanges and transmission system operators as a cornerstone of a competitive market.
- Transparency on wholesale markets; quality of information on the availability of interconnectors and available generation, of day-ahead and week-ahead aggregate forecasted and actual loads.

2.3.3. Concerning the networks for transportation and distribution,

these levels of creation of value, which are not in competition with each other but enhance competition through neutral non-discriminatory or non-privileging grid access and grid access conditions:

- In case of vertically integrated companies, effective unbundling of the grid management, by legal form, by accounts, by organisation, information and decision making.
- Implementation of compliance programs for unbundled system operators to ensure competition.
- Reports of the regulatory authorities on the outcome of their monitoring activities.
- Presentation of Member State reports on the quality and levels of maintenance of the networks.
- Adequate interconnector infrastructure and interconnections between transmission areas, as well as long-term capacity reservation, adequate coordination and harmonisation between transmission companies and allocation rules.
- Harmonisation of TSO's databases on markets, grids and interconnectors.
- Enhanced level of TSO and DSO information to their clients.

3. Step by step

Pursuant to the EC Treaty (primary law level) and EC Regulations and Directives (secondary law level), meanwhile important steps took place with

- The Green Paper for the Security of Energy Supply, in march 2006 (The EU Commission inviting everybody to discuss probably new initiatives for EU law)

- The Report on progress in creating the Internal Gas and Electricity Market, COM(2006)841 final, Jan. 10th 2007, (responsible member of the Commission: Commissioner A. Piebalgs; the Commission here acts as watchdog of the implementation of actual EU-laws into Member state law according to Article 249 of the Treaty). The concerning EP-resolution of July 10th 2007 (P6_TA(2007)0326), underlines the relevant differences between electricity and natural gas, calls on the Commission to consider additional relevant problems and to publish all the results before presenting new legislative proposals; furthermore the EP invites to respect the importance of SMEs.
- The Energy Sector Inquiry, COM(2006)851 final, Jan. 10th 2007, based on EC-Competition law (responsible member of the Commission: Commissioner N. Kroes; the Commission here acts in its responsibility as EU competition authority, Art. 85 ECT, executing EU competition law, which obliges directly any market participant).
- Commission Communication “An Energy Policy for Europe” (COM (2007)1 final, Jan. 10th 2007, and the Presidency conclusions of the European Council, 7224/1/07 Rev 1, Mai 2nd 2007.

Political and public discussion as well as scientific work of researchers and institutes helped to clarify the issues raised in these reports and communications.

4. Proposal for a Third EU Legislative Package

At present, the Commission has proposed a new legislative package (see “Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003” (COM (2007) 0528); “Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1228/2003” (COM (2007) 0531); “Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003” (COM (2007) 0529); “Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1775/2005” (COM (2007) 0532)). The Commission insists on having reflected and resolved all problems mentioned above. The proposal is currently before the European

Parliament and Council. The discussion will go on if the Commission's legislative proposals really meet the challenges, especially concerning necessary investments and the development of final consumer prices.