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Legal Affairs Committee

Implementation of TSO and DSO Unbundling Provisions

–

Update and Clean Energy Package Outlook

CEER Status Review

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Abstract

This CEER document (C18-LAC-02-08) presents an updated Status Review on the Implementation of Transmission and Distribution System Operators' Unbundling Provisions of the 3rd Energy Package, focusing on new developments since summer 2015. It also briefly summarises the main changes and novelties with regard to unbundling-related provisions that were made in the recasts of the Electricity Directive and Electricity Regulation within the framework of "Clean Energy for All Europeans" package (CEP).

Under the 3rd Energy Package, energy networks are subject to unbundling requirements which oblige Member States to ensure the separation of vertically integrated energy companies, resulting in the separation of the various stages of energy supply (generation, transmission, distribution, and retail).

This Status Review aims to assess the status of DSO and TSO unbundling, highlighting the new developments since 2015 and to provide an overview of the main changes in unbundling-related provisions introduced in CEP. Topics explored included related issues such as: cases and reasons for reopening certification decisions; branding; financial independence in terms of staff and resources; compliance programmes and officers; investments, joint-venture TSOs and joint undertakings.

Target Audience

European Commission, energy suppliers, traders, gas/electricity customers, gas/electricity industry, consumer representative groups, network operators, Member States, academics and other interested parties.

Keywords

Unbundling; Cross-Sectoral; Networks; 3rd Package; Market Monitoring; National Regulatory Authorities (NRAs); Transmission System Operators (TSOs); Distribution System Operators (DSOs); Ownership Unbundling; Independent System Operator (ISO); Independent Transmission Operator (ITO); Interconnectors; Clean Energy for all Europeans Package (Clean Energy Package, CEP).

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Related Documents

CEER documents

- CEER Status Review on the Implementation of Transmission System Operators' Unbundling Provisions of the 3rd Energy Package, 28 April 2016, Ref. C15-LTF-43-04. https://www.ceer.eu/en/1305

- CEER Status Review on the Implementation of Distribution System Operators' Unbundling Provisions of the 3rd Energy Package, 1 April 2016, Ref. C15-LTF-43-03. https://www.ceer.eu/en/1305

- The Future Role of DSOs - A CEER Conclusions Paper, 13 July 2015, Ref: C15-DSO-16-03. https://www.ceer.eu/en/1306

- CEER Memo on the transposition of unbundling requirements for Transmission, Distribution and Closed Distribution Systems Operators, 30 July 2014, Ref: C14-IBM-61-03. https://www.ceer.eu/en/1307

- CEER Status Review on the Transposition of Unbundling Requirements for DSOs and Closed Distribution System Operators, 16 April 2013, Ref: C12-UR-47-03. https://www.ceer.eu/en/1308

External documents

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- Commission de Régulation de l'énergie (CRE) Decision on the certification of RTE, *Decision No 2018-005*, 11 January 2018. Retrieved from: https://www.cre.fr/Documents/Deliberations/Decision/certification-rte

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Executive Summary

With the adoption of Directive 2009/72/EC[1] ("Electricity Directive") and Directive 2009/73/EC[2] ("Gas Directive"), henceforth together referred to as "the Directives", new rules have been introduced by these "3rd Energy Package" legislative texts on unbundling for Transmission System Operators (TSOs) and, to a lesser extent, for Distribution System Operators (DSOs).

This report provides an update of the CEER Reports on the status of implementation of the unbundling provisions set out in the above mentioned Directives of the 3rd Energy Package (3rd Package), focusing on the new developments since 2015. Under this Package, energy networks are subject to unbundling requirements which oblige Member States to ensure the separation of vertically integrated energy companies, resulting in the separation of the various stages of energy supply (generation, distribution, transmission and supply).

For TSOs (and to a lesser extent, for DSOs) the unbundling requirements have been considerably reinforced through the 3rd Package in comparison to the 2nd Energy Package: the independence of the network operators is now be assessed through a certification process conducted by national regulatory authorities (NRAs).

The information on the current status of unbundling was collected by way of a survey among the NRAs of CEER Member countries, based on the information available to them until March 2018. 25 CEER Members (out of 33 CEER Members and Observers at that time) participated in the survey for this status review (**Austria**, **Belgium**, **Croatia**, **Czech Republic**, **Denmark**, **Estonia**, **Finland**, **France**, **Germany**, **Great Britain**, **Greece**, **Hungary**, **Italy**, **Ireland, Latvia**, **Lithuania**, **Luxembourg**, **Malta**, **the Netherlands, Norway**, **Poland**, **Portugal**, **Slovenia**, **Spain**, and **Sweden**). Input was provided in March 2018 to CEER and represents the status of the TSO and DSO unbundling in the respective country at that time.

On the TSO side, this review aims to assess the new developments in TSO unbundling practice. Topics explored include related issues such as: reopening of certification decisions and the reasons for this; 3rd country certifications; cross-border certifications; requirements for state-owned TSOs; financial independence; compliance issues; investments, joint-venture TSOs and joint undertakings. As for DSOs, this report aims at highlighting the evolution of DSOs' unbundling status at national level since 2015 regarding notably: the unbundling regime and DSO structure; rebranding; independence; resources; and the compliance regime.

Furthermore, at the time of publication of this report, the final four legislative texts of the new "Clean Energy for All Europeans" package (CEP), modifying the aforementioned 3rd Package Electricity Directive, as well as the Electricity Regulation (and some other Directives and Regulations on the energy sector) were formally adopted on 22 May 2019 by the Council of ministers of the EU[3].

Therefore, in this Status Review we also report briefly on the main changes and novelties with regard to unbundling related provisions which were made in the recasts of the Electricity Directive and Electricity Regulation which are part of this new Clean Energy Package (CEP).

[1] 2009/72/EC Directive of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

[2] 2009/73/EC Directive of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in gas and repealing Directive 2003/55/EC

[3] https://ec.europa.eu/info/news/clean-energy-all-europeans-package-completed-good-consumers-good-growth-and-jobs-and-good-planet-2019-may-22_en

Main outcome of the assessment of TSO unbundling

All three unbundling models have been equally assessed in this status review and it clearly appears that most of the changes that occurred for the TSOs are related to Independent Transmission Operator (ITO) and Ownership Unbundling (OU) models.

Several Member States have decided to not take ownership shares in their TSOs in the future. They rather support the privatisation of their TSOs.

We also observe a trend of third-country participations in EU TSOs so that the procedure of Article 11 of the Directives has to be properly applied in order to involve all parties (Member States and the European Commission) equally and to thoroughly assess the "security of supply" criteria. Third-country participation is welcome as long as the European legal framework remains fully applicable in order to avoid discrimination.

Since summer 2015, there were three electricity TSO and two gas TSO certification decisions in relation to third countries with involvement of the European Commission and the concerned Member States.

The participation of financial funds significantly increased over the last years; in **France**[4] and **Great Britain** TSOs owned by financial funds having shares in generation and/or supply were certified. In these cases, no specific conditions were attached to the certification decisions. Nonetheless, in **France**, the NRA imposed upon the fund to notify any purchase of shares above 5% in generation and/or supply companies in Europe. In **Great Britain**, the NRA put a list of conditions to fulfil in the licenses in order to limit conflicts of interest (e.g. obligation to ensure that information about the transmission business cannot be shared with any associated business, etc.).

New business models were established as some major European TSOs that were certified as ITOs divested their shares and decided to be certified under the OU model. The possibilities foreseen in the Directives to implement various unbundling models (also changing models) are efficiently used by the TSOs and allow them enough flexibility to (re-) organise and/or adapt their business smoothly to the unbundling requirements.

In most of the concerned countries, the monitoring and control of state-owned TSOs is properly divided (mainly by law) between different ministries to avoid any influence in the decision making on TSO, production and supply activities.

The additional unbundling requirements put on the TSOs by NRAs are, so far, compliant with the EU legislation even if it is sometimes a burdensome process to maintain. In the majority of Member States no major obstacles were observed where additional conditions have been put on TSO unbundling requirements. Following the monitoring of the TSOs' unbundling regimes, NRAs took the following measures in cases of non-compliance with unbundling rules:

- Imposed sanctions/penalties;
- Revoked the certification;
- Imposed a modification in the certification.

[4] This certification took place in 2014.

A new issue has appeared since the last Status Review related to the "Project of Common Interest" (PCI)[5], a label that can be attributed to a TSO and its obligations under the unbundling provisions. In a document published by ENTSO-E[6], it is underlined that the project promoter (asking for the attribution of the PCI status, generally for an interconnection) has to ensure that PCIs comply with the unbundling rules of the 3rd Package. Hence, when submitting its application the project promoter must confirm the fulfilment of the European Union unbundling rules or its commitment to comply with them (i.e. the project promoter has to either proceed with the certification of the TSO or obtain an exemption) at the latest by the time of entry into operation of the project. This condition is, of course, assessed by the competent authorities/NRAs and the European Commission.

Main outcome of the status review of DSO unbundling

Malta still benefits from the exemption from the requirements of Electricity Directive and **the Netherlands** remains the only Member State where national law requires full ownership unbundling while all of the others require at least a legal and functional unbundling for both gas and electricity DSOs. In the **Flemish region of Belgium**, even though the relevant regional law does not impose ownership unbundling for DSOs, in practice DSOs have been fully unbundled.

Since the entry into force of the 3rd Package, several NRAs have observed major changes in the ownership structure of DSOs. The most important changes that have been observed are related to the ownership structure of the DSOs.

In **France**, within the group Electricité de Strasbourg, the DSO used to be the parent company. The group had to change its structure, with the parent company becoming a holding with two subsidiaries: one for the production/supply activity and the other one in charge of electricity distribution.

In **Denmark**, many electricity DSOs have merged while the state-owned infrastructure company "Energinet" has taken over one gas DSO.

In **Hungary**, one electricity DSO was acquired by a state-owned company and now operates under the name "NKM Áramhálózati Kft", whereas the gas DSO "FŐGÁZ" was reprivatised and TIGÁZ DSO was acquired by the Hungarian MET Group.

One of the most relevant issues that NRAs had to deal with in terms of DSO unbundling is linked to DSO branding. The NRA's control over DSO branding and communication in order to avoid confusion with the vertically integrated undertaking (VIU) is a relevant example of the major role played by NRAs to guarantee the effective implementation of unbundling provisions. Almost half of the NRAs of the participating Member States stated that they had been directly involved in a DSO rebranding/communication process change.

[5] EU-Regulation 347/2013 as regards the Union list of projects of common interest. Every two years since 2013, the European Commission draw up a new list of PCIs. In November 2017 the European Commission published its third list of PCIs which contains 173 projects; 106 electricity transmission and storage, 53 gas. https://ec.europa.eu/energy/sites/ener/files/documents/pci_list_final_2017_en.pdf

[6] ENTSO-E Practical implementation document for inclusion of transmission and storage projects in the 10-year network development 2018. https://docstore.entsoe.eu/Documents/TYNDP%20documents/Third%20Party%20Projects/171002_ENTSO-E%20practical%20implementation%20of%20the%20guideliens%20for%20inclusion%20of%20proj%20in%20TYNDP%202018_FINAL.pdf

Some cases of non-compliance have been detected by NRAs in various Member States. In some countries such as **Denmark**, **Germany**, **France** or **Great Britain**, national law provides pecuniary penalties with maximum fines. So far, NRAs have not imposed any sanction although three decisions were issued in **Austria** instructing that compliance with the law must be restored within an appropriate period of time.

In **France**, following an investigation conducted by the NRA, "ERDF", the main electricity DSO wholly owned by EDF, changed its logo and corporate identity to "ENEDIS". Moreover, in 2018, CRE[7] asked another DSO to change its logo, in consideration of the fact that it was too similar to the logo of the supply entity of the VIU.

In **Sweden**, even though there has been no formal case of non-compliance, Ei[8] investigated one issue regarding communication with electricity consumers and the public and another investigation is ongoing.

Finally, in the Member States where rebranding processes have been carried out, more than half of the NRAs concerned consider that it was conducted to a satisfactory level in both gas and electricity. In some other Member States, NRAs' interventions have been necessary to implement the rules properly.

When it comes to the DSO landscape, the number of gas and electricity DSOs in the participating Member States has not significantly changed between the two surveys, with the exception of some countries such as **Poland** for gas and electricity DSOs (whose numbers have increased since 2015) and **Germany** for gas and electricity DSOs with less than 100,000 connected customers (whose numbers have decreased since 2015).

The number of DSOs clearly contrasts with the TSOs' landscape in Europe, where a consolidation trend has been visible for the last three years. Due to this contrasting picture, it appears difficult to implement detailed and fully harmonised European standards as regards to DSOs. By reason of scale, such measures seem to be better achieved at local level.

In almost all of the Member States, detailed rules on independence of the staff and the management of DSOs have been adopted. Additional rules have been specifically implemented in certain Member States to ensure independence e.g.:

In **Denmark**, the compliance officers of the DSOs can neither be employed in other companies of the VIU nor have any kind of responsibility, business relationship or interest in such companies.

In **Latvia**, the same person cannot be concurrently involved in units of the vertically integrated natural gas merchant, which are responsible, directly or indirectly, for the production of natural gas, provision of liquefied natural gas services and trade thereof.

In other countries, such as **Great Britain**, the independence issue is tackled through the licencing procedure.

[7] CRE - Commission de régulation de l'énergie (French NRA)
[8] Energimarknadsinpektionen/Energy Markets Inspectorate (Swedish NRA)

DSOs mainly benefit from a complete independence within the approved financial plan or any equivalent instrument; this was and remains the case in the majority of Member States with the exception of **Cyprus**, **Czech Republic**, **Denmark**, **France**, **Germany** and **Portugal**.

Most of the participating NRAs reported that the legal form chosen for their DSOs ensures a sufficient level of independence of the DSOs.

This survey has revealed that more Member States have shared services in both the gas and electricity sectors compared with the situation covered in the previous report. **Denmark** and **Lithuania** now have shared services in both gas and electricity. Although NRAs continually control that DSOs comply with the aforementioned unbundling requirements, the increase of shared services between DSOs and their VIUs may raise questions on the complete independence of DSOs, since shared services lead to more interactions between the different entities of the VIUs.

Apart from **the Netherlands** and the fully ownership unbundled DSOs for which this obligation is not relevant, the participating NRAs have all taken into consideration that DSOs have sufficient financial resources under their immediate control to ensure real decision-making power and independence in their work.

Almost all of the participating NRAs confirmed that compliance officers have enough information and resources to fulfil their tasks independently. Their reports are very helpful for NRAs to further monitor the correct implementation of the compliance programme.

1 The new challenges of the certification procedures

Since the last CEER report from 2015, various developments have taken place concerning TSOs' activities and organisations. Most NRAs have had to deal with new certifications or to reopen certification procedures. Accordingly, the European Commission has issued over 20[9] opinions[10] to evaluate NRAs' decisions.

As a result, there were **21 cases** reported where the certification procedure was reopened by NRAs or a new certification process took place. The main reasons for reopening a certification were related to changes in the ownership structure, changes in the shareholders' percentage-share and changes in the unbundling model[11].

When it comes to the Agency for the Cooperation of Energy Regulators' (ACER) involvement in the certification decisions, the European Commission is entitled to request an opinion from ACER on the preliminary decision by the NRA. Such a request extends the certification procedure by an additional two months. The relevant provisions in the Electricity and Gas Directives and Regulations[12] do not specify in which cases the European Commission might request an ACER opinion. The European Commission indicated in its staff working document[13] that it has wide discretion in this respect. When making a request for ACER's opinion, the European Commission considers ACER's particular competences and expertise. Until now, there has been no ACER opinion provided in a certification procedure.

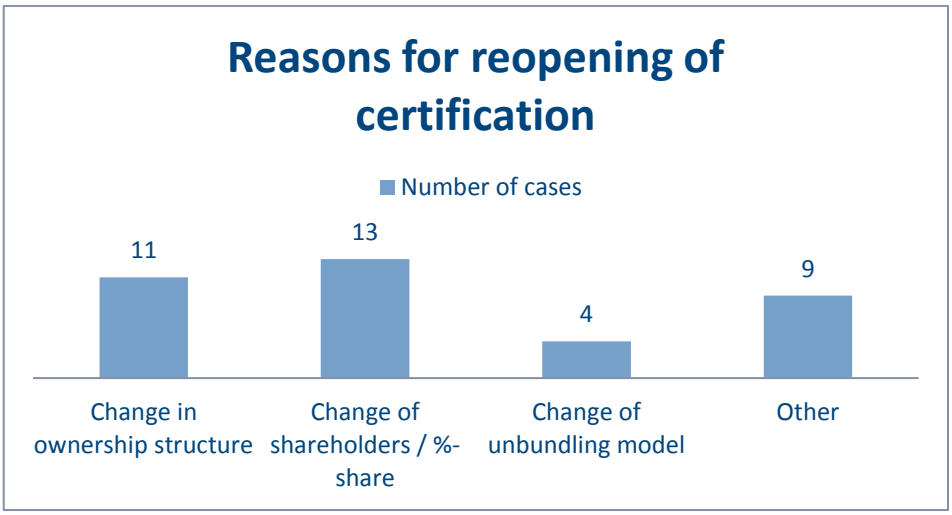


Figure 1: Reasons for reopening of certification

The result of the certification decisions was either to revoke the certification, to certify or to amend a certification decision. In approximately eight cases the review procedure is still ongoing.

[9] https://ec.europa.eu/energy/sites/ener/files/documents/certifications_decisions_final2018.pdf.
[10] Pursuant to Article 3(1) of Electricity and Gas Regulations and Article 10(6) of Electricity and Gas Directives.
[11] E.g. review of an ongoing certification procedure or subsequent steps based on earlier lunched procedures.
[12] Regulation (EC) n° 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and Regulation (EC) n° 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks.
[13] Commission Staff Working Paper; Interpretative note on Directive 2009/72/EC Concerning common rules for the Internal Market in Electricity and Directive 2009/73/EC concerning common rules for the internal market in natural gas; The Unbundling Regime. of 22 January 2010 https://ec.europa.eu/energy/sites/ener/files/documents/2010_01_21_the_regulatory_authorities.pdf.

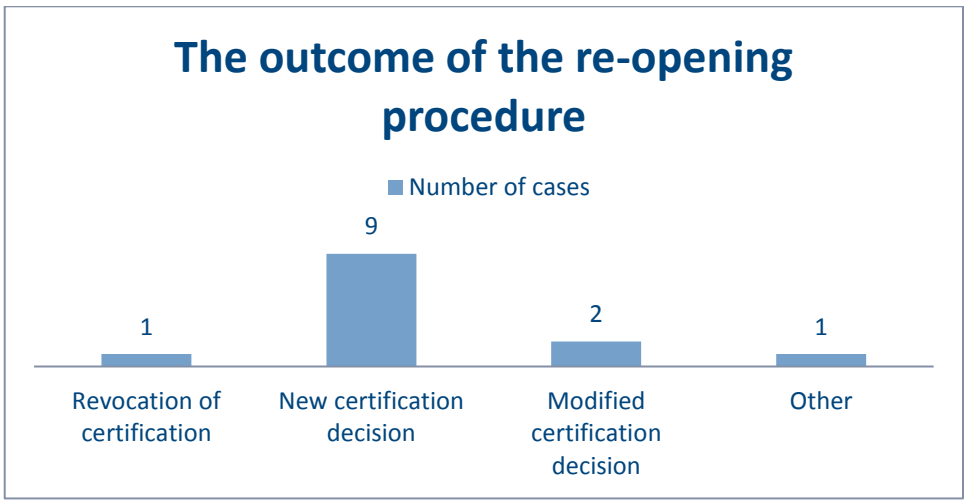


Figure 2: The outcome of the re-opening procedure

1.1 Changing the unbundling model

According to the information submitted, three certification cases were related to changes regarding the unbundling model of the TSO:

- **Greece** - TSO "ADMIE" changed from the ITO model to OU model as a consequence of its changed ownership and shares structure[14].
- **France** - TSO "TIGF" (now called Teréga) also changed its unbundling regime from an ITO to OU in 2014.
- **Ireland** - the first certification of TSO "GNI" was issued as an ITO model following the divestment of the parent company Ervia, which resulted in the cessation of the supply and generation activities. In 2016 GNI applied for an OU certification that was granted the same year.

In **Great Britain**, the certification decision for the Interconnector "IUK Ltd" that was granted on a temporary basis was reviewed due to a change of the legal basis from a regime similar to an exempted interconnector to the OU regime.

This clearly shows that most of the changes that occurred are related to ITOs applying for the OU model.

1.2 Changes in the ownership structure

In various cases, the new certification decisions were triggered by changes in the ownership structure or in the shareholders' shares.

[14] From 100% PPC (DEH) to 51% ADMIE SYMMETOCHON S.A. (Energiaki Holding), 25% DES ADMIE S.A. and 24% STATE GRID EUROPE LIMITED.

- **Great Britain**: a change occurred in the ultimate controller of TSO "TCP OFTOS"[15] (six offshore TSOs[16]) where the shareholding percentage in the TSO and intermediate controllers remained the same but the new main shareholder acquired the company group that holds a 50% share in the TSO[17]. This new main shareholder is from a third country.
- **Great Britain**: for the TSO "Greater Gabbard OFTO Limited" two of three original shareholders each sold their 33% share to the third shareholder, who now holds 100%[18]. The latter is also from a third country;
- **Spain**: The new certification of "Reganosa" is not a certification in relation to third countries as Sojitz Corporation (a Japanese company) has only 15% of Reganosa, and does not control it. The new certification procedure was though related to the purchase of 15% of Reganosa by Sojitz. In its final decision, adopted on 5 April 2018, the Spanish regulator (CNMC) authorised the change but established that Sojitz may not appoint members of the supervisory board of Reganosa. The decision has been implemented accordingly.
- **Austria***:* The change of shares by the TSO "Gas Connect Austria GmbH" (GCA) was reflected in the following way: "BOG"[19] owned 51% of GCA and 49% of "OMV AG" whereas GCA owned 99.999% of "OMV Gas & Power GmbH" and 0.001% of OMV AG. After BOG merged with GCA it was certified under the ITO model[20].
- **Greece**: "SOCAR[21]" from Azerbaijan was the preferred bidder for 66% of the shares of the public TSO "DESFA". The NRA issued one combined certification decision, for both "DEPA"[22] on the basis of Article 10 of the Directive and "SOCAR" according to Article 11 (third country rule). Considering that the abovementioned transaction was not realised in the end, the shares of DEFSA were put out for sale again in 2017[23].
- **France**: EDF reduced its share in RTE from 100% to 50.1%. Shares were sold to the public entity "Caisse des dépôts et consignation" and "CNP Assurances". The changes in shareholding led to a new certification process[24].

Several Member States have decided to not take ownership shares in their TSOs in the future. They rather support the privatisation of their TSOs. We also observe a trend of third-country participations in the EU TSOs so that the procedure of Article 11 of the Directives has to be properly applied.

[15] OFTO means Offshore Transmission Owner. More information available at the following link: https://www.ofgem.gov.uk/electricity/transmission-networks/offshore-transmission
[16] Six TCP OFTOS (TC Robin Rigg OFTO Limited; TC Barrow OFTO Limited; TC Gunfleet Sands OFTO Limited; TC Ormonde OFTO Limited; TC Lincs OFTO Limited; TC Westermost Rough OFTO Limited).
[17] Two original ultimate controllers each held 50% share of the TSO, a new ultimate controller acquired the company group that owns 50% of the TSO (the intermediate controlling companies and structure remain the same, with 50/50 share split between two ultimate controllers).
[18] One of the original owners acquired the remaining 66% share in the TSO from the other two owners, and now holds 100% of the TSO.
[19] Baumgarten-Oberkappel GasleitungsgesmbH.
[20] Gas Connect Austria GmbH, V ZER G 04/17 – old shareholder was 100 % OMV, new shareholder is 51 % OMV Gas & Power GmbH, 49 % Allianz SE and Snam SpA, whereas 49 % from OMV were transferred to Allianz and Snam.
[21] State Oil Company of Azerbaijan Republic
[22] Public Gas Corporation of Greece (Depa) S.A.
[23] A new certification process pursuant to Article 10 of the Directive and under the Ownership Unbundling model was triggered in 2018 with a new preferred bidder.
[24] Commission opinion C(2018)150 final of 10 January 2018; CRE n°2018-005 decision of 11 January 2018.

1.3 Cross border certifications

NRAs reported three cross-border **gas** TSOs certifications[25] and one **electricity** TSO certification[26]. These decisions were taken as **coordinated decisions** between NRAs but were individually published.

The GNI Case Study (Ireland/Northern Ireland/Scotland)

Three NRAs for an Interconnector – How does it work in practice?

The gas TSOs "Gas Networks Ireland" (GNI) and "GNI UK" applied for certification under the **OU model**. The transmission assets of the TSOs (i.e. GNI and its wholly owned and controlled subsidiary GNI (UK)) straddle three jurisdictions: **Ireland**, **Northern Ireland** and **Scotland**.

The gas TSOs are consequently licensed by the three responsible NRAs (CRU[27], UR[28] and Ofgem[29]) because the TSOs require certification from each NRA. GNI's application to the CRU seeks the certification of GNI (including GNI UK) as an OU TSO in respect of Ireland's gas transmission system. Its subsidiary GNI UK submitted an OU certification application to UR and Ofgem. In Northern Ireland, GNI UK's OU certification applies to transmission assets operated by GNI UK, while in Great Britain, GNI UK's OU certification applies to interconnector assets operated by GNI UK. To facilitate a coordinated approach regarding the certification of GNI and GNI UK, the **NRAs had a series of discussions and a joint meeting** with GNI and its wholly owned and controlled subsidiary GNI UK.

Results:
1. CRU certified GNI (including its subsidiary GNI (UK)) under the OU model
2. UR certified GNI (UK) under the OU model
3. Ofgem certified GNI (UK) under the OU model

On 17 April 2019 the European Parliament and the Council adopted the revision of the Gas Directive concerning interconnectors to and from third countries[30]. According to the revised Directive, EU rules (including EU competition rules) are extended to all pipelines entering the EU from non-EU countries. This means that all gas pipelines from non-EU countries will have to abide by EU rules: third-party access, ownership unbundling, non-discriminatory tariffs and transparency. The revision also clarifies the legal framework for any future pipeline projects with third countries, including with the UK when it becomes a non-EU country[31].

The amended rules give exclusive competence to the EU when it comes to agreements on new EU gas lines with non-EU countries, including for granting exemptions. The European

[25] TAP (GR/IT); Interconnector (UK) Limited (GB/BE), GNI (GB/IR).
[26] Nemo Link Ltd (UK/BE), (2 decisions are currently pending - ElecLink, EirGrid).
[27] CRU - Commission for Regulation of Utilities (Irish NRA).
[28] UR - Northern Ireland Authority for Utility Regulation.
[29] Ofgem - Office of Gas and Electricity Markets (British NRA).
[30] According to the new definition, an 'interconnector' means a transmission line which crosses or spans a border between Member States for the purpose of connecting the national transmission system of those Member States or a transmission line between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State (Article 1(1) Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas).
[31] As of time of publication, the UK had an extension granted such that the deadline to leave the EU under the terms of Article 50 is 31 October 2019.

Commission may authorise the Member State in which the pipeline's first entry point is located to open negotiations on gas delivery from a new pipeline from a non-EU country, unless it considers this to be in conflict with EU law or detrimental to competition or security of supply. The relevant Member State shall consult other EU countries concerned before proposing an exemption from EU rules and it is up to the European Commission to decide whether to grant the exemption.

For existing pipelines (connected to EU pipelines before the entry into force of the revised Directive), a Member State can decide on a derogation within one year after the entry into force of the Directive if it is not detrimental to competition.

1.4 Third-Countries Certification Regime

A TSO controlled by a person or persons from a third country or third countries shall be certified following the certification procedure laid down in Article 11 of the Directives (certification in relation to third countries). Although the procedure of Article 10 is replaced in this case by the procedure of Article 11 of the Directives, the concept of control remains the same as the one used in the EC Merger Regulation and should be interpreted accordingly. In such cases, in addition to the regulatory authority, another competent authority designated by the Member State (e.g. a relevant ministry) can be involved in the process. Certification in relation to third countries shall be refused if it has not been demonstrated that:

(a) The entity concerned complies with the requirements of the unbundling rules according to Article 9 of the Directives. This applies equally to OUs, ISOs and ITOs; and
(b) Granting certification will not put at risk the security of energy supply of the Member State and the European Union.

The particularity of this procedure is that:

1. The European Commission provides a prior opinion to the NRA[32];
2. The Member State has a major role in assessing the security of supply aspect on which this paper provides more insight below.

1.4.1 Certification of TSOs in relation to third countries

There were three electricity TSOs'[33] and two gas TSOs' certification decisions[34] in relation to third countries with involvement of the European Commission and the concerned Member States. In two cases, the certification procedure has been carried out and a thorough assessment has been the priority of NRAs in cooperation with their Member States and the European Commission.

- **Latvia**: A third country certification is about to start and involves Russia. In 2018, the NRA (PUC) received an application from the Joint Stock Company (JSC) "Conexus Baltic Grid" regarding its certification for a combined natural gas transmission and storage system

[32] An opinion on the draft certification decision and (if so provided for by the Member State) an opinion on whether the entity concerned complies with the unbundling requirements of Article 9 of the Directives, and whether granting certification will not put at risk the security of energy supply to the Community.
[33] UK: Humber Gateway OFTO Limited (intermediate controller registered in the Cayman Islands) and TC Westermost Rough OFTO Limited (ultimate controller from the US); the Greek TSO "ADMIE".
[34] The French TSO "Teréga" which is controlled jointly by SNAM and GIC Group (Singapore) and the Greek TSO "DESFA" under "SOCAR" of Azerbaijan.

operator. PUC has discovered that one of the JSC Conexus Baltic Grid shareholders with a share of 25.22% is the Russian Public Joint Stock Company "Gazprom" (JSC "Gazprom").

JSC Conexus Baltic Grid Statutes provide that shareholders involved in production or trading of natural gas **are prohibited from attending and participating** in the JSC Conexus Baltic Grid shareholders meetings, as well as voting, and such shareholders are only allowed to receive dividends and the liquidation quota. Although **JSC Gazprom has minority shares** in the JSC Conexus Baltic Grid and formally JSC Conexus Baltic Grid is not controlled by JSC Gazprom, in the JSC Conexus Baltic Grid certification process PUC intended to assess, inter alia, whether such requirements contained in the Statutes could be a suitable mechanism to ensure the independence of the JSC Conexus Baltic Grid. Finally, PUC notified the European Commission of its decision in early 2018.

- **Greece**: The TSO "ADMIE", jointly controlled by the Greek State and the People's Republic of China[35], was certified as taking into account the European Commission's concerns and remarks that considering that the strategic investor and its owners perform activities in the field of electricity or natural gas generation outside of the EEA that "[…] **this does not lead to a risk of discriminatory behaviour via privileged access to transmission services for affiliated companies** to the detriment of other network users". In addition, the European Commission agreed with the NRA that it is of "**crucial importance to obtain and analyse**" any new participation of China or its state-owned companies in VIUs active in electricity and gas generation and supply within the EEA.

- **France**: The TSO "Teréga" is jointly controlled by SNAM and "GIC Group Singapore" (GIC), a public entity from a third country. In its certification decision, CRE considered that GIC's interests in production and supply in Europe did not entail a risk of a conflict of interest. CRE nonetheless implemented a notification mechanism whereby GIC must notify CRE of any purchase of shares above 5% in generation and/or supply companies in Europe.

1.4.2 The definition of the "security of supply" criteria

Where certification is requested by a TSO controlled by a person of a third country/third countries, the NRA shall notify the case to the European Commission. In addition, the NRA or another competent authority designated by the Member State, such as a ministry, shall examine independently the impacts of the certification on **the national as well as the European security of supply**. This assessment shall be part of the final certification decision by the NRA.

The following cases provide further insight into the assessment of the security of supply criteria:

[35] In fulfilment of a commitment made in the third Memorandum of Understanding of 19 August 2015 in the context of the budgetary assistance programme granted to Greece, Greek Law 4389/2016 provides for the full ownership unbundling of ADMIE from PPC. In this framework, PPC's General Assembly approved on 24 November 2016 the acquisition of 24% of PPC's share in ADMIE by the State Grid International Development Ltd (hereinafter "SGID"). SGID appointed a special purpose acquisition company for the purpose of the transaction, State Grid Europe Limited (hereinafter "SGEL"), which is a wholly owned subsidiary of SGID. SGID, in turn, is a wholly owned subsidiary of the company State Grid International Development Co, Ltd (hereinafter "SGID Beijing"), which is a 100 % subsidiary of the company State Grid Corporation of China (hereinafter "SGCC") which is 100% controlled by the People's Republic of China (State Owned Assets Supervision and Administration Commission of the State Council).

In **Great Britain**, the security of supply criteria are assessed by the Energy Ministry and where there may not have been relevant international agreements in place with the third country to be considered, the following elements have been taken into account:

- Whether the person from a third country is an intermediate controller or the ultimate controller of the TSO;
- Whether there is only one ultimate controller, of if there are multiple ultimate controllers from different corporate groups;
- The size, scope and nature of the particular transmission system;
- Whether the controller from a third country has any day-to-day involvement in the management and decisions of the TSO, or if it is only a financial investor; and
- The legislative and regulatory restrictions on the TSO's and the controller's other activities.

In the case of the certification process of the **Latvian** Gas TSO, the NRA (PUC) assessed whether the certification put at risk the security of supply of Latvia and the EU. There is no specific national regulation that provides special arrangements for such an assessment. The TSO submitted documents to PUC to assess the security of supply. PUC also reviewed the rights and obligations of Latvia and the EU with respect to that third country and other specific facts and circumstances.

PUC assessed in particular whether there are no conflicts of interests as one of the JSC "Conexus Baltic Grid" shareholders with a share of 29,06% is the European Fund "Marguerite Gas I Sarl". This fund is also a shareholder within the largest Latvian gas trader JSC "Latvijas Gāze" (28,97%). In PUC's opinion, Marguerite Gas I as a JSC Conexus Baltic Grid shareholder should be a passive shareholder without voting rights.

The security of supply in the ADMIE Case Study (Greece/China)

In the certification of the Greek TSO "ADMIE", the NRA (RAE) referred firstly to the cooperation framework between the EU and China in the field of energy. It then assessed the security of supply concerns regarding the **maintenance and the development** of the Greek network. No risk for the security of supply was identified on the basis of the following elements:

- RAE assessed the national ten-year network development plan (TYNDP) as well as its compliance with the ENTSO-E TYNDP and is competent to take any measures to ensure its fulfilment.
- RAE is entitled to take any measure necessary, including imposing fines, to ensure the fulfilment of ADMIE's obligations enshrined in law.
- The Greek State must, according to the national law, remain the majority shareholder of ADMIE, which excludes the possibility that third countries acquire sole control.

For RAE, it was important that the shares of the strategic investor do not increase to the extent that **it can appoint the majority of the members of the Board of Directors responsible for deciding on, inter alia, the business plan and the budget** of ADMIE and all members of the "Strategic Committee" consisting now of two members appointed by the Energiaki Holding (controlled by the Greek State) and two by the strategic investor.

To assess the security of supply criteria for the EU, RAE presented the interconnection between Greece and neighbouring Member States, i.e. Italy and Bulgaria, as well as the flows between these countries. The result was that the interconnection capacity and the exports from Greece to these Member States represent a limited percentage of their import needs. RAE

also referred to the participation of China through SGID/SGEL[36] in the Italian public entity "Italian Cassa Depositie Prestiti reti S.p.S", which did not lead to the exercise of any kind of control within the Italian electricity and gas TSOs "Terna" and "Snam".

RAE concluded that no incentive exists for SGID to exercise control over ADMIE in a manner that would endanger the security of supply of Greece and the EU, in particular as undertakings owned by the Chinese investors are not active in generation or supply activities in Greece or in the EU to the extent or in such a way as to pose risks for the security of supply.

The European Commission underlines that if the non-EU country concerned is active in the field of electricity generation or supply but it can be excluded with reasonable certainty that the produced energy will be supplied to the EU, it is less likely that the TSO controlled by the entity from a non-EU country might be operated in a manner contrary to security of supply interests of Greece or the EU.

In the absence of commercial activities of energy supply to the EU and/or interests in the energy production in the EU, the incentives and opportunities for exercising influence over ADMIE to the detriment of EU energy security of supply **are limited**, **and thus security of supply concerns are unlikely to arise under the present circumstances.**

The following conditions were nevertheless imposed for granting the certification to ADMIE:

- **RAE must be notified of** any future development in relation to ADMIE (e.g. regarding the activities of SGID, its mother company and, in general, China in Greece and Europe, or any change in control over ADMIE etc.)**,** underpinned by adequate reasoning for continuous compliance with the unbundling requirements (e.g. security of supply criteria).
- On the TYNDP, ADMIE needs to inform RAE of the agenda points of the internal decision process and, upon request, also submit the minutes of the meetings.

1.5 Participation of financial investors in TSOs' activities

This issue arises in regard to how the rules on ownership unbundling as set out in Article 9 of the Directives are to be applied in situations where, on the one hand, a shareholder in a TSO also has shares in generation, production and/or supply activities, but, on the other hand, it can be demonstrated that in the specific circumstances of the case there is no incentive for this shareholder to influence the decision making in the TSO with the intention to favour its generation, production and/or supply activities to the detriment of other network users.

To assist NRAs in better appreciating this issue, the European Commission has already issued in 2013 a paper to illustrate how to interpret and apply the ownership unbundling rules in such cases[37]. The European Commission underlines that it is for the TSO to be certified to make the case before the NRA that even though one or more of the circumstances set out to in Article 9(1)(b),(c) and/or (d) of the Directives may arguably be present, no conflict of interest exists in the case. **The burden of proof** as to the absence of a conflict of interest or an incentive to exploit it lies with the **TSO** and its shareholders, and **includes an obligation to submit all the relevant information**. The regulatory authority has to take the presented

[36] See footnote 35.
[37] SWD(2013)177 Commission staff working document of 08.05.2019 on the Commission's practice in assessing the presence of a Conflict of Interest of financial investors. https://ec.europa.eu/energy/sites/ener/files/documents/swd_2013_0177_en.pdf

information into account and include it in its assessment whether the unbundling rules of Article 9 of the Directives are complied with.

There were two cases where certified TSOs were owned by financial funds having shares in generation and/or supply.

In **France**: no specific conditions were attached to the certification decision but the NRA has asked the financial funds to notify any purchase of shares above 5% in generation and/or supply companies in Europe.

In **Great Britain**: the certification of the offshore transmission owner "OFTO" also did not entail any condition. The licenses granted to OFTO contain, however, a number of conditions that limit any possible conflict of interest. These include the following obligations on the licensee:

- To ensure that information about the transmission business cannot be shared with any associated business, including the licensee's ultimate controllers or their subsidiaries (except in very limited, specified circumstances);
- To conduct the transmission business in a way that ensures that neither the licensee nor any subsidiary of the licensee's ultimate controller obtains any unfair commercial advantage, in particular from preferential treatment or a discriminatory arrangement;
- Not to disclose commercially sensitive information, in particular information about the licensee's own activities that may be commercially advantageous in respect to supply or generation activities;
- Not to share any information relating to or deriving from the management or operation of the transmission business; and
- To procure a legally enforceable undertaking from the licensee's ultimate controllers that those ultimate controllers and their subsidiaries will refrain from any action that would be likely to cause the licensee to breach any of its obligations under the Electricity Act of 1989 (containing unbundling obligations) or its licence.

Any additional regulatory restrictions on financial investors are also considered in the certification decision process. This assessment is conducted on a case-by-case basis and the conditions published by the European Commission in its staff working document on a conflict of interest including in case of financial investors[38].

1.6 New developments in the OU model

Since the last report, several TSOs have decided **to divest their shares** in order to be certified **under the OU model. Most of these TSO were previously certified as ITO.**

- **Latvia**: the gas TSO AS "Conexus Baltic Grid" AS "Latvijas Gāze" was divided into two undertakings. JSC "Conexus Baltic Grid" shareholders LLC "Itera Latvia" and "Uniper Ruhrgas International GmbH" sold their shares to the JSC "Augstsprieguma tīkls" (the Latvian electricity TSO, the state-owned company, at this moment owns 34.36% of JSC "Conexus Baltic Grid" shares). It was necessary because LLC "Itera Latvia" and "Uniper Ruhrgas International GmbH" have shares in the largest gas trader JSC "Latvijas Gāze". Despite the fact that LLC "Itera Latvia" and "Uniper Ruhrgas International GmbH" sold their shares, the JSC "Gazprom" still has shares in both undertakings – JSC "Conexus Baltic Grid" (TSO) and AS "Latvijas Gāze" (gas trader).

[38] See footnote 37.

- **France***:* Total sold its shares in the TSO "Teréga" (an ITO) to a consortium. After the change in its share capital, "Teréga" was certified as an OU TSO.
- **Great Britain**: Gas suppliers/producers which were shareholders of the UK Interconnector Limited divested their shares.

According to new business models several major European TSOs that were certified as ITO divested their shares and decided to be certified under the OU model. The possibilities foreseen in the Directives to implement various unbundling models are efficiently used by the TSOs and allow them enough flexibility to organise and/or adapt their business smoothly to the unbundling requirements.

1.6.1 Compliance of state-owned TSOs with unbundling requirements

The **state-owned TSOs** reinforced measures to guarantee an effective separation of control and exercise of rights in most of the Member States where they are established.

- In **Greece** and **Estonia**, different Ministries are in control of the incumbent and of the TSO respectively.
- In **Slovenia,** two separate bodies exercise control over the TSO on the one hand and over production/supply undertakings on the other hand. The rights and obligations of the State arising from financial assets in the TSO are exercised by the government. The rights and obligations of the State arising from financial assets in the supply and production companies are exercised by the Slovenian Sovereign Holding;
- In **Czech Republic**, the electricity TSO "ČEPS" is wholly owned by the Ministry of Industry and Trade while the majority of the stock of the energy company "ČEZ" is owned by the Ministry of Finance.
- **Lithuanian** TSOs AB "Amber Grid" and "LITGRID" AB and legal persons engaged in commercial production and supply activities (UAB "Lietuvos dujų tiekimas", AB "Lietuvos energijos gamyba", UAB "Energijos tiekimas", UAB "Litgas") are controlled by different State authorities. Production, supply and distribution activities were transferred under the control of the Ministry of Finance through UAB "Lietuvos energija" and the transmission activities to the Ministry of Energy through UAB "EPSO-G". In UAB "Litgas" management, the Ministry of Energy does not have a controlling share package and cannot exercise its voting rights or adopt decisions.
- In **the Netherlands**, shares of the electricity TSO are held by the Ministry of Finance whereas decisions regarding production/generation/trading in electricity/gas are taken by the Ministry of Economic Affairs and Climate.
- In **Austria**, according to Austrian law, **two separate public bodies** exercising control over a TSO on the one hand and over an undertaking performing any of the functions of generation or supply on the other hand are deemed not to be the same legal person. There are several provisions in federal and provincial law to ensure this separation.
- In **Ireland**, the Government has approved a Majority Shareholding Ministerial (MSM) Order, which divests the Ministry for Communications, Climate Action and Environment's (MCCAE) control of "Ervia" (gas TSO parent company). As a result of the MSM Order, Ministerial control of the Ervia Group is now vested with the Ministry for Housing, Planning and Local Government (MHPLG). The NRA is of the view that the MCCAE has no possibility of exercising decisive influence on an energy undertaking in production/supply.

In most of the concerned Member States the monitoring and control of the state-owned TSO are properly divided mainly by law between different ministries to avoid any influence on the decision making of TSO, production and supply activities.

1.6.2 Additional NRAs' requirements for the OU model

Some NRAs have recently issued additional requirements when certifying OU TSOs. Even if the provisions of the Directives are quite detailed, Members States can always add provisions if these are necessary to efficiently implement the EU provisions.

In **Ireland**, notwithstanding its positive OU final certification decision, the NRA imposed the following obligations on gas TSO GNI in order to ensure continued OU compliance:

- GNI provides to the CRU (Irish NRA) signed declarations from all new members that are appointed to GNI's and GNI (UK)'s boards, which confirm that the relevant board member status is compliant with Article 9 of the Gas Directive;
- GNI immediately notifies the CRU regarding the potential and actual appointment of members to the Ervia's board, and advises whether members of Ervia's board have interests in an undertaking that is involved in energy production/supply[39].

In **Great Britain** conditional certifications are not issued, however, legislative requirements were amended in 2017 requiring all generation and supply interests outside the EEA to be included in unbundling assessments. Consequently, there are a number of point-to-point transmission systems with limited TSO functions whose financial investors regularly change their shareholdings and investments in other energy undertakings, including generation assets. This has recently led to almost **constant certification reviews** involving large international companies that invest in TSOs.

The additional unbundling requirements put on TSOs by NRAs are, so far, compliant with EU legislation, even if the process is sometimes an burden to maintain. In the majority of Member States, no main obstacles were observed where additional conditions have been put on TSO unbundling requirements.

1.7 New developments in the ITO model

Since 2015 some NRAs have imposed additional requirements for issuing ITO certification decisions.

- In **Croatia**, requirements concerned, for example, the provisions of telecommunication services, termination of lease agreements, procurement of ancillary services and balancing energy.
- In **France**, CRE asked EDF to change one of its representatives in RTE's supervisory board who was previously a member subject to independence rules, in violation of Article 19(7) of the Electricity Directive.
- In **Greece**, some of the following commitments have been put on the TSO "TAP AG":

[39] Other measure taken: GNI shall immediately notify the CRU regarding the potential and actual establishment of any new companies within the Ervia Group; notify the potential and actual activation of any dormant/non-trading company with the Ervia Group; notify the CRU if Irish Water substantially escalates its energy production/supply, such that it could reasonably be deemed to be an undertaking that actively participates in energy production/supply. Additionally, GNI shall notify the CRU if additional generation units of Irish Water start exporting electricity to the grid.

- maintain, during the construction phase and until the commercial operation date (COD), the current functional unbundling regime monitored by the Regulatory Compliance Officer;
- twelve months before COD, provide the authorities with full and concrete evidence to prove TAP AG's readiness to comply with their Road Map not later than COD;
- during the construction phase and beyond, submit to the authorities any technical operation and maintenance agreement signed with adjacent TSOs.

The Directives further require the ITOs to set up a TYNDP on an annual basis, identifying both the investments already decided upon and new investments which need to be executed within the next three years in order to ensure that the necessary investments are made in the network. This is also an instrument for NRAs to judge whether the establishment of TYNDPs is a guarantee for a sufficient degree of investment in the networks.

All ITOs have already adopted their first set of annual TYNDPs and it seems that they have sufficient resources to finance them. So far, no formal complaints were submitted to the relevant NRAs in relation to the TYNDP. NRAs successfully intervened in the past to ensure the appropriateness of the TYNDP. Concerning investment decisions, there was no difference between the levels of investment made by TSOs under the ITO or the OU model in countries where both models exist.

1.8 New developments in the ISO model

Although the ISO model is not a broadly used model, it has also been adapted through NRAs by imposing further requirements in issuing or through constant monitoring of the ISO certification.

The **Latvian** TSO (JSC “Augstsprieguma tīkls”) is a state-owned company in which the Ministry of Finance is the holder of state capital shares. At the same time, the Ministry of Economics is the holder of state capital shares in the largest trader of electricity (JSC “Latvenergo”). Even if there is a strict division of competences between the Ministry of Finance and the Ministry of Economics, the NRA has discovered that based on a decision made by an extraordinary meeting of stockholders, a supervisory board of the TSO consisting of three members was established where one of the members was a public official of the Ministry of Economics. Under the aforementioned circumstances, the NRA underlined that this member cannot occupy this position as this is not compatible with Article 9(1) of the Electricity Directive. In its decision the NRA obliged the relevant member of the supervisory board to terminate his function.

1.9 New developments on joint ventures

According to Article 7(4) of the Gas Directive and 6(4) of the Electricity Directive, where vertically integrated transmission system operators participate in a joint undertaking established for implementing such cooperation, the joint undertaking shall establish and implement a compliance programme which sets out the measures to be taken to ensure that discriminatory and anticompetitive conduct is excluded. That compliance programme shall set out the specific obligations of employees to meet the objective of excluding discriminatory and anticompetitive conduct. It shall be subject to the approval of ACER. Compliance with the

programme shall be independently monitored by the compliance officers of the vertically integrated transmission system operators[40].

Case Study - Balansys:

In 2017, the Belgian TSO "Fluxys Belgium" and the Luxembourgish TSO "Creos" entrusted the management of the market-based balancing activities of the integrated Belux zone to a joint venture, "Balansys".

For implementing such cooperation, the joint venture, Balansys, established a compliance programme that set out the specific obligations of employees to meet the objective of excluding discriminatory and anti-competitive conduct.

On 19 July 2016, CREG approved Balansys' appointment of the compliance officer. In addition, the CREG also approved the conditions concerning the mandate or the employment conditions of the compliance officer, including the duration of the mandate.

On 17 July 2017, the Belgian NRA CREG issued a final opinion on the compliance programme of Balansys. After this, Balansys submitted its compliance programme to ACER for approval pursuant to Article 7(4) of the Gas Directive. It is still waiting for ACER's approval decision.

1.10 European Commission's assessment in the certification decisions

According to Article 10 of the Directives, the explicit or tacit decision on the certification of a TSO is to be notified to the European Commission by the NRA, together with all the relevant information with respect to that decision. The European Commission has to closely assess whether and to what extent the unbundling requirements, particularly for the ITO model, are successful in practice in ensuring full and effective independence.

In relation to the European Commission's involvement in the certification process, a staff working document has been published by the European Commission[41]. The purpose of this document is to provide practical guidance on how the European Commission will treat and assess NRAs' notifications of preliminary certification decisions.

In order to facilitate the process of certification, NRAs discuss their intended notifications with the European Commission prior to officially requesting it to examine the notification. This preparatory stage is an important part of the review process since it gives the NRAs and the European Commission the opportunity to informally discuss an intended notification and in particular, the scope of the information to be submitted. Such preparatory discussions also enable NRAs to send to TSOs targeted requests for information and will, therefore, limit the administrative burden for TSOs. They will, furthermore, facilitate the planning of the notification.

For transparency purposes the European Commission publishes the non-confidential version of its opinions/decisions on its website[42].

[40] Other possible options for setting up joint ventures are provided in the following articles: Article 9(5) of the Directives; Article 17(2)(g) of the Gas Directive; Article 1, last paragraph, of the Gas Regulation as well as in various electricity and gas network codes.

[41] SEC(2011) 1095 final from 21.9.2011 https://ec.europa.eu/energy/sites/ener/files/documents/sec_2011_1095.pdf.

[42] https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation.

There have been seven cases where the European Commission issued opinions during the certification process or after the adoption of the certification decisions requesting a revision of an NRA's decision.

In its opinions, the European Commission addressed the following issues:

- Restriction of requirements concerning the management of the TSO;
- Restriction of requirements concerning members representing employees in the supervisory body of the TSO;
- Scope of the VIU and competences of the supervisory board;
- Generation and supply interests held by a TSO's controllers/financial investors outside the EEA should be considered (this has since been amended in transposing into UK legislation);
- Generation and supply interests held by any of the TSO's controllers/financial investors should be considered cumulatively, in terms of the total capacity held by a controller;
- Minimum capacity in terms of generation and supply interests, small or micro generation interests held by a TSO's controllers/financial investors to be considered;
- Passive financial rights related to a minority shareholding; and
- The scope for a conflict of interest in relation to the generation interests held by a TSO's shareholders.

Case Study 1 - Certification of the TSO "ADMIE"

The European Commission highlighted the following points:

- **Rights of public investors**: The European Commission urged Greek NRA RAE to examine and possibly impose measures to make sure that public investors who hold shares in Energiaki Holding (ADMIE Symmetochon) and exercise control or rights over an undertaking having as business activity either the production or supply of electricity would be disabled from exercising voting rights, including the competence to appoint members in the Supervisory Board, Directorate or other representative bodies of ADMIE.
- **Separation within the State**: The assessment of RAE should also include the role of the Prime Minister in Greece and in particular if he would be able to exercise influence over multiple ministers (including the Minister of Finance and the Minister of Environment and Energy) and/or give orders or instructions as regards the Minister's responsibilities in transmission of electricity.

The European Commission further noted when it comes to the third-country issue that RAE should further assess the rights of the created "Strategic Committee" and particularly these potential risks:

- the risk of Chinese legislative acts that render it impossible or difficult (such as by creating legal uncertainty or conflicts of law between Chinese and EU legislation) for ADMIE or SGID to comply with EU energy law;
- the risk that Chinese investors exercise their ownership rights in SGID and its mother company in a manner that could result in ADMIE or SGID acting contrary to EU energy law; and
- the risk that Chinese investors SGID and/or companies affiliated to them may directly or indirectly impose sanctions on ADMIE or SGID in contradiction with EU law and policies, notably related to security of supply.

The European Commission noted that safeguards are needed to ensure that ADMIE as well as its shareholders controlled by a person from a third country comply with such requirements.

The European Commission recommended "*that RAE takes into account also the requirements set out in the NIS Directive in its final decision and requires that ADMIE and its shareholders from a third country, already now, properly identify potential cyber-incidents as a risk and commit to take appropriate technical and organisational measures to prevent and minimise the impact of the incidents affecting the security of networks in Greece and in the Union*".

The European Commission agreed that future developments regarding the activities of SGID, its mother company and, in general, the government China in Greece and Europe need to be monitored to ensure that the security of supply assessment remains unchanged.

Finally, the European Commission determined that the NRA should introduce mechanisms that enable the monitoring of shareholdings in ADMIE on a regular basis and contribute to deciding whether or not a shareholder meets the requirements of Article 9(1)(b)(i) of the Electricity Directive.

Case Study 2 – Certification of the TSO "GNI"

The CRU's preliminary certification decision confirmed the CRU's intention to certify GNI under the OU regime. The EU opinion on its preliminary decision requested that the CRU:

- require GNI to indicate if additional generation units of Irish Water start exporting electricity to the grid;
- specify in its final decision whether "Ervia's" non-trading companies are engaged in activities of generation or supply of gas or electricity; and
- assess in its final decision the degree of independence that the Minister for Environment, Community and Local Government (MECLG) enjoys in the exercise of his/her function in relation to "Ervia" and GNI.

The European Commission closely monitored whether and to what extent the unbundling requirements for the ITO model are successful in practice in ensuring full and effective independence of the ITO. The European Commission submitted a detailed specific report on this topic to the European Parliament and the Council according to Article 47(3) of the Electricity Directive and Article 52(3) of the Gas Directive by 3 March 2013[43]. In all cases, the European Commission has brought forward its suggestions to the NRAs on how the ITO provisions should be interpreted in the case at hand. Most of the ITO regimes in place were fulfilling the conditions put forward by the European Commission so that no further changes/amendments to the legal framework were necessary. It has been stated that no formal complaints have been submitted to the European Commission by market participants in this regard and that the vast majority of the questioned network users confirmed to have little or no reason to complain about the autonomy of ITOs they are directly working with.

1.11 Monitoring the application of the unbundling provisions

The monitoring of the proper application of the unbundling provisions through the certifications decisions is divided between diverse entities:

[43] Staff working document – Report on ITO Model of 13.10.2014, SWD(2014) 312 final. https://ec.europa.eu/energy/sites/ener/files/documents/2014_iem_communication_annex3.pdf

1. A **compliance officer** is designated by the TSO and checks the application of the unbundling rules in the company. The compliance officer monitors the compliance of the TSO with all the unbundling provisions, meaning also assessing the implementation of informational and accounting unbundling within the company.
2. The **NRAs** are responsible for ensuring a continuous monitoring of the unbundling implementation.
3. The **European Commission** evaluates whether gaps are identified in the implementation of the unbundling provisions

All these entities ensure a **continuous monitoring** of the certification requirements in compliance with the legal provisions within and outside the TSOs.

The monitoring of the **compliance officer** is done within the TSO with its result annually published in a compliance report submitted for verification to the NRA. Compliance programmes, which are available to all employees and are made public in some cases, are generally seen as an effective tool in helping to monitor ITOs' compliance with the unbundling requirements.

NRAs must monitor the compliance of TSOs, particularly with regard to the requirements of Article 9 of the Directives. They are required to open a certification procedure to ensure such compliance. The monitoring activity of the **NRAs** is twofold: an **active role** in asking TSOs for information where unlawful behaviours have been detected and a **passive role** through the obligations put on TSOs to inform NRAs of all changes occurring in their structure. On the latter, in most countries[44] the TSOs informed the NRAs of every planned transaction that may have required a reassessment of their certification. In some countries[45], this information was provided upon an NRA's request.

Regular exchanges between the compliance officer and the NRA ensure effective monitoring of compliance with the unbundling rules, meaning regular compliance reports as well as meetings in order to check whether monitoring is effective and compliance officers fulfil their tasks.

The instruments foreseen for NRAs to assess the implementation of unbundling (and sanction breaches) are listed in Article 37(5) of the Electricity Directive and Article 41(5) of the Gas Directive. NRAs' duties and powers can be summarised as follows:

- issue penalties for discriminatory behaviour favouring the VIU of up to 10% of the annual turnover either of the VIU or of the TSO, as the case may be;
- monitor communications between the TSO and other parts of the VIU in order to ensure compliance of the TSO with its obligations;
- monitor commercial and financial relations including loans between the ITO and other parts of the VIU;
- carry out inspections, including unannounced ones, on the premises of the ITO and other parts of the VIU; and
- assign all or specific tasks of the ITO to an independent system operator where the ITO persistently breaches its obligations under the Directives, in particular, where it engages in repeated discriminatory behaviour to the benefit of the VIU.

Significant monitoring of compliance with the unbundling rules occurs in relation to commercial and financial agreements between ITOs and other parts of the VIU. NRAs report whether ITOs

[44] i.a. Slovenia, Austria, Belgium, Greece, France, Poland, Finland and Great Britain.
[45] i.a. Poland and Lithuania.

comply with their obligation to notify the NRA of commercial agreements with its VIU. NRAs must scrutinise those agreements carefully. This assessment is based on a regular communication between ITOs and NRAs so that problems are very often solved during informal consultations. Monitoring is a necessary instrument to ensure a smooth cooperation between parties to avoid stricter measures.

The following measures have been taken by NRAs in cases of non-compliance with unbundling rules:

- Imposed sanctions/penalties;
- Revoked the certification; and/or
- Imposed a modification of the certification.

In some Member States (**Malta** and **Great Britain**) derogations from the unbundling provisions according to Article 44 of the Electricity Directive were attributed whilst in **Greece**, **Ireland**, **Austria** and **Great Britain** derogations to unbundling provisions were granted according to Article 49 of the Gas Directive.

2 DSO Unbundling

2.1 Unbundling regime and DSOs' structure

As provided by the Directives, the DSO unbundling regime is composed of legal unbundling, functional unbundling and accounting unbundling rules. No derogation is possible from the rules on accounting unbundling for smaller DSOs serving less than 100,000 connected customers.

Malta still benefits from the exemption from the requirements of Directive 2009/72/EC: the Maltese Electricity Market Regulations require unbundling at an internal accounting level only. With regard to natural gas, the Natural Gas Market Regulations require that if the DSO is part of a VIU, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution.

The **Netherlands** remains the only Member State where national law requires full ownership unbundling while all of the others require at least a legal and functional unbundling for both gas and electricity DSOs. In the **Flemish region of Belgium**, even though the relevant regional law does not impose ownership unbundling for DSOs, in practice DSOs have been fully unbundled.

Since the entry into force of the 3rd Package, several NRAs have observed major changes in the ownership structure of DSOs. Some examples are listed below:

- In **France**, within the group "Electricité de Strasbourg", the DSO used to be the parent company. At the French NRA's (CRE) request, the structure of the group changed with the parent company becoming a holding with two subsidiaries: one for the production/supply activity and the other one in charge of electricity distribution.
- In **Belgium**, seven electricity DSOs and five gas DSOs were merged into "ORES Assets scrl" on 31 December 2013. Electrabel sold its ORES Assets scrl shares on 31 December 2016.
- In **Denmark**, many electricity DSOs have merged while the state-owned infrastructure company, Energinet, has taken over one gas DSO. Negotiations are still pending regarding the other remaining gas DSOs.
- In **Hungary**, one electricity DSO (formerly owned by EDF) was acquired by a state owned company and now operates under the name "NKM Áramhálózati Kft." Gas DSO FŐGÁZ was reprivatized (operates as "NKM Földgázhálózati Kft"), while "TIGÁZ" DSO (formerly owned by ENI) was acquired by the Hungarian MET Group.
- In **Latvia**, in the context of the implementation of the legal, functional and organisational unbundling of the gas distribution activity of "Latvijas Gāze", the gas DSO JSC "GASO" started to operate in December 2017. The DSO's compliance with the independence requirements is currently being assessed by PUC. Latvijas Gāze continues to perform its natural gas supply activities.
- In **Portugal**, 26% of EDP (holding of the major DSO – "EDP Distribuição" – as well as major supplier and generator) is owned by two Chinese state-owned entities. EDP

therefore had to sell its shares in "REN" (Portuguese TSO)[46]. There has been no change of control of EDP holding since 2012.

The most important changes that have been observed are related to the ownership structure of DSOs. Mergers between small DSOs into ones having more market share have been observed.

2.2 Assessment of DSOs' rebranding

In most of Member States, national law specifically provides that the DSO's branding and communication shall not create confusion with the production and supply activities of the VIU[47]. In this respect, several Member States have adapted their national legal framework since 2015 to further define the unbundling rules regarding branding and communication of DSOs:

- In **Denmark**, a national rule regulating rebranding came into force in June 2017. In particular, with regards to its communication practices, the DSO's corporate identity must be different from that of the VIU. DERA[48] has been actively guiding the electricity DSOs in the ongoing implementation process. In this respect, 17 out of 48 DSO rebranding processes have been reported to DERA so far.
- In **Italy**, in order to avoid any confusion in respect of the separate identity of the supply branch of the VIU, the NRA decided to implement the full rebranding of DSOs for both the electricity and gas sectors.
- In **Norway**, the law imposes on DSOs general neutrality requirements. In addition, the implementation of explicit branding requirements rules is expected in the coming months.
- In **Greece**, in the framework of monitoring the effective implementation of the new unbundling provisions in the natural gas sector, all three natural gas DSOs actively consulted RAE (through multiple meetings and the submission of explanatory memoranda) before adopting their final brands.

The NRAs' control over DSO branding and communication in order to avoid confusion with the VIU is a relevant example of the major role played by European regulators to guarantee the effective implementation of unbundling provisions. As a matter of fact, based on the previous CEER 2016 report on the implementation of DSO unbundling provisions, almost half of the NRAs of the participating Member States stated that they had been directly involved in a DSO rebranding/communication process change.

Ofgem and BNetzA[49] declared that there had been a rise in the number of DSOs whose corporate identity might create confusion with the supply branch of the VIU. These DSOs have therefore been requested to rebrand their corporate identity.

NRAs must intervene when cases of non-compliance are detected to oblige DSOs to rebrand and redefine their communications according to the unbundling requirements. These interventions are necessary to properly inform consumers on gas and electricity offers since the logos are often the first information and marker that a client will have regarding a company.

[46] Commission opinion pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC and to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Portugal - Certification of REN Rede Eléctrica Nacional S.A. and REN Gasodutos S.A.
[47] In Poland, there are no national law provisions which oblige DSOs to change their brand.
[48] DERA - Danish Energy Regulatory Authority.
[49] Die Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (German NRA).

The unbundling requirements must also guarantee a fairer competition among DSOs while enabling new companies to enter the energy market.

Overall, few cases of non-compliance have been detected by NRAs in the various Member States[50].

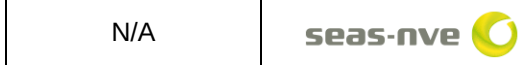
In some countries, such as **Denmark**, **Germany**, **France** and **Great Britain**, national law provides pecuniary penalties with maximum fines. So far, NRAs have not imposed any sanctions, although three decisions were issued in Austria instructing that compliance with the law must be restored within an appropriate period of time.

In **France**, following an investigation conducted by CRE, "ERDF", the main electricity DSO wholly owned by EDF, changed its logo and corporate identity to "ENEDIS". Moreover, in 2018, CRE has asked another DSO to change its logo, considering that it was too similar to the logo of the supply entity of the VIU.

In **Sweden**, even though there has been no formal case of non-compliance, Ei investigated one issue regarding communication with electricity consumers and the public.

In **Luxembourg,** the holding company named, "Enovos International S.A.", was rebranded, in October 2016, to "Encevo S.A." in order to avoid the risk of confusion between the holding company with its subsidiaries, "Enovos Luxembourg S.A." and "Creos Luxembourg S.A.".

Below are a few examples of recent changes of logos of the DSO or the production/supply branch of the VIU:

Country	Old logo VIU	New logo VIU	Old logo DSO	New logo DSO
Denmark	N/A			
				
	N/A			
	N/A			
France	N/A			
	N/A			
Germany				

[50] Several cases have been detected in Austria, 4 in France and around 19 in Germany.

Country	Old logo VIU	New logo VIU	Old logo DSO	New logo DSO
			energiSaar energisnetz	
	enercity positive energie	enercity positive energie	enercity netz enercity netz	enercity Netz Ein Unternehmen der enercity-Gruppe
Greece	ΔΕΠΑ ΘΕΣΣΑΛΟΝΙΚΗΣ - ΘΕΣΣΑΛΙΑΣ	ZeniΘ Κορυφαία ενέργεια.	ΔΕΠΑ ΘΕΣΣΑΛΟΝΙΚΗΣ - ΘΕΣΣΑΛΙΑΣ	ΕΔΑΘΕΣΣ ΕΤΑΙΡΕΙΑ ΔΙΑΝΟΜΗΣ ΑΕΡΙΟΥ
	φυσικό αέριο ΕΠΑ ΑΤΤΙΚΗΣ	φυσικό αέριο ΕΛΛΗΝΙΚΗ ΕΤΑΙΡΕΙΑ ΕΝΕΡΓΕΙΑΣ	φυσικό αέριο ΕΠΑ ΑΤΤΙΚΗΣ	διανομή αερίου αττικής ΕΤΑΙΡΕΙΑ ΔΙΑΝΟΜΗΣ ΑΕΡΙΟΥ ΑΤΤΙΚΗΣ Α.Ε.
	N/A	ΔΕΠΑ	ΔΕΠΑ	ΔΕΔΑ
Italy	N/A	EDISON	EDISON D.G.	Infrastrutture Distribuzione Gas
	N/A	enel	Enel Distribuzione	e-distribuzione
Luxembourg	CEGEDEL	enovos	CEGEDEL Net	creos

In those Member States where rebranding processes have been carried out, more than half of the NRAs concerned consider that they have been conducted to a satisfactory level in both gas and electricity. In some other Member States, NRAs interventions have been necessary to implement the rules properly.

2.3 Overview of the DSOs in different Member States

The landscape for gas and electricity DSOs as well as for DSOs serving less than 100,000 connected customers remains quite heterogeneous. This had already been highlighted in the 2016 CEER report. The number of DSOs varies from one or two in some Member States to several hundred in other countries.

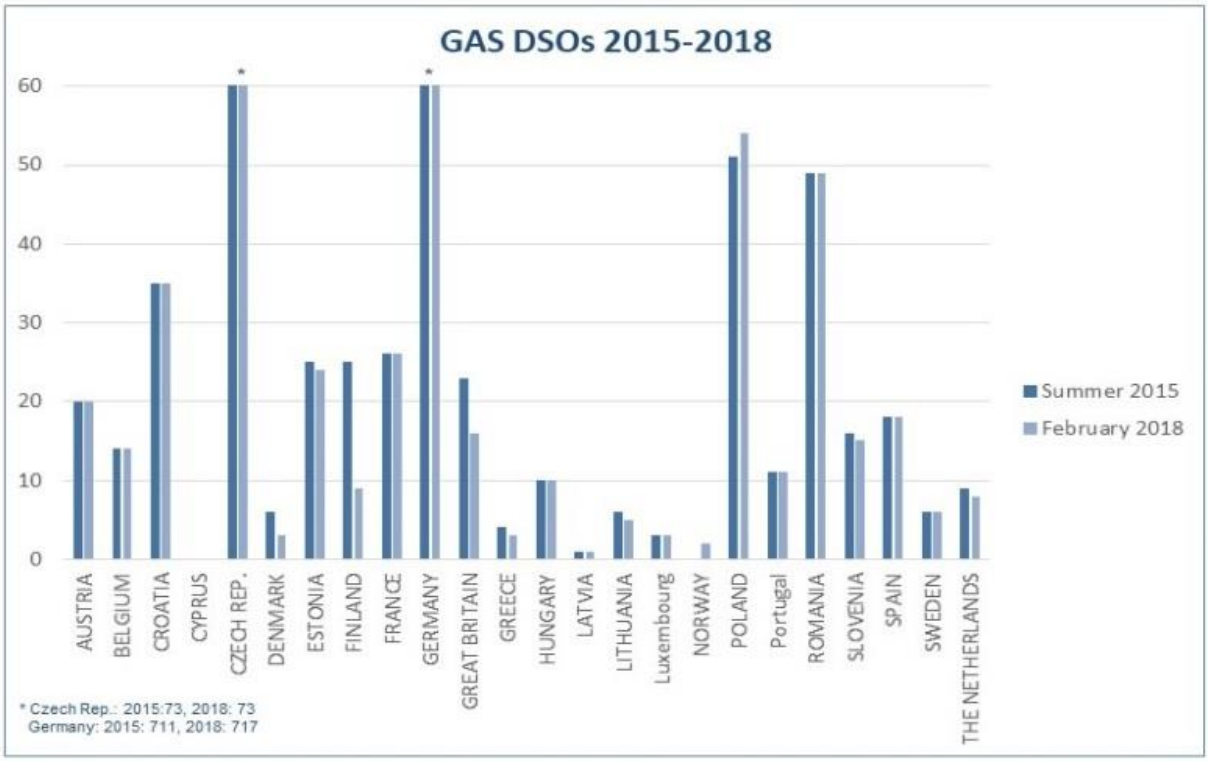


Figure 3: Gas DSOs 2015-2018

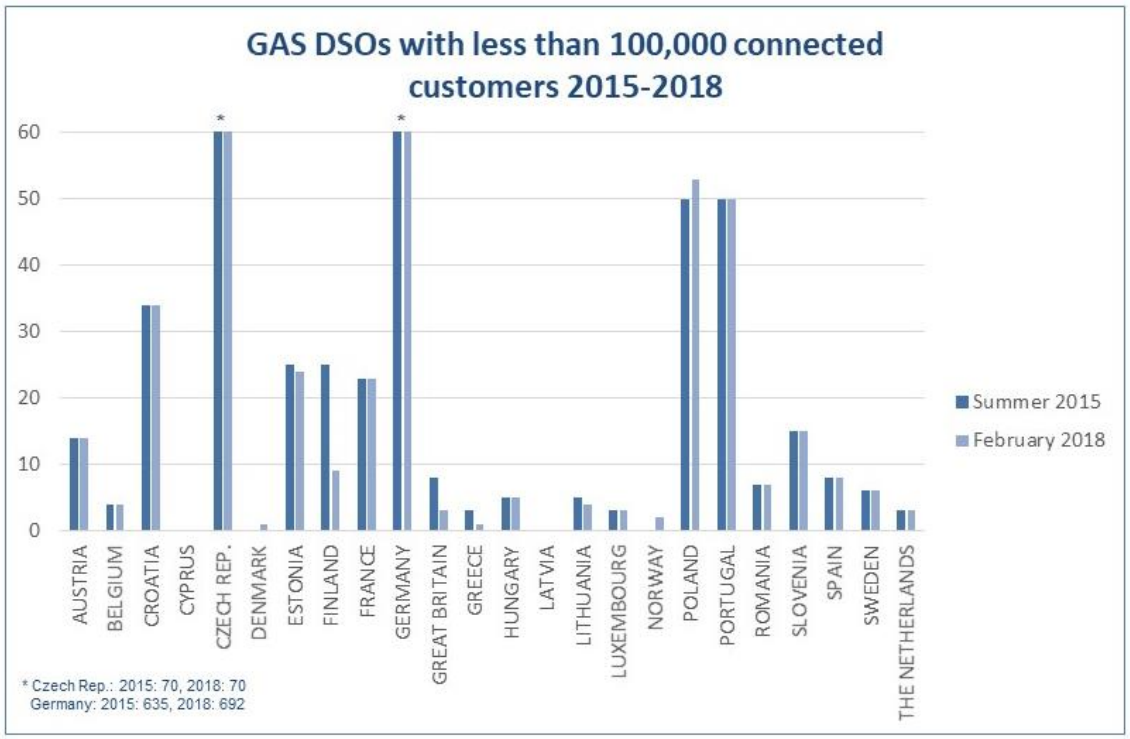


Figure 4: Gas DSOs with less than 100,000 connected customers 2015-2018

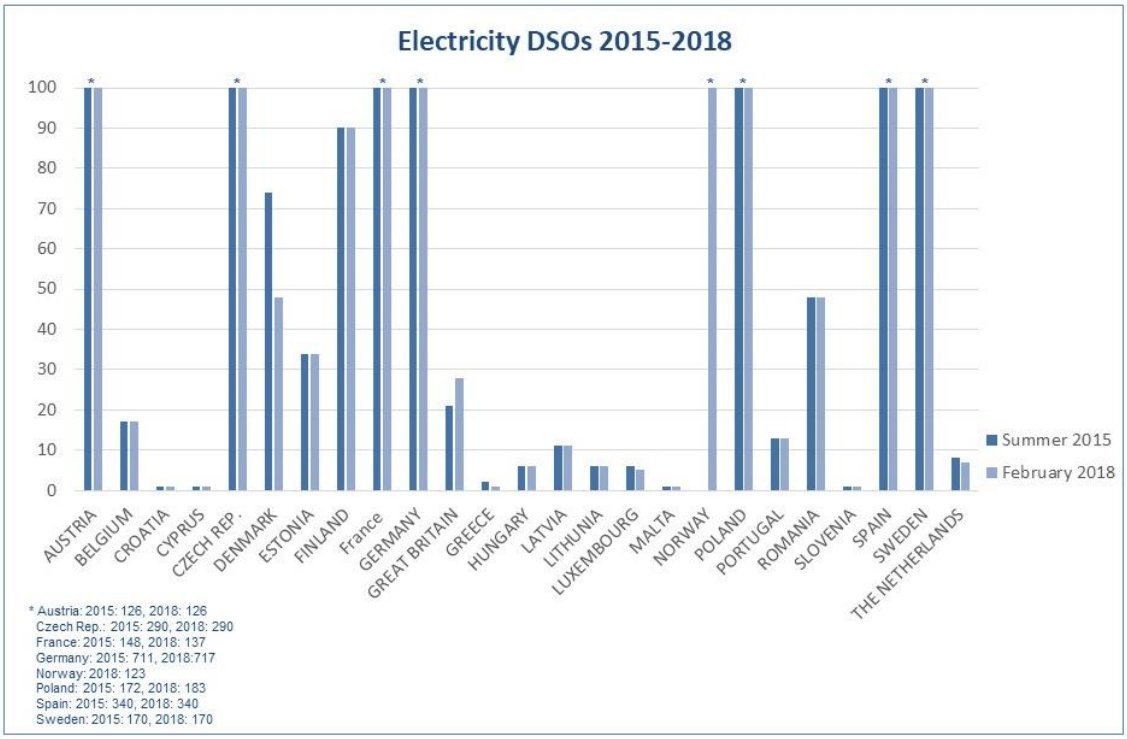


Figure 5: Electricity DSOs 2015-2018

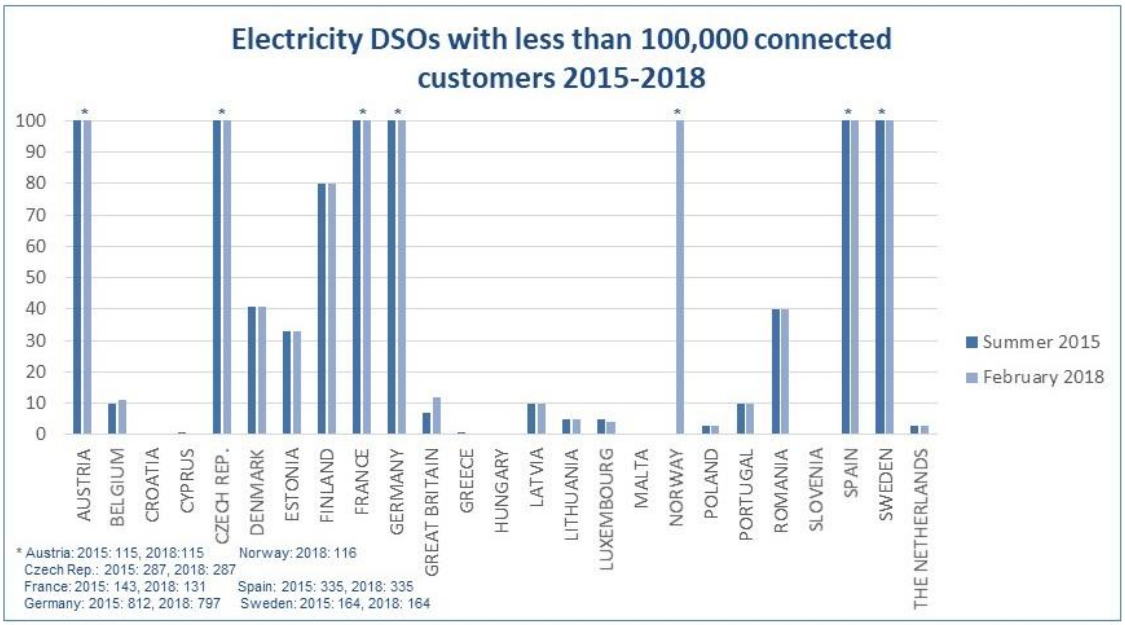


Figure 6: Electricity DSOs with less than 100,000 connected customers 2015-2018

With the exception of some countries such as **Poland** for gas and electricity DSOs (whose numbers have increased since 2015) and **Germany** for gas and electricity DSOs with less than 100,000 connected customers (whose numbers have decreased since 2015), the number of gas and electricity DSOs in the Member States participating in this report has not significantly changed between the two surveys.

The number of DSOs clearly contrasts with the TSO landscape in Europe, where a consolidation trend has been visible for the last three years. Due to this contrasting picture, it appears difficult to implement detailed and fully harmonised European standards in regard to DSOs. For reasons of scale, such measures seem to be better achieved at local level.

2.4 Independence of DSOs

2.4.1 Independence regime

Distribution activities are to be performed in accordance with the legal and functional unbundling requirements as provided in the Directives.

In the **Belgian region of Wallonia**, the audit that was ongoing in 2015 revealed inadequacies in regard to independence rules. The DSO concerned received a formal notice to comply with these rules, and the regional NRA *Commission wallonne pour l'Énergie* (CWaPE) has called for a reinforcement of the legal framework aiming at a simplification of DSOs' structure.

In almost all Member States, detailed rules on independence of the staff and the management of DSOs have been adopted[51]. Additional rules have been specifically implemented in certain Member States to ensure independence:

- In **Denmark**, the compliance officers of the DSOs can neither be employed in other companies of the VIU nor have any kind of responsibility, business relationship or interest in such companies. The executive members and the members of the management board of the DSOs are bound to impartiality rules, such as not being part of the board of directors in affiliated companies;
- In **Norway**, there was a need to further strengthen the rules on independence, since nearly all legally unbundled DSOs were part of a group of companies including production and supply, which created challenges in practice. Thus, new and stricter unbundling rules with a wider scope have been adopted, pending entry into force in the near future.
- In **Latvia**, the same person cannot be concurrently involved in different units of the vertically integrated natural gas merchant, which are responsible, directly or indirectly, for the production of natural gas, provision of liquefied natural gas services and trade thereof. The persons in charge of the DSO must act independently as well.
- In **Great Britain**, DSOs' independence issues are dealt through the licencing procedure.

DSOs must benefit from complete independence within the approved financial plan or any equivalent instrument. This was and remains the case in the majority of Member States (with the exception of **Cyprus**, the **Czech Republic**, **Denmark**, **France**, **Germany** and **Portugal**).

From 2015 to 2018, the **Greek** and **Slovenian** NRAs saw an improvement in the independence of DSOs in relation to their approved financial plans in the gas sector.

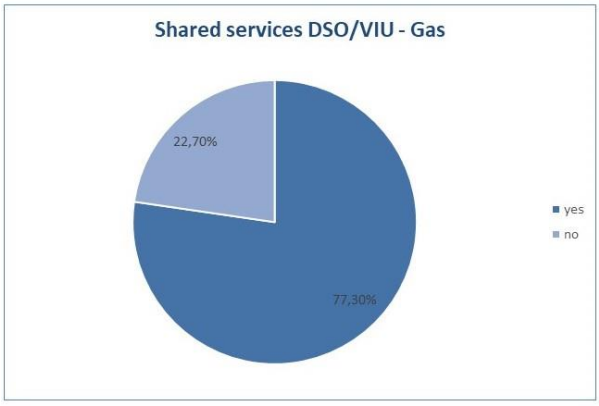
Most of the participating NRAs reported that the legal form chosen for their DSOs ensures a sufficient level of independence.

[51] Except Malta, Cyprus, Austria, the Netherlands and Slovenia (nonetheless, in the Slovenian Energy Act some rules are in place when the DSO is part of a VIU).

2.4.2 Special rules for shared services

Shared services between DSOs and their VIU are limited and accepted under the condition that effective competition is ensured and conflicts of interest are excluded.

The shared services concern all the different categories of services from personnel to finance, IT, accommodation, transport and call centres.



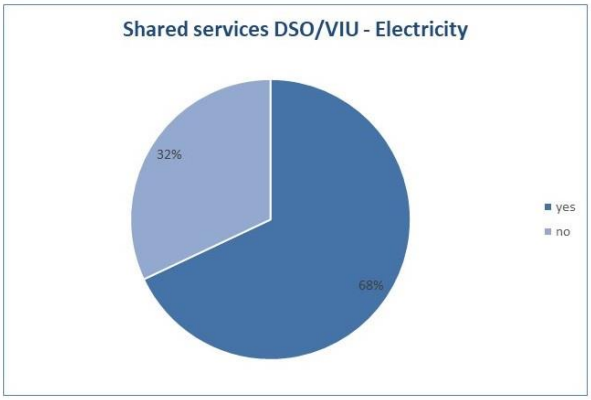


Figure 7: Shared services between DSO and the VIU – Gas

Figure 8: Shared services between DSO and VIU – Electricity

The 2018 survey has revealed that more Member States have shared services in both the gas and electricity sectors compared with the situation covered in the previous report. **Denmark** and **Lithuania** now have shared services in both gas and electricity. Although NRAs continually monitor that DSOs comply with the aforementioned unbundling requirements, the increase of shared services between DSOs and their VIUs may raise questions on the complete independence of DSOs, since shared services lead to more interactions between different entities of VIUs.

2.5 Financial and personnel resources of the DSOs

Apart from the Netherlands and the fully ownership-unbundled DSOs for which this obligation is not relevant, the participating NRAs have all considered that DSOs have sufficient financial resources under their immediate control to ensure real decision-making power and independence in their work.

It was found that in most Member States, except **Cyprus**, **Denmark**[52], **Finland**[53] and **France**, DSOs have sufficient personnel resources directly employed to ensure real decision-making power and independence in their work.

In **France**, several DSOs were structured on a "light DSO" scheme in which the personnel used by the DSOs were employed by the supply branch of the VIU. In its 2013-2014 report on unbundling, CRE asked these DSOs to send an action plan in order to solve this issue. Since the findings of the last (April 2016) CEER unbundling report, the necessary personnel resources have been transferred from the supply branch of the VIU to the DSO.

[52] In Denmark, a number of electricity DSOs have no or few personnel resources directly employed.
[53] In Finland, the DSOs must also have sufficient personnel resources directly employed in a DSO and this is checked within the DSO licensing process.

In **Finland**, this issue is checked during the DSO licensing process whereas in **Lithuania** the personnel resources must comply with the requirements specified in the Energy Undertakings Technological, Financial and Management Capacity Assessment Procedure approved by the Lithuanian NRA in March 2015. This procedure foresees that DSOs' personnel resources are treated as sufficient if the DSO:

- has the necessary qualitative and quantitative capacities to (i) communicate with the national regulator, (ii) comply with its requests, (iii) provide necessary information and (iv) fulfil other legally defined obligations;
- can carry out its regulated activity, prepare reports and implement accounting requirements;
- has the personnel necessary to inform and consult consumers and to deal with their complaints.

In some Member States[54], there is either a legal or regulatory guidance and/or methodology to define the principle of sufficient personnel resources. Some countries[55] have put in place a monitoring policy on personnel resources. In **Greece**, DSOs must submit periodic reports in this regard. In **Lithuania**, the DSO has to provide motivated explanation to the NRA on changes related to personnel from the time the licence has been issued or modified.

In **Norway**, the electricity DSOs report annually on detailed accounts on income and expenses. Random or selected audits of the DSOs may be conducted as well.

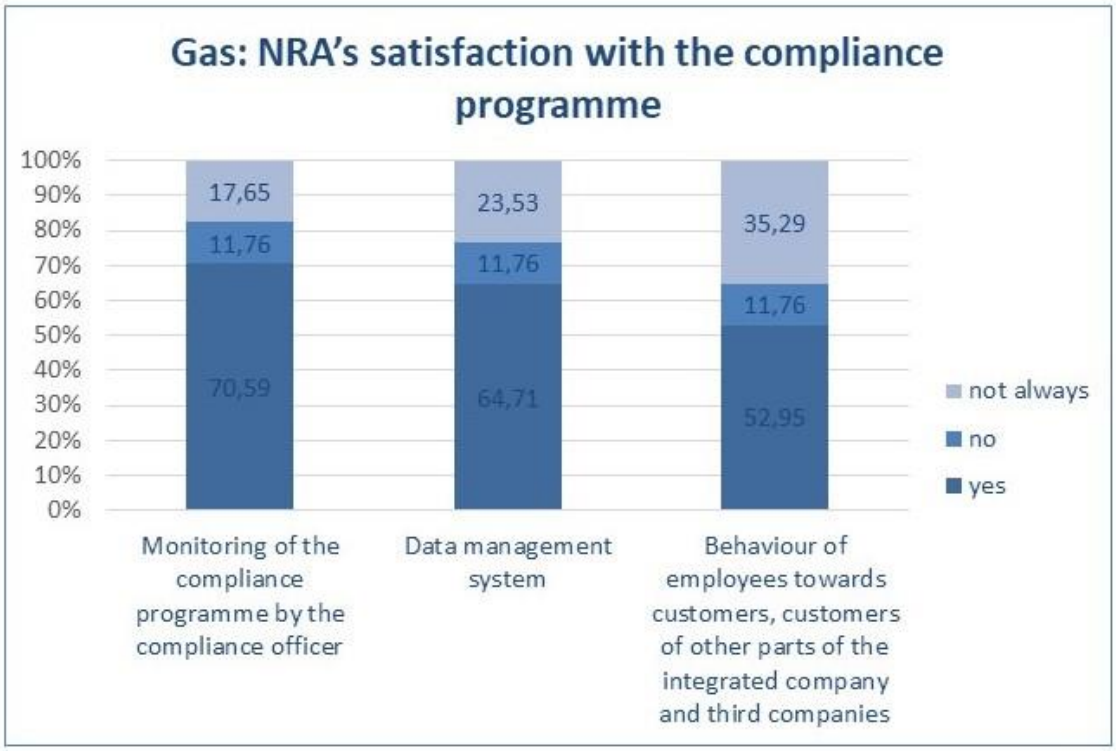


Figure 9: Gas: NRA's satisfaction with the compliance programme of the DSOs

[54] Denmark, Germany, Great Britain, Hungary and Lithuania.
[55] Cyprus, Hungary, Greece, Lithuania, Poland, Romania and Spain.

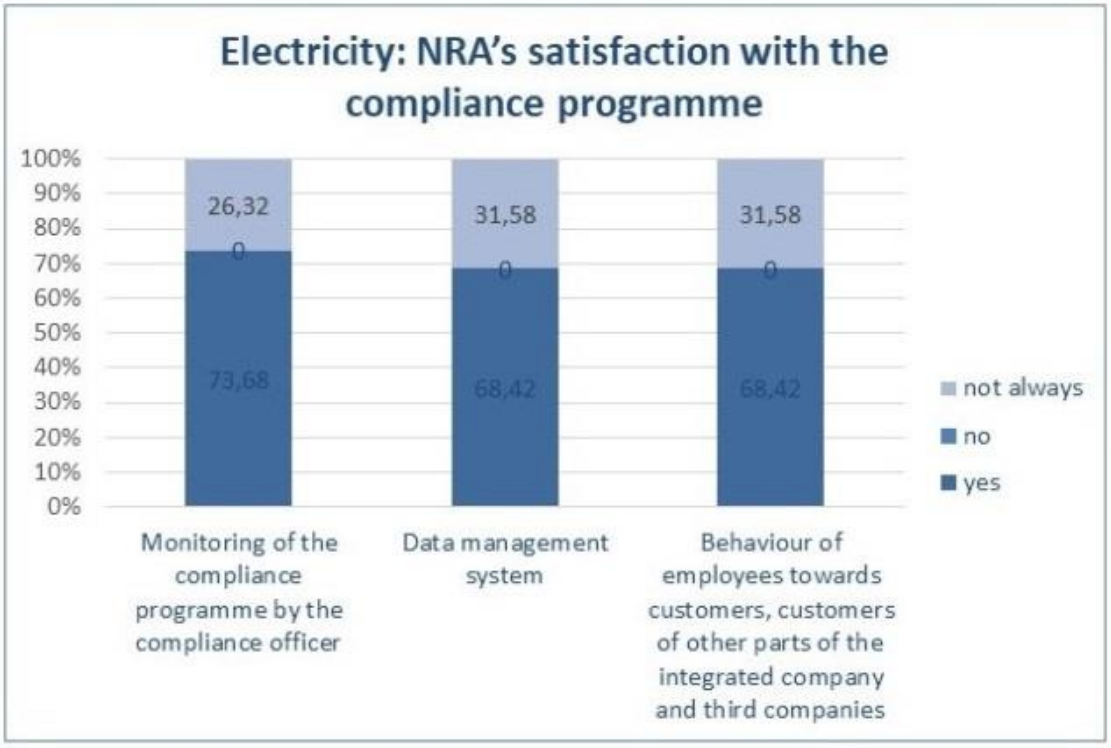


Figure 10: Electricity: satisfaction with the compliance programme of the DSOs

NRAs are, in the majority, satisfied with DSOs' compliance programmes, particularly when it comes to the monitoring activity of the compliance officer. For example, in **Poland**, compliance officers are appointed by the operator in order to monitor compliance programmes implementation. They should be independent in this activity, and provided with access to all information necessary to fulfil the officer's tasks, including information which is possessed not only by the DSO, but also by its affiliated entities.

Less satisfactory are often the measures foreseen to guide the behaviour of the employees of the concerned companies and the way data management is handled. On these two topics NRAs are of the view that work is still needed to efficiently ensure proper informational unbundling.

Almost all of the participating NRAs confirmed that compliance officers have enough information and resources to fulfil their tasks independently. Their reports are very helpful for NRAs to further monitor the correct implementation of the compliance programme.

3 Conclusion

3.1 Main outcome of the assessment of TSO unbundling

All three unbundling models have been equally assessed in this status review and it clearly appears that most of the changes that occurred for TSOs are related to ITO and OU models.

Several Member States have decided to not take ownership shares in their TSOs in the future. They, rather, support the privatisation of their TSOs.

We also observe a trend of third countries' participations in EU TSOs, such that the procedure of Article 11 has to be properly applied in order to involve all parties equally (Member States and the European Commission) and to thoroughly assess the "security of supply" criteria. Third-country participation is welcome as long as the European legal framework remains fully applicable in order to avoid discrimination.

There were three electricity TSO and two gas TSO certification decisions in relation to third countries with the involvement of the European Commission and the concerned Member States.

The participation of financial funds has significantly increased in recent years: in **France** and **Great Britain**, TSOs owned by financial funds having shares in generation and/or supply were certified. In these cases, no specific conditions were attached to the certification decisions. Nonetheless, in **France**, the NRA imposed upon the fund to notify the NRA of any purchase of shares above 5% in generation and/or supply companies in Europe. In **Great Britain**, Ofgem put a list of conditions in the licenses to fulfil, in order to limit conflicts of interest (e.g. an obligation to ensure that information about the transmission business cannot be shared with any associated business, etc.).

New business models for some major European TSOs that were certified as ITOs divested their shares and decided to be certified under the OU model. The possibilities foreseen in the Directives to implement various unbundling models (also changing models) have been efficiently used by TSOs and allow them enough flexibility to organise and/or adapt their business smoothly to the unbundling requirements.

In most of the concerned countries the monitoring and control of the state-owned TSO are properly divided mainly by law between different ministries to avoid any influence in the decision making on TSO, production and supply activities.

The additional unbundling requirements put on the TSOs by NRAs are, so far, compliant with the EU legislation even if it is sometimes a burdensome process to maintain. In the majority of Member States, no major obstacles were observed where additional conditions have been put on TSO unbundling requirements. Following the monitoring of the TSOs' unbundling regimes, NRAs took the following measures in cases of non-compliance with unbundling rules:

- Imposed sanctions/penalties;
- Revoked the certification;
- Imposed a modification in the certification.

A new issue has appeared with respect to the last report related to the 'Project(s) of Common Interest' (PCI) – a label that can be attributed to a TSO and its obligation under the unbundling

provisions. In a document published by ENTSO-E[56], it is underlined that the project promoter (asking for the attribution of the PCI status generally for an interconnection infrastructure) has to ensure that PCIs comply with the unbundling rules of the 3rd Package. Hence, when submitting its application, the project promoter must confirm the fulfilment of the European Union unbundling rules or its commitment to comply with them (i.e. the project promoter has to either proceed with the certification of the TSO or obtain an exemption), at latest by the time of entry into operation of the project. This condition is, of course, assessed by the competent authorities/NRAs and the European Commission.

3.2 Main outcome of the status review of the DSOs unbundling

Malta still benefits from the exemption from the requirements of the Electricity Directive and **the Netherlands** remains the only Member State where national law requires full ownership unbundling while all of the others require at least a legal and functional unbundling for both gas and electricity DSOs. In the Flemish region of **Belgium**, even though the relevant regional law does not impose ownership unbundling for DSOs, in practice DSOs have been fully unbundled.

Since the entry into force of the 3rd Package, several NRAs have observed major changes in the ownership structure of DSOs. The most important changes that have been observed are related to the ownership structure of DSOs.

In **France**, within the group Electricité de Strasbourg, the DSO used to be the parent company. The group had to change, with the parent company becoming a holding with two subsidiaries: one for the production/supply activity and the other one in charge of electricity distribution.

In **Denmark**, many electricity DSOs have merged while the state-owned infrastructure company Energinet has taken over one gas DSO.

In **Hungary**, one electricity DSO was acquired by a state owned company and now operates under the name “NKM Áramhálózati Kft” whereas the gas DSO FŐGÁZ was reprivatised and TIGÁZ DSO was acquired by the Hungarian MET Group.

One of the most relevant issues NRAs had to deal with in terms of DSO unbundling is linked to DSO branding. The NRAs’ control over DSO branding and communication in order to avoid confusion with the VIU is a relevant example of the major role played by NRAs in order to guarantee the effective implementation of unbundling provisions. Almost half of the NRAs of the participating Member States stated that they had been directly involved in a DSO rebranding/communication process change.

Overall, some cases of non-compliance have been detected by NRAs in various Member States. In some countries, such as **Denmark**, **Germany**, **France** or **Great Britain**, national law provides pecuniary penalties with maximum fines. So far, NRAs have not imposed any sanctions, although three decisions were issued in **Austria** instructing that compliance with the law must be restored within an appropriate period of time.

In **France**, following an investigation conducted by the NRA, “ERDF”, the main electricity DSO wholly owned by EDF, changed its logo and corporate identity to “ENEDIS”. Moreover, in 2018, CRE has asked another DSO to change its logo, considering that it is too similar to the logo of the supply entity of the VIU.

[56] See footnote 6.

In **Sweden**, even though there has been no formal case of non-compliance, Ei investigated one issue regarding communication with electricity consumers and the public.

Finally, in the Member States where rebranding processes have been carried out, more than half of the NRAs concerned consider that they have been conducted to a satisfactory level in both gas and electricity. In some other Member States, NRAs had to intervene in order to implement the rules properly.

When it comes to the DSO landscape, with the exception of some countries such as **Poland** for gas and electricity DSOs (whose numbers have increased since 2015) and **Germany** for gas and electricity DSOs with less than 100,000 connected customers (whose numbers have decreased since 2015), the number of gas and electricity DSOs in the participating Member States has not significantly changed between the two surveys.

The number of DSOs clearly contrasts with the TSO landscape in Europe, where a consolidation trend has been visible for the last three years. Due to this contrasting picture, it appears difficult to implement detailed and fully harmonised European standards as regards DSOs. For reasons of scale, such measures seem to be better achieved at local level.

In almost all of the Member States, detailed rules on independence of the staff and the management of DSOs have been adopted. Additional rules have been specifically implemented in certain Member States to ensure independence e.g.:

In **Denmark**, the compliance officers of the DSOs can neither be employed in other companies of the VIU nor have any kind of responsibility, business relationship or interest in such companies.

In **Latvia**, the same person cannot be concurrently involved in different units of the vertically integrated natural gas merchant, which are responsible, directly or indirectly, for the production of natural gas, provision of liquefied natural gas services and trade thereof.

In other countries such as **Great Britain**, the independence issue is tackled through the licencing procedure.

DSOs mainly benefit from complete independence within the framework of the approved financial plan or any equivalent instrument; this was and remains the case in the majority of Member States with the exception of **Cyprus**, **Czech Republic**, **Denmark**, **France**, **Germany** and **Portugal**.

Most of the participating NRAs reported that the legal form chosen for their DSOs ensures a sufficient level of independence of the DSOs.

This survey has revealed that more Member States have shared services in both gas and electricity sectors compared with the situation as it was depicted in the previous report. **Denmark** and **Lithuania** now have shared services in both gas and electricity.

Although NRAs continually monitor that DSOs comply with the aforementioned unbundling requirements, the increase of shared services between DSOs and their VIUs may raise questions on the complete independence of DSOs, since shared services lead to more interactions between the different entities of the VIUs.

Apart from **the Netherlands** and the fully ownership unbundled DSOs for which this obligation is not relevant, the participating NRAs have all considered that DSOs have sufficient financial resources under their immediate control to ensure real decision-making power and independence in their work.

Almost all the participating NRAs confirmed that compliance officers have enough information and resources to fulfil their tasks independently. Their reports are very helpful for NRAs to further monitor the correct implementation of the compliance programme.

4 The Clean Energy Package Unbundling related provisions in a nutshell

On 30 November 2016, the European Commission published a series of proposals as the "Clean Energy Package for All Europeans" (CEP) package in order to facilitate the clean energy transition, update the current European energy setting and the energy policy framework (particularly for electricity). Since their publication, these legislative proposals underwent multiple changes as various stakeholders and EU policymakers from all three European institutions (European Commission, European Parliament and European Council) contributed to the legislative shaping of the texts during a period of almost 2.5 years. After several rounds of trilogues between representatives of the European institutions, which were concluded on 18 December 2018, the three legislative texts relevant for this report, i.e. the recasts of the Directive and Regulation on the internal market for electricity, as well as the ACER Regulation have been formally adopted on 22 May 2019 by the Council of Ministers of the EU[57]. Hereafter, we briefly report on the main changes and novelties with regard to unbundling related provisions in these three recast texts which are part of the Clean Energy Package.

4.1 Main TSO unbundling principles and certification rules remain unaltered

The Recast Electricity Directive now explicitly includes the unbundling rules in the very first article on the subject matter of this directive and mentions therein the unbundling rules as being part of the "key rules" of the directive.

The Directive's chapter (Chapter VI) setting out the rules on TSO unbundling as developed in the 3rd Package, remains unchanged when it comes to the main substantive rules on the unbundling regimes for TSOs (OU, ISO, ITO, ITO+) as well as the TSO designation and certification process (the latter is also set out in Article 51 of the Recast Electricity Regulation). However, the Recast Electricity Directive, which entails a restructuration of the articles of the TSO unbundling chapter, and the Recast Electricity Regulation do contain some new and modified provisions related to TSO unbundling and certification, which (may) also have important implications for NRAs tasks.

Furthermore, it is to be noted that, as far as ACER's (although limited) role in TSO certification is concerned, there seems to be a contradiction in the changes made to the ACER Regulation and the corresponding article in the Electricity Regulation: in the Recast ACER Regulation, ACER's task to provide, upon EC's request, an opinion on the NRA's preliminary decision on a TSO certification has been deleted (see Article 10 of the Recast ACER Regulation), while the provision on ACER's task in this respect is maintained in the recast Electricity Regulation (see Article 51(1)).

4.2 Delegation and scope of TSO tasks

The new provisions of the Recast Electricity Directive explicitly foresee the possibility for Member States to provide in their national laws that one or several TSO tasks or responsibilities may be assigned to a TSO other than the one which owns the transmission system[58] (Article 40(2)). In such case, the entity to which the tasks are assigned has to be a TSO, but does not have to own the transmission system it is responsible for, and shall be

[57] https://ec.europa.eu/info/news/clean-energy-all-europeans-package-completed-good-consumers-good-growth-and-jobs-and-good-planet-2019-may-22_en

[58] See also the « multiple-TSO provision » in the CACM, Balancing, FCA and System Operation Network Codes.

certified by the NRA under the OUB, ISO or ITO model[59]. This is without prejudice to the possibility for TSOs which are certified as OU, ISO or ITO to delegate on their own initiative and under their supervision certain tasks to other TSOs which are certified under one of the three aforementioned unbundling models and under the condition that this delegation of tasks does not endanger the effective and independent decision-making rights of the delegating TSO. This now provides a clear general principle and derogation rules outlining that such TSO tasks can only be assigned to other certified TSOs, so *a contrario* not to other (non-regulated) entities which are not a certified TSO[60].

In addition, Article 40(8) of the Recast Electricity Directive provides that Member States or their designated competent authorities may allow TSOs to perform activities other than those provided for in the Electricity Directive and Electricity Regulation where such activities are necessary for the TSOs to fulfil their obligations under this Directive or Regulation and the regulatory authority has assessed the necessity of such a derogation.

This is without prejudice to the right of TSOs to own, develop, manage or operate networks other than electricity networks, where the Member State or the designated competent authority has granted such a right.

4.3 Ownership, development, management and operation of energy storage facilities by TSOs[61], including new tasks for NRAs

A new important provision (Article 54 of the Recast Electricity Directive) prohibits TSOs, as a general principle, from owning, developing, managing or operating energy storage[62] facilities[63]. The underlying idea is that network operators should not own, develop, manage or operate energy storage facilities, as in the new electricity market design storage services should be market-based and competitive. Consequently, cross-subsidisation between energy storage and the regulated functions of distribution or transmission should be avoided[64].

This prohibition, however, comes with a double derogation possibility for Member States: they may allow TSOs to own, develop, manage or operate energy storage facilities (1) where they are fully integrated network components[65] and the regulatory authority has granted its approval or, (2) where a series of (cumulative) conditions is fulfilled including a tendering procedure as well as ex-ante review and approval by the NRA.

Decisions to grant a derogation also have to be notified to ACER and the EC.

[59] In the initial Recast proposal of the EC only the OUB model was foreseen.
[60] CEP provisions do not cover the matter whether a TSO which is exempted from the certification obligation is allowed to assign certain tasks to another certified TSO.
[61] In the initial Recast proposal of the EC a similar principle with derogations was foreseen for ownership and control of assets providing ancillary services.
[62] New definition of energy storage (Article 2(59) of the Recast Electricity Directive): "'energy storage' means, in the electricity system, deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy or use as another energy carrier."
[63] New definition of energy storage facility: (Article 2(60) of Recast Electricity Directive): 'energy storage facility' in the electricity system means a facility where energy storage occurs."
[64] See Recital 62 of the Recast Electricity Directive.
[65] "Fully integrated network components" (Article 2(51) of Recast Electricity Directive) means: "network components that are integrated in the transmission or distribution system, including storage facilities, and that are used for the sole purpose of ensuring a secure and reliable operation of the transmission or distribution system and not for balancing or congestion management";

As for the first derogation, Recital 63 of the Recast Electricity Directive clarifies that where energy storage facilities are fully integrated network components that are not used for balancing or congestion management, they should not, subject to approval by the regulatory authority, be required to comply with the same strict limitations for system operators to own, develop, manage or operate those facilities.

Capacitors or flywheels which provide important services for network security and reliability, and contribute to synchronisation of different parts of the system, are given as examples of fully integrated network components.

The conditions for the second derogation are threefold: (a) other parties, following a tendering procedure (subject to review and approval by the regulatory authority) have not been awarded with a right to own, develop, control, manage or operate such facilities or could not deliver these services at a reasonable cost and in a timely manner; (b) such facilities are necessary for the TSOs to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the transmission system and they are not used to buy or sell electricity in the electricity markets; and (c) the regulatory authority has assessed the necessity of such derogation, has carried out an ex-ante review of the applicability of a tendering procedure, including the conditions of the tendering procedure, and granted its approval.

This implies new tasks for NRAs, among others, NRA approval in case of a derogation. Derogations shall also be subject to regular reassessment by the NRA in view of a phasing-out[66] of TSO energy storage activities (in which case the NRA also has to ensure phase-out).

In any case, it is to be welcomed that derogations are subject to fulfilment of clearly detailed conditions and can only by granted after an enquiry and approval by regulators.

4.4 Derogations from unbundling rules

The provisions of the Electricity Directive's article on "Derogations" (Article 66 of the Recast Electricity Directive) have been modified as follows: in addition to "small isolated systems" being eligible for a derogation from, among other things, unbundling requirements, a newly created category of "small connected systems"[67] may also apply for a derogation from TSO and DSO unbundling rules, where Member States can demonstrate substantial problems for the operation of their small connected and isolated systems.

It is explicitly stated that such derogations granted by the EC shall be limited in time and subject to conditions aiming at increasing competition in and integration of the internal market and ensuring that they do not hamper the transition towards renewable energy, increased flexibility,

[66] The re-assessment and phase–out requirement does not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until 2024 "provided that such battery storage facilities are: (a) connected to the grid at the latest two years thereafter; (b) integrated into the transmission system; (c) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and (d) not used to buy or sell electricity in the electricity markets, including balancing."

[67] Defined in Article 2(43) of the Recast Electricity Directive as follows: 'small connected system' means any system that had consumption of less than 3 000 GWh in the year 1996, where **more** than 5 % of annual consumption is obtained through interconnection with other systems"

storage, electro-mobility and demand response (with an exception for outermost regions within the meaning of Article 349 TFEU[68]).

In the Recast Electricity Regulation, an interesting new paragraph on so called "offshore hybrid assets" has been added to Recital 66 dealing with investments in major new infrastructure and more specifically, exemptions/temporary derogations for interconnectors from, among other things, "full" unbundling requirements, stating that: "*Offshore electricity infrastructure with dual functionality (so-called 'offshore hybrid assets') combining transport of offshore wind energy to shore and interconnectors, should also be eligible for exemption such as under the rules applicable to new direct current interconnectors. Where necessary, the regulatory framework should duly consider the specific situation of those assets to overcome barriers to the realisation of societally cost-efficient offshore hybrid assets*."

4.5 DSO Unbundling, Citizen[69] Energy Communities and Closed Distribution Systems

The unbundling requirements for DSOs as laid down in the 3rd Package remain as such unchanged when it comes to the main substantive rules on DSO unbundling (Article 35 of the Recast Electricity Directive). However, the Recast Electricity Directive does contain some new and modified provisions which are relevant for/relate to DSO unbundling. These new provisions have implications for NRAs' tasks with regard to DSOs and Closed Distribution Systems (CDSs), the newly created "Citizen Energy Communities" (CECs), storage facilities, new technologies (flexibility, electro-mobility, data management).

As far as DSO tasks are concerned, the Recast Electricity Directive provides, like for TSOs, that Member States or their designated competent authorities may allow DSOs to perform activities other than those provided for in the Electricity Directive and Electricity Regulation where such activities are necessary for the DSOs to fulfil their obligations under this Directive or Regulation and the regulatory authority has assessed the necessity of such a derogation.

This is without prejudice to the right of DSOs to own, develop, manage or operate networks other than electricity networks "*where the Member State or the designated competent authority has granted such a right*" (Article 31(10) of the Recast Electricity Directive).

With regard to the new "**Citizen Energy Communities**"[70], the Recast Electricity Directive foresees a possibility for Member States to grant a citizen energy community the right to manage a distribution system and, hence, to become a DSO, either under the general regime or in accordance with Article 38 as a so-called "Closed Distribution System Operator" (CDSO).

[68] For outermost regions within the meaning of Article 349 TFEU, that cannot be interconnected with the Union electricity markets, the derogation shall **not** be limited in time and shall be **subject to conditions aimed to** ensure that the derogation does not hamper the **transition towards renewable energies**.

[69] In the initial EC proposal for CEP such Citizen Energy Communities were labelled as "Local Energy Communities".

[70] The new concept of a citizen energy community is defined as follows in Article 2(11) of the Recast Electricity Directive: 'citizen energy community' means: a legal entity that (a) is based on voluntary and open participation and is effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small enterprises; (b) has for its primary purpose to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits; and (c) may engage in generation, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders;"

Member States need to ensure that CECs are treated in a non-discriminatory and proportionate manner with regard to their activities, among others, as a DSO.

The Directive provides that such CECs, when they manage distribution networks, also have to comply with rules on unbundling of DSOs (Article 16(4)). Hence, this new concept of "Citizen Energy Communities" included in the Recast Electricity Directive also affects NRA tasks with regard to DSO unbundling (monitoring) since such new CECs also have to comply with unbundling rules when managing distribution networks.

The provisions on **Closed Distribution Systems** (CDSs), as laid down in Article 28 of the Electricity Directive, are maintained in Article 38 of the Recast Electricity Directive. However, with the following addition: a new provision is added to the rules on CDSs which explicitly states that: "*Closed distribution systems shall be considered to be distribution systems for the purpose of the Directive*."

Consequently, CDSs need to comply with the DSO unbundling rules (unless the exemptions under the "100,000-customers"-rule in respect to small isolated systems, which remained unchanged from the 3rd Package provisions, would be applicable and applied by the Member State(s) concerned).

Furthermore, three new exemption possibilities for Member States with regard to CDSs have been added in the Recast Electricity Directive: Member States may provide for NRAs to exempt the operator of a CDS from the following requirements:

(1) To procure flexibility services and to submit network development plans to the NRA;
(2) Not to own, develop, manage or operate recharging points for electric vehicles;
(3) Not to own, develop, manage or operate energy storage facilities.

In addition, the new "Citizen Energy Communities" can also become a closed DSO under Article 38 of the Recast Electricity Directive (see above).

4.6 Ownership, development, management and operation of storage facilities by DSOs

Similarly to the new rules for TSOs on energy storage, the Recast Electricity Directive also contains a new provision on ownership, development, management and operation of energy storage facilities by DSOs (Article 36 of the Recast Electricity Directive). This new provision prohibits DSOs, as a general principle, from owning, developing, managing or operating energy storage facilities.

This prohibition comes with a derogation possibility: Member States may allow DSOs to own, develop, manage or operate energy storage facilities where (1) they are fully integrated network components[71] and the NRA has granted its approval or, (2) a series of (cumulative) conditions are fulfilled including a tendering procedure as well as NRA ex-ante review and approval.

The conditions for the 2nd derogation are threefold: (a) other parties, following a tendering procedure (subject to review and approval by the NRA) have not been awarded a right to own, develop, manage or operate such facilities or could not deliver those services at a reasonable

[71] For the definition of "Fully integrated network components" (Article 2(51) of Recast Electricity Directive): see footnote 65 above

cost and in a timely manner: (b) such facilities are necessary for the DSOs to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the distribution system and the facilities are not used to buy or sell electricity in the electricity markets; and (c) the NRA has assessed the necessity of such a derogation and has carried out an assessment of the tendering procedure, including the conditions of the tendering procedure, and has granted its approval.

It also includes an obligation for NRAs to perform at regular intervals a public consultation to assess[72] for existing storage facilities the potential availability and interest of market parties to invest in such facilities, in view of a phase-out of DSO energy storage activities (in which case the NRA also has to ensure phase-out within 18 months). Hence these new rules entail a number of new duties for NRAs, including approval, assessment and phase-out tasks.

In any case, it is to be welcomed that derogations are subject to the fulfilment of clear detailed conditions and can only be granted after enquiry and approval by regulators. Furthermore, DSO unbundling rules remain applicable to DSOs engaged in ownership, development, operation or management of such energy storage facilities.

4.7 New DSO tasks regarding the use of flexibility, integration of electro-mobility into the network and data management

- New tasks for DSOs on the **use of flexibility** in the distribution network (Article 32 of the Recast Electricity Directive): obligation for DSOs to submit a (at least) biennial network development plan to the NRA, to which the NRA can request amendments, (including among others the flexibility services needed, investments for connecting new generation capacity and new loads such as recharging points for electric vehicles, demand response, energy storage facilities, etc.). These provisions include a possibility for Member States to derogate from this obligation in case of integrated electricity undertakings serving less than 100,000 connected customers or which serve small isolated systems.

- **Integration of electro-mobility** into the electricity network: the Recast Electricity Directive establishes as a general principle that DSOs shall not be allowed to own, develop, manage or operate recharging points for electric vehicles, with the exception of owning private recharging points solely for their own use (Article 33). However, by way of derogation Member States may allow DSOs to own, develop, manage or operate recharging points for electric vehicles under a series of cumulative conditions. These conditions include a tendering procedure, subject to review and approval by the NRA (as well as ex-ante review and approval of the tendering conditions by the NRA) and an obligation for the DSO to operate recharging points on the basis of third-party access and non-discrimination between (classes of) system users, in particular in favour of its related undertakings. Such a derogation is also subject to a regular reassessment (via a public consultation by the Member State or their designated competent authorities) of the potential interest of market parties to own, develop, manage or operate recharging points, as well as a phase-out obligation of the DSO's activities in case of a positive result of the reassessment.

[72] The public consultation and phase-out requirement does not apply to fully integrated network components or for the usual depreciation period of new battery storage facilities with a final investment decision until the entry into force of this Directive "provided that such battery storage facilities are: (a) connected to the grid at the latest two years thereafter; (b) integrated into the distribution system; (c) used only for the reactive instantaneous restoration of network security in the case of network contingencies where such restoration measure starts immediately and ends when regular re-dispatch can solve the issue; and (d) not used to buy or sell electricity in the electricity markets, including balancing." (Article 36(4) of the Recast Electricity Directive).

Furthermore, DSO unbundling obligations remain applicable to DSOs engaged in ownership, development, operation or management of such recharging points.

- Tasks of DSOs in **data management**: where smart metering systems have been implemented and DSOs are involved in data management, compliance programmes need to include specific measures in order to exclude discriminatory access to data from eligible parties. Where DSOs are not subject to Article 35 of the Recast Electricity Directive (i.e. DSO unbundling rules), Member States have to take all necessary measures to ensure that vertically integrated undertakings have no privileged access to data for the conduct of their supply activities.

Annex – List of Abbreviations

Term	Definition
2nd Package	Second Energy Package
3rd Package	Third Energy Package
ACER	Agency for the Cooperation of Energy Regulators
ARERA	Autorità di regolazione per energia reti e ambiente (Italian NRA)
BNetzA	Die Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (German NRA)
CEER	Council of European Energy Regulators
CEP	Clean Energy Package for all Europeans
CRU	Commission for Regulation of Utilities (Irish NRA)
ČEPS	Česká energetická přenosová soustava (Czech TSO)
CNMC	La Comisión Nacional de los Mercados y la Competencia (Spanish NRA)
CNMV	Comisión Nacional del Mercados de Valores (Stock Exchange Spanish Agency)
COD	Commercial operation date
CRE	Commission de régulation de l'énergie (French NRA)
CREG	Commission de Régulation de l'Électricité et du Gaz (Belgian NRA)
DERA	Danish Energy Regulatory Authority
DSO	Distribution System Operator
EC	European Commission
E-Control	Energie-Control Austria (Austrian NRA)
EDF	Électricité de France SA
EEA	European Economic Area
Ei	Energimarknadsinpektionen / Energy Markets Inspectorate (Swedish NRA)
ENTSO-E	The European Network for Transmission System Operators for Electricity

Term	Definition
ENTSO-G	The European Network for Transmission System Operators for Gas
ERSE	Entidade Reguladora dos Serviços Energéticos (Portuguese NRA)
EU	European Union
GCA	Gas Connect Austria GmbH
i.a.	Inter alia
ILR	Institut Luxembourgeois de Régulation (Luxembourgish NRA)
ISO	Independent System Operator
ITO	Independent Transmission Operator
LNG	Liquefied Natural Gas
MS	Member State
NMa	Nederlandse Mededingingsautoriteit (The Netherlands Competition Authority)
NRA	National Regulatory Authority
NVE	Norges vassdrags- og energidirektorat / Norwegian Water Resources and Energy Directorate (Norwegian NRA)
OFGEM	Office of Gas and Electricity Markets (British NRA)
OU	Ownership Unbundling
PCI	Project of Common Interest
PUC	Sabiedrisko pakalpojumu regulçðanas komisija / Public Utilities Commission (Latvian NRA)
RAE	Ρυθμιστική Αρχή Ενέργειας / Regulatory Authority for Energy (Greek NRA)
Resp.	Respectively
RTE	Réseau de Transport d'Electricité (French TSO)
TSO	Transmission System Operator
TYNDP	Ten-Year Network Development Plan
UR	Northern Ireland Authority for Utility Regulation
VIU	Vertically Integrated Undertaking

About CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national energy regulators. CEER's members and observers comprise 38 national energy regulatory authorities (NRAs) from across Europe.

CEER is legally established as a not-for-profit association under Belgian law, with a small Secretariat based in Brussels to assist the organisation.

CEER supports its NRA members/observers in their responsibilities, sharing experience and developing regulatory capacity and best practices. It does so by facilitating expert working group meetings, hosting workshops and events, supporting the development and publication of regulatory papers, and through an in-house Training Academy. Through CEER, European NRAs cooperate and develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

In terms of policy, CEER actively promotes an investment friendly, harmonised regulatory environment and the consistent application of existing EU legislation. A key objective of CEER is to facilitate the creation of a single, competitive, efficient and sustainable Internal Energy Market in Europe that works in the consumer interest.

Specifically, CEER deals with a range of energy regulatory issues including wholesale and retail markets; consumer issues; distribution networks; smart grids; flexibility; sustainability; and international cooperation.

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More information is available at www.ceer.eu.