

Making the 3rd energy package proposals more effective

- **Strengthening regulators at EU and national level is essential to create a climate of investment**
- **There are shortcomings in the Commission's 3rd package proposals but they can be overcome**
- **Commission's proposed EU Agency must be made more independent and efficient**

The European Energy Regulators have published their comments on the European Commission's third package proposals¹. While welcoming much of what the Commission proposes, the regulators suggest improvements to enhance the independent regulatory framework.

Strengthening regulators at national and EU level will significantly improve the climate for investment

Investors need a predictable and stable regulatory framework at both national and EU level.

EREG² Chair, Sir John Mogg, stated "*strong, independent regulators are key to attracting investment, stimulating competitiveness and enhancing the security of Europe's supplies. Effective regulation is also needed at EU level. Independent national regulators must be given the powers to take decisions on defined cross border issue through an effective EU Agency.*"

Shortcomings on network regulation in Commission's 3rd package proposals can be overcome

Regulators support the creation of an EU Agency for the Cooperation of Energy Regulators³, but have concerns about the proposed role of, and interplay between, the EU Agency and the EU Transmission Network System Operator (ENTSOs) bodies. In particular,

1. The scope of the "technical and market rules" in 11 generic areas attributed to the TSOs (which lie at the heart of delivering an integrated EU energy market) is too broad and lacks definition.
2. The technical and market codes (where agreed by the Agency) could remain voluntary, thus unenforceable in which case the system would fail.
3. There is not sufficient regulatory oversight of the ENTSO – the Agency has no decision making power over the codes nor with regard to the 10-year investment plan.

Sir John commented "*Regulatory approval is of central importance. The Commission's proposals principally lead to voluntary arrangements. This risks codifying a model of principally self-regulation by network operators at EU level. This would be compounded if there is not full and proper implementation of the unbundling rules. In the public interest we propose a few significant improvements to the Commission's proposals to have a more balanced, efficient regulatory process.*"

To start the process Regulators suggest that "strategic guidelines" on each code or rule be prepared by the EU Agency, with extensive consultation of stakeholders. When finalised, each draft "strategic guidelines" will be submitted to the Commission for consideration under the comitology procedure. Once the strategic guidelines is agreed, the ENTSOs will develop the detailed rule needed, monitored by the Agency. At the end of the process, the Agency will ensure that each code or rule properly reflects the "strategic guidelines" established at the outset. In this way, each code and rule would be binding and enforceable by the Agency, thus avoiding resulting in legal complications where enforcement would not be possible in respect of voluntary codes.

Commission's proposed model for an EU Agency could be more independent and efficient

Given concerns with the governance of the proposed Agency, the regulators recommend a number of changes (e.g. a clearly defined role for the Board of Regulators in the Director's appointment, accountability of the Agency to the European Parliament) which should improve the effectiveness of the Agency and avoid any unnecessary expenditure for the EU budget.

(see Note to Editors on next page)

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Note to Editors:

1. See Key Comments on the European Commission's Third Package (ref. C07-G-36-08) on www.ceer-eu.org.
2. The European Regulators Group for Electricity and Gas (EREGEG) was established by the European Commission in 2003 as its advisory group on Internal Energy Market issues.
3. Key aspects of the European Commission's proposals welcomed by ERGEG (see [PR-07-09](#), [PR-07-10](#) and [PR-07-11](#));
 - the reinforcement of the powers and independence of national regulators
 - the proposal to reserve exclusively to national regulators the decisions to fix/approve network tariffs and to vest them with the powers to impose measures such as gas or electricity release programmes.
 - An Agency for Co-operation of Energy Regulators (ACER), provided certain concerns about how it can provide effective regulatory oversight at EU level are sufficiently addressed
 - Cooperation between TSOs so long as TSOs are effectively unbundled
 - Proposal to give the Agency the powers to decide on electricity infrastructure exemptions (Art 7.4 of Regulation) and on Art. 22 exemptions of the Gas Directive in a cross border context.
 - Ownership unbundling in principle in both electricity and gas, with certain derogations subject to strict regulatory control.

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