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# Unbundling models in the EU and certification of TSOs in Germany

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10th EU-US Energy Regulators Roundtable – Session V

The Hague, 8-9 April 2013



## 1. Introduction

## 2. Certification process

## 3. Unbundling models

## 4. Conclusions



- Electricity Directive 2009/72/EC:

*”Any system for unbundling should be effective in removing any conflict of interests between producers, suppliers and transmission system operators, in order to create incentives for the necessary investments and guarantee the access of new market entrants.”*

- Member States to choose among 3 main unbundling models:

- **Full Ownership Unbundling (OU)**

- **Independent Transmission Operator (ITO)**

- **Independent System Operator (ISO)**

- Exceptionally, also **Independent Transmission Operator+ (ITO+)**

- Transposition into national law required by 3 March 2011

- Infringement proceedings ongoing against 11 Member States (for failure to communicate national transposition measures)



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- Who is concerned?
  - Transmission System Operators but not Distribution System Operators (Proper definition of Transmission/Distribution needed)
  - Electricity and Gas TSOs
  
- Who can initiate a certification procedure?
  - Notification by the Transmission System Operator und Transmission Owner
  - On reasoned request by the European Commission
  - NRAs on their own initiative
  
- Deadline for certification: 3 March 2012

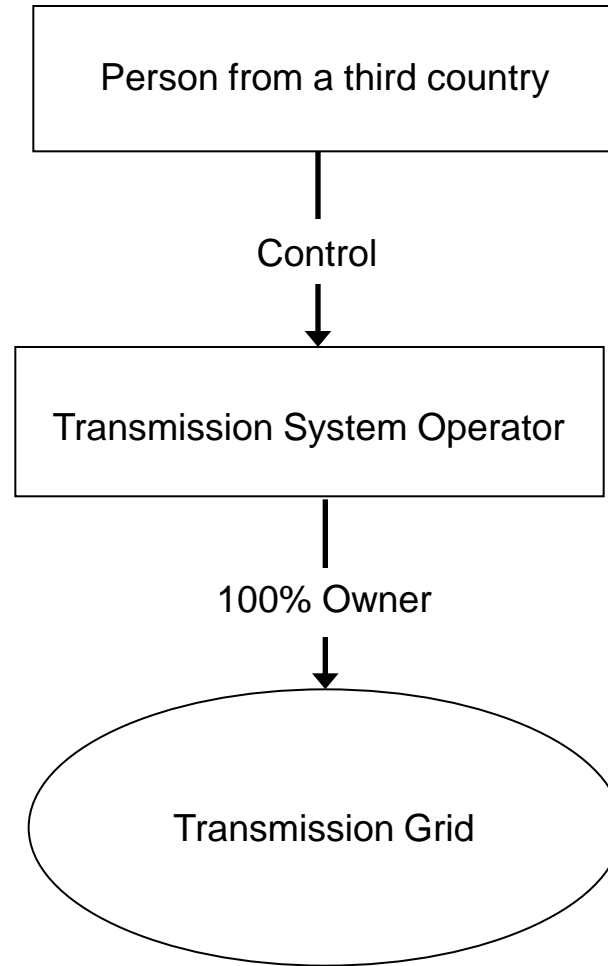
## Certification process (2)



<b>3 March 2012</b>	<b>Final deadline for application by TSOs</b>
<b>4 months</b>	<b>Deadline for draft NRA decision (counting from availability of complete application documentation)</b>
<b>ASAP</b>	<b>Notification of draft NRA decision to the Commission</b>
<b>2 months</b>	<b>Deadline for Commission opinion</b>
<b>2 months</b>	<b>Possible extension in case the Commission decides to involve ACER</b>
<b>2 months</b>	<b>Deadline for final NRA decision (from receipt of Commission opinion)</b>
<b>X</b>	<b>Publication of NRA decision in its Official Journal, i.e. designation of TSO</b>



## Certification in relation to third countries (outside the EU)





### Certification in relation to third countries (outside the EU)

- Deadline for notification: 3 March 2013
- Check of the **general unbundling requirements** and, in addition, and **assessment** by the NRA or the relevant national Ministry **whether certification granting certification would put security of energy supply of Member State and EU at risk**
- Deadline for the completion of procedure: 4 months





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## 3.1. Ownership Unbundling

## 3.2. Independent Transmission Operator (ITO)

## 3.3. Independent System Operator (ISO)



- **Obligation to implement OU for any TSO set up after 3 September 2009**
  - No choice between OU/ ITO / ISO models in this case
- **Exercise control over and rights in a transmission operator and exercise control over and rights in an undertaking performing any functions of **generation or supply** is not allowed**
  - „Control“ definition established by the EC Merger Regulation:  
*„Rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking‘.*  
*The key consideration in this regard is the concept of ‘decisive influence‘.“*
  - „Rights“, particularly minority rights (25.1% but also case-by-case)
  - Only shares/shareholdings within the EU relevant



- **Property rights in the transmission grid:**
  - Direct ownership of the grid (co-ownership also possible, e.g. gas pipelines)
  - Indirect ownership through shares
  - Scope of the transmission grid
    - Direct parts of the asset transmission grid (e.g. pipeline)
    - Indirect parts of the asset transmission grid (e.g. IT hardware and software)
- **Requirements for staff unbundling**  
between grid undertaking and supply and generation undertaking –  
Supervisory Board, Administrative Board etc.
- **Requirements for financial, technical, and human resources of the TSO**



## 3.1. Ownership Unbundling

## 3.2. Independent Transmission Operator (ITO)

## 3.3. Independent System Operator (ISO)



Under the ITO model:

- TSO may remain part of a vertically integrated undertaking
- Numerous detailed rules however apply in order to ensure effective unbundling



- **„Vertically Integrated Undertaking“ (VIU) is necessary for certification** in particular regarding:
  - Staff organisation of TSO („cooling off“ und „cooling on“ periods)
  - TSO's shares in other companies and own position in the undertaking
- Criteria to define a „Vertically Integrated Undertaking“ are:
  - Control (EC Merger Regulation)
  - Activity in the electricity / gas sectors  
(cf. Art 2 No 35 of the Electricity Directive and Art 2 Nr. 1 of the Gas Directive)
  - Activity in the EU



- ITO must be independent from the VIU in terms of:
  - representation before the NRA (regulatory affairs) and within ENTSO
  - corporate services, including legal services, accountancy and IT
- ITO must be equipped with all necessary financial, technical, physical and human resources
- ITO must not, in its corporate identity, create confusion in respect to its communication, branding and premises
- Staff performing the core activities of ITO (management and network operation) must be employed by the ITO
- Assets must be owned by the ITO  
(not only the network, but also any other assets necessary for the activity)
- ITO not allowed to share IT systems or equipment, physical premises and security access systems with VIU

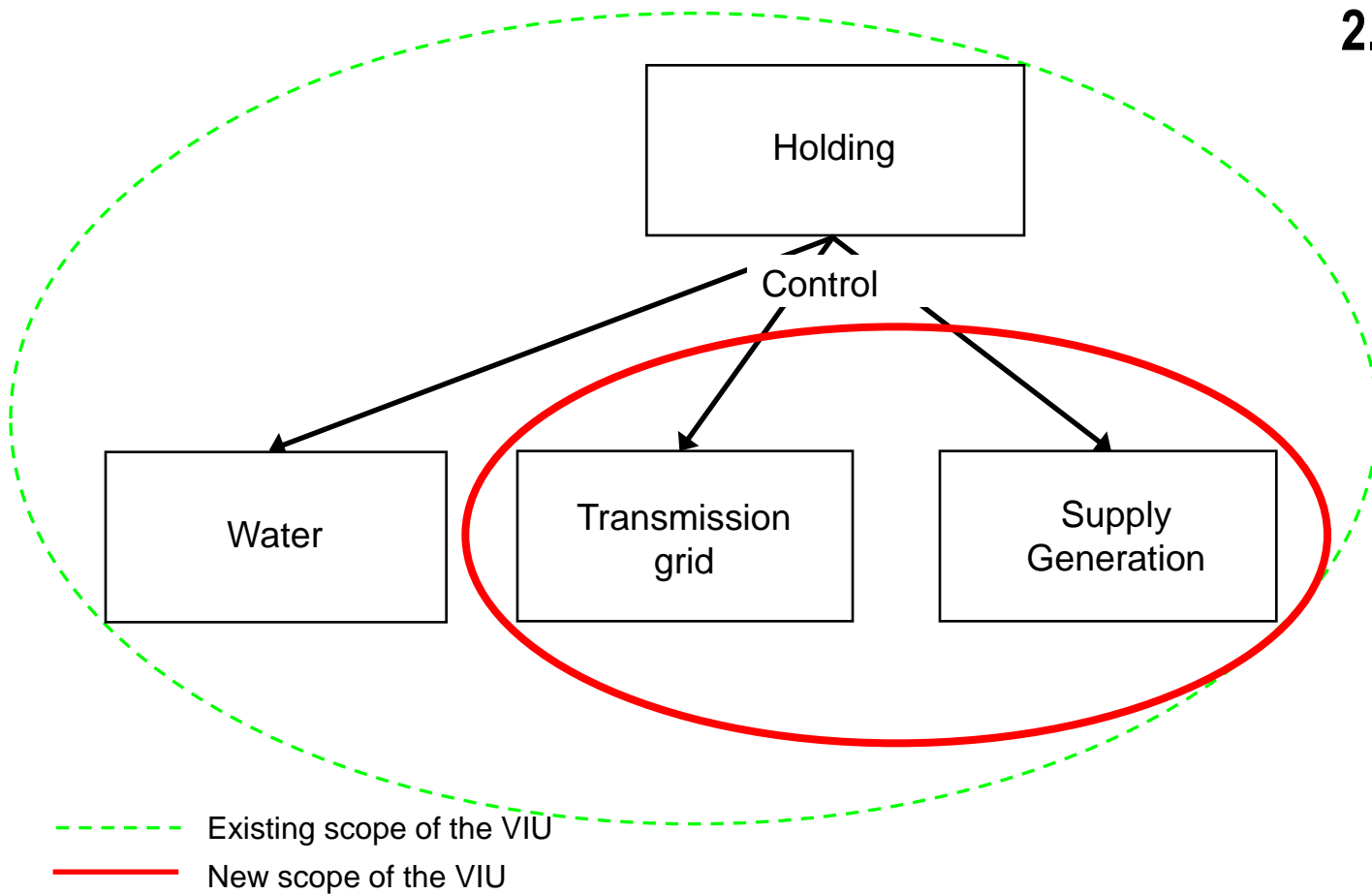




## Vertically Integrated Undertaking

### 1. Control

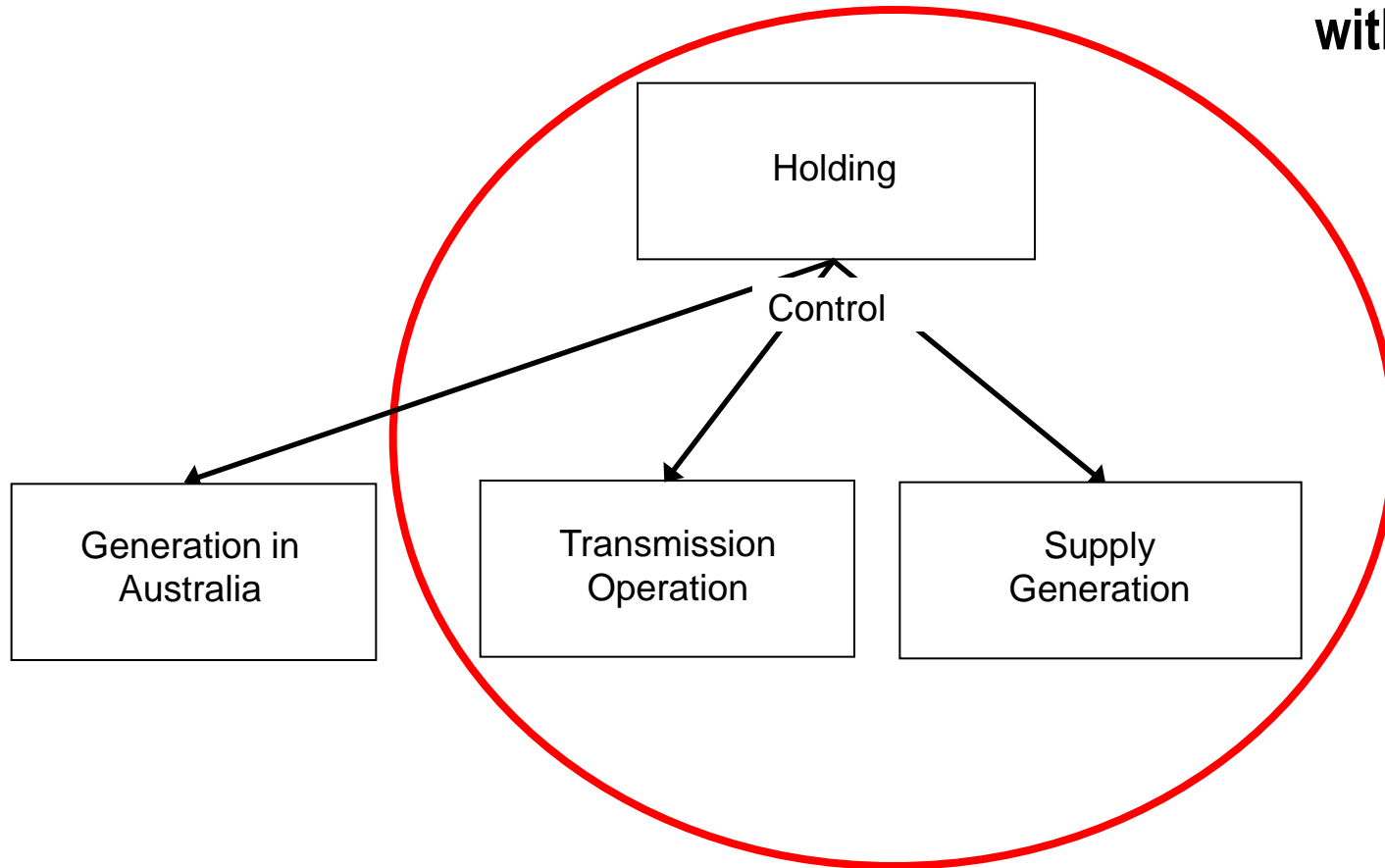
### 2. Activity in electricity / gas





## Vertically Integrated Undertaking

### 3. Activity within the EU



— Scope of the VIU



## ■ Provision of services is limited:

- Provision of services by **VIU to ITO not allowed**
- Provision of services by **ITO to VIU allowed but only if:**
  - no discrimination of other system users
  - no restriction of competition in generation or supply
  - NRA has approved the provision of the services concerned



## ■ Staff issues:

- ITO obliged to employ a sufficient number of qualified staff to handle day-to-day activities
- Strict distinction between staff of the VIU and the TSO



## 3.1. Ownership Unbundling

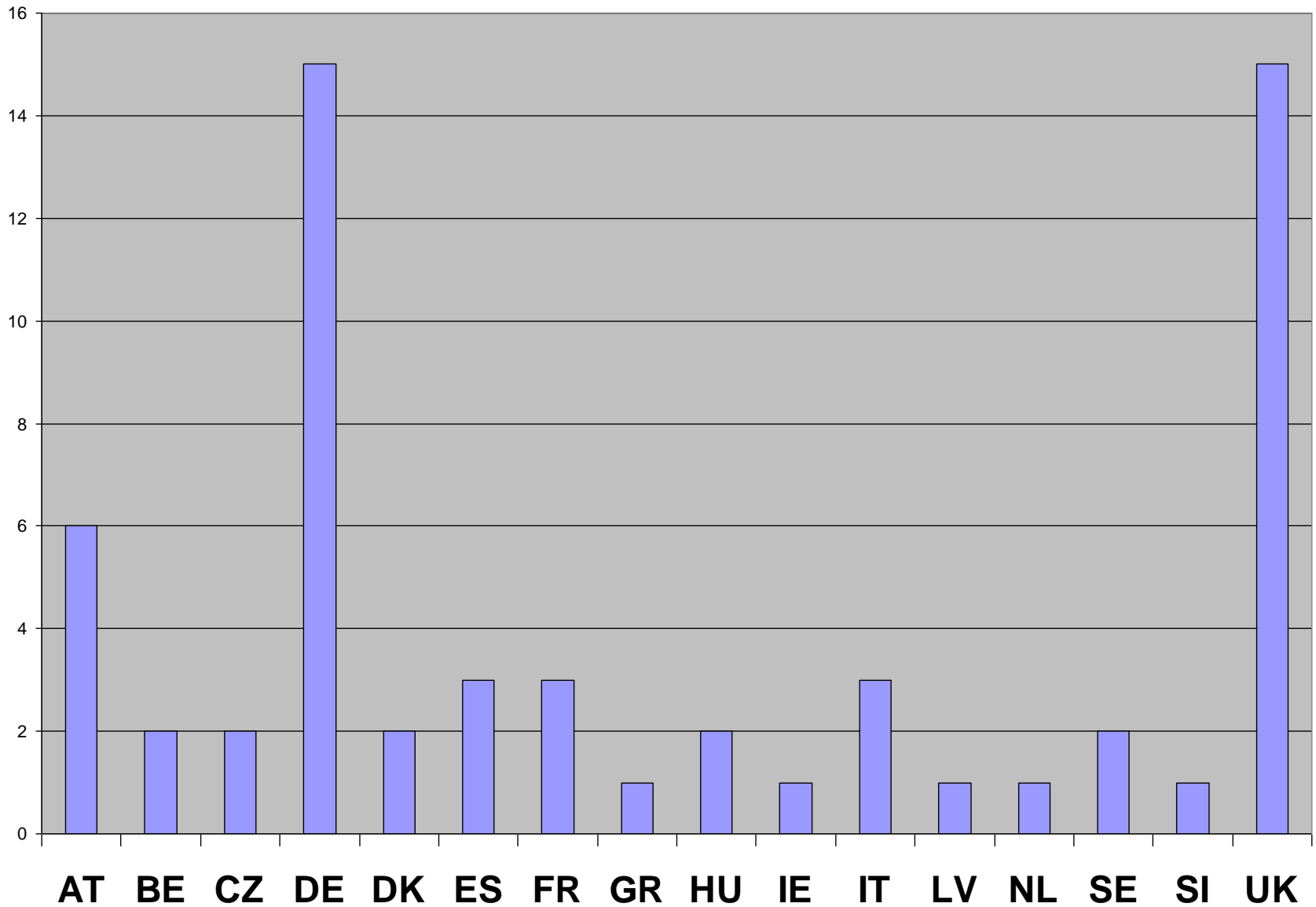
## 3.2. Independent Transmission Operator (ITO)

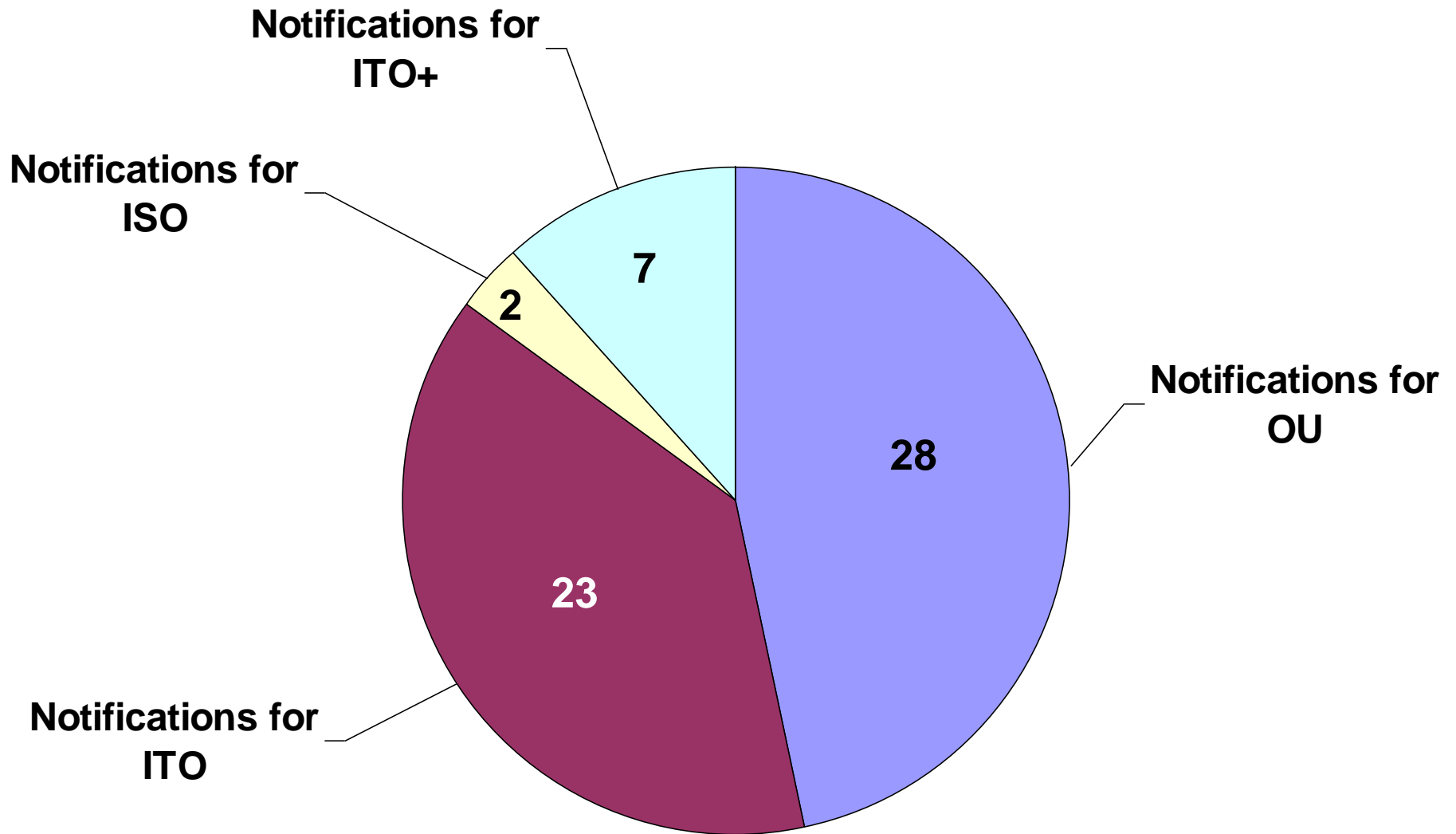
## 3.3. Independent System Operator (ISO)



- ISO must comply with the rules on ownership unbundling
- Separate ownership and operation of the transmission grid
- ISO must demonstrate that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks
- Rights of ownership limited:  
Transmission owner obliged to finance investments decided by ISO
- ISO model does not play a role in Germany  
(one gas ISO in Austria (TAG) and one electricity ISO in Latvia (Augstsprieguma) notified so far, according to Commission)

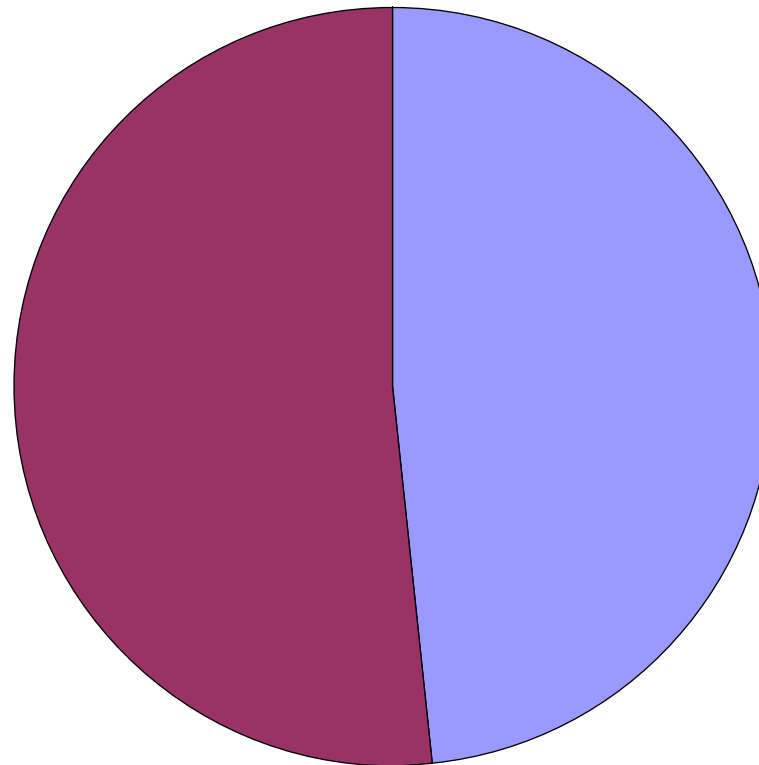
# Certification update – Notifications submitted by NRAs







**Gas 31**



**Electricity 29**



# Certification update – Notifications submitted by NRAs

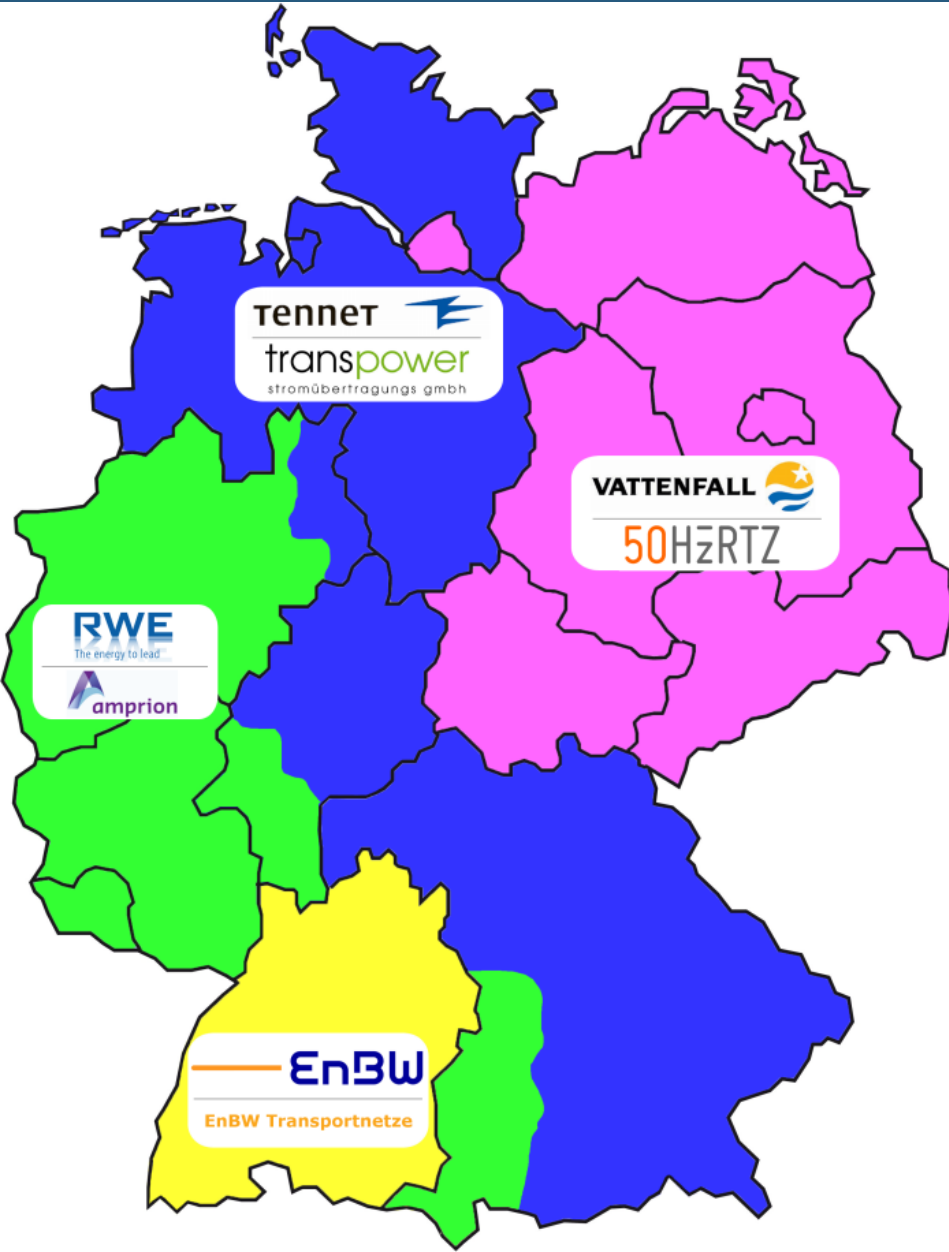


MS	Company	Model
AT	Austrian Power Grid	ITO Ele.
AT	Vorarlberger ÜN	OU Ele.
AT	Baumgarten-Oberkappel	ITO Gas
AT	Gas Connect	ITO Gas
AT	TAG	ISO Gas
AT	NABUCCO	ITO+ Gas
BE	FLUXYS	OU Gas
BE	Elia	OU Ele.
CZ	NET4GAS	ITO Gas
CZ	CEPS	OU Ele.
DE	50 Hertz	OU Ele.
DE	Amprion	ITO Ele.
DE	Tennet	OU Ele.
DE	Bayernets	ITO Gas
DE	Fluxys	OU Gas
DE	GRTGaz	ITO Gas
DE	jordgas	ITO Gas
DE	Nowega	ITO Gas
DE	Terranets	ITO Gas
DE	GASCADE	ITO Gas

MS	Company	Model
DE	GTG Nord	ITO Gas
DE	Ontras	ITO Gas
DE	Gasunie Transport	OU Gas
DE	Thyssengas	ITO Gas
DE	TransnetBW	ITO Ele.
DK	Energinet	OU Ele.
DK	Energinet	OU Gas
ES	Reganosa	OU Gas
ES	ENAGAS	OU Gas
ES	REE	OU Ele.
FR	GTRgaz	ITO Gas
FR	RTE EDF Transport	ITO Ele.
FR	Total Infrastructures Gaz	ITO Gas
GR	Admie	ITO Ele.
HU	FGSZ	ITO Gas
HU	MAVIR	ITO Ele.
IE	EirGrid	ITO+ Ele.
IT	SNAM RETE GAS	ITO Gas
IT	Società Gasdotti Italia	OU Gas
IT	Terna	OU Ele.

MS	Company	Model
LV	AS Augstsprieguma tīkls	ISO Ele.
NL	BBL	ITO+ Gas
SE	Svenska kraftnät	OU Ele.
SE	Swedegas	OU Gas
SI	Plinovodi	ITO Gas
UK	National Grid NGET	OU Ele.
UK	National Grid NGG	OU Gas
UK	National Grid Interconnect	OU Ele.
UK	TC Robin Rigg OFTO	OU Ele.
UK	Gunfleet Sands OFTO	OU Ele.
UK	Barrow OFTO	OU Ele.
UK	Ormonde OFTO	OU Ele.
UK	SHETL	ITO+ Ele.
UK	SPTL	ITO+ Ele.
UK	TC Lincs OFTO Limited	OU Ele.
UK	Blue Transm. Walney	OU Ele.
UK	BBL	ITO+ Gas
UK	Interconnector (UK)	OU Gas
UK	Walney London Array	OU Ele.
UK	Northern Ireland Electricity	ITO+ Ele.

# Electricity TSOs landscape in Germany



- 4 electricity TSOs with own balancing zones, each alone counting among the largest areas in Europe:
  - 2 OU (TenneT, 50 Hertz),
  - 2 ITOs (amprion, EnBW Transportnetze)
- Single electricity price zone Germany/Austria
- Some 13 gas TSOs in 2 gas market areas
- In addition, 1600 electricity and gas DSOs



	Unbundling model	Status
50Hertz	OU	Certified ✓
Tennet	OU	Certification denied
TenneT Offshore	OU	Ongoing
Amprion	ITO	Certified ✓
TransnetBW	ITO	Ongoing



	Unbundling model	Status
Fluxys Tenp	OU	Certified ✓
Gasunie	OU	Certified ✓
Open Grid Europe	OU	Ongoing
bayernets	ITO	Certified ✓
GRTgaz	ITO	Certified ✓
jordgas	ITO	Certified ✓
Nowega	ITO	Certified ✓
terranets	ITO	Certified ✓
Gascade	ITO	Certified ✓
Gastransport Nord	ITO	Certified ✓
Ontras VNG	ITO	Certified ✓
Ostseeanbindungsleitung	ITO	Ongoing
Thyssengas	ITO	Certified ✓



- Assessment of the TSO's economical and financial capacity has led BNetzA to refuse certification of electricity TSO TenneT:
  - TenneT unable to provide the necessary proof of having the financial means to fulfill its statutory system operation and expansion obligations (offshore connection)
  - Commission view: "Financial capacity" criterion must apply exclusively for certification as an ITO, not for OU
  - TenneT filed a complaint with German Court (ongoing)
- Different definition of the Vertically Integrated Undertaking (inside / outside the EU)
- BNetzA considers that obligation to have separate financial accounting companies for ViU and TSO is not necessary for effective unbundling
- Definition of level 2-management: Complaint from TSO against BNetzA decision



## Stable investor appetite for transmission investment assets in Germany:

- **50Hertz** – formerly Vattenfall Europe Transmission, acquired by Belgian state-owned TSO Elia and Australian investment fund IFM
- **TenneT** – formerly E.ON Netz, acquired by Dutch state-owned TSO TenneT
- **TenneT Offshore** project company – jointly owned by TenneT and Mitsubishi Corporation
- **Open Grid Europe** – formerly E.ON, acquired by Macquarie and other institutional investors
- **Thyssengas** – formerly RWE, acquired by Macquarie
- **Gasunie Deutschland** – formerly BEB, acquired by Dutch state-owned TSO Gasunie



- Commission shared “**Informal non-binding draft discussion paper**” with regulators in 2012
- Designed to provide clarification on interpretation and application of ownership unbundling rules
- Focus on financial investors owning a TSO and, at the same time having participations in generation, production and/or supply activities
- Criterion: *No incentive for a shareholder in a TSO to influence the decision making in this TSO with the intention to favour its generation, production and/or supply interests to the detriment of other network users*
  - Geographic location: No conflict of interest for instance in case of TSO in the EU and owner’s simultaneous generation investment outside the EU
  - Relative value and nature (main or side business) of the participations
  - Impact of wholesale price evolution (low in case of feed-in tariff)
  - Interests of other shareholders
- **Commission requires NRA to carry out “impact test” case-by-case**
- **Draft paper never matured to an official Commission document, but Commission pursued its substance in certification opinions**



- Commission's 2012 Communication on the Internal Energy Market :
  - *“A new industry branch has emerged with a transmission-only focus and an increasingly cross-border footprint.*
  - *Unbundling and competition rules will have to continue to be enforced rigorously to ensure effective access to transmission infrastructure across the EU.”*
- Council of the EU (draft conclusions of 4 April 2013):
  - *“highlights the positive effects that the third energy package unbundling provisions have on the development of energy infrastructure and on competition, while underlining the importance of assessing the effectiveness of the different unbundling models,*
  - *invites the Commission to present an **analysis and guidance on institutional investors** that wish to invest in both energy generation capacity and energy infrastructure.”*





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- Choice between 3 unbundling models working in practice
- Certification process time-consuming and delayed, but learning curve in interaction between Commission and NRAs
- Tension between unbundling rules and the need to attract (financial) investors for transmission assets important not only for Germany, but for the EU as a whole
- Expected Commission Guidance needs to provide ex-ante certainty for investors, in order to support EU energy infrastructure requirements
- Germany in turn needs predictability for the long-term infrastructure investments indispensable for making “Energiewende” a success story



Thank you for your attention