

May 2007

Fact Sheet on a European System of Energy Regulation: Regulatory and EU Network Bodies¹

What is wrong with the current framework of energy regulation in Europe?

There is a “regulatory gap” in Europe². EU legislation is not always implemented (at national level) in the spirit of the law (e.g. the powers and independence of national energy regulators differ widely and often they do not have the powers to do the job properly). Furthermore some issues are cross-border by nature (e.g. investments in cross border network capacity, and the integration of energy markets). A new European regulatory system is required, which can only be filled by new legislation. In the meantime, some improvement could and should also be achieved with improved implementation of existing legislation (notably by more effective regulation).

What would this new EU regulatory system for energy deal with?

Its purpose would be to create the stable and coherent climate for investment in an efficient integrated European grid (i.e. a “network of networks”) and to deliver open and competitive single European markets in gas and electricity. The core elements would be

- an EU mechanism to require that national energy regulators co-operate and take decisions in **cross-border** issues including market oversight, monitoring and information-sharing, investigations and enforcement;
- an EU mechanism to require Transmission System Operators (TSOs) to **develop and operate their networks as part of a single EU grid**;
- the creation of European bodies which would enable the gas and electricity TSOs to co-operate in undertaking this task by acting collectively, and a European regulatory body made up of National Regulatory Authorities (NRAs) to ensure the task is undertaken in the wider European public interest; and
- **national regulators** with sufficient powers, levelled up and harmonised, and political as well as commercial independence.

Does this mean a “Single Regulator” or something else?

Rather than creating a “single regulator”, ERGEG proposes a model of a European System of Energy Regulation (**ESER**) to undertake the functions necessary to fill the ‘regulatory gap’ at a European level. This ESER model takes into account the present EU institutional balance (between the Commission, Parliament and Council), and reflects existing policies and practices (e.g. ERGEG arrangements) in terms of the interactions between the national regulators and EU institutions. Regulatory independence and public accountability to the European Institutions are assured in this model which has at its core a Regulators’ Council³. National regulators and national TSOs will continue to undertake their tasks and functions at a national level.

¹ FactSheet Reference No: FS-07-05.

² See “ERGEG’s response to the European Commission’s Communication “An Energy Policy for Europe”” (C06-BM-09-05), 6 February 2007 for an explanation of the “regulatory gap”. For details of the ESER model, see the ERGEG advice on the 3rd legislative package input “Legal and regulatory framework for a European system of energy regulation” (C07-SER-13-06-2-PD), 5 June 2007.

³ The same requirements for regulatory independence (politically and commercially) at national level should in principle be applied at the EU level in order to facilitate a stable climate for EU investment: this European regulatory function should be able to fulfil its legal duties by taking independent, binding decisions without recourse to the European Commission or Member States.

There would be adequate Community resources and funding, and proper accountability to the EU institutions. The European Commission would also act as a decision-maker of last resort in the event that the Regulators’ Council is unable to reach a decision by Qualified Majority Vote. An Administrative Board comprising the European Commission and representatives of the Member States would oversee the governance and accounts, including setting the budget for Secretary-General/Secretariat. Decisions of the Regulators’ Council are challengeable to the ECJ. The model envisages an Appeals Board to consider cases before recourse to ECJ action.

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What tasks and responsibilities would be attributed to the EU Regulators' Council?

The Regulators' Council⁴ (comprising the heads of the energy National Regulatory Authorities (NRAs) of the Member States) would be the primary regulatory decision-making body in the ESER. Effective regulatory oversight of network companies and their European organisations (ETSO, GIE) is essential both at domestic and European level. The Regulators' Council will have an EU duty to oversee the public interest objective of promoting competitive single EU gas and electricity markets. The Regulators' Council would be responsible for carrying out the following functions that **can only be performed at a European level:**

- The approval of EU security standards
- The approval of EU operating standards
- The approval of EU-level investment plans
- The approval of cost allocation methodologies for non-domestic/cross border investments
- The approval of binding guidelines/implementing measures in areas defined by legislation
- Enforcement powers including the power to impose solutions on the EU network bodies
- Providing advice to the European Commission on regulatory issues

What duties will the National Regulatory Authorities (NRAs) have in this ESER model?

NRAs are a vital part of the ESER and strong, independent regulation at national level is essential to delivering competitive EU energy markets. NRAs will oversee the European activities of relevant TSOs in the same way as for a national investment. ERGEG has set out the additional powers required in new EU legislation to ensure that NRAs powers are harmonised and levelled up⁵. TSOs would play a vital role in the proposed framework at a national level, where they would be required to comply with European, as well as national standards, and EU level through the EU network bodies.

What tasks and responsibilities would be attributed to the EU network bodies (ETSOplus, GIEplus)?

ERGEG has set out in detail the requirements for a new legal framework for the establishment of an EU grid so that the obligations of TSOs (and their EU network bodies) are clear⁶. ERGEG also sets⁷ out the legal framework and activities of the new EU network bodies – GIEplus and ETSOplus – these bodies must as a basic requirement comprise effectively unbundled TSOs with no interests or affiliates in the competitive parts of the market (see separate ERGEG Fact Sheet on Unbundling).

⁴ This model would provide the proper legal basis for a Regulators' Council which would carry out the EU regulatory function previously envisaged by the so-called "ERGEG+" option.

⁵ See the ERGEG advice on the 3rd legislative package input "Powers and Independence of National Regulators", (C07-SER-13-06-5-PD), 5 June 2007. The additional powers are limited to transmission and the operation of wholesale markets. They focus on the following areas; governance (duties, independence, accountability, sharing of data), requirements for network regulation, requirements for market regulation and enforcement.

⁶ See the ERGEG advice on the 3rd legislative package input "Network Regulation –Overall Framework" (C07-SER-13-06-3-PD), 5 June 2007. These obligations require each TSO to develop, operate and maintain their network for the integrated market so that (1) it meets the public interest objectives set out in European law (2) it complies with a new Regulation and its Guidelines including technical standards and (3) it co-operates with other relevant TSOs in achieving these objectives.

⁷ See the ERGEG advice on the 3rd legislative package input "ETSOplus/GIEplus" (C07-SER-13-06-4-PD), 5 June 2007. These obligations require each TSO to develop, operate and maintain their network for the integrated market so that it (1) it meets the public interest objectives set out in European law (2) that they comply with a new Regulation and its Guidelines including technical standards and (3) that they co-operate with other relevant TSO in achieving these objectives.



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Where can I get further information?

ERGEG was established by the European Commission (in November 2003) as the **European Commission's advisory body** on internal EU energy matters. ERGEG (www.ergereg.org) and CEER (www.ceer-eu.org) aim to create EU-wide electricity and gas markets, acting **in the interest of the EU energy consumer**.

This FactSheet (FS-07-05) was issued by the European Energy Regulators to reflect their advice given to the European Commission.

Should any member of the EU Institutions require the (free and timely) independent advice of the European Energy Regulators on any energy issue (big or small), contact the Secretary General:

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Other useful FactSheets:

- FactSheet on the new 3rd package of energy legislation (FS-07-03), May 2007.
- FactSheet on Unbundling (FS-07-04), May 2007