

CEER

**Council of European
Energy Regulators**



Fostering energy markets, empowering **consumers**.

**CEER Memo on the transposition of
unbundling requirements for
Transmission, Distribution and Closed
Distribution Systems Operators**

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1 Introduction

Delivering electricity and natural gas to any kind of customer and/or end-user and guaranteeing the long-term ability of the system make transmission system operators (TSOs) and distribution system operators (DSOs) important market actors. As such, their independence may strongly influence the level of retail competition.

The rules on unbundling of TSOs and DSOs are one of the main pillars of the EU's Third Energy Package (3rd Package¹), designed to provide for new, further reaching rules for the effective separation of supply and generation activities from network operations to avoid potential discriminatory behaviour, as well as defining minimum criteria and standards for distribution companies.

In 2013, CEER published a report² monitoring the implementation of DSO unbundling requirements and closed distribution systems operators, which outlined the state of play based on the information available to European national regulatory authorities for energy (NRAs) in summer 2012. Since the publication of that report, CEER has conducted a similar data gathering exercise in order to form the basis for a full update to the previous report next year (2015), which also included information on TSOs; a new addition to the previous report. This memo provides a brief summary of the interim findings.

2 Main findings

2.1 Key aspects of DSO unbundling

The majority of countries have fully implemented the 3rd Package. However, in the countries which have not yet transposed the Directives, the requirements for DSO unbundling are not fulfilled. In some countries, there is only one single ownership unbundled system operator. The assessment criteria does not seem to have changed much since the previous report and therefore few major structural changes were observed; not surprisingly as most of these changes already took place previously during the implementation of the 3rd package provisions.

- **Rebranding of DSOs:**

It is still too early to fully evaluate the results of unbundling in terms of rebranding, as the process is on-going. Nevertheless, information received suggests that several NRAs were still not fully satisfied with the rebranding process. In very few cases, a DSO has been found to refuse compliance with the rebranding requirements (and in certain situations, the NRA has exercised its right to commence legal proceedings against the DSO).

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; and
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.

² http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Cross-Sectoral/Tab/C12-UR-47-03_DSO-Unbundling_Status%20Review_Public.pdf



- **Resources of DSOs:**
In general, NRAs remain satisfied that DSOs have sufficient financial and personnel resources.
- **Compliance officers:**
Overall, NRAs remain satisfied with the compliance programmes and officers put in place by DSOs. Independent decision-making is guaranteed via national law, licence agreements or network codes and evaluated in the annual compliance report sent to the NRAs.
- **Closed distribution systems:**
Most countries do not have closed distribution systems (as defined in the directives) and only a minority transposed the respective article (Article 28).
Closed distribution systems vary widely from country to country as in some cases, specific national rules regulate access conditions and unbundling requirements or stipulate that there is no obligation to provide public service.

2.2 Key aspects of TSO unbundling

The majority of countries have transposed the 3rd Package Directive provisions regarding TSO unbundling, and have at least one certified TSO and final certification decisions issued by the NRA (with few exceptions). The Directives provide for different TSO unbundling models: the OU (as a point of departure), or as alternatives the ISO and the ITO (or in addition the specific exception of the so called “ITO+” model).

For each TSO, compliance with the requirements of the Directive has to be certified by the NRA. The European Commission gives its opinion on the NRA's decision and the certification procedure requires that the NRA adopts its final decision taking the utmost account of the Commission's opinion. Lots of these procedures have been successful which reflects that both the NRAs and the EC have considered that the TSOs were broadly in line with the 3rd Package Directive provisions. However, some difficulties have also been raised during this process.

In most cases, the major obstacle in the TSO certification process, regardless of the model applied (OU, ITO or ISO), is in the ownership structure(s) between the shareholders. Even the OU model, which is very strict and seemingly straight forward in this matter, questions on ownership structure still occur. In general, the outsourcing of specific tasks to the vertically integrated undertaking (VIU), as well as the financial independence of the TSOs or resource related issues, also caused problems during certification. The TSO certification process is still on-going in several countries.

- **Ownership Unbundling (OU):**
Overall, TSOs under the OU model are unbundled by ownership from all other undertakings which produce or sell electricity or natural gas; there have been various ways of unbundling the TSO in different countries. The main issues NRAs faced during the implementation of the ownership unbundling rules in the certification process were often linked with the equipment with resources of the ownership unbundled TSO and its possibility to outsource certain tasks. Some NRAs imposed a number of additional requirements for issuing the certification.



- **Independent Transmission Operator (ITO):**
Obstacles during the implementation of ITO unbundling rules included the service provision of the VIU and outsourcing of core activities as well as the financial independence of the ITO through the development of a central funding model. The independence of the compliance officers or corporate policies and issues surrounding the shareholding structure (for example the majority shareholder of the TSO is the VIU) are key issues to overcome.
- **Independent System Operator (ISO):**
There are only a few TSOs certified under the ISO model. Again, the issue of ownership is also here a major hurdle while implementing the unbundling rules.

3 Conclusion and next steps

From this brief interim exercise, CEER notes that on DSO unbundling, more work still needs to be done with regard to improving the rebranding approach.. As reported in our 2012 Status Review, many DSOs have rebranded their corporate identity (CI), although for gas further action is needed. Also as rebranding is understood as the complete change of name, logo etc. of a DSO compared to its VIU; this still needs more time as several NRAs considered there was not a clear enough differentiation between the production/supply branches within the VIUs.

With regard to TSOs, a deeper analysis will allow us to better provide an overview of the different models chosen and the level of implementation achieved. Nevertheless, it appears that ownership (in terms of shareholdings) will reoccur as a key obstacle in the unbundling process.

In 2015, CEER intends to conduct an in-depth analysis to update its previous report on the status of implementation of unbundling requirements in the 3rd Package.



Annex 1 – CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national regulators of electricity and gas at EU and international level. Through CEER, a not-for-profit association, the national regulators cooperate and exchange best practice within and beyond Europe's borders. CEER includes national regulatory authorities from 33 European countries (the EU-28, Iceland, Norway, Switzerland, FYROM, Montenegro and growing).

One of CEER's key objectives is to facilitate the creation of a single, competitive, efficient and sustainable EU internal energy market that works in the public interest. More specifically, CEER is committed to placing consumers at the core of EU energy policy. CEER believes that a competitive and secure EU single energy market is not a goal in itself, but should deliver benefits for energy consumers.

CEER works closely with (and supports) the Agency for the Cooperation of Energy Regulators (ACER). ACER, which has its seat in Ljubljana, is an EU Agency with its own staff and resources. CEER, based in Brussels, deals with many complementary (and not overlapping) issues to ACER's work such as international issues, smart grids, sustainability and customer issues. European energy regulators are committed to a complementary approach to energy regulation in Europe, with the Agency primarily focusing on its statutory tasks related to EU cross-border market development and oversight, with CEER pursuing several broader issues, including international and customer policies.

The work of CEER is structured according to a number of working groups and task forces, composed of staff members of the national energy regulatory authorities, and supported by the CEER Secretariat.

This report was prepared by the Market Monitoring and Reporting Task Force of CEER's Implementation, Benchmarking and Monitoring Working Group.

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Annex 2 – List of abbreviations

Term	Definition
CEER	Council of European Energy Regulators
3rd Package	Third EU Energy Package
CI	Corporate Identity
DSO	Distributions System Operator
EC	European Commission
ISO	Independent System Operator
ITO	Independent Transmission Operator
NRA	National Regulatory Authority
OU	Ownership Unbundling
TSO	Transmission System Operator
VIU	Vertically Integrated Undertaking