DOI: 10.36719/AEM/2007-2020/55/91-99

Shukufa Elbrus Muradsoy
Baku State University
sukufemuradsoy@mail.ru

THE THIRD ENERGY PACKAGE AND LIBERALIZATION OF EUROPEAN ENERGY MARKET

Key words: *third energy package, liberalization, single energy market, directive, energy policy, electricity market, competition law*
Açar sözlər: *üçüncü enerji paketi, liberallaşma, vahid enerji bazarı, direktiv, enerji siyasəti, elektrik enerjisi bazarı, rəqabət hüququ*
Ключевые слова: *третий энергетический пакет, либерализация, единый энергетический рынок, директива, энергетическая политика, рынок электроэнергии, конкурентное право*

Introduction

The liberalization of European energy markets is an ongoing process which started around 20 years ago. The aim of the liberalization process was to remove national monopolies and stimulate cross-border trade to attain a single European energy market, supposedly leading to lower prices and better services for consumers. A third-party access regime and protection mechanisms against discrimination by vertically integrated energy utilities were introduced by European directives in the mid to late 1990s. The liberalization process was then re-enforced by the launch of the so-called second energy package in 2003 including an obligation on Member States to fully open their electricity and gas markets by way of a regulated third-party access regime and far reaching rules on legal, operational and informational unbundling.

Analysis

Consumer protection lies at the heart of the European Union competition law system. EU energy policy is de facto an extension of competition law to the EU energy sector. For business and consumers, this means that guaranteeing a reliable energy supply at reasonable prices is paramount. In this spirit, the EU has been progressively working towards the completion of the Internal Energy Market and a coherent EU energy policy since the 1980 s, increasingly liberalizing European electricity and gas markets. Ownership Unbundling and Third-Party Access, set out in 2009 in the Third Energy Package legislation, are key elements with a dual goal in this respect: they facilitate liberalization, as well as a Europe-wide integration of energy markets [4, 59-60].

In the initial years of the European project, energy was viewed through the narrow focus of security of supply and pooling of common resources. The treaty establishing the European Coal and Steel Community (ECSC) was signed in April 1951 and entered force in August 1952, with Belgium, Germany, France, Italy, Luxembourg and the Netherlands the signatories. The common markets set out by the Treaty opened in February 1953 for coal, iron ore and metal, followed by that for steel in May 1953. In 1957 the founding of the European Atomic Energy Agency (Euratom) also sought a common policy approach to nuclear power. The foundation of both these treaties was an attempt to foster a cooperative approach to the handling of the traditional backbone of energy supply in Europe, coal, the primary raw material for industry, steel, and the fuel of the future, nuclear power. But the determination of energy source remained at the member state decision making level, and the project of European integration was still developing. Although market integration was discussed, the focus of policy remained on security of supply [7, 93-94].

National electricity grids in Europe became increasingly interconnected in the 1950s, with cross-border interconnections encouraged by the Organization for European Economic Co-operation as part of post-war reconstruction. The Union for the Coordination of Production and Transmission of Electricity (UCPTE – which became ENTSOE in 2009) was created following its inaugural meeting in May 1951 with Austria, Belgium, France, Federal Republic of Germany, Italy, Luxembourg, the Netherlands and Switzerland the founder members. UCPTE's primary aim was to contribute to the development of economic activity by way of more effective energy usage resources – something that would be enabled through increased interconnection of national electricity networks. After its establishment in Western Europe, the UCPTE fostered interconnections in the late 1950s and 1960s in electricity markets in southern and eastern Europe and the Balkans.

Later in the 1960s the focus hardened on supply security – although there remained an absence of a unified energy policy – during the 1967 and 1973 Arab oil embargos. Because of support for Israeli military

engagements with Arab countries, an oil export embargo was placed on the US and selected perceived European allies such as the UK, West Germany, the Netherlands and Italy by Arab members of OPEC. Other European countries were threatened with phased supply reductions, and those without disruption began to stockpile oil. France had called for a coordinated EU external policy response to the wars and the embargo, but the varying treatment shown to European countries by OPEC reflects the absence of a common approach [14, 113]. At the subsequent Copenhagen Summit of heads of state or government in 1973 the importance of negotiating cooperative arrangements with oil-producing countries was recognized, and a study was proposed into common problems faced by oil-consuming countries.

It was not until the 1980s that a collective approach to energy policy was formalized, with the focus on the single market. The Single European Act (1985) set out the basis for increased integration and a move towards the single market, but energy was not included. Within the act environmental protection was included, but the primary focus remained the furthering of the internal market [6, 5]. Greater integration of national energy markets had been discussed by the Council of Ministers, and in 1988 the idea of a functioning internal energy market was set down in Commission working paper. It recognized that an internal market required harmonization of rules and technical norms, the opening up of public procurement of energy and the removal of fiscal barriers – primarily the individual manner in which member states tax energy. The document also envisioned a 'common carrier' system for gas and electricity across member states, in which consumers could purchase energy from any supplier within the Community regardless of grid ownership.

The paper put forward the idea that a single energy market would reduce energy costs for consumers, improve and rationalize energy production and transportation costs, increase investment and ensure security of supply. Electricity and gas had been left out of market liberalization policies up until this point due to the physical nature of their networks (compared to the more fungible coal and oil), and the strong presence of monopolies on grid and pipelines – which were considered 'natural monopolies' [2, 20] – and the associated politics internally and between member states. The working paper identified four sets of actions needed to achieve an internal energy market: implementing and harmonizing general rules and technical norms for the energy sector; the application by the Commission of Community Law; a satisfactory equilibrium between energy and environment policies; and the definition of appropriate means in areas related to energy policy (i.e. specific energy directives). Following the working paper a package of proposals for energy directives needed to ensure free competition in electricity and gas markets was adopted by the Commission and referred to the Council of Ministers in 1989. But there was widespread opposition to the package – most notably to its proposal of a common carrier system – as they sought to liberalize market sectors that had traditionally enjoyed privileged and protected positions through both national and natural monopolies [8, 200].

Following the Council's opposition, in 1990 the Commission adopted directives on price transparency and transit rights for electricity grid operators, which were regarded as the less contentious directives in the proposed package. The Commission continued to develop plans for a liberalized internal energy market in the 1990s, but no specific chapter on energy was included in the 1992 Maastrict Treaty, as its inclusion was vetoed by member states – notably those with large energy reserves – to ensure they retained autonomy over energy policy. Energy was directly referred to in the treaty as an activity of the European Community in terms of 'measures in the spheres of energy, civil protection and tourism' – the last of the twenty categories outlined in the treaty document. But the wording was vague and it did not provide a regulatory or legislative foundation. Further reference to energy was made in the treaty in relation to 'trans-European networks', with the European Community contributing to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures. Elsewhere in the treaty the primary reference to energy was in the context of Euratom. By the second half of the 1990s the internal market for energy became more substantially developed, when the European Parliament passed a directive on the rule for the internal electricity market in 1996, which was followed by a directive in 1998 on rules for the gas market. These were watered-down versions of proposals rejected by member states originally in 1990, but nevertheless they substantially bolstered the moves towards an internal market place and attempted to remove 'legal monopolies' and obliged vertically integrated companies to grant third party access to networks. Article 15 of the Directive also introduced requirements for separation of operations for vertical integration companies.

Directive 96/92/EC (electricity): Chapter IV, Article 15:

1. Member States which designate as a single buyer a vertically integrated electricity undertaking or part of a vertically integrated electricity undertaking shall lay down provisions requiring the single buyer to operate separately from the generation and distribution activities of the integrated undertaking.

2. Member States shall ensure that there is no flow of information between the single buyer activities of vertically integrated electricity undertakings and their generation and distribution activities, except for the information necessary to conduct the single buyer responsibilities.

The directive also set out key rules on unbundling – the idea that a supply company cannot also own an entity that operates a network – and rules for transmission system operators (TSOs) and distribution system operators (DSOs). Member states were required to designate whether the TSO or DSO would determine 'non-discriminatory access' to networks. The access could be provided using negotiated third party access, regulated third party access or the Single Buyer model, although no rules were included in the directive detailing how TSOs should facilitate access of third-parties to networks [15, 10].

Under the unbundling rules TSOs were required to be 'independent at least in management terms from other activities not relating to the transmission system', while the Directive also sought to increase network transparency, establish a wider remit and central role for TSOs and DSOs, and introduce rules relating to standardized provisions for the construction of new generation capacity. However, the Directive was not sufficient in breaking the dominance of big incumbent market actors as there was nothing within it that required countries to create a competitive field of companies in generation or retail, meaning the sectors remained highly concentrated. It was also noted subsequently that the range of management and transmission systems in Europe and a lack of cross-border capacity remained a hindrance to the development internal market. Furthermore, the Commission had to accept that member states could effectively restrict trade across national borders, as high market concentration in practice allowed a single national firm to ultimately retain full control over imports.

The Directive made an important distinction between a regulated part of the market – the network – and its competitive parts – generation and supply. But ultimately it failed to facilitate the development of more competitive wholesale and retail markets, while the varying results in transposing the Directive by member states and opening of their electricity markets to competition actually led to market distortion [3, 50-65]. DG Competition also highlighted the existence of negotiated third party access regimes, limited levels of unbundling obligations and the lack of an obligation to establish a national energy regulator as failings of the Directive.

A 2001 benchmarking report into the implementation of the electricity and gas Directives highlighted community-wide problems (as well as some specific to member states), although overall transposition by member states had been carried out to a satisfactory suitable level. In the electricity market the report identified the following problems: high network tariffs and lack of structural clarity; powerful market incumbents; illiquidity in wholesale and balancing markets; and insufficient unbundling.

Problems identified with internal gas market were: insufficient flexibility for third-parties to change gas source/customer base due to high tariffs; concentration of production and import within a small number of companies; non-market based balancing regimes; a lack of tariff structure clarity; and insufficient unbundling. The focus remained predominantly on the internal market, with some reference to security of supply. But 'environment' was only referred to three times in the articles of the electricity market directive, and four times in the gas directive. Scant reference was made to environmental concerns beyond broad-stroke phrasing of 'environmental protection' and 'with due regard for the environment'.

The early-to-mid 2000s

At this stage environmental policy notably entered the stream of energy, with the adoption of Directive 2001/77/EC – the 'Renewable Energy Directive' – following progress made previously under the Kyoto protocol that was adopted in 1997. The Directive mandated a community target of a 21pc share for renewable energy consumption by 2010, and encouraged member states to incentivize renewable energy development through the use of support schemes.

Following the 2001 benchmarking report, in July 2003 the electricity Directive 96/92/EC (and its gas counterpart) was repealed and replaced by Directive 2003/54/EC on the common rules for the internal market in electricity – the 'Second Electricity Directive' – alongside regulation (EC) 1228/2003 on cross border electricity trading. The Directive set out common rules for the generation, transmission, distribution and supply of electricity, provisions on ownership/unbundling, and consumer protection, with the aim of improving and integrating competitive electricity markets in the EU. Rules set down in the directive included the organization and functioning of the electricity sector, open access to the market, the rights of electricity consumers and competition requirements. An equivalent directive for gas (2003/55/EC) was also adopted. The directive was different from that in 1998 as it provided less freedom to member states, required quicker transposition (with target of 2004), and addressed cross-border issues [9, 1].

The Second Electricity Directive aimed at a more complete market opening, with all non-household electricity customers to become eligible by 1 July 2004, followed by the full opening of retail markets for all household customers by 1 July 2007. The Directive sought to remove the discrepancies in the level of market opening between Member States that had plagued the 1996 Directive. It also mandated the creation of a regulator independent from the industry (though not necessarily government), and pushed further still with unbundling. The Directive also replaced negotiated third party access to networks with regulated third-party access, under which third parties can access the network in a non-discriminatory manner based on published tariffs. The unbundling regime under the Second Electricity Directive had three basic features:

1. Legal unbundling of the TSO and DSO from other activities not related to transmission and distribution
2. Functional unbundling of the TSO and DSO, in order to ensure its independence within the vertically integrated undertaking
3. Accounting unbundling that required separate accounts for TSO and DSO activities.

In 2003 the EU also made further developments on the environmental dimension of energy policy with the adoption of the 'Emissions Trading Directive' 2003/87/EC, which came into force in 2005. The Directive placed a limit on overall emissions from over 11,000 high-emitting energy installations as of 2013 in industrial and energy sectors, and also the aviation industry. An estimated 45pc of total EU emissions were covered by the scheme. The Directive also allowed for the trade of emissions capacities between permit holders, under a 'cap and trade' mechanism.

More progress towards market liberalization was made in 2005 during the UK's EU Presidency. The government's stated energy priorities for the Presidency included the driving forward of open and competitive energy markets in Europe, the promotion of long-term security of supply, and the tackling climate change. The UK was in favour of promoting security of supply through stronger EU-third country relations, with the European Energy Community Treaty with southeastern European states, progress with EU-OPEC dialogue and EU-Russia energy dialogue. In October 2005 at the Hampton Court Informal Heads of State or Government meeting on EU external policy UK Prime Minister Tony Blair called for an EU-wide energy security policy against the backdrop of increasing oil and gas prices, rising energy demand and import dependency, and climate change [16]. Political developments and deteriorating relations between Russia and Ukraine in 2004-2005 that culminated in Russia shutting off the gas supply to Ukraine on 1 January 2006 were also behind calls for a security strategy. Following the Hampton Court summit the Commission produced a green paper entitled: 'A European Strategy for Sustainable, Competitive and Secure Energy' which identified six key energy policy priority areas to address the challenges facing the EU:

- Completion of the internal gas and electricity markets
- Energy solidarity between member states
- Tackling security and competitiveness energy of supply
- An integrated approach to tackling climate change
- Innovation and technology
- A coherent external energy policy.

Significantly, the green paper expanded the definition of energy policy to include climate change and security of supply alongside the traditional policy objective of creating the internal energy market [1, 3]. Despite the advances made under the Second Electricity Directive, in 2005 the Commission launched an inquiry into the energy sector to identify distortions in competition in response to concerns raised by consumers and new market entrants regarding price rises. Energy Commissioner Andris Piebalgs said "the Commission is determined to see that Member States follow through on their commitment to create competitive energy markets", which would require the full implementation of liberalization Directives, the construction of new interconnectors and pro-active application of competition law. The inquiry findings were published in January 2007 and shortcomings in the gas and electricity markets that were identified included: Market concentration in national markets; A lack of liquidity; Too little integration between member states' markets; An absence of transparency; Inadequate levels of unbundling.

The Third Energy Package

In 2005 the Commission launched sector inquiries into the functioning of the European electricity and gas markets in 2005, investigating potential shortcomings of the liberalization process. The Commission published its final sector inquiry report on 10 January 2007 and identified several deficiencies then remaining on European energy markets. Its main concerns were:

- high market concentration especially at the wholesale level;

- vertical foreclosure resulting from an insufficient level of unbundling between network operation on the one side and supply and/or generation activities on the other side;
- insufficient cross-border capacities and different market designs constituting an obstacle to further market integration;
- lack of efficient and transparent price formation as well as information asymmetry between incumbents and market entrants;
- long contract duration and restrictive practices in relation to the operation of supply contracts resulting in the foreclosure of downstream markets;
- regarding balancing markets, the existing balancing regimes were often found to favour incumbents and create obstacles for new market entrants.

To address the concerns identified in the sector inquiry, the Commission not only used its powers under the antitrust rules but also proposed further regulatory and structural measures leading to the third legislative package. After lengthy discussions this was adopted in July 2009. At the heart of the package are the formation of a European Network of Transmission System Operators (ENTSO) for electricity and gas, respectively, which implements common standards in order to facilitate cross-border energy supplies, the establishment of an agency as a new body to coordinate the actions of the national regulatory authorities and, most important, the implementation of more stringent unbundling rules8 designed to ensure effective independence of the network business from the rest of the vertically integrated energy utilities [10, 63].

As a result of the findings, the most recent evolution of energy policy came about in the form of the Third Energy Package in 2009, which consisted of five primary documents: two Directives and three regulations. The five main areas that the Third Package covered were:

- Unbundling energy suppliers (including generation) from network operators
- Strengthening the independence of regulators
- Establishment of ACER (Agency for the Cooperation of Energy Regulators)
- Increasing cross-border TSO cooperation (ENTSO-E)
- Increased transparency in retail markets.

Both the previous directives regarding the common rules for the internal electricity and gas markets were replaced by updated versions – Directive 2009/72/EC for the internal electricity market and Directive 2009/73/EC for the internal gas market. The three Regulations introduced were regarding access to the natural gas transmission networks (EC/715/2009), conditions for access to the networks to allow cross-border electricity exchange (EC/714/2009), and the establishment of ACER (EC/713/2009). The primary aspects of the policy that were new within the package were related to unbundling of energy supply and network distribution, increased transparency of retail markets and more effective oversight by independent market watchdogs, the national regulatory authorities and better cross-border collaboration and investment between member states.

The unbundling as part of the Third Package was a step change from previous Directives. The new Directive, under Article 9, introduced a ‘structural separation’ between TSOs and generation, production and supply activities – the aim of which was to avoid conflicts of interest and provide transparency. The package was adopted in July 2009 and it came into force on 3 March 2011. Importantly the Third Package sought independence for regulatory authorities from governments and industry actors, whereas the 2003 Second Package had arranged only voluntary harmonization of rules and practices. Member states had until March 2011 to transpose the directives and regulations into national law, but had until March 2012 to ensure the conditions set out under Article 9 on ‘Unbundling of transmission systems and transmission system operators’ were met. As of 2014 there were six general energy regulations and directives in force, with a total of 217 directives, implementing acts, and regulations covering specific sectors: oil (7); gas (9); electricity (13); renewables (16); energy efficiency (57); networks (4); and nuclear (111).

While the Regulations forming part of the third energy package entered into force on 3 March 2011, the Directives were not transposed on schedule by any Member State. The Commission had opened infringement procedures against eighteen Member States by 30 September 2011, putting pressure on those Member States to implement the provisions of the Directives, especially with regard to the implementation date for the new, more stringent unbundling rules of the Directives. Considering that there were still over sixty infringement proceedings underway concerning the second energy package in early 2011, the track record suggests that the Commission is right in closely monitoring the implementation of the third energy package. The one (preliminary ruling) case in which the ECJ actually was to rule on the correct transposition of the second package gas Directive, was decided on procedural grounds. No decision was taken on whether European law allowed

for two different tariffs for the domestic transmission and transit (cross-border transmission) of gas to be foreseen by national regulation [11, 77].

The transposition deadline for the Third Package was originally 3 March 2011, but full and timely transposition was ‘a challenge for the vast number of the Member States’ – none of them had achieved full transposition by the deadline. By September of that year 38 proceedings were opened against 19 member states. Directive transposition was speeded up, and by 26 September 2014 Directives were fully transposed in all but two member states. Proceedings were put in place against Romania and Ireland for failed transposition. Romania adopted amendments to its electricity (and gas) laws on 17 September (although had yet to full transpose), while Ireland was referred to the Court of Justice by the Commission for failing to transpose internal market rules. Across the EU 96 out of 100 TSOs have been certified as compliant with unbundling with the model of full ownership unbundling the most popular (though 6 electricity TSOs use the ITO model). In September 2014 the Commission started to identify and resolve problems concerning incurrect transposition and/or bad application of the Third Package rules by member states, and undertook a ‘systematic non-conformity assessment’ of national measures in almost all 28 member states, and opened pilot cases (i.e. where in instances where violation of transposition or bad application of acquis has occurred) on several occasions against member states. Following a conclusion that national law was not in conformity with the Third Package, the Commission initiated nine ‘non-conformity’ Pilot Cases, with one resulting infringement procedures. The Commission has also done this on ad-hoc basis, for example against Spain in 2012-13. As of May 2014 (*September 2014 also?*) there were nine Member States with cases where Directives were not fully transposed (Belgium, Czech Republic, Ireland, Luxembourg, Netherlands, Austria, Poland, Slovenia, and Finland) and there were eight pending infringement cases for non-conformity.

The Internal Energy Market. In 2011 the EU had ambitiously targeted 2014 for the completion of the internal energy market (IEM), but it remains a substantial way off completion. The target model is formed of a wide range of integration mechanisms, but broadly centered on the principles of: energy only regional markets (i.e. revenues are determined by the price of each unit of energy supplied); and market coupling (a means of linking zonal day-ahead spot markets into an EU-wide virtual market) [5, 2]. Market coupling is discussed further in section 4 below. The vision for the day-ahead markets is a European Price Coupling (EPC) mechanism that would simultaneously determine volumes and prices in all relevant zones, based on the marginal pricing principle and supply and demand. The project on integration and coupling is mainly led by ENTSO-E – alongside ACER and CEER and the TSOs – which was given a legal mandate (directive EC/214/2006) under the Third Energy Package to lead the development of a pan-European electricity transmission network. In particular, ENTSO-E’s role is to:

- Ensure the secure and reliable operation of the increasingly complex network;
- Facilitate cross-border network development and the integration of RES;
- Enhance the creation of the Internal Electricity Market (IEM).

In 2006 CEER launched the European Regional Initiative (ERI) to speed up the integration and coupling of Europe's national electricity markets and the creation of the single market. ACER and national regulatory authorities produced the ‘EU Energy Work Plan for 2011-2014’ in electricity, which was formed of four roadmaps that focused on the implementation of the separate parts of the internal energy market across member states:

- Implementation of a single European price market coupling model;
- Implementation of a cross-border continuous intraday trading system across Europe;
- Implementation of a single European set of rules and a single European allocation platform for long and medium-term transmission rights;
- Implementation of fully coordinated capacity calculation methodologies and particularly the flow-based allocation method in highly meshed networks.

Seven regional electricity organizations were also established as an interim step to the eventual creation of a single EU-wide market and work plans were developed, focusing on the specific issues and requirements of each needed to meet the four roadmaps and complete the internal electricity market. The integration of markets should result in more cross-border competition and therefore allow more actors into the market, which could increase supply security and liquidity In theory, markets connected via interconnectors will respond according to the Increased security and liquidity as a result of greater cross-border interconnection is a key tenet of the Commission’s promotion of the internal energy market and is a driver behind future developments such as the UK-Norway interconnector, which supply and trading company RWE noted ‘will improve market liquidity, competition and security of supply’.

The next stage: Energy Union. In February 2015, the European Commission published a framework strategy for the creation of a new package of energy policies, the European Energy Union. Building on the themes and policies of the Third Energy Package, the strategy set out the Commission's vision on how the Energy Union will deliver 'secure, sustainable, competitive and affordable energy' for all EU citizens.

The package builds on from the Commission's Energy Security Strategy communication of May 2014, which detailed areas of energy policy and practice that it considered require actions in the short and longer-term to respond to energy security challenges. These included building a well-functioning and fully integrated internal market, diversifying external supplies and increasing the coordination of national energy policies. Although the internal energy market continues to develop, the Commission noted in April 2015 how the current fragmented nature of Europe energy markets remains an issue. High levels of fuel import dependency, outdated infrastructure, low investment, a poorly functioning retail market and high final energy prices could, the Commission argues, be addressed by the EU overcoming the fragmented nature of national markets. As such, the Union proposes five distinct yet overlapping policy dimensions: Energy security, solidarity and trust; A fully integrated European energy market; Energy efficiency contributing to demand moderation; Decarbonizing the economy; Research, Innovation and Competitiveness.

The framework package also contained a fifteen-point action plan detailing specific aims of the Energy Union across the policy dimensions. While wide-reaching, the action points vary in their scope from broad aims such as the diversification of gas supply, regional electricity market integration and a better performing retail market, to more targeted ones such as renewable electricity generation and energy savings targets. Some of the proposals of the Energy Union –notably regarding gas– would be ground breaking, but overall much of what is proposed in the framework package continues or builds upon from the Third Package. For example, in arguing why the Energy Union is needed, the Commission refers to the difficulties of 27 national regulatory frameworks and the need for an integrated energy market to create more competition and lower retail prices – something also at the core of the Third Package. As part of the move for a fully integrated European energy market the Energy Union package also has at its core greater linkage of markets and member states through interconnections alongside the implementing and upgrading of legislation related to how the market will function (including the network codes). Although many legislative and market functioning initiatives of the Third Package are yet to be completed – something the Energy Union package framework recognizes and would seek to do – the new package would see the Commission propose an ambitious legislative redesign of electricity market, with greater links between the wholesale and retail sides of energy.

Energy policy was one of the priorities of the Juncker Commission. While most of the concepts put forward in Commission President Juncker's political guidelines in the field of energy policy build upon existing tools and policies, there are also new proposals to further strengthen the 'Energy Union', first of which is the appointment of a Vice-President who will take the lead on the 'Energy Union' within the College of Commissioners. One novel idea to counteract the dependency of Europe on external energy supplies is the pooling of demand and joint negotiation with foreign energy suppliers as suggested in Commission President Juncker's mission letter to the Energy Union-Vice-President, Maros Sefcovic. It will be interesting to see how such a proposal will be aligned with the competition and internal market rules as well as trade law and in which other ways the new Commission will have an impact on European energy policy [12, 201-202].

During the last couple years, only a few new rules were adopted. It appears that regulators have consolidated their decision-making practices on the basis of new Directives and Regulations adopted by the EU institutions over the last years.

This applies in particular in relation to two key pieces of regulation, (i) the 'Regulation on Wholesale Energy Market Integrity and Transparency' (REMIT), which was adopted by ACER, the Agency for the Cooperation of Energy Regulators to close perceived gaps in the regulation of trade in energy markets and prevent insider trading and market manipulation, and (ii) the network codes ENTSO-E and ENTSO-G (the networks of transmission system operators) which have been designed to complement existing national rules on cross-border supplies and which deal with requirements for generators, electricity balancing, demand connection, and issues of procedure, and also with capacity allocation and congestion management (ENTSO-E) and with market integration, system operation and development, capacity allocation, network connection and operational security, market integration, competition, cross-border trade, and non-discriminatory and cost-reflective transmission tariffs (ENTSO-G).

The same holds true for guidance that the Commission has issued in the form of the revised and supplemented Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG) for the promotion of renewable energies and with regard to so-called capacity mechanisms subsequently implemented by Member States. As some subsidy schemes provide for renewable energies to be treated preferentially com-

pared to conventional energy from fossil resources, based on the EEAG, the Commission has continued to emphasize that — among other types of subsidies—subsidy schemes for facilities with high generation capacity, and which were not granted on the basis of a competitive bidding process, remain subject to the notification obligation contained in Art. 108 (3) TFEU. To comply with State aid rules, Member States must show that the aid contributes to an objective of common interest, that there is a need for State intervention, that the aid is appropriate, and that there is an incentive effect [13, 190-192].

Conclusion

Summarizing all the aforementioned, it could be emphasized that the European Commission has for 20 years struggled for greater supranational powers in internal energy market affairs, and its proposal of a third policy package marked yet another attempt. With Member State governments, the Commission again experienced the determination of recalcitrant Member States to remain in charge – making intergovernmentalism still well suited to depict the power relations in long-term EU internal energy market policies. The former perspective focuses on the long-term development in power relations between supranational and national institutions in EU energy policy, with transnational networks of non-state agents a potential instrument for the Commission in this power play.

Bibliography

1. Barysch K. Green, safe, cheap – Where next for EU energy policy? London, Centre for European Reform, 2011, 89 p.
2. Buchan D. Energy and climate change: Europe at a crossroads. Oxford, Oxford University Press, 2009, 200 p.
3. Domanico F. Concentration in the European electricity industry: The internal market as solution? // Energy Policy, 2007, Vol. 35, p. 50-65.
4. Energy law and economics. Ed. by K. Mathis, B.R. Huber. Geneva, Springer, 2018, 367 p.
5. Keay M. The EU target model for electricity markets: fit for purpose? Oxford Institute for Energy Studies, 2013, 11 p.
6. Langsdorf S. Energy Roadmap 2050 – A History of EU Energy Policy. Brussels, Green European Foundation, 2011, 9 p.
7. McGowan F. Can the European Union's Market Liberalism Ensure Energy Security in a Time of "Economic Nationalism" // Journal of Contemporary European Research, 2008, Vol. 4 (2), pp. 90-106.
8. McGowan F. The UK and EU Energy Policy: From Awkward Partner to Active Protagonist? / Toward a Common European Union Energy Policy. Ed. by V. Birchfield, J. Duffield. London, Palgrave, 2011, pp. 187-216.
9. Meeus L., Belmans R. Electricity Market Integration in Europe // Revue-E, Vol. 124 (1), 2008, pp. 5-10.
10. Scholz U., Purps S. The application of EC competition law in the energy sector // Journal of European Competition Law & Practice, 2011, Vol. 2, No.1, pp. 62-77.
11. Scholz U., Purps S. The application of EC competition law in the energy sector // Journal of European Competition Law & Practice, 2012, Vol. 3, No.1, pp. 77-87.
12. Scholz U., Purps S. The application of EC competition law in the energy sector // Journal of European Competition Law & Practice, 2015, Vol. 6, No.3, pp. 200-209.
13. Scholz U., Vohwinkel T. The application of EC competition law in the energy sector // Journal of European Competition Law & Practice, 2017, Vol. 8, No.3, pp. 190-204.
14. Smith M.E. Europe's Foreign and Security Policy: The Institutionalization of Cooperation. Cambridge, Cambridge University Press, 2004, 308 p.
15. Thomas S. The European Union Gas and Electricity Directives. PSIRU – University of Greenwich, 2005, 110 p.
16. Whitman R., Thomas G. Two Cheers for the UK's EU Presidency. Chatham House briefing paper. 2005, 92 p.

Üçüncü enerji paketi və Avropa enerji bazarının liberallaşdırılması

Xülasə

Avropa enerji bazarlarının liberallaşdırılması təxminən 20 il əvvəl başlamış fasiləsiz proses olmuşdur. Liberallaşdırmanın məqsədi vahid Avropa enerji bazarının yaradılması üçün milli inhisarların aradan qaldırılması və transsərhəd ticarətin stimullaşdırılması olmuşdur ki, bu da güman edildiyi kimi qiymətlərin aşağı salınmasına və istehlakçılar üçün xidmətlərin keyfiyyətinin yüksəldilməsinə gətirib çıxarmışdır. Daha sonra liberallaşma 2003-cü ildə üzv-dövlətlərin özlərinin elektrik enerjisi və qaz bazarlarını açmaq öhdəliyini nəzərdə tutan ikinci enerji paketi adlı sənədlərlə möhkəmləndirildi. 2009-cu ildə enerji siyasətinin ən son təkamülü 5 əsas sənəddən ibarət olan üçüncü enerji paketi formasında reallaşdı: iki direktiv və üç normativ akt.

Третий энергетический пакет и либерализация европейского энергетического рынка

Резюме

Либерализация европейских энергетических рынков – это непрерывный процесс, который начался около 20 лет назад. Целью процесса либерализации было устранение национальных монополий и стимулирование трансграничной торговли для достижения единого европейского энергетического рынка, что предположительно ведет к снижению цен и повышению качества услуг для потребителей. Затем процесс либерализации был подкреплен запуском в 2003 году так называемого второго энергетического пакета, включающего обязательство государств-членов полностью открывать свои рынки электроэнергии и газа. В 2009 году самая последняя эволюция энергетической политики произошла в форме Третьего энергетического пакета, который состоял из пяти основных документов: двух директив и трех нормативных актов.

Rəyçi: h.f.d.C.Hacıyev

Göndərilib: 18.06.2020 Qəbul edilib: 20.06.2020