



**3<sup>rd</sup> Workshop on  
EU Energy Law and Regulation**

***New Challenges for Energy Regulation:  
Investment, Environment, Cross-Border Trade  
and Co-ordination among  
Regulatory Authorities***

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**Executive Summary**

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## ***Executive Summary***

The objective of the 2003 edition of the Annual EU Energy Law and Regulation Workshop was to discuss some of the challenges that energy market-players and regulators will have to face in the short and medium-term in relation to the implementation of the second EU energy regulatory package.

This Report summarises the main points that were raised during the discussion, and underlines the main conclusions emerging thereof. It is structured as follows:

- **Background:** a brief section on the structure and objectives of the Annual EU Energy Law and Regulation Workshop
- **Structure of the Proceedings – an overview of the main themes covered during the debate.**
- **Investment Issues (Session 2),** covering the topic of incentives and/or disincentives to invest from a regulatory perspective.
- **The Interface Between Energy and Environmental Regulation (Session 3),** assessing the impact of the introduction of the EU Emissions Trading Scheme on the energy sector.
- **Cross-Border Trade and Competition (Session 4),** dealing with two main issues: congestion management and transmission capacity allocation in the electricity sector, and respectively, the regulatory and competition law enforcement issues related to the use of long-term contracts and destination clauses in gas trade.
- **Cooperation Among Regulators and Competition Authorities (Session 5)** reporting on recent developments in this direction following the recent modernization and decentralization of EC competition law enforcement.
- **Main Conclusions and Recommendations.**

### **Investment Issues (Session 2)**

During this Session, the participants sought in principal to answer to the question whether the regulatory framework emerging from the implementation of the second EU energy regulatory package will provide adequate incentives to invest in this sector in the short and medium-term. The debate covered the following main issues:

- **Particularities of the energy markets,** i.e. specific market failures and higher risk associated with investment.
- The **need for large investments** in the European electricity sector in the short and medium-term.
- **The state of the European electricity markets** following liberalization and the implementation of the second EU energy regulatory package, as seen, on the one hand, from the perspective of the market players themselves, and on the other hand from the perspective of the regulators.
- The **pre-conditions for investment to take off** from the perspective of the market players, which include: ensuring freedom of trade across the European

borders; limiting in as far as possible regulatory barriers to companies developing their own business and investment strategies; ensuring a consistent regulatory framework; increasing interconnection capacities among the Member States; ensuring free access to grids.

- The appropriate **regulatory approach to investment issues**: in the view of both market players and regulators, the best regulatory approach to ensuring a proper investment climate should be a combination of close monitoring of the functioning of the markets, more vigorous application of EC competition rules, addressing of local markets problem from an European perspective, more willingness of regulators to cooperate across borders and to harmonise national regulation on the basis of “best practices”, while at the same time allowing in as far as possible the markets to evolve themselves and “learn by doing”.
- Issues specific to **investment in infrastructure for ensuring security of supply**: the need to ensure ownership unbundling and remove transmission bottlenecks; a criticism of the draft Infrastructure Directive and the regulatory instruments foreseen for attaining security of supply objectives from the perspective of the market players; a discussion on the alternative proposal submitted by the Dutch government; an update on the current state of the debate on the draft Infrastructure Directive.

### **The Interface Between Energy and Environmental Regulation (Session 3)**

During this Session the debate centred on the impact that the implementation (from January 2005) of the **EC Emissions Trading Scheme (ETS)** will have on the electricity sector, covering in particular the following aspects:

- A short **description of the ETS**: main characteristics, timing and functioning, current state of the preparations for its implementation (the review and approval of the **National Allocation Plans**).
- An assessment of the **impact of the introduction of the ETS on the European electricity sector**, balancing its cost and distributional effects against the advantages that it brings along for the electricity sector.
- Some considerations on the possibility of **investing in renewable energy projects on the emerging markets** as a modality of obtaining Kyoto credits to be re-inserted into the ETS.
- A discussion on the **concerns in relation to the application of the ETS to the electricity sector** from the perspective of consumers (i.e. increased electricity prices) and market players (i.e. the possibility that some electricity companies receive illegal state aid at the time of the initial allocation of emission allowances through the NAPs).

### **Cross-Border Trade and Competition (Session 4)**

This Session focused on two **topical policy issues**: **congestion management and transmission capacity allocation (TCA)**, and the regulatory and competition law enforcement problems associated with the practice of **long-term contracts and destination clauses in gas trade**.

Related to **congestion management and TCA**, the debate covered the following aspects:

- The advantages of market-based organisational systems such as the **Scandinavian electricity pool** in dealing with congestion management and TCA problems.
- An evaluation of the **EC Regulation on Cross-Border Electricity Trade**: objectives, legal instruments to attain them, current non-compliance problems (i.e. still limited use of explicit or implicit auctions for capacity allocation, absence of clear mechanisms for re-allocating the available capacity, capacity curtailments, reduced transparency on use and availability of interconnection capacities).
- Lessons to be learned from the **September 2003 blackout on the Swiss-Italian border**.
- An evaluation of the on-going work on the elaboration of **EC Guidelines on Security and Reliability**.

In relation to the **use of LTCs and DCs in gas trade**, the debate covered the following main aspects:

- **Problems related to the use of LTCs and DCs in gas trade from the perspective of EC competition law enforcement** (upstream and downstream anticompetitive effects).
- The European Commission's strategy of **negotiating solutions** to the competition law problems individuated in relation to the use of LTCs and DCs (including an evaluation of the recent 2003 ENI-Gazprom and 2004 OMV-Gazprom deals).
- Some specific issues related to **security of supply and infrastructure investment in the gas industry**.

## **Cooperation Among Regulators and Competition Authorities (Session 5)**

This short concluding Session was devoted to clarifying some practical issues related to the future cooperation between regulators and competition authorities in light of the recent modernization of the EC antitrust enforcement system. The participants were informed about:

- The elements of novelty brought about by the recent **reform of the EC antitrust enforcement system**:
  - decentralised application of Article 81(1) EC;
  - elimination of the European Commission's monopoly to grant individual exemptions from the application of Article 81(1) EC;
  - the setup of an European network of competition authorities (ECN), comprising the European Commission and the national competition authorities.
- The recent setup of an **ECN Energy Group**, as an (informal) forum for regular meetings between the competition authorities and the energy regulators.

- Some topical aspects regarding the **cooperation and coordination between the energy regulators** themselves in light of the implementation of the second EU energy regulatory package.