

THIRD ENERGY PACKAGE - UNBUNDLING -

Energy Community Secretariat
Rozeta Karova, Ph.D.

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1. Choice from three models of unbundling

- *Ownership unbundling (OU)*
- *Independent System Operator (ISO)*
- *Independent Transmission Operator (ITO)*

* **ISO / ITO** – only if VIU existed on 6 October 2011

* **VIU** - *an electricity/gas undertaking or group of undertakings where the same person/persons are entitled, directly or indirectly, to exercise control, AND where the undertaking or group of undertakings perform at least one of the functions of trans- mission or distribution, and at least one of the functions of generation or supply of electricity*

2. Certification of TSOs

- *Notification by TSO*
- *Draft NRA decision notified to ECS*
- *ECRB gives opinion to ECS; ECS gives its opinion to NRA*
- *NRA adopts final decision taking utmost account of ECS opinion*

Ownership Unbundling

1. TSO *owns* and *manages* the network – *ex. Terna S.p.A. Italy*
1. Same person *cannot*:
 - *exercise control* over a production or supply company and *exercise control* or any right over a transmission system, and *vice versa*
 - *appoint board members* of a TSO and *exercise control* or any right over a production or supply company
 - *be a member of the board* of a TSO and of a production or supply company
2. Owner of a transmission system shall *act as a TSO*
 - *grants & manages TPA*
 - *collects transmission charges, congestion charges, inter-TSO compensation*
 - *responsible for investment planning*

1. Holding company - *National Grid*
2. Investors (financial, pension funds, insurance companies)
 - a. *Società Gasdotti Italia S.p.A.*
 - b. *Swedegas*
 - c. *Red Electrica de Espana and Enagas*

Assessment - EU experience:

- Burden of proof for absence of conflict is on the TSO;
- Case-by-case assessment:
 - *geographic scope and location of transmission and generation/supply;*
 - *significance of participation (value and nature; size and market share);*
 - *access to confidential information by the investor;*
- RES
- NRA monitoring in future

OU – Separation within the state (1)

Two public bodies (ex. two Ministries) – case-by-case assessment:

- activities are exercised by separate public bodies seen as two distinct persons;
- the public bodies should be able to control both activities, provided that can be demonstrated that are not under the common influence of another public body;
- the public bodies concerned must be truly separate.

a. Energienet.dk – Denmark – good example of separation

- *independent power of decision & no mutual interference;*
- *the Prime Minister cannot give orders or instructions;*
- *TSO is separate legal entity & day-to-day running of the company is undertaken by the board and the management.*
- *TSO board & management is prohibited from having commercial interests in generation/supply;*
- *Internal Monitoring Programme applicable to all its employees preventing discriminatory behaviour and providing detailed instructions on handling confidential information;*
- *TSO's financial resources are kept separate from the State's financial resources;*
- *TSO it is not covered by State insurance;*
- *declaration on honour and its renew annually.*

OU – Separation within the state

Participation in storage / exchanges

1. Two public bodies:

- a. Vorarlberger Übertragungsnetze GmbH (VÜN) – Austria* – doubt if independence is effectively ensured
- b. Svenska Kraftnat – Sweden* – no interference in day-to-day business & strategic investment
- a. Gasunie Deutschland – Germany* – assessed not only if Gasunie NL's interest in generation/supply, but also the interest of Dutch state

2. Participation in storage / exchanges

fall outside the scope of the activities that may raise conflict if interest relevant for certification of OU TSO

ISO

1. VIC *owns* the transmission system, but ISO performs *technical and commercial operation* of transmission system
2. ISO
 - *must be independent from supply or production interests and must guarantee effectiveness of separation as ownership unbundling*
 - *in charge with investment planning*
 - *acts as a TSO*
3. Transmission system owner
 - *is legally and functionally unbundled from VIC*
 - *has obligation to finance investment decided by ISO*
4. Significant regulatory oversight

ISO – Separation within the state

Performance of core tasks

- *Augstsprieguma tīkls – Latvia – electricity*
 - *Two public bodies (two Ministries) the provision as for OU applies also for ISO - detailed assessment of the separation of the two Ministries, focusing on the legal structure of the State administration and regulations determining their competences.*

- *Trans Austria Gasleitung GmbH (TAG) – Austria – gas*
 - *The ISO should be independent from the system owner.*
 - *Core tasks (operation, maintenance and development of the network) shall be performed by the TSO itself. They can be outsourced to other undertaking, only under strict circumstances:*
 - *ISO is equipped & capable to oversee & monitor carrying of the tasks;*
 - *Sub-contractor to be independent from the VIU;*
 - *Sub-contractor not to have interest in generation and supply;*
 - *Under market-based conditions.*

ITO

1. Transmission is *owned and operated* by ITO which may have same owner as VIC but is *independent* from VIC
2. Detailed rules on *independence of ITO*
 - *assets, equipment, staff and identity*
 - *effective decision making rights*
 - *independence of management*

** Supervisory Body; compliance programme and compliance officer*
3. ITO
 - *must have a strong say in investment planning – power to raise money on capital market*
 - *acts as a TSO*
4. Heavy *regulation* & permanent *monitoring* by NRAs

1. Independence of Management / Supervisory Board

Applicable for appointments irrespective of the date of appointment and not only for those after 3 March 2012 only

- **Gas Connect GmbH – Austria** - *per legem independence of Supervisory Board members - inconsistent with the Directives.*
- **Bayernets – Germany** - *financial interests in other parts of the VIU either sold or put in hands of an independent trustee immediately and not after 31 March 2016*

2. Using IT consultants / contractors and auditors other than those of the VIU

- **Bayernets – Germany** - *Shall be different than the ones of the VIU except in exceptional cases where:*
 - *no other external contractor, except for the one that also provides services to the VIU, could provide such services to the ITO*
 - *transitional nature, limited in time, and accompanied by measures to effectively ensure that any conflicts of interests and abuses are avoided.*

3. Services provision between the VIU and ITO

- FGSZ – Hungary; Net4Gas – Czech Republic

- VIU to ITO - *As the ITO should be autonomous and not dependent on other parts of the VIU, contracting of services to the ITO by any other part of the VIU is prohibited*
- ITO to VIU - *In specific circumstances for the provision of services by the ITO to other parts of the VIU, in particular if there is no discrimination of other system users, if there is no restriction of competition in production or supply and if the regulatory authority has approved the provision of the services concerned.*

4. Corporate identity – to avoid confusion

- FGSZ – Hungary; Gas Connect – Austria

- *FGSZ consistently adds to its logo the words 'Member of the MOL Group' and creates confusion as to its independence from the VIU.*

UNBUNDLING OPTIONS

Comparison

	(A) owner (assets)	(B) operation (technical and commercial)	investment decision
o.u.	acts as TSO		
	>> independent from supply/production		
ISO	assets <u>remain</u> with vertcially integrated company	ISO (acting as TSO)	
	>> legal & functional unbundling	>> independent from poduction & supply	
		>> ownership unbundled from (A)	X
ITO	ITO		X
	>> independent from vertcially integrated company (assets, managment, supervisory board)		