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Fragmented Energy Market in the EU

Aleksandra Gawlikowska-Fyk

The creation of an internal energy market fits well into the logic of economic integration in the European Union. It is a field, however, where it is extremely difficult to introduce market and uniform solutions in the EU as a whole. Despite many efforts—common regulations, practical initiatives, creation of new institutions—together with the political will, it appears that still much has to be done to integrate national energy markets. The main conclusion that can be drawn from the new Communication from the European Commission, published in November, is that the integration of energy markets by 2014 is an extremely ambitious goal that may be difficult to achieve unless further efforts from Member States are made.

The Communication from the European Commission (EC), “Making the internal energy market work,” together with supporting documents provides an analysis of the electricity and gas markets in the EU and assesses the opportunities for concluding the creation of a single EU energy market by 2014. This deadline was adopted by the European Council in February 2011, but more than 20 months after setting this goal and a year before its completion, the EU is disturbingly far from its aim. Although the EC notes that some progress has been made—consumers have a wider choice of offers, prices are more often set by supply and demand, wholesale markets are liquid and more transparent, and the security of supply is increasing—it is still not the level of integration that could confirm the existence of a single energy market in the EU.

Problems to Overcome. Although the deadline for implementing the directives of the Third Energy Package expired in March 2011, many countries have not done so yet. The Package contains basic provisions to ensure the proper functioning of energy markets, including new rules for unbundling transmission and trade activities, rules aiming to increase the independence and competences of energy regulators and to improve the functioning of retail markets for the benefit of consumers. Therefore, correct and full transposition of EU law is the prerequisite for the creation of an internal energy market. But it seems that many Member States find it difficult to introduce all rules envisaged in the Third Energy Package as the governments need to take into account many vested interests. Another reason is the technical and complicated nature of the provisions.

The EC’s Communication highlighted many shortcomings. In some countries, energy markets are still dominated by historic incumbent suppliers. The lack of effective competition means that consumers do not benefit from the possibility of swiftly changing their energy supplier. As a result, but also because of the lack of knowledge, they do not make use of their rights, which from 1 July 2007 were granted to all consumers, including households. Only in nine Member States was price regulation fully abolished. Price regulation, usually meaning an artificial lowering of prices, has an adverse impact on the propensity of energy companies to invest, which has recently become a great concern. Some countries (chiefly Great Britain, though the issue is also being discussed in Poland) are aiming to introduce a mechanism to support the construction of new power plants (so-called capacity market). But the EC notes that this type of domestic support, also in the case of subsidies for renewable sources of energy, raises barriers to market integration.

Making the Internal Energy Market Work. In order to integrate energy markets by 2014 the EC undertakes actions addressed to Member States. One of them is opening many infringement proceedings (26 against 13 Member States). Recently the EC brought three countries to the Court of Justice of the European Union: Poland, Slovenia and Finland for non-implementation or improper implementation of both the gas and electricity directives. The charges concern such issues as price regulation, consumer empowerment and the unbundling process. The EC requested the imposition of daily penalties, which in Poland's case may amount to €84,400 (electricity directive) and €88,800 (gas directive) and the final decision will be taken by the court. In pending cases against other Member States, the EC not only precludes subsequent claims to the court but also promises a detailed analysis of those states that initially had reported implementation of the rules.

Yet the EC does not content itself with those formal actions. Firstly, it calls on Member States to deregulate energy prices, although the EU rules envisage some exemptions. Secondly, Member States should empower consumers—provide them with greater access to information, shorten and simplify the supplier change procedures, and finally promote so-called smart metering. They are also encouraged to address the issue of vulnerable consumers and energy poverty. Thirdly, the EC draws attention to the need of law enforcement also in the case of common competition rules, including state aid. In this last case, the EC plans to review the guidelines on environmental state aid by 2013. It also foresees that all subsidies that have a negative impact on the environment, mainly support for the coal sector, should be phased out by 2020. The EC thus pointed out which actions are the most important from the point of view of creating a pan-European, competitive energy market.

Together with the Communication, the EC published a decision formally establishing the Electricity Coordination Group. It is worth mentioning that this Group was a Polish initiative, voiced during the Polish presidency in October 2011. Its goal is to monitor the security of electricity supply, which is becoming an increasingly important issue at the European level due to the rapid development of renewable energy sources and their impact on interconnected power systems (as a result of loop flows). The establishment of the Electricity Coordination Group shows that the EC wants to address the problem of different national energy strategies concerning the internal energy mix.

Conclusions and Recommendations. The EC's Communication confirms that full integration of the energy market is again proving to be more complex and time-consuming than expected. The main obstacle is delays in the implementation of EU law by many Member States. Bringing these countries to the ECJ, and requesting the imposition of a high financial penalty, means that the EC will use its powers to force Member States to properly implement the directives. Poland, against which two proceedings have been launched, should intensify work on new energy legislation and liberalise its gas market as a matter of priority. Notably, the EC proceedings are still open regarding the non-implementation of the second energy package.

The Communication from the EC should be discussed not only in relation to the aforementioned proceedings, but also in the context of the future actions announced by the EC. In the case of Poland, the EC points out to problems associated with the lack of incentives for investment in transmission infrastructure, including interconnectors, but also generation capacity. The EC has launched public consultation on the generation adequacy and support mechanisms for their development, because it is concerned that the proposed solutions are exclusively national. Regarding internal discussion on this topic, Poland should actively take part in the debate initiated by the EC. The EC's review of guidelines on state aid for environmental protection will also be important, as it may aim to limit subsidies for renewable technologies because of market expansion. The EC will also issue guidelines on best practices on renewable energy support schemes. And it is necessary to remember that there are two different systems in the EU (the so-called feed-in tariff—for example in Germany, and the certification system—for example, in Poland), and any action to harmonise these will be extremely difficult.

In the Communication, the EC also identifies new barriers that prevent full integration of energy markets and could prove to be a step backwards. In particular, the EC notes the growing importance of national energy policies, which are not consulted either regionally, among neighbours, or at the EU level. Addressing issues such as plans to support new generation capacity, subsidies in the energy sector and the establishment of the Electricity Coordinating Group may prove that the EC wants to increase its role in the coordination of national policies in the field of the energy mix, in spite of not having such formal powers. Therefore, even though in principle it relates to a common energy market, the Communication has a broader scope. Poland, which will soon have to update its energy policy (the current one was adopted in 2009, and the law requires work on a new policy every four years), should start a debate on this subject, seriously taking into account the proposals announced in the Communication.