

Internal market in natural gas. Third energy package

2007/0196(COD) - 13/10/2014 - Follow-up document

This Commission Staff Working Document on the report on the independent transmission operator (ITO) Model in the context of the Third Energy Package.

To recall, Directives [2009/72/EC](#) (the Electricity Directive) and [2009/73/EC](#) (the Gas Directive) introduced new and stricter rules on the unbundling of transmission system operators (TSOs). Under these Directives, part of the Third Energy Package, three possible unbundling models were provided: ownership unbundling, independent system operator (ISO) and independent transmission operator (ITO).

The present Staff Working Paper aims to provide an assessment of the ITO model and the extent to which it is capable of sufficiently and adequately ensuring the effective separation of transmission networks from generation and supply interests.

State of play: where on the date of entry into force of the Electricity and Gas Directives, i.e. 3 September 2009, the transmission system belonged to a vertically integrated undertaking (VIU), a Member State could decide not to apply the rules of full ownership unbundling, but to provide for an independent transmission operator. The ITO model under the Third Energy Package permits TSOs to remain part of a vertically integrated undertaking as long as a set of detailed behavioural and structural criteria are respected.

At the time of writing of this document, there were 26 certified ITOs in 10 EU Member States (Austria, Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Slovakia and Slovenia). The majority of the certified ITOs are operating in the gas sector (21), while only five ITOs are active in the electricity sector. Moreover, there is a limited number of remaining TSOs which are likely to be certified as ITOs but for which a certification process at European level has not started yet.

As a first remark it needs to be underlined that ITOs have been certified only since 2012 and have been operating under the new rules for a very short period of time. It is therefore too early to draw definite conclusions on the functioning of the model and the actual independence of the ITOs in practice. Also, compliance checks are still ongoing to ensure the correct implementation of the existing unbundling requirements under the Gas and Electricity Directives in the national legislation of the Member States in which the ITO model is implemented.

That being said, the ITO study underlines the initial assessment of the Commission that at present, in the view of the Compliance Officers, but also of NRAs and the majority of network users who responded to the questionnaire, most requirements related to the ITO model seem to work in practice and are usually sufficient and adequate to ensure effective separation of the transmission business from generation and supply activities in the day-to-day business. This suggests that the notion that the positive effects that unbundling has on facilitating cross-border trade as well as security of supply can also materialize in market areas where the network is operated by an ITO.

Although ensuring compliance under the ITO model appears to be burdensome for both the NRAs and the TSOs involved, this does not mean that the ITO model is not effective in separating transmission and generation/supply and ensuring investments in the networks.

Provisions designed to ensure autonomy, independence of the ITO and independence of the staff and management seem to be working well. Equally, ITOs are actively consulting with the NRA with regards to commercial and financial agreements between ITOs and other parts of the VIU.

Nevertheless, careful monitoring is essential with regards to the requirements for the Supervisory Board and its independence from the VIU, provisions concerning Cooling On/Off period, effectiveness of the Compliance Programme and ITOs ability to ensure that the necessary investments are made in the network.

Whilst the ITO model so far appears to function well in practice, it may be further improved, for instance, by strengthening the independence of the Supervisory Board, specifying the scope of the Compliance Programmes and developing common guidance and a network of cooperation for Compliance Officers, as well as harmonising the timeframe for network development plans at national and European level.

Therefore, the Commission will continue to monitor the implementation and effectiveness of the unbundling requirements under the Third Energy Package. The Commission will also continue to be vigilant to ensure that ITOs and VIUs comply with the EU competition rules.