



Directorate-General
for Energy
and Transport



EUROPEAN
COMMISSION

- **Closed Distribution Systems in the new gas and electricity directives**

**Institut für deutsches und europäisches Wirtschafts-,
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● What the 3rd Package will deliver

- Effective unbundling of networks
- EU Regulatory Agency
- Cooperation of network operators (ENTSO)
- Stronger powers for national regulators
- Transparency
- Retail market & consumer protection
- Third country clause
- Level playing field



EPIC

“...I inclined
To lose my faith in Ballyrush and Gortin
Till Homer's ghost came whispering to
my mind.
He said: I made the Iliad from such
A local row. Gods make their own
importance.”

Patrick Kavanagh

● Objekt- und arealnetze

- German law foresaw exemptions from rTPA part access for certain classes of Sites
 - » Geographically connected private zone
 - Predominantly serves the needs of operator
 - Supplying end consumers with a common primary commercial purpose
- Similar provisions in other MS legislation

- Legal challenge in Citiworks case
 - Refusal of third party access at Flughafen Leipzig Halle
 - Domestic courts asked ECJ for guidance on German law

● And then.....

- ECJ clearly decided that
 - » Electricity Directive applied to “Objektnetze” exempted under German law
 - » Users had right to chose their energy suppliers i.e. TPA rules applied
 - » Tariffs not directly addressed – but these are part of rTPA rules
- In line with Commission position

● Aftermath of judgement

- Industry concerns about implications of judgement
 - » Would longstanding agreements be affected?
 - » Would efficiencies from integrated operations be lost?
 - » Would compliance costs be excessive?
- Parliament was considering Third Energy Packet
 - » Issue was brought to the table...

● Commission response to EP amendment

- Commission examined situation in detail
 - » met with industry representatives
 - » Visited potentially affected industrial sites
 - » Examined areas where directive compliance could be problematic
 - » Discussed issues internally with legal services
- Came to the view that **some** adaptation of requirements of Directive was appropriate

● Position during finalisation of 3rd Package

- Parliament concerned to allow appropriate exemptions – but was not tied to its far ranging original proposals
- At council some MS, though accepting need for some adaptation, did not wish for wide ranging exemptions

- Concept of closed DSO introduced in European law
- Individual MS may classify closed distribution systems where
 - » Operations/production processes are integrated
 - » It primarily used to distribute electricity to the owner/operator of the closed DSO (or affiliates)

● Treatment of closed DSOs I

- Many obligations in Directive are on MS – not on DSOs themselves
- MS may design appropriate rules e.g. relating to priority access or in applying Article 5 on technical rules
- Legal and functional unbundling
 - » Directive already allows MS not to apply to DSO serving less than 100 000 customers
 - » No need to replicate possibility of exemption

● Exemptions for closed DSOs II

- Exempted from ex-ante tariff approval
 - » This is a very important exemption
 - » Reflects the particular commercial nature of the relationship
 - » Allows parties to take account of the impact of interdependencies etc.
- Electricity - Exemption in relation to procuring losses and reserve capacity

● Review of negotiated TPA

- But dispute resolution mechanism necessary
 - » NRA is the body with the appropriate expertise
 - » Avoids delays and uncertainty of legal system

● Accounts unbundling...

- Only applies to internal accounts
- NRA requires access to such accounts in order to be able to review tariffs where there is a dispute
- Given cost centre accounting this should not be burdensome
 - » Good business practice
 - » compliance fits in with system of internal control

● Conclusions – Closed Systems

- Creation of sub-category of DSO is significant
 - » Allows such grids to be considered within the wider system
 - » Makes clear that there may be a need to have different obligations
- Important role for MS and regulators in transposition and implementation of directive
 - » Detailed definitions
 - » Technical rules
 - » Mechanics for review of tariffs

Thank you for your attention

