EUROPEAN REGULATIONS ON ENERGY GOVERNANCE IN BULGARIA – IMPACT ASSESSMENT

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Abstract

The aim of the research is to present the impact assessment of the European regulatory framework related to the energy governance at national level. In recent years, impact assessments have become key public governance instruments that aim at developing and evaluating policies and laws in such a way that their goals are attained in most efficient path. At the same time, however, impact assessments should cover the specific national aspects of the transposed European legislation, with which all must comply. From this point of view, the study is focuses on two parts: 1) clarifying the European energy regulatory regime and 2) its effect on the national level. The results of the transfer of the European energy model at national level, its potential and risks are also presented.

Key words: Regulations, Impact Assessment, Energy, Energy Sector

Introduction

In the 80s of the last century, the classic model of governance in the delivery of services, including energy services, based on government control is replaced by a new model of government - the regulatory state². Its purpose is to protect and guarantee the fundamental rights of consumers in the context of market competition when it comes to private offering of public goods. This concept is at the heart of the European understanding of a common internal market for services and is fundamental to the perception of the country's regulatory model. Although the regulatory model at European level is still not a fully completed model and subject to continuous development and improvement, it is essential to understand the approach and effects of managing services of general economic interest (energy services), with individual countries of the EU as well as in Bulgaria.

The Bulgarian energy sector, and in particular the production and trade of electricity, including renewable energy, is still a white spot in research on the emergence of a Pan-European regulatory model at national level. Therefore, our focus is on researching the regulation of energy services - the electricity market and the production of RES energy. The study focuses on two parts: 1) Clarification of the European Energy Regulatory Regime and 2) Its effect on the national level. The results of the transfer of the European energy model regarding the governance of the energy sector in Bulgaria are presented.

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European regulations governing the change in the model of energy services governance in Bulgaria

European energy policy is based on the principle that an independent regulated and competitive energy market is the most effective and efficient way to achieve a common energy market and long-term competitiveness of the economy. For this reason, the beginning of European integration started with cooperation in the field of energy markets. Initially, due to governments' unwillingness to abandon their national independence in this strategically important segment of the economy, EU integration does not lead to an integrated energy policy. Even in 1973 (during the so-called “Oil shock”) Member States took a significant number of measures to formulate and achieve a common energy policy. However, the first long-term European targets in this direction were formulated in 1995 in the White Paper on Energy Policy, followed by the Green Paper "Towards a European Strategy for the Security of Energy Supply". They underline that EU energy policy "must be part of the general objectives of economic policy based on market integration and deregulation, limiting state intervention that must be reduced to what is necessary to protect the public interest and prosperity, sustainable development and economic and social cohesion". The instruments through which these objectives are to be achieved are liberalization of the electricity and gas market, price transparency, energy efficiency, internal interaction between the parties, protection of the common interest. In order to harmonize and liberalize the internal EU energy market in the period 1996 - 2009, the European Parliament and the Council adopted three consecutive legislative packages. They are used to regulate access to markets, consumer protection, interconnection and security of supply of electricity, natural gas and oil and the development of trans-European networks for the transmission of electricity and natural gas. These packages are known as first, second and third liberalization packages. In addition, in 2017, given the developments in the energy sector and especially in the renewable energy sector, the European Commission (EC) also offers the latest energy regulatory package known as the Clean Energy package or EU Winter package, which has not yet entered into force. They prescribed “the electricity market to be fully open to competition by 2007 by creation of effective rules, equal treatment and transparency of all participants in the energy markets, open access to energy infrastructure and the existence of independent regulatory authorities. The main reason for this was the ineffective operation of the electricity markets, mainly the fact that many European countries kept following the model of vertically integrated undertaking. The vertically integrated energy companies refer to companies which perform at least two of the following: production, transmission, distribution and/or storage in electricity, when one entity can control the other. At the heart of all these packages are the requirements of competitiveness, security of supply and sustainability of energy production and supply. In schematic form, these priorities are shown in the figure below:

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5 Figure 1: Main priorities in the field of European regulation regarding the establishment of an internal electricity market.
First package of EU legislative changes

The first legislative package of the European Union, the main documents of which are Directive 1996/92 / EC concerning common rules for the internal market in electricity and Directive 1998/30 / EC concerning common rules for the internal market in natural gas, was adopted in the 1990s of the last century. It attempts to introduce measures to ensure that energy markets are opened up to competition by providing each Member State with an Independent state institution to regulate monopoly activities in the energy sector. In particular, the aim of the first energy package is to open energy networks to competition through mandatory access to an undiscriminated third party. The Internal Electricity Market Directive contains the presumption of contractual access. For the first time, EU Member States are required to designate their system operators (Article 7.1 and Article 10.2) and to define their specific functions (Articles 7, 8 and 11). However, the organizational separation is limited only to the level of transmission systems. Briefly:

► The basic rules for the organization and operation of the electricity and gas sectors are introduced, including:
  - establishing common rules on the generation, transmission and distribution of electricity and natural gas;
  - rules for the management of energy systems;
  - rules for determining access to the market (criteria and procedures applicable to the organization of tenders and the granting of permits for the construction of production facilities).

Overall, the legislative package of the 1990s emphasizes the importance of Member States, on the basis of their institutional organization, to organize the management of energy and gas undertakings in accordance with the competition rules. This means that "an approach based on the equality of individual actors”⁶ should be imposed. Among the basic requirements

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⁶ Andreeva, Lyubimka. (2016).“Услуги от общ интерес. Регуляция на електроенергиия та пазар I на произвобдството на електрична енергия от възобновяеми източници”/Services of General Economic Interest. The
for this is in Member States where the Single Buyer\textsuperscript{7} model is preserved to operate under a division of production and distribution activities. The essence of such a measure lies in trying to avoid the risk of maintaining monopoly positions and restricting competition in the energy services market. The establishment of independent regulatory bodies is envisaged.

**Second package of legislative changes to the EU**

Although the regulatory framework of the 1990s prescribes measures to achieve liberalization of the electricity market, it is insufficient to achieve the pan-European goal of building internal energy market. The reasons for this are: the expected large enlargement of the EU with ten new countries in 2004, the inherited national differences in the sector's governance model to the early 1980s and the varying degree of ongoing reforms in the countries that have just passed from a centralized management to a market economy. It is therefore decided at European level that the legislative requirements for the organization of the energy markets of the 1990s should be replaced and supplemented by new ones. It is considered that they will have a greater impact on achieving the overall goal. This was done in 2003, when the so-called "a second liberalization package was adopted. The main acts of the 2003 regulatory package are - Directive 2003/54 / EC and Directive 2003/55 / EC on the internal market in electricity and natural gas. Through the new directives adopted allow new electricity and natural gas suppliers to be included in the markets of the Member States and for industrial consumers (as of 01.07.2004) and household consumers (as of 01.07.2007) freely choose their energy supplier. The main focus is on increasing economic efficiency, reducing prices as a result of effective competition, increasing competitiveness and protecting the common interest. Based on the analysis of the rules of the 1990s, the 2003 regulatory rules focus on "the possibility of improving market performance by ensuring a level playing field through non-discriminatory transmission and distribution tariffs guaranteeing the protection of rights to small and vulnerable customers. In short, the basic requirements of the second regulatory regime are:

- **Reduction of prices as a result of effective competition**;
- **enhancing competitiveness and protecting the common interest**;
- **increasing economic efficiency**.

Due to a non-sufficiently impact assessment covering the specificities of individual Member States (notably the retention of the Single Buyer and / or Vertically Integrated Enterprise model), the European authorities in 2009 have imposed new regulatory rules, called third liberalization package.

**Third package of EU legislative changes**

The third legislative package includes - Regulation 713/2009 establishing the Agency for the Cooperation of Energy Regulators; Regulation 714/2009 on conditions for access to the network for cross-border exchanges in electricity; Regulation 715/2009 on conditions for access to the gas transmission networks, Directive 2009/73 / EC concerning common rules for the internal market in natural gas, Directive2009 / 72 / EU concerning common rules for the internal market in electricity. This package is based on the idea that secure supply of

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\textsuperscript{7} Single Buyer "is a model in the power system of countries where a single company is both a public utility and energy infrastructure owner.

electricity and natural gas is essential for the development of European society, the implementation of a sustainable policy on climate change and to promote competitiveness within the internal market. In a schematic view, the priorities of the third liberalization package are outlined in the figure below.

![Figure 2: Priorities of the Third Energy Package](image)

Overall, the EU's third package of legislative changes provides for a significant number of measures to achieve competition in the energy sector and, therefore, to achieve the pan-European goal of a single European energy market. However, its implementation faces a variety of difficulties, depending on the specific features of the country in which it is to be implemented. This, in turn, calls for new efforts to reform the energy sector in the Community, based on a detailed impact assessment to ensure that the rules introduced will be implemented alongside national specificities. That is why, since 2016, the most recent regulatory package called the Clean Energy for All European Citizens Package/Winter Package, aims, on the basis of a detailed analysis, to redefine European energy policy in the direction of the above, which is why it is still a project document.

**Clean Energy Package for All European Citizens – new moments**
The "Clean Energy for All European Citizens" package is grouped into three categories:
- "proposals for amending the existing legislation in the field of the energy market;"
- proposals to amend existing legislation on climate change and
- proposals for new measures, for all European citizens. 

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9 Figure 2: Priorities of the Third Energy Package, Source: Center for the Study of Democracy

10 Prof. L. Hancher and Mr. B.M. Winters ,,The EU Winter Package", Feb. 2017
And some measures being foreseen to enter into force and to apply from 1 January 2020 and 2021, while for others, a timetable for action is not yet set.

The first category of measures aims to create a new market design, also known as a market design initiative, which includes a new directive amending and repealing Directive 2009/72, a new Internal Market Regulation amending and repealing Regulation 714/2009, as well and a new regulation repealing Regulation 713/2009 on ACER, commonly referred to as the third package of liberalization measures in the EU electricity market.

The second category of measures aims to better align and integrate climate change objectives into the new market design. This category includes a fully redesigned 2009/28 Renewable Energy Directive and a fully revised Energy Efficiency Directive 2012/27 to enter into force on 1 January 2021. Finally, the proposal for a new Risk Regulation (the risk) and the proposed regulation on the management of the energy union (the Governance Regulation), which will enter into force on 1 January 2021, and which are entirely new management measures.

The new mechanisms for governance European energy policy, proposed by the European Commission in the Clean Energy package redefine European electricity and climate change towards more free market but also protect consumer rights. The envisaged new market design is based on more renewable energy production and fully competitive prices. The very idea of changing energy rules is based on the idea of a cleaner Europe and the security of energy supply. This, in turn, requires a long-term compromise by member states so as not to undermine national interests but at the same time to achieve the common goal.

**Impact Assessment of European regulations on Energy governance at national level (Bulgarian experience)**

The process of establishment competitive electricity market in Bulgaria, begin in the 90s of the last century, in accordance with EU competition rules stated above. From practical point of view the European Energy Target Model is present on figure 3.

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18 Data by Commission of Energy Regulation “4 European Integration: Electricity Target Model”, 2014
However, given the extent of the changes at the national level, the majority of European regulations remain formally implemented. For example, the requirement to remove the "single buyer" model of the electricity market in Bulgaria still exists, although the basic laws - the Energy and Energy Efficiency Act, later - the Energy Act and related strategies required its removal.

At present, the electricity market in Bulgaria is based on two parallel functioning segments. These are: the market of regulated prices and the market of freely negotiated prices.

The market of regulatory prices is characterized by the prices, approved by the Energy and Water Regulatory Commission (The Bulgarian regulator); the parties of the transactions are determined by legislation (The Low of Energy); relations are regulated on the basis of measured quantities of energy; participants do not balance; the price of access and transfer is paid to the existing supplier.

The market of freely negotiated prices is characterized by regulated part and unregulated part. The regulated part of the market is organized through contracts with the National Electricity Company (NEK EAD) at prices regulated by the Regulatory Commission. The unregulated part works through freely negotiated prices between the participants.

The final prices of electricity for the regulated market are formed in the chain production - transmission - distribution - suppling and are determined by the Bulgarian Regulatory Commission. Generation/production, transmission, distribution and suppling are key elements of the power system in Bulgaria. However, the idea of liberalization has been electricity trading to be separated from distribution. In fact, this model marked the beginning to liberalization of the Bulgarian electricity market by starting Energy Stock Exchange/ Power Exchange.
The establishment of Bulgarian stock market of electricity is a basic prerequisite for liberalization of the energy market. The aim of it is to create conditions for operating the electricity market in a competitive, transparent and non-discriminatory environment; to determine reference electricity prices according to supply and demand needs and to ensure optimum use of the transmission capacity of interconnections with neighboring countries. The Bulgarian stock exchange market is organized on a daily base for single hour and starts its work at the end of 2016, continue with its development. See figure 4. Transactions concluded on the stock market, represent a strong commitment for electricity traders to supply electricity. Each transaction is linked to one day, one interval and one market area of delivering electricity.

![Figure 4: Building a stock market for electricity in Bulgaria](http://www.ibex.bg/en)

The introduction of the new trading platform "within the day", which was done through amendments to the Electricity Trading Rules, is an important step towards the Europeanization of the Bulgarian energy sector. The Energy Exchange is the face of the liberalization of the Bulgarian electricity market and the start of the new market segment opens the way for the gradual establishment of a regional electricity market and, in the future, for the integration into the combined European electricity market.

However, in practice, the liberalization of the electricity market in Bulgaria is severely delayed precisely because of the lack of consideration of national specifics. The long-term operating of the market under the "single buyer" model, in which there is no regulated access of third parties to the transmission network, and at the same time the so-called 'Cross-subsidization' leads to a lack of progress - one that the Community aims at. At the same time, it should be noted that the existence of a single buyer model and the organization of energy based on vertically integrated companies is not only a problem for the Bulgarian reality. In most of the Member States, transmission infrastructure is the property of vertically integrated companies, which have a significant share in both energy production and sales.
Conclusions

The findings of the review highlight the following issues and results at European and national level:

1) Regarding European regulations:
   1.1 European regulations are well-formulated, but without taking into account the specifics of individual Member States;
   1.2 There is a lack of determination regarding the elimination of vertically organized companies in the Energy sector (example: different options for unbundling transmission and distribution networks are proposed);
   1.3 Lack of transparency on setting European energy policy goals in the field of renewable energy also exist (why, for example, is the 16% target for renewable energy production and consumption by 2020 set for Bulgaria and why are the new climate targets are different?).

2) Regarding the effect of European regulations at national level:
   2.1 There is still no fully liberalized electricity market, although Bulgarian legislation copies the European legislation in this direction;
   2.2 There is existence of dependence of the energy companies on each other / preservation of the vertical structure;
   2.3 Lack of public discussion on planned changes to the legislative framework in Bulgaria (if any, it is not taken into account).

In general, the combined challenges of stimulating competition in the EU electricity markets in the short term, as well as promoting and coordinating investment in generating capacity, systems and network infrastructure in the long term, require a new market design and, with it, a redesign of existing EU legislation. The mere introduction of a new electricity market design in 27 nation-states is a purely legal issue, on the one hand, but a shared responsibility between the Community and the Member States, on the other. Switching to such a model, in turn, requires a long-term compromise on the part of the Member States, so as not to undermine national interests but at the same time achieve the common goal. In this way, a compromise is sought in the interaction between different stakeholders - market, state and civil society. An important moment in reaching this compromise is precisely the new mechanisms, which undoubtedly represents the beginning of a long and complex negotiation process concerning the future of European energy policy, taking into account both the general objective and the national specificities for achieving it. Ex-ante impact assessment in this direction becomes mandatory not only as a theoretical issue, but also as a practical application.

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