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Ms. Wilson attended the comprehensive yearly conference that updated attendees on the status of the implementation of the Third Liberalisation Package and the impact it is projected to have in the EU. One presenter described the Third Liberalisation package as a “revolution,” a statement that some of the attendees seized on to comment upon the inordinate breadth of powers that the European Commission has prescribed in the Third Package – for itself, the EU level Agency for the Cooperation of Energy Regulators (ACER), ENTSO (European Network of Transmission System Operators) for electricity, and to national regulators.

Indeed, the overall expansion of jurisdiction of the EC set forth in the new Directive on the internal market (electricity directive 2009/72/EC), the establishment of the ACER (Regulation (EC) No. 713/2009) and the expansion of the Regulation on conditions for access to the network for cross-border exchanges in electricity (Regulation (EC) No. 714/2009), which officially establishes ENTSO has been effectively designed to push forward consistent liberalisation to a degree not previously seen.<sup>1</sup>

This new regime, however, calls for the definition of a number of operational details, with the supra-national involvement of the regime created by the Third Liberalisation Package. For that reason, there still remains a great deal of uncertainty as to exactly how the Package will be implemented, which perhaps accounted for a slight tone of speculation in the Conference. The tone of the conference was also affected by the fact that as of yet, there is no European Commission yet in place, termed the “interregnum”. DGTREN is being split into two, with a new Directorate of Energy. The new Commissioner of Energy Designate, Günter Oettinger, the ex-prime minister of the German state of Baden Württemberg, in his Parliamentary Hearing favored “solidarity” [unified policy] for energy, which allayed the concerns of some members of the European Parliament about his being a German national.<sup>2</sup> However, other points of view were articulated during the hearing.<sup>3</sup>

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<sup>1</sup> See interpretative note for third liberalisation package, dated 22 January 2010:  
[http://ec.europa.eu/energy/gas\\_electricity/interpretative\\_notes/interpretative\\_note\\_en.htm](http://ec.europa.eu/energy/gas_electricity/interpretative_notes/interpretative_note_en.htm)

<sup>2</sup><http://www.ihsglobalinsight.com/SDA/SDADetail18141.htm>

<sup>3</sup> [http://www.europarl.europa.eu/news/expert/infopress\\_page/008-67199-013-01-03-901-20100113IPR67198-13-01-2010-2010-false/default\\_en.htm](http://www.europarl.europa.eu/news/expert/infopress_page/008-67199-013-01-03-901-20100113IPR67198-13-01-2010-2010-false/default_en.htm)

**Heinz Hilbrecht, Director Security of Supply and Energy Markets. “Achieving the requirements of the new Renewable energy Directive: a practical guide.”**

This is the first year that the conference was not opened by the DGTREN Commissioner, but Mr. Hilbrecht did a good job of describing Mr. Piebalgs’ mandate as “years of amazing development of energy policy,” noting that (i) climate change and energy policy came together as low carbon, high efficiency energy policy, and (ii) the creation of the energy article in the New Lisbon document that focused on energy security and determined that the EU will have an action plan to prevent crisis. Energy security was increasingly viewed as a European policy, rather than old nationalist policy. He discussed the revised energy efficiency (EE) action plan and the Renewables directive, requiring each Member State (MS) to prepare an action plan this year. A template for action plans has been provided. The EC will provide new direction on biofuels.

**Hans ten Berge, Secretary, Eurelectric, “Priorities for the EU’s Gas Industry during the next Commission.”** [The association of the electricity industry in Europe: electricity producers, suppliers, traders and distributors from the EU and other European countries.] Although the presentation was wide-ranging, the most interesting portion of it concerned a point on the efficiency of subsidies on renewables and reaching the 2020 targets at reasonable cost. Mr. Berge pointed out that in Germany, feed-in tariffs in 2009 are 39c/kWh for solar photovoltaic electricity (200kW, building installed) as opposed to 9.2 c/kWh for onshore wind. He questioned why consumers would pay so much for solar when wind is so much cheaper. His point was that high subsidies have maintained high prices, and renewables companies have therefore spent relatively little on R&D – less than 2% of sales, as opposed to typical engineering companies that spend +6%.

**Christopher Jones’ Round Table Discussion on “Priorities for the EU’s Electricity Industry during the next Commission.”** Prior to leading the Roundtable, Mr. Jones presented his personal “alternative vision,” which, he said, did not match the vision of the Commissioner designate and others. In his opinion, there is plenty of renewables in Europe to power all that we need to meet the 2050 deadline. All of the policies on Emission Trading, renewables, EE, SET-Plant [a financing communication], the Third Liberalisation package and security of supply will get us there. However, there are several problems: many are thinking only up to 2020, when what needs to be done by 2020 is merely a staging post to 2050, not the end of the line. Further, there is a problem in the new revision of the EE buildings directive in that for heating/cooling houses and buildings, the building must be refurbished completely or all must be changed to electricity or combination of both. The directive does not address refurbishment heating/cooling policy and practice. It is easy to get to 0 carbon emissions with the Emission Trading Scheme (ETS) and simply prohibiting the sale of any but electric or hydrogen-powered vehicles after 2030.

**Interesting contributions from the round table members were:**

**Konstantin Staschus, President of ENTSO-E.** [Mr. Jones complimented Mr. Staschus in that, in creating ENTSO, all other organizations were eliminated, when usually an umbrella organization would have been created.] Within the next five years, permitting is the biggest problem; 2015 is tomorrow from a TSO point of view. The industry must move through permitting situation [referring to resistance to siting rights-of-way] so that wind can be integrated into the transmission system. As of March 1, the consultation for the first pilot 10 year network development plan will open. From a policy point of view, power plants determine where the transmission investments go; the market modeling simulation will drive infrastructure

development. Mr. Staschus is concerned that the lines won't get built early enough in the right places.

**Christian Kjaer, European Renewable Energy Council.** If we want to be carbon free by 2050, we must build only carbon free beginning 2020. The next decade is belongs to EE; however, Mr. Kjaer said that there is no legislation on efficiency, even though its value is undeniable. There are countries that are almost completely coal-dependent, and he understands that the legislation is stalled because of its effect on carbon prices! He reminded listeners that ETS is a tool, and we cannot fail to make viable economic positions because we're afraid of how it will impact a tool. The renewables directive can impact investment in countries that are dependent on fuel like coal; and, if competition works, then investors will be submitted to the investment carbon risk of being unable to pass the costs through, and the cheapest renewables will take the market.

**Fiona Hall, Member of the EU Parliament.** Ms. Hall noted that it was striking how all presentations placed the same strong emphasis on EE, so obviously, Europe must act in the next five years on EE. In her opinion, Europe simply needs to implement the legislation it has in place. However, no requirement exists for Member States to create a program for renovations on buildings. There is much debate on whether the EU should go forward with an EE binding target; but because EE is politically complicated and messy, involving the population and local authorities, a binding target is critical. While it is politically boring, in Ms. Hall's opinion, for the next 5 years Europe should continue the last 5 years. Strategic targets on EE are needed, but in the Parliamentary hearings, the proposed energy commissioner was ambivalent.

**Prof. Jean-Michel Marchant.** In response to a question on whether the market is functioning well enough to rely only on ETS, Prof. Marchant stated that no one can use a market to correct a market. The CO2 market is a financial market, which relies on *expectations* of what the price will be. It is not the final solution.

**Claude Turmes, Rapporteur of the RES Directive. "What Will European Parliament expect of the new Commission"** Mr. Turmes, who speaks at every conference and is a well known, informed environmental activist, did not disappoint. He started his presentation by saying that the people at Copenhagen are criminals to the next generation and the people who live on this planet, and we are all eating up time that is already scarce.

*Transportation.* He stated that between 2010 and 2020, we are buying time for technological innovations. Underlying the climate problem is the oil problem, which fuels transportation: Europe is very dependent on the trucking industry for transporting goods, and alternatives to oil-driven transport are needed. Electric cars are needed to get off of oil dependence.

*Directive on buildings.* The good news is that new buildings must be energy neutral. The bad news on buildings is that governments were reluctant to impose any obligation on the renovation of buildings. Deep renovation should be required. Austria and Switzerland are bringing in architects to pre-design standardized elements that can be fitted on the facades, can change the whole roof to lift up the roof so that it pays for the whole renovation! The EU needs to do pilot projects and get experience on deep renovation so that they get a standard program. The biggest problem is to train a large enough work force to do the work.

*Renewables.* With the requirement for renewables, Europe can cut its CO2 emissions between 35-40% rather than 25%. The 30-32% coal in the power system could be reduced in the next 10 years to 5% with gas investments and renewables. So long as we have 30 to 35% of coal based electricity, the priority must be on electricity savings to allow time for renewables to kick coal out

from the system, which will allow a 35-40% reduction of greenhouse gases in the EU, while keeping the lead on green technologies.

*Biomass.* The role of biomass is limited because by 2050 we will have 9 billion inhabitants on the planet. If all middle classes copy higher protein diets, this means more land is needed to feed the people. This biomass we will need to replace kerosene, bunker fuel for shipping and trucks.

*Wind.* The grid and markets should be built around wind, as it will be the no. 1 energy source in the power sector.

**Hans van Steen, Head of Unit for Renewables, DG TREN**

**“Achieving the requirements of the new Renewable Energy Directive, a practical guide.”**

The Goal of new Renewables Directive is to ensure that *all* Member States move towards renewables (to date, progress has been patchy), in that the indicative targets become legal targets by 2020. The requirement for 10% renewables for transport by 2020, requires National Renewable Energy Action Plans (NREAP) by the middle of this year, reduction of administrative and regulatory barriers, grid issues, and a sustainability regime for biofuels. Biofuels is the most complicated part of the directive

**Emmanuel Cabau, Head of Taskforce EE, DGTREN. “The New Energy Efficiency Action Plan and its consequences for the EU’s energy industry.”**

The new energy efficiency action plan contains no binding legal commitment to achieve the 20% reduction; its current requirements will only result in an 11.3% reduction. A KfW project: showed refurbishing 270,000 building/year, created 202,000 jobs/year. The retrofitting of large buildings can gain huge reductions and can create 2 MM new jobs in the EU. Much more is needed in terms of requirements; but we must wait for next EC to complete this redefinition. The best idea is to build these requirements onto the Covenant of Mayors, who can share best practices. The role of regulators for promotion of energy savings is unclear, with different competencies in different countries. Mr. Cabau was asked by the Moderator, Prof. Jean-Michel Marchant, if this is so simple, why isn’t it done? Mr. Cabau answered the question with a question: have you refurbished your house? Prof. Marchant, professor and economist of energy, sheepishly answered that he is heating his garden! Mr. Cabau stated that we need workers who can assess a building and make EE recommendations. As things stand, we have a number of split incentive issues, where a landlord has no incentive to reduce energy consumption since the tenants pay for it. Prof. Marchant suggested that the EU could limit ability to sell building without its being energy efficient.

**Forian Ermacora (Austrian), DGTREN responsible for the Internal Energy market.**

**“Internal Energy Market: practical Priorities for the New Commission.”**

Mr. Ermacora’s presentation defines the key practical steps on implementation of the Third Liberalisation Package, which entered into force 9-3-09, the Member States must transpose by 3-3-11, and regulations must become applicable as of 3-3-11.

*Interpretative Notes of 1-22-10.* Interpretative Notes have been issued, but they were controversial, as the EC was accused of trying to make its own legislation! The Package contains semi-binding obligations for Member States to install smart meters, which measure consumption of electricity with the possibility for a supplier to directly connect with the meter. There is a group working on a regulatory framework for the further implementation of smart grids; standardization is important for smart grids, and data protection is important for both smart meters and grids. In June should see the first ideas in this area, perhaps a green paper from the EC.

There are three Models for “effective unbundling” of TSOs:

1. Ownership unbundling.
  - a. TSO cannot be controlled by undertakings with supply and/or generation interests.
  - b. TSO cannot control any undertaking with supply and/or generation interests.
2. Independent System Operator (ISO).
  - a. Transmission system remains with vertically integrated company, but *technical and commercial operation* of transmission system is performed by ISO, acting as a TSO.
  - b. Transmission system owner is legally and functionally unbundled.
  - c. Significant regulatory involvement.
3. Independent Transmission Operator (ITO). This is quite complex to implement, so vertically integrated companies may be less interested in this model.
  - a. Transmission system is owned and operated by an ITO which is a independent but still part of the vertically integrated company.
  - b. There are detailed rules to ensure the independence of the ITO (clear and rigid Chinese walls).
4. Restrictions to the free choice among three unbundling options.
  - a. ISO and ITO models can only be chosen for a specific TSO if on entry into force of the Directives (9-3-09) the transmission system belonged to a vertically integrated undertaking. [South Stream cannot evade ownership unbundling because it doesn't exist as of 9-3-09.]
  - b. A Member State cannot prevent a vertically integrated undertaking from complying with the requirements of ownership unbundling.
  - c. Where a Member State has opted for ownership unbundling, either in general or as regards a specific TSO, the vertically integrated undertaking does *not* have the right to set up an ISO or ITO. [i.e., the Member State decision prevails.]
5. Designation of TSOs. There is a certification procedure of the TSO by the national regulators certify TSOs and notification of the Commission.

Codes and Guidelines; the interim phase. The requirements for codes and guidelines are not boring; rather, it is a revolution! This is the first time that the EU has a possibility of creating binding network codes for transmission at the European level.

1. The Commission must establish an annual priority list of areas to be covered by the network codes. Until this is done, some in DGTREN vision an interim phase in which some sort of “pilot projects” are done according to specific codes and guidelines on capacity allocation for gas; network connection, capacity allocation and congestion management, network security and reliability rules for electricity.
2. Interim Phase, ERGEG will stand in for ACER. Draft non-binding framework guidelines setting out objectives and principles for development of network codes.

Institutional Architecture under Third Package.

The EU level Agency for the Cooperation of Energy Regulators (ACER) will be seated in Ljubljana (the most difficult decision), there are 6 individuals that are now being considered for a director, will go down to 3, and the Administrative Board and Board of Regulators will choose the director. Selection of key personnel from March 2010 onwards.

**Walter Boltz, Chairman E-Control [Austrian regulator], “The new Regulatory Agency: a practical guide to its functioning and priorities.”**

ACER will be operating 3-3-11 and able to do something on its own by the end of this year.

Provisions in the Third Package on the national energy regulators and their relationship with ACER:

- The Package contains a set of new powers for the regulators. [Coordination across Europe has been problematic, because competencies are spread out among regulators and ministries. Now contact must be in one regulatory agency.
- National Regulators must have strong cooperation on cross border issues.
- National Regulators will implement decisions of ACER and the Commission.
- The market monitoring function, especially concerning all unbundling provisions, e.g., level of effective market opening, disconnection rates, etc., means that regulators can ask anything about the competitive part of the business of regulated companies. This requires new staff because there are now new issues.
- The Third Package gives regulators the power to impose effective, proportionate and dissuasive penalties. Only national regulators have sanction power, but it is dependent on internal law, in that regulators have to be given that power by government. ACER only can instruct national regulators to do something under certain circumstances. [The Directive provides that a regulator can impose a penalty on regulated companies in the amount of 10% of annual turnover.]

Framework Guidelines and network codes. There are no clear definitions in the Third Package on which framework guidelines and network codes should be developed. The Directive provides for a timeline of six months for agency framework guidelines; ENTSOG prepares network codes; ACER approves network codes in 3 months; the EC takes the code and puts into comitology; all meaning that the entire process, excluding comitology, is 2 ½ to 3 years. Mr. Boltz thinks that the EU cannot wait for three years for these codes, so something needs to be done in the interim, perhaps pilots, as a short-cut.

The Third Package requires on the national level of its Member States a Ten Year Network Development Plan (TYNDP), which is non-binding, includes modeling, scenarios, the European generation/supply adequacy outlook, and an assessment of the resilience of the system. ACER is to provide an opinion or recommendation. This process should result in a better identification of gaps and problems and make it easier for TSOs to build the network.