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Regulatory and Energy Assistance

Summary

Third Liberalisation Package

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What is the Third Liberalisation Package

- Issued September 3, 2010.
- Package of 2 Directives and 3 Regulations regarding the internal market in electricity and gas.
- Status in BiH.
 - On September 24, 2010, the Energy Community Treaty Ministerial Council *recommended* adoption of the Third Liberalisation Package.
 - Needed an EC recommendation for implementation in the Energy Community before mandating its adoption.
 - On May 6, 2011, the European Commission issued a decision to propose to the Energy Community implementation of the Third Package.
 - Next meeting of the Ministerial is in October 2011.

Changes to the Third Liberalisation Package

Applies to both electricity and gas:

- 1. Unbundling Regime.**
- 2. Stronger authorities of the regulatory authorities.**
- 3. Retail Markets.**
- 4. European Network of Transmission System Operators (ENTSO) and European Network of Transmission System Operators Gas (ENTSOG).**
- 5. Establishment of the Agency for Cooperation of Energy Regulators (ACER)**
- 6. Gas only: Third Party Access to storage and LNG facilities.**

Unbundling Transmission

- **Transmission: new choices in organization**
 - Ownership Unbundling.
 - Independent System Operator (ISO).
 - Independent Transmission Operator (ITO).
- **ISO and ITO options can be chosen for a specific TSO if on 9-3-09, the TSO belonged to a vertically integrated undertaking.**
 - Cannot go from ownership unbundling to an ISO or ITO if on 9-3-09 the TSO was not part of a vertically integrated undertaking.

Unbundling Distribution

- **Distribution: the obligation remains**
 - **Where a distribution system operator (DSO) is part of a vertically integrated undertaking,**
 - It shall be independent in terms of its legal form, organization and decision making from other activities not relating to distribution.
 - This means distribution must be unbundled from supply.
 - DSO must have decision making rights with respect to distribution assets necessary to operate, maintain or develop the network.
 - No need for ownership unbundling, only functional and legal unbundling.
- **BiH chose Transco/ISO combination before 9-3-09.**
- **DSOs must be formed in both Entities.**

Stronger Regulator Authorities

- **Designation of Single Regulatory Authority**
 - Core regulatory duties cannot be split with other bodies, regulatory or other (e.g., ministry).
 - Derogation for regional regulators (Belgium).
- **Regulator Independence.**
 - Regulator may not seek or take direct instructions from any government or public or private company when carrying out regulatory tasks.
 - General policy guidelines unrelated to regulator power and duties acceptable.
 - Regulator decisions are immediately binding:
 - Challenge must be in the courts.
 - Governments can use the same mechanism.
 - Only courts can suspend decision.

Stronger Regulator Authorities (cont'd)

- **Duties. The list of duties has been substantially expanded.**
 - **Very broad power to ensure compliance with the entire sector-specific *acquis communautaire*, vis a vis all energy undertakings.**
 - **Penalties. The regulatory authority shall impose effective, proportionate and dissuasive penalties**
 - **on electricity undertakings not complying with their obligations or relevant legally binding decisions of the regulatory authority,**
 - **or propose that a competent court impose the penalty,**
 - **up to 10% of the annual turnover of the TSO or vertically integrated undertaking.**

Stronger Regulator Authorities (cont'd)

- **BiH Impact of stronger regulatory authorities:**
 - **Setting a clear energy policy becomes more critical. Will be the Government's guidance on activities of the regulator.**
 - **Government/Ministry impact on day-to-day regulatory activities is specifically limited.**
 - **Regulatory regime in BiH with one State and two Entity regulators is acceptable.**
 - **Penalties need to be increased to be “effective, proportionate and dissuasive.”**

Retail Markets

- **Directive expanded to address customer protection in more detail. Examples:**
 - **Vulnerable customer provisions are expanded.**
 - **Member States required to define concept of energy poverty and prohibition of disconnection in critical times.**
 - **Social security systems must ensure electricity supply to vulnerable customers or support is provided for EE improvements.**
 - **Annex I expands provisions on customer protection.**
 - **Plans for smart meters subject to an economic assessment of long-term costs and benefits.**

ENTSO and ENTSOG

- **Regulation requires that all electricity and gas TSOs cooperate through European Network of Transmission System Operators (ENTSO) and ENTSOG.**
 - **Ensure optimal management, coordinated operation and sound technical evolution of transmission systems.**
 - **Number of network codes are required to be developed.**
 - **Associations must develop ten year network development plans.**
 - **ENSTO(E) finds that 23-28 Billion Euro in the first five years needed for new transmission lines and upgrades.**
 - **ENTSOG has also prescribed substantial expansion of facilities without a price tag.**
- **BiH should be sure to at least review for comment the network codes as they are proposed.**

Agency for Cooperation of Energy Regulators (ACER)

- Regulator at the EU level.
- Tasks:
 - TSO Cooperation. Opinions to the EC re network codes, development plans.
 - ACER and Regulatory Authorities:
 - ACER may provide opinion to regulatory authority when asked as to whether its decisions comply with the Directives.
 - Cross-border. ACER may decide issues when competent regulators have not agreed within six months or a joint request for decision.
 - Exemptions and opinions of interconnecting infrastructure and certification.
- ECRB and PHLG have called for involvement of the Energy Community institutions in ACER, ENTSO and ENTSOG.

Natural Gas – Storage and LNG

- **Process for capacity allocation and congestion management of storage and LNG defined.**
- **Third party access service and processes defined.**
- **Currently not applicable to BiH.**

What BiH Should Expect

- **EC will propose adoption of the Third Liberalisation Package to Ministerial in October.**
- **Acceptance means that it will be mandatory that Contracting Parties adopt the Package.**
- **Contracting Parties must fully transpose the Package by January 1, 2013.**
- **Meanwhile, BiH needs an official translation of the documents NOW.**
- **When issue laws or rules, we should incorporate the provisions of the Third Liberalisation Package.**

Thank you for your attention!