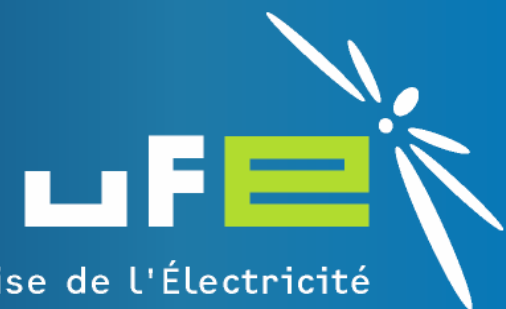

Die Vorschläge zum 3. Richtlinienpaket aus französischer Sicht

« EEU Alternative »

Nicolas Bouley – Délégué Général de l'UFE

Bochum, 21. Februar 2008



Union Française de l'Électricité

- 1. The European Council (march 2007) and progress report emphasize the need for independent TSOs***

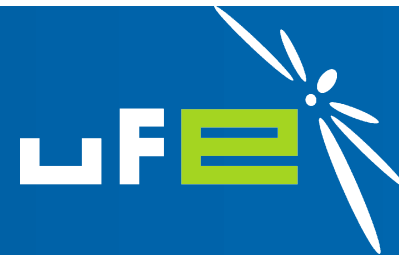
- 2. OU / ISO are not the only solutions that can ensure the independence of the TSO***

- 3. The « Effective and Efficient Unbundling » (EEU) alternative***

- 4. Conclusions***

***Austria, Bulgaria, France, Germany, Greece, Latvia,
Luxembourg, Slovakia***

1. The European Council (march 2007) and progress report emphasize the need for independent TSOs



« In any case, effective unbundling should meet at least the following requirements:

a. The implementation of effective unbundling should respect the principle of non-discrimination between the unbundling alternatives.

b. The obligations imposed to the overall transmission activities and investments under the different unbundling alternatives should be similar to avoid distortions between Member States in the internal market;

c. Be “based on independently run and adequately regulated network operation systems which guarantee equal and open access to transport infrastructures”;

d. Guarantee “independence of decisions on investment in infrastructure”.

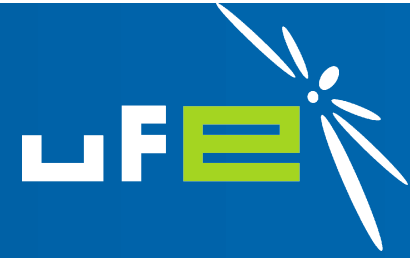
Extract from the Progress report (dec 2007)

2. OU / ISO are not the only solutions that can ensure the independence of the TSO

2.1 OU is simple in principle but presents several difficulties when dealing with its concrete implementation

2.2 ISO is not a real alternative to OU and presents additional difficulties

2.1 OU is simple in principle, presents several difficulties when dealing with its concrete implementation



- ➔ **Together OU and ISO do infringe property rights and are not compatible with several Member States ' constitutional laws**

- ➔ **They introduce an uncertainty about future developments of the energy legislation : what about DSOs? What about LNG terminals?**

- ➔ **They come up with additional provisions (certification procedure, third country clause) that are difficult to implement for a majority of Member States**

While at the same time :

- **The impact of OU / ISO on prices and investments is not clear**
- ➔ • **Market integration is not hindered by Non-OU TSOs as shown by the work performed in the Pentalateral forum where 3 out of 5 countries are non-OU countries**

2.2 ISO is not a real alternative to OU



- Same disadvantages as in the OU option, no real consequences on prices and investments
- The ISO option raises a certain number of highly difficult questions, as regards accountancy rules / allocation of revenues between the owner and the operator
- Serious doubts remain on the efficiency of this option, given the past experience in some EU countries

➔ **ISO is not a realistic solution. Even in the third package, it is considered as an exceptional case**

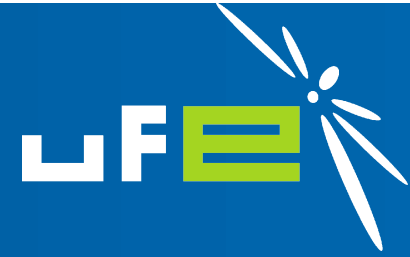
3. The « Effective and Efficient Unbundling » (EEU) alternative

3.1 The EEU requirements : it shall not be a status quo solution

3.2 The EEU provisions on TSO organisation and governance

3.3 The EEU provisions on investment, connection to the grid and market integration

3.1 The EEU requirements : it shall not be a status quo solution



The alternative must be effective and must represent an important step forward compared to the 2nd internal market package : Need to get concrete commitments that are not included in the second package :

- *Constitution / structure of the TSO*
- *Top management independence*
- *Independence shall be a key element of the corporate TSO culture.*
- *Investment decisions shall be independently taken*

The alternative must be efficient and ensure an appropriate level of investments :

- *10-year development plan*
- *Connection procedures*
- *Regional integration*

Substance and composition of the TSO

Directive 2003/54/CE :

« Where the transmission system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission. These rules shall not create an obligation to separate the ownership of assets of the transmission system from the vertically integrated undertaking. »

➔ **« Legal unbundling » as defined in the Directive 2003/54/CE is a very imprecise concept with no reference to the equipment nor the identity of the TSO**

➔ **Our first priority, if we want to build up a concrete alternative is to ensure TSOs are not « empty nutschell companies » but real and autonomous ones**



Substance and composition of the TSO

EEU provisions :

- *The TSO shall be fully equipped with **all the assets, personnel and financial resources of the vertically integrated undertaking** necessary for the regular business of electricity transmission*
- *The TSO shall be organised in the legal form of a **joint-stock company***
- *The TSO shall have its **own corporate identity**, significantly different from the vertically integrated undertaking with **separate branding, communication and premises** .*
- *TSOs accounts shall be audited by **another auditor than the one auditing the integrated undertaking** and all its affiliated companies.*

Top management independence

Directive 2003/54/CE :

« Appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the transmission system operator are taken into account in a manner that ensures that they are capable of acting independently ;»

- ➔ **No precise measures were included in the Directive 2003/54**
- ➔ **Only concrete measures can ensure a true independence of the management since we need to limit the control the shareholder can exercise on its subsidiary**



Top management independence

EEU :

- *The appointment / removal of the CEO / Executive board shall be subject to the **veto of the regulatory authority** or any other competent public authority.*
- *The CEO / Executive board shall be submitted to a “**3-years**” **cooling-off period** after their departure from the TSO*
- *The **remuneration shall not depend on activities other than those of the TSO***
- *The supervisory boards / boards of directors of TSOs shall include **independent members**, appointed for a term of at least 5 years*
- *The **Chairman of the supervisory board/board of directors of the TSO shall not participate** in any branch of the vertically integrated undertaking performing functions of generation or supply.*

Reinforced monitoring

Directive 2003/54/CE :

« The transmission system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 23(1) and shall be published. »

- ➔ **No guarantee provided on the independence of the person/ body responsible for the monitoring of the compliance programme**
- ➔ **No real powers of investigation are granted to this person / body**
- ➔ **No sanction foreseen in case the compliance programme has not been enforced in a rigorous way**
- ➔ **So, our third priority is to give a status to the compliance officer, ensure his independence, and make sure the TSO can be sanctioned**



Reinforced monitoring

EEU :

- *The chief executive officer / executive board of the TSO shall appoint a person or a body as a **compliance officer** in charge of monitoring the implementation of the compliance programme*
- ***In order to ensure his full independence**, the nomination / removal of the compliance officer shall be submitted to the **approval of the regulatory authority** or any other competent authority*
- *The compliance officer shall **assist to all sessions of the supervisory board relevant for unbundling issues**. He shall ensure no commercially sensitive information from being disclosed to the supervisory board*
- *The regulatory authority shall have the **power to sanction** the TSO in case of inappropriate implementation of the compliance program.*

Investments

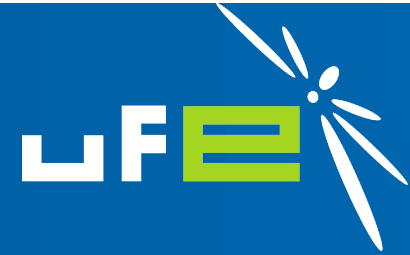
Directive 2003/54/CE :

« The transmission system operator shall have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network.....It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission lines »

No transparency on investments decisions

➔ No guarantee on their adequacy with market needs

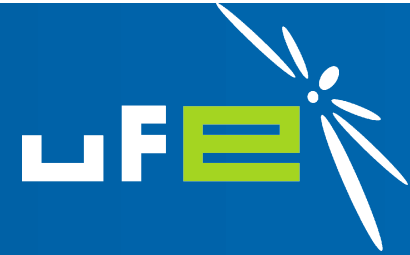
No control on TSO decisions and no solution for users faced with a refusal from the TSO to realize a specific investment



Investments

EEU :

- TSOs shall elaborate a **10-year network development plan** at least every two years. This plan shall indicate to market participants the main transmission infrastructures that ought to be built over the next ten years.
- The 10-year network development plan shall be based on a **consultation, held by an independent body**, of all relevant network users in an open and transparent manner. The result of the consultation, in particular possible needs for investments, shall be published.
- The 10-year network development plan shall be eventually **approved** by the competent public authority
- **In case the TSO rejects to implement a specific investment, two measures are foreseen : either the competent public authority request the TSO to invest or it launches a tendering procedure.**



Connection to the grid

EEU :

- *TSOs shall be obliged to establish and publish transparent and efficient procedures for non-discriminatory connection of new power plants to the grid. Those **procedures shall be subject to the approval of national regulatory authorities or any other competent national public authority***
- *TSOs shall not be entitled to refuse the connection of a new power plant on the grounds of possible future limitations to available network capacities, e.g. congestion in distant parts of the transmission grid. The TSO shall be obliged to supply necessary information.*
- *TSOs shall not be entitled to refuse a new connection point, on the sole ground that it will lead to additional costs linked with necessary capacity increase of grid elements in the close-up range to the connection point.*

Regional integration

EEU :

When the cooperation between several countries at a regional level encounters significant difficulties, following the joint request of these countries the Commission may designate, in agreement with all Member states concerned, a regional coordinator.

The regional coordinator shall promote at a regional level the cooperation of, regulatory authorities and any other competent public authorities, network operators, power exchanges, grid users and market parties.

He shall submit a report to the Commission and Member states concerned every year on the progress achieved in the region and on any difficulty or obstacle that may hinder progress.

➔ **Regional coordinators could play an important role in facilitating the dialog between Member States, notably as regards cross-border investments**

Conclusions

2 pillars of EEU :

- **Effective separation without infringing ownership :**

Independence of TSOs under control by the national regulatory authority, the compliance officer and the auditor

- **Elimination of Underinvestment**, consultation of grid users and effective sanctions:

no discriminatory potential for TSOs in this respect any more and directly effective measures for further market integration

Conclusions

Advantages of EEU :

- avoids negative consequences related to Ownership Unbundling and ISO,
- no delay for implementation
- is equally applicable to gaz and electricity,
- is equally applicable to state-owned and private companies.
- No additional protection against certain non-EU-investors are needed
- Directly effective measures for further market integration are foreseen

Conclusions

- The OU debate did unfortunately lead to the split of EU countries in two groups : OU and Non-OU countries
- France is confident this solution could be acceptable by all
- France is confident this solution is sensible and will introduce both effective and efficient measures

=> This solution goes much further than the second package and contains provisions that will significantly help us to achieve common objectives

=> Let's hope that further negotiations will be constructive.

Thank you for your attention.