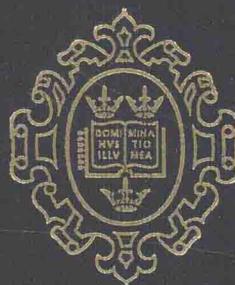


LEGAL ASPECTS
OF EU ENERGY
REGULATION

Implementing the New Directives on
Electricity and Gas Across Europe

EDITED BY
PETER D. CAMERON



OXFORD

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DIRECTIVES ON ELECTRICITY
AND GAS ACROSS EUROPE

Edited by
PROFESSOR PETER CAMERON

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FOREWORD

During the 1990s restructuring of the energy industry was triggered by several factors, almost simultaneously in all continents. The European Union launched the most ambitious energy restructuring process; so far, it is the most advanced region all over the world. This book promotes an understanding of what happens in the European electricity and gas markets.

The European model exhibits four main features:

1. Liberalization is based upon non-discriminatory regulated network access and unbundling of network (transmission and distribution) operation;
2. Liberalization is introduced simultaneously at generation and supply levels. This means that wholesale and retail competition are introduced at the same time. More than 80% of EU energy demand is already eligible and this figure will increase up to 100% by 2007;
3. Liberalization of national energy markets is pursued simultaneously with their integration into a single European energy market. The so-called Internal Energy Market is the largest integrated energy market all over the world; and
4. Regulation of EU electricity and gas markets has been mainly achieved through cooperation. The level of litigation is very low compared to other network industries or to the energy sector in other continents.

Since 1 July 2004 new directives define the Internal Energy Market legislative framework. Objectives, principles, procedures, and deadlines are established in a clear, consistent, and comprehensive way. However, we are still far from a fully competitive, integrated, and efficient Internal Energy Market. Professor Cameron succeeded in gathering together an excellent team of experts who provide us with an updated picture of electricity and gas markets in the European Union at the beginning of this new phase of the Internal Energy Market.

The different chapters of the book allow the reader to identify five major factors hindering the achievement of the Internal Energy Market:

1. A lack of transmission capacity, and in particular, cross-border capacity in several areas;

2. A lack of transparency in network access in some EU and non-EU countries (e.g. Switzerland);
3. A lack of appropriate coordination between TSOs in order to ensure adequate levels of efficiency and reliability;
4. A lack of deep, robust, and liquid energy markets in several areas, and
5. A lack of consistency in application of competition law (merger control, antitrust, state aid) by the competent national and EU authorities.

As chairman of the Council of European Energy Regulators (CEER), which was created in March 2000 in order to facilitate the development of the Internal Energy Market, I am aware of these obstacles. The 27 national energy regulatory authorities represented in the CEER (EU-25 plus Norway and Iceland), together with the European Commission, have been working together for some years. They are developing:

- a) A comprehensive regulatory framework to translate the legislative framework into practical and efficient rules for the benefit of EU energy consumers, and
- b) A coherent institutional and conceptual framework for the application of EU competition law to the energy sector.

Regulation is essential for the proper functioning of the Internal Energy Market and this was acknowledged by the EU Institutions (Commission, Council of Ministers, European Parliament). Efficient regulation requires not only appropriate institutional mechanisms and clear statutory powers, but also a high degree of competence in multiple disciplines. In order to improve the quality of regulation in Europe, the CEER, together with the European Commission and the European University Institute (EUI), decided to create a platform for research, training, and dialogue with industry. The Florence School of Regulation was born at the end of 2003 to provide such a platform. I would like to thank EC President Romano Prodi, EC Vice-President Loyola de Palacio, EUI President Professor Yves Meny, and Professor Helen Wallace, Director of the EUI Robert Schuman Centre for Advanced Studies for their enthusiastic support.

Professor Peter Cameron has been one of the main contributors to the success of the Florence School of Regulation. Thanks to his engagement, academic excellence, and organizational skills, the EU Energy Law & Regulation Workshop and this book became a reality. This book is also a practical example of 'Regulation by Cooperation'. I am sure that it will earn the recognition of a large interested audience, both for its contents and for its approach.

I believe that through cooperation—among regulatory institutions, between regulatory authorities, and all interested parties—we will succeed in implementing an efficient, open, and integrated European energy market. To those who

Foreword

wonder whether it will be possible to build a single European energy market without a single European regulatory agency, I would like to recall the wise words of William of Ockham: *non sunt multiplicanda entia praeter necessitatem.*

Jorge Vasconcelos
Chairman, Council of European Energy Regulators
Florence, 22 September 2004

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