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**THE UNBUNDLING OF THE
TRANSMISSION SYSTEM OPERATOR IN
ELECTRICITY SECTOR. THE GREEK CASE OF
ADMIE**

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ABSTRACT

This dissertation was written as part of the LLM In Transnational And European Commercial Law And Alternative Dispute Resolution at the International Hellenic University.

The goal of my dissertation is to develop the scope and operation of the unbundling in electricity sector and in particular on the TSO's point of view. The European Commission and the Parliament struggle reach the goals of "Europe 2020 Strategy" through a secure and competitive environment. The correct transposition of the European electricity legislation in all Member States is not yet complete. Hence, the Third Internal Energy Market Package was adopted in 2009 to accelerate investments in energy infrastructure, enhance cross border trade and access to diversified sources of energy. Market concentration isn't yet fully repealed in the European Union, nevertheless we have high hopes that the three options EU has introduced (ownership unbundling, independent system operator (ISO) and independent transmission operators (ITO)) to weaken the market power of the biggest electricity firms, will work out.

Furthermore, it is important to examine the case of the Greek TSO, ADMIE.

My supervisor is going to be Dr. Theodore Panagos, who really stipulated my interest on the Energy Sector during the lesson “Energy Law” in International Hellenic University. I consider the topic of Energy Law a must-take, since energy sector is always going to be a subject of interest around the Globe, whichever the circumstances and furthermore, because during my Bachelor at Law at the Aristotle University of Thessaloniki I never had the chance to hear about such interesting and up-to-date issues as the electricity, gas and generally energy sector.

30/1/2015

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A.INTRODUCTION

It is true that nowadays life without electricity would be definitely un contemplated. Electricity is the entity that is nearly used for any aspect of human life - from heating our homes, to cooking and using electric devices.¹ It is however a scarce commodity that not only has to be produced, but also has to be transported via grids and distributed to the final consumers.² Its generation is originated by both primary and renewable energy sources that are not evenly distributed around the globe and as a result, there is no equality of cost among different countries, as far as its production is concerned.³

The fact that electricity cannot be stored makes its delivery to consumers a complicated issue. To elaborate, its delivery is done through a network of grids to which all actors (from producers to consumers) are simultaneously connected.⁴ The moment the power produced enters the power pool of the grid, it becomes indistinguishable from any other sort of power otherwise generated.⁵ Furthermore, we should bear in mind that electricity is consumed extraordinarily faster than produced and its storage in the system doesn't last more than a tenth of a second, which is the

¹ Janusz Bielecki, Melaku Geboye Desta, *Electricity Trade in Europe, Review of the Economic and Regulatory Challenges*, International Energy and Resources Law and Policy Series, p. xiii, 2004, Kluwer Law International.

² Janusz Bielecki, Melaku Geboye Desta, *Electricity Trade in Europe, Review of the Economic and Regulatory Challenges*, International Energy and Resources Law and Policy Series, p. xiii, 2004, Kluwer Law International.

³ Janusz Bielecki, Melaku Geboye Desta, *Electricity Trade in Europe, Review of the Economic and Regulatory Challenges*, International Energy and Resources Law and Policy Series, p. xiii, 2004, Kluwer Law International.

⁴ Janusz Bielecki, Melaku Geboye Desta, *Electricity Trade in Europe, Review of the Economic and Regulatory Challenges*, International Energy and Resources Law and Policy Series, p. 6, 2004, Kluwer Law International.

⁵ Janusz Bielecki, Melaku Geboye Desta, *Electricity Trade in Europe, Review of the Economic and Regulatory Challenges*, International Energy and Resources Law and Policy Series, p. 6, 2004, Kluwer Law International.

reason why generation capacity has to fluctuate synchronously with power demand. In other words, there must be a balance between the electricity generated and the electricity used at every moment.⁶

B. THE BEGINNING OF ENERGY MARKET LIBERALIZATION

During the 1990s,⁷ the majority of national electricity markets usually evolved vertically integrated geographic monopolies that were either owned by the states or were privately-owned and regulated as natural monopolies.⁸ The aforementioned firms had turned to be the exclusive suppliers of electricity to any sort of consumer, resident of a specific geographic area.⁹ At that time, after eight years of controversial negotiations¹⁰ the European Union in collaboration with the Member States decided to initiate a reform programme of liberalization of the above markets, so as they become open to competition.¹¹ To be specific, the Commission made a proposal for a directive that would reform sectoral practices and create an Internal Energy Market based on

⁶ Janusz Bielecki, Melaku Geboye Desta, *Electricity Trade in Europe, Review of the Economic and Regulatory Challenges*, International Energy and Resources Law and Policy Series, p. 6, 2004, Kluwer Law International.

⁷ European Commission, Competition, Energy, Energy and Environment, Overview, Liberalisation of the electricity and gas markets, http://ec.europa.eu/competition/sectors/energy/overview_en.html.

⁸ Paul L. Joskow, *Lessons Learned From Electricity Market Liberalization*, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 10, 2008, IAEE.

⁹ Paul L. Joskow, *Lessons Learned From Electricity Market Liberalization*, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 11, 2008, IAEE.

¹⁰ Rainer Eising, *Policy Learning in Embedded Negotiations: Explaining EU Electricity Liberalization*, International Organization 56, 1, The IO Foundation and the Massachusetts Institute of Technology, p. 85, 2002.

¹¹ European Commission, Competition, Energy, Energy and Environment, Overview, Liberalisation of the electricity and gas markets, http://ec.europa.eu/competition/sectors/energy/overview_en.html.

Article 100a (EEC), under the consultation of both the European Parliament and the Council.¹²

In order to comprehend the aforementioned project, we should first investigate on the ultimate goals of the various liberalization policies.¹³ It would not be wise to say that “de-regulation” or “competition” per se, are the fundamental incentives of the electricity liberalization programme,¹⁴ since it would be preferable to consider them as the means for the achievement of further, more crucial performance goals.¹⁵ To make things clear, these further initiatives couldn’t be other than the **creation of new institutional arrangements** for the electricity sector, that would entail various net benefits not only for the society as a whole, but also for consumers individually¹⁶. An example of the aforementioned could be the increase of **efficiency of electricity production and consumption** in consistency with the preservation of the environment.¹⁷ Benefits as such, would arise in the context of competitive wholesale power markets **providing**: a) better control over the construction and the operating costs of the generating capacity, together with b) innovation encouragement as regards the technology of supply and c) shifting of the various risks (technology

¹² Rainer Eising, Policy Learning in Embedded Negotiations: Explaining EU Electricity Liberalization, International Organization 56, 1, The IO Foundation and the Massachusetts Institute of Technology, p. 85–120, 2002.

¹³ Jean Michel Glachant, Francois Leveque, Electricity Reform in Europe Towards a Single Energy Market, p. xiv, 2009, Edward Elgar Publishing Limited.

¹⁴ Jean Michel Glachant, Francois Leveque, Electricity Reform in Europe Towards a Single Energy Market, p. xiv, 2009, Edward Elgar Publishing Limited.

¹⁵ Jean Michel Glachant, Francois Leveque, Electricity Reform in Europe Towards a Single Energy Market, p. xiv, 2009, Edward Elgar Publishing Limited.

¹⁶ Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 11, 2008, IAEE.

¹⁷ Jean Michel Glachant, Francois Leveque, Electricity Reform in Europe Towards a Single Energy Market, p. xiv, 2009, Edward Elgar Publishing Limited.

choice, construction cost and operating “mistakes”) that could potentially appear from consumers to suppliers.¹⁸

The liberalization programme further imports, the “**retail competition**” or “**third party access**” ability in the electricity sector, pursuant to which, a) **consumers** are allowed to choose the retail power supplier that offers the price/service quality that best matches the needs of consumers and b) **generators and intermediaries** in competition, are allowed to offer their services to consumers.¹⁹ Although some parts of the total costs of electricity supply – distribution and transmission – would **still be regulated as legal monopolies**, the reformation of the traditional regulations concerning the arrangement of distribution and transmission networks has been considered as the cornerstone of the introduction to the wholesale and retail competition.²⁰ Accordingly, the privatization of companies that distribute and transmit electricity, together with the application of performance-based regulatory mechanisms result into the imposition of hard budget constraints on regulated network companies, forcing them to reduce costs and ameliorate the quality of the provided service. Finally, it should be underpinned that the prerequisite for the achievement of all the aforementioned goals is the **existence of a well-functioning**

¹⁸ Jean Michel Glachant, Francois Leveque, Electricity Reform in Europe Towards a Single Energy Market, p. xiv, 2009, Edward Elgar Publishing Limited // Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 11, 2008, IAEE.

¹⁹ Jean Michel Glachant, Francois Leveque, Electricity Reform in Europe Towards a Single Energy Market, p. xiv, 2009, Edward Elgar Publishing Limited // Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 11, 2008, IAEE.

²⁰ Jean Michel Glachant, Francois Leveque, Electricity Reform in Europe Towards a Single Energy Market, p. xiv, 2009, Edward Elgar Publishing Limited // Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 11, 2008, IAEE.

infrastructure, supporting both transmission and distribution networks, regulated under the proper terms and conditions of access to and use.

B.1. A SUCCESSFULL REFORM

As many adequate authors have suggested²¹, the “orthodox line” to achieve the reconstruction, regulatory renovation and expansion of the power markets is not arbitrary.²² On the contrary it is a specific Community path involving several aspects. Starting with the **privatization** of state-owned electricity monopolies which creates hard budget constraints and urges for improvement,²³ the next step is the vertical division, in other words, the **unbundling** of the **competitive segments** of an industry (the generation, marketing and retail supply) from the **non-competitive** ones that will continue to be regulated (distribution, transmission, system operations).²⁴

²¹ Michael G.Pollitt, Electricity Liberalisation in the European Union: A Progress Report, Electricity Policy Research Group, Working Paper 0929, Cambridge Working Paper in Economics 0953, p. 4-5, University of Cambridge // Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 12-13, 2008, IAEE // European Commission, Competition, Energy, Energy and Environment, Overview, Liberalisation of the electricity and gas markets, http://ec.europa.eu/competition/sectors/energy/overview_en.html.

²² Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 12, 2008, IAEE.

²³ Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 12, 2008, IAEE // European Commission, Competition, Energy, Energy and Environment, Overview, Liberalization of the electricity and gas markets, http://ec.europa.eu/competition/sectors/energy/overview_en.html //Michael G.Pollitt, Electricity Liberalisation in the European Union: A Progress Report, Electricity Policy Research Group, Working Paper 0929, Cambridge Working Paper in Economics 0953, p. 4-5, University of Cambridge.

²⁴ Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David

Furthermore, the obligation of operators of non-competitive industrial segments to **allow third party access** to the infrastructure, the **opening** of the market **to suppliers** together with the establishment of the freedom of customers to choose whoever supplier they wish and better fits their interests.²⁵ Finally, the **existence of an independent regulatory authority** providing good information about the costs, the quality of provided services and comparative performance of the supplying enterprises, with the capacity to enforce various regulatory requirements pursuant to this information should be considered highly important.²⁶

B.2. THE FIRST ELECTRICITY DIRECTIVE

The liberalization of energy markets in Europe is a process that started during the 1900s, in order to achieve the ultimate objective, the creation of an EU-wide integrated energy market.²⁷ Although it is true that many important results have

Newbery, p. 12, 2008, IAEE // European Commission, Competition, Energy, Energy and Environment, Overview, Liberalization of the electricity and gas markets, http://ec.europa.eu/competition/sectors/energy/overview_en.html // Michael G.Pollitt, Electricity Liberalisation in the European Union: A Progress Report, Electricity Policy Research Group, Working Paper 0929, Cambridge Working Paper in Economics 0953, p. 4-5, University of Cambridge.

²⁵ European Commission, Competition, Energy, Energy and Environment, Overview, Liberalization of the electricity and gas markets, http://ec.europa.eu/competition/sectors/energy/overview_en.html

// Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 12, 2008, IAEE // Michael G.Pollitt, Electricity Liberalisation in the European Union: A Progress Report, Electricity Policy Research Group, Working Paper 0929, Cambridge Working Paper in Economics 0953, p. 4-5, University of Cambridge.

²⁶ Paul L. Joskow, Lessons Learned From Electricity Market Liberalization, The Energy Journal, Special Issue, The Future of Electricity: Papers in Honor of David Newbery, p. 12, 2008, IAEE.

²⁷ Delia Vasilica Rotaru, A Glance At The European Energy Market Liberalization, CES Working Papers, p.100, 2013, Volume 5 (1).

occurred from the whole process, we could not call it a complete success story since there are parameters, such as various differences between the Member States that delay the achievement of its final objectives.²⁸

Taking things from the beginning, the first Electricity Directive was drafted in 1992 and passed as **Directive 96/92/EC (First Electricity Directive)** in 1996.²⁹ The Directive established the basic principles and rules for the function of a liberalized energy market³⁰, such as the principles of free electricity trade and third party network access between Member States along with the idea of abandonment of national sovereignty over electrical energy.³¹ The ultimate incentive of the Directive was not only the establishment of rules relative to the efficient generation of electricity, transmission, distribution and supply³², but also rules that arrange and systematize the electricity sector, market access and the authorization procedures for constructing new generating facilities.³³

Furthermore, the Directive **underpinned both**, that vertically integrated monopolistic companies had to **unbundle** and that **new system operators** in the context of **Distribution** and **Transmission** had to be created, separately from the

²⁸ Delia Vasilica Rotaru, A Glance At The European Energy Market Liberalization, CES Working Papers, p.100, 2013, Volume 5 (1).

²⁹ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, “Economic impacts of regulatory reforms in electricity sector” n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 317, 2012.

³⁰ Theodore Panagos, The Unbundling In The Energy Sector Companies, Sakkoulas Editions, p.16, 2011.

³¹ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, “Economic impacts of regulatory reforms in electricity sector” n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 317, 2012.

³² Theodore Panagos, The Unbundling In The Energy Sector Companies, Sakkoulas Editions, p.17, 2011.

³³ Ivan Tominov Liberalization of the electricity market – is it meeting expectations?, Journal of Energy, 57 (3), p. 256-299, 2008.

competitive parts of the electricity sector.³⁴ Regarding the **unbundling**, the European legislator considered that there should be a separate administrator of the transmission system and a separate one for the distribution network **in order to** protect both the producers' and consumers' interests by guarding against the risk that integrated companies would use their ownership of the network to unfairly give advantage to their generation and/or retail businesses.³⁵³⁶ As far as retail competition is concerned, the consumers of electricity were, after the enforcement of the Directive able to choose and change their suppliers, resulting into the opening of European electricity market to foreign suppliers.³⁷ However, a completely opened market was not actually imposed due to protection of national or local solidarity through various forms of state intervention.³⁸ Finally, Directive 96/92/EC also introduced the issue of **network access**, obliging the Transmission and Distribution System Operators to grant **non-discriminatory network access** regardless of whether we are talking about negotiated third party access, regulated third party access or even a "single buyer", who would be responsible for the purchase of the country's electricity and the determination of power plants to be used. ³⁹

³⁴ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, "Economic impacts of regulatory reforms in electricity sector" n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 318, 2012.

³⁵ Theodore Panagos, The Unbundling In The Energy Sector Companies, Sakkoulas Editions, p.17, 2011.

³⁶ Thomas Steve , The European Union Gas and Electricity Directives, Public Services International Research Institute, University of Greenwich, EPSU, p.10, 2005.

³⁷ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, "Economic impacts of regulatory reforms in electricity sector" n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 318, 2012.

³⁸ A. Višković , Elektroenergetika zemalja Europske Unije u devedesetima – uloga države u eri privatizaciji, Kigen, Zagreb,p. 33, 2005.

³⁹ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, "Economic impacts of regulatory reforms in electricity sector" n°

Despite the long desired harmonization on specific issues among the various Member States that any Directive provides, the introduction of Directive 96/92/EC had created many serious problems due to its asymmetry.⁴⁰ To elaborate, gaining access to a national market is equivalent to the market's openness and the type of network access.⁴¹ The unbundling obligation didn't set as a precondition the independence of the network access actors, whereas due to the negotiated third party access option, the incumbent companies were able to keep their competitors away. As a result, the aforementioned formulated a concentrated retail sector and on the contrary, restricted retail competition, since competitive producers were kicked off national markets that already had a dominant generator.⁴²

An overall comment on this first Electricity Directive would be that it undoubtedly opened the path to a new order as regards the electricity sector in Europe; however it only set out some minimum standards for effective competition without the parallel "construction" of an independent authority to supervise and ensure that the rules set out are respected and followed.⁴³ In this way, the various Member States comply with the rules of the Directive at their discretion and the intentional harmonization remains a dead letter.

081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 318, 2012.

⁴⁰ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, "Economic impacts of regulatory reforms in electricity sector" n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 318, 2012.

⁴¹ A. Višković, Elektroenergetika zemalja Europske Unije u devedesetima – uloga države u eri privatizaciji, Kigen, Zagreb, p. 33, 2005.

⁴² Thomas Steve, The European Union Gas and Electricity Directives, Public Services International Research Institute, University of Greenwich, EPSU, p.10, 2005.

⁴³ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, "Economic impacts of regulatory reforms in electricity sector" n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 319, 2012.

B.3 THE SECOND ELECTRICITY DIRECTIVE

The second Electricity Directive (2003/54/EC) along with Regulation 1228/2003 that explicitly addressed cross-border issues for the first time, moved the internal electricity market a step forward.⁴⁴ The Directive was passed in June 2003 and had to be implemented until 2004. On the other hand, the Regulation does not need transposition into national law, allowing less room to maneuver for Member States.⁴⁵ The need for **stricter rules of unbundling** and for **classification of the unbundling elements**⁴⁶ praised the idea of enhanced European energy policy that would promote full market opening, supply of electricity to all sorts of consumers and better quality of service and business efficiency.⁴⁷ Furthermore, in order to promote third party access to the network and market competition, the European and national legislators foresaw the establishment of an independent regulatory body together with the necessary structural measures.^{48,49}

The areas of interest of the Second Electricity Directive were the following. As regards the construction of new electricity generation capacities, the Directive introduced the rule of authorization⁵⁰ and alternatively tendering.⁵¹ Furthermore, in

⁴⁴ Leonardo Meeus, Ronnie Belmans, Electricity market integration in Europe, Bourses d'énergie, University of Leuven (KUL), p.6, 2008.

⁴⁵ Leonardo Meeus, Ronnie Belmans, Electricity market integration in Europe, Bourses d'énergie, University of Leuven (KUL), p.6, 2008.

⁴⁶ Theodore Panagos, The Unbundling In The Energy Sector Companies, Sakkoulas Editions, p.19, 2011.

⁴⁷ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, "Economic impacts of regulatory reforms in electricity sector" n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 320, 2012.

⁴⁸ Theodore Panagos, The Unbundling In The Energy Sector Companies, Sakkoulas Editions, p.19, 2011

⁴⁹ Leonardo Meeus, Ronnie Belmans, Electricity market integration in Europe, Bourses d'énergie, University of Leuven (KUL), p.6, 2008.

⁵⁰ Thomas Steve , The European Union Gas and Electricity Directives, Public Services International Research Institute, University of Greenwich, EPSU, p.11, 2005.

order to achieve a fully opened electricity market the Directive highlighted the importance of non-discriminatory network access that was granted by the Transmission or Distribution System Operators which **had to be legally separated entities from the ones that produce and supply** electricity.⁵² Finally, as far as the network access was concerned, the negotiated third party access and the single buyer option were withdrawn since they were never adopted.

The reasons behind the Second Electricity Directive and its implications varied. The avoidance of discrimination and cross-subsidization between monopolistic and competitive activities was of fundamental importance because the First Electricity Directive was insufficient to contest discriminatory trends and behaviors.⁵³ This meant that the Distribution System Operator (DSO) and the Transmission System Operator (TSO) activities had to be carried out by legally separate companies, although an integrated company could still own a TSO or DSO company as well as a generation infrastructure.⁵⁴ However, despite the further establishment and strengthening of the unbundling obligation, the Directive didn't mention the specific measures for breaking up dominant companies.⁵⁵

⁵¹ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, "Economic impacts of regulatory reforms in electricity sector" n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 320, 2012.

⁵² Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, "Economic impacts of regulatory reforms in electricity sector" n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 320, 2012.

⁵³ Theodore Panagos, The Unbundling In The Energy Sector Companies, Sakkoulas Editions, p.20, 2011.

⁵⁴ Thomas Steve , The European Union Gas and Electricity Directives, Public Services International Research Institute, University of Greenwich, EPSU, p.12, 2005.

⁵⁵ Pavle Jakovac, B. Sc., Electricity Directives And Evolution Of The Eu Internal Electricity Market, "Economic impacts of regulatory reforms in electricity sector" n° 081-0361557-1455, financed by Croatian Ministry of Science, Education and Sports, p. 320, 2012.

The first and second Electricity Directives managed to achieve a certain level of the desired liberalization of the electricity market, even though few could dispute the process hadn't yet been completed.⁵⁶ Overviewing the above projects we would come to the following conclusions: to begin with a) national monopolies gave their seat to new private megamonopolies – oligopolies⁵⁷, b) the first of the two Directives imposed the unbundling of generation and transmission, while the second prescribed the unbundling of distribution and retailing, separating potentially competitive segments of the industry from the natural monopoly segments⁵⁸, furthermore c) the idea of an internal European electricity market proved to be multidimensional and as a result neither solidarity, nor implementation mechanisms among Member States were strong enough for its achievement, let alone the significant differences in organization and operation of each market that made the above venture seem more unrealistic,⁵⁹ c) since the opening of the market less than 20% of the buyers of each country have changed their supplier of electricity with respect to low electricity costs or due to absence of real competition in supply activity⁶⁰ d) the long periods of return of the dependence of the project's success on everyday market risks, resulting into the absence of necessary activities and delay in construction of minimally required transmission and production capacities.

C.THE SITUATION AFTER THE TWO ELECTRICITY DIRECTIVES

Although the progress already made was significant, the market opening objectives hadn't yet been achieved since there were still barriers restraining free competition. Electricity wholesale prices raised arbitrarily, entry barriers and limited

⁵⁶ G. Majstrović, Implementation and Perspectives of Electricity Market, Nafta, 59,11, p. 546, 2008.

⁵⁷ G. Majstrović, Implementation and Perspectives of Electricity Market, Nafta, 59,11, p. 546, 2008.

⁵⁸ Jean Michel Glachant, Francois Leveque, Electricity Reform in Europe Towards a Single Energy Market, p. 72, 2009, Edward Elgar Publishing Limited.

⁵⁹ G. Majstrović, Implementation and Perspectives of Electricity Market, Nafta, 59,11, p. 546, 2008.

⁶⁰ G. Majstrović, Implementation and Perspectives of Electricity Market, Nafta, 59,11, p. 546, 2008.

exercise of the customer's right to choose, forced the Commission to open an inquiry regarding the function of the European electricity markets in June 2005, so as an assessment of the existing competitive conditions and the detected market malfunctioning was made.⁶¹ It was found that urgent action was needed in (1) achieving the **effective unbundling** of network-supply activities, (2) in filling regulatory gaps, in (3) the enhancement of market transparency and finally in (4) the enumeration and comprehension of the reasons that provoke market concentration and barriers to entry.⁶²

D.THE THIRD ENERGY PACKAGE

As a consequence, the Third Energy Package was issued in 2009 consistent of two Directives on electricity and gas markets (2009/72/EC and 2009/73/EC) and three Regulations as regards the conditions for access to gas transmission networks, the cross-border electricity exchanges network and the creation of the Agency for the Cooperation of Energy Regulators.⁶³ Both the aforementioned Directives introduced new rules on the unbundling of TSO's and DSO's.⁶⁴

⁶¹ European Commission, Competition DG, Energy, Basic Industries, Chemicals and Pharmaceuticals

Energy, Water, Dg Competition Report On Energy Sector Inquiry, p.4, Brussels, 10 January 2007.

⁶² European Commission, Competition DG, Energy, Basic Industries, Chemicals and Pharmaceuticals

Energy, Water, Dg Competition Report On Energy Sector Inquiry, p.4, Brussels, 10 January 2007.

⁶³ Radu Dudau, Teodora Simionel, The Politics of the Third Energy Package, Petroleum Industry Review, Romania Energy Center, Policy Paper, p.3, September 2011.

⁶⁴ European Commission, Commission Staff Working Paper, Interpretative Note On Directive 2009/72/Ec Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/Ec Concerning Common Rules For The Internal Market In Natural Gas , The Unbundling Regime, p.4, 2010.

D.1.WHAT IS UNBUNDLING

As far as the **unbundling** of enterprises acting in the energy market is concerned, it is the distinct exercise of natural monopoly activities by an integrated undertaking, in other words the separation of transportation and transmission of electricity from the competitive activities of generation and trade of electricity.⁶⁵ It constitutes a strictly necessary measure for the specific market to be liberalized⁶⁶ and according to relevant studies of the European Union, as long as the unbundling is insufficient not only is competition restrained⁶⁷ but also various risks are involved.⁶⁸

The main goal of the European Union is the protection of European citizens' right to be supplied in energy, in a safe and price-friendly way, even though at that time gas and petroleum prices were dramatically rising and investments in the energy sector were scarce.⁶⁹ The up-to-that-date unbundling rules dictated that undertakings controlling the energy generation made it hard for new companies to use the latter's pipework systems and power cables in order to access the market.⁷⁰ As a result, it was highly important for these new companies to be protected by the adoption of new unbundling rules, so that they can easily enter the markets and have the ability to

⁶⁵ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.21, 2011.

⁶⁶ Council of European Energy Regulators ASBL, *Draft ERGEG Guidelines of Good Practice on Functional and Informational Unbundling -An ERGEG Public Consultation Paper*, p.3, 2006.

⁶⁷ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.22, 2011.

⁶⁸ European Commission, Competition DG, *The Preliminary Report Of The Sector Inquiry On The Gas And Electricity Markets*, p.115- 192, 2006.

⁶⁹ Andris Pielbags, *Giati oi anoixtes energeiakes agores tha ofelisoun tous katanalotes?*, Kathimerini, ,p. 29, 2007.

⁷⁰ Andris Pielbags, *Giati oi anoixtes energeiakes agores tha ofelisoun tous katanalotes?*, Kathimerini, ,p. 29, 2007.

choose and change suppliers if they want to. In other words, effective unbundling means effective freedom of choice.⁷¹

To make things clear, if a vertically integrated undertaking functioned without having separated its monopolistic activities from the competitive ones, the administrative branch of the undertaking could be non-transparent, partial and discriminatory, setting unnecessary prerequisites against the trading/generating branch.⁷² The administrator could possibly hide necessary information regarding elements that private persons need to know in order to perform their activities, competing the vertically integrated undertaking in an unequal way.⁷³ Those hidden pieces of information could be, the clients names of that undertaking, the measurers, the consumption and other elements the undertaking incorrectly considers to be confidential.⁷⁴ The aforementioned could restrain third party access and demotivate new players from entering the system and the grids. The situation could become even more dangerous as regards electricity markets, on condition that the vertically integrated undertaking was simultaneously a dominant market player.⁷⁵

Another issue coming up when competitive and monopolistic activities are not separated are the high network charges and the cross-subsidies among branches of the same vertically integrated undertaking.⁷⁶ As a consequence, use charges can be very high when it comes to new-comers on the market, whereas the insufficient unbundling of an administrative vertically integrated company could give rise to favorable

⁷¹ Andris Pielbags, *Giati oi anoixtes energeiakes agores tha ofelisoun tous katanalotes?*, Kathimerini, ,p. 29, 2007.

⁷² Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.23, 2011.

⁷³ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.25, 2011.

⁷⁴ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.25, 2011.

⁷⁵ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.23, 2011.

⁷⁶ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.25, 2011.

treating towards its own production units as far as the allocation of units of the independent producers of electricity is concerned.⁷⁷

The essential principle of all pieces of European legislation relating to the electricity regulatory framework, which is also confirmed by the Third Energy Package, goes as follows: “Any competent administrator is obliged to provide its service qualitatively, unhindered and in reasonable prices towards any user, notwithstanding the fact that it **must** be provided equally, in a non-discriminatory basis.”⁷⁸ The European Union has made considerable efforts to safeguard the abovementioned doctrine, among which the adoption of unbundling in the “Second Electricity Directives” in order to take the necessary constitutional measures for the creation of an internal energy market, in which competition would thrive and at the same time, security of transactions and legal certainty would be assured.⁷⁹

D.3. COMPONENTS OF THE UNBUNDLING

I would now like to highlight the components of unbundling. First of all, it is the **legal** separation of the Transmission System Operator (TSO) and the Distribution System Operator (DSO) from other, irrelevant to transmission and distribution activities, the **functional** unbundling and the **accounting** unbundling.⁸⁰

D.4. LEGAL UNBUNDLING

In the context of legal unbundling, we first have to highlight that it only applies to vertically integrated undertakings. A vertically integrated undertaking is at

⁷⁷ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.25, 2011.

⁷⁸ Case C-239/07, *Sabatauskas and Others*, Judgement of 9.10.2008, paragraphs 37-44.

⁷⁹ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.29, 2011.

⁸⁰ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.30, 2011.

the same time involved in generation or supply of electricity⁸¹, the network operation is either done within the same legal structure or in a legally separate network company which is still under the control of the supply/production company⁸² and the separate network company that controls the supply/generation company, is thus at the same time a holding company .⁸³ The administrator of the electricity transmission system which is part of a vertically integrated undertaking, has to be independent, at least regarding its legal personality, organization and decision making from other activities of the undertaking that have nothing to do with transmission. ⁸⁴ ⁸⁵In case the transmission branch remains part of the vertically integrated undertaking, guarantees of independence are required.⁸⁶ Articles 14 and following of the Legal Act 2773/99, transposed the aforementioned to the Greek legal system and established a distinct legal person, the Administrator of the Greek Electricity Transmission System S.A (DESMIE) which remained in a vertically integrated undertaking' s ownership, named PPC S.A. ⁸⁷

D.5.FUNCTIONAL UNBUNDLING

Functional unbundling, that is also applicable on condition that we have to do with a vertically integrated undertaking, mandates that the administrators of the electricity transmission system are independent and autonomous, not only in terms of organization but also in decision making, towards the generation and trading interests

⁸¹ DG TREN, Note Of Dg Energy & Transport On Directives 2003/54/Ec And 2003/55/Ec On The Internal Market In Electricity And Natural Gas, p.3, 2004.

⁸² Art 3(3) of EC Merger Regulation.

⁸³ Johannes Mrázek, Vertically Integrated Undertakings (VIU) and Unbundling, Energie-Control GmbH, slide 4, 2005.

⁸⁴ Peter Cameron, Legal Aspects of EU Energy Regulation Implementing the New Directives on Electricity and Gas Across Europe, p.18, 2005.

⁸⁵ Directive 2009/72/EC, Article 9.

⁸⁶ Theodore Panagos, The Unbundling In The Energy Sector Companies, Sakkoulas Editions, p.38, 2011.

⁸⁷ Theodore Panagos, The Unbundling In The Energy Sector Companies, Sakkoulas Editions, p.38, 2011.

of the undertaking.⁸⁸ In order to achieve that, it is highly important that there is an establishment of administrative, directive and supervisory structures of the Transmission System Operators which are fully independent from the respective structures of trading and generation.⁸⁹ One decisive criterion for the correct application of the functional unbundling rules is the degree of control that the undertaking with the competitive activity has on the undertaking with the monopolistic activity. To elaborate, the bodies responsible for the transmission of electricity are not allowed to participate in the structures of the vertically integrated undertaking, whereas those bodies' interests have to be respected and protected in such a way that their independent action is definitely ensured.⁹⁰ Furthermore, the people appointing those bodies must have substantive powers in decision making regarding the necessary resources for function, maintenance and development of the system and the grids, whereas the mother company maintains the co-ordination mechanisms ensuring the protection of the latter's economic and supervising rights, concerning its subsidiary's efficiency of resources.⁹¹ Finally, the administrator of the transmission system has to establish compliance programmes setting out measures that have to be taken in order to ensure that discriminatory conduct is excluded and the programme's observance is monitored.⁹²

D.6.ACCOUNTING UNBUNDLING

In order to prevent conducts that undermine competition, cross-subsidization, discriminatory tariffs and discrimination among different clients, the European legislator also established accounting unbundling, which is the least drastic form of

⁸⁸ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.59, 2011.

⁸⁹ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.59, 2011.

⁹⁰ Directive 2009/72/EC, Article 19.

⁹¹ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p.60-61, 2011.

⁹² Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p. 61, 2011.

unbundling.⁹³ Pursuant to that, undertakings performing in the field of electricity shall keep separate accounts for each of their generation, transmission, distribution and trading activities,⁹⁴ in a way as if they were carried out by separate undertakings.⁹⁵ The internal accounts shall include a balance sheet and a profit and loss account for each activity.⁹⁶ The competent authority to approve the methodology of application of this accounting unbundling is the relevant “Cooperation Of Energy Regulators”⁹⁷ whereas the prerequisites that the Greek legislature has set out for a company to be subject to that sort of unbundling are: a) to be a fully integrated undertaking, b) to act in the field of electricity and finally c) to have the relevant licence for the generation, trading, transmission or distribution of electricity.

E. THE UNBUNDLING OF TSOs

There is a whole controversy as far as the **unbundling of the Transmission System Operators** is concerned. The Third Energy Package introduced three different models that could be adopted by TSOs, so as not only are they well-organized, but also provide system security, promote a spirit of cooperation between TSOs, regulators and market parties, let alone the fact that this diversity of choices could encourage innovation in the specific field. The reason behind the various considerations for the choice of the best model is that it has to safeguard the neutrality of the TSOs towards the entrance of third parties to the grids.⁹⁸

⁹³ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p. 82, 2011.

⁹⁴ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p. 81, 2011.

⁹⁵ DG TREN, *Note Of Dg Energy & Transport On Directives 2003/54/Ec And 2003/55/Ec On The Internal Market In Electricity And Natural Gas*, p.18, 2004.

⁹⁶ DG TREN, *Note Of Dg Energy & Transport On Directives 2003/54/Ec And 2003/55/Ec On The Internal Market In Electricity And Natural Gas*, p.18, 2004.

⁹⁷ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p. 81, 2011.

⁹⁸ Theodore Panagos, *The Unbundling In The Energy Sector Companies*, Sakkoulas Editions, p. 103, 2011.

E.1.CERTIFICATION PROCEDURE

Before the examination of the models we should write a few words about the certification procedure which is the same irrespectively of the TSO model chosen. Article 10 of the 2009/72/EC Directive mandates the details of the procedure. The competent regulatory authorities of every Member State monitor the compliance of every TSO to the rules of Article 9 (that are explained below) in the following ways: Either the TSO on its own initiative, asks for a reassessment of its compliance due to future transactions, or ex officio the regulatory authority initiates the certification procedures after being informed of scheduled changes, etc.⁹⁹ Finally, another incentive for the initiation of such a procedure could be a request from the Energy Community Secreteriat.¹⁰⁰The decision on whether a TSO should be certified must be issued in approximately a four month period and silence would be considered as certification granting.¹⁰¹

E.2.OWNERSHIP UNBUNDLING

The first suggested model is that of the **ownership unbundling**. In compliance with that model, an undertaking is at the same time the owner and TSO of a transmission system. In that case, the undertaking would be first responsible to treat the system users in a non discriminatory way regarding third party access, furthermore collect access and congestion charges on the one hand and payments via its compensation mechanisms on the other, together with maintaining and developing the network system and ensuring the ability of the system to meet market

⁹⁹ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.74, Electricity, Directive 2009/72/EC.

¹⁰⁰ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.74, Electricity, Directive 2009/72/EC.

¹⁰¹ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.74, Electricity, Directive 2009/72/EC.

demands.¹⁰² Pursuant to that model, a person cannot exercise control over an undertaking performing any of the production or supply functions, and simultaneously control or exercise any right over a TSO or a transmission system.^{103 104} And vice versa, a person exercising control over a TSO, is not entitled to control or exercise any right over an undertaking performing any of the functions of production or supply.¹⁰⁵

When it comes to “**control**”, we mean nothing different from the meaning that Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (‘the EC Merger Regulation’), has given to control.¹⁰⁶ Pursuant to Article 3(2) EC Merger Regulation, control can be exercised through rights, contracts and other means in a manner that suggests decisive influence over an undertaking.¹⁰⁷ Accordingly, decisive influence could arise either from ownership and rights to use the undertaking’s assets, or from rights and contracts conferring decisive influence regarding the organization and decision making of an undertaking.¹⁰⁸

¹⁰² Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.9, 2010.

¹⁰³ Directive 2009/72/EC, Article 9(1)(b)(i).

¹⁰⁴ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.8, 2010.

¹⁰⁵ Directive 2009/72/EC, Article 9(1)(b) (ii).

¹⁰⁶ Directive 2009/72/EC, Recital 13.

¹⁰⁷ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.8, 2010.

¹⁰⁸ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And

Article 9(1)(b)(i) of Directive 2009/72/EC also refers to “**person**” and “**rights**”. By “person” this Article encompasses not only individuals, but also companies, private/public sector entities. Even more specifically, the “person” would usually be either the company responsible for the supply or network operation activity or a parent company with subsidiaries acting as suppliers or network operators.¹⁰⁹ On the other hand, the abstract concept of “**rights**” could possibly include a vast variety of rights such as voting rights, appointing rights, administrative rights, rights of legal representation and holding of majority shares. Article 9(1)(b) specifies the concept of shareholding even more, setting some mandatory prerequisites that need to be met in case a supplier keeps a shareholding in a network operator.¹¹⁰ First the shareholding cannot be a majority share. Furthermore, voting rights relating to the shareholding cannot be directly/indirectly exercised by the supplier, neither is the supplier capable of appointing members of the supervisory or the administrative board, nor can he exercise any sort of control over the network operator or the network system. In the opposite case, where a TSO reserves a supplier shareholding, the same cumulative conditions need to apply.¹¹¹

Similarly, Article 9(1)(c) underpins that a “person”, exercising control or any sort of rights in a supply/generation undertaking cannot exercise decisive powers in

Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.8, 2010.

¹⁰⁹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.9, 2010.

¹¹⁰ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.9, 2010.

¹¹¹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.10, 2010.

the appointment of members of the administrative board, the supervisory board, or legally representing bodies of a TSO or a transmission system.¹¹² The incentive behind this is the avoidance of concentration of powers in a single entity, in other words, the avoidance of situations where a parent company participating in the field of supply, even slightly, also participates in the nomination of TSO members.¹¹³ On the same wavelength, the same person cannot simultaneously be a board member of a supplier and a TSO.¹¹⁴

Three clarifications regarding ownership unbundling are also important. First, we should underpin that although the above rules apply both to electricity and gas sectors, interdependency between those two different fields in a way that the same person is both an electricity supplier and a gas TSO, or a gas supplier and an electricity TSO is unacceptable.¹¹⁵ Furthermore, it is worth mentioning that the ownership unbundling rules equally apply to both private and public entities and if for example two separate public bodies operate in the field of generation and transmission, thought needs to be given on whether they are under the common influence of a third public entity.¹¹⁶ In that case they should all comply with the aforementioned rules. Finally, Article 9(5) of Directive 2009/72/EC refers to the case where TSOs that are ownership unbundled create a joint undertaking, functioning as a

¹¹² Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.10, 2010.

¹¹³ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.10, 2010.

¹¹⁴ Directive 2009/72/EC, Article 9 (1)(d).

¹¹⁵ Directive 2009/72/EC, Article 9 (3).

¹¹⁶ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.10, 2010.

TSO in more than one Member States.¹¹⁷ According to the European Legislator that legal arrangement escapes the regulatory framework set out in Article 9(1)(a), as explained above.¹¹⁸

Making an assessment of the Ownership Unbundling we would find both some benefits and costs. To begin with we should definitely consider its effect on competition since ownership unbundling reduces discrimination conduct against non-integrated competitors.¹¹⁹ Nevertheless, it might possibly make space for mergers of generation undertakings because of the fact that the selling of vertically unbundled transmission assets could become financial resources for horizontal integration.¹²⁰ Another thing we could also consider as an advantage of the ownership unbundling is the promotion of transparency among network and competitive businesses resulting into facilitation and effectiveness of regulation.¹²¹ On the second point, a potential disadvantage could be the increase of regulatory oversight requirements as far as

¹¹⁷ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.10, 2010.

¹¹⁸ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.10, 2010.

¹¹⁹ Michael Pollitt, The arguments for and against ownership unbundling of energy transmission networks, Judge Business School and ESRC Electricity Policy Research Group University of Cambridge p.7, 2007.

¹²⁰ Michael Pollitt, The arguments for and against ownership unbundling of energy transmission networks, Judge Business School and ESRC Electricity Policy Research Group University of Cambridge p.7, 2007.

¹²¹ Michael Pollitt, The arguments for and against ownership unbundling of energy transmission networks, Judge Business School and ESRC Electricity Policy Research Group University of Cambridge p.8, 2007.

transactions between unbundled parts of the electricity production are concerned.¹²² Regarding security of supply, it can have beneficial effect on forcing transmission companies to actually get improved and even incentivize better information systems.¹²³ It can also, on one hand reduce the costs of transactions and on the other, increase computing system costs for the coordination of transmission sector. On a similar basis, power contracts may have to be renegotiated, conferring significant costs to the undertakings, especially when the parties are from different countries and essential wealth transfers may diminish the national social welfare.¹²⁴ Ultimately, the risk of erratic governmental interference is smaller seeing that after the reformed framework introduced by the Third Energy Package, governments will be less willing to initiate alteration and renovation programmes.¹²⁵

E.3. INDEPENDENT SYSTEM OPERATOR (ISO)

The second model a Transmission System Operator could adopt is the Independent System Operator (ISO). What should first be stated is that it also applies only to vertically integrated undertakings which may have their seat in the same or different Member States, as long as they are operating in at least one of the fields of transmission or distribution of electricity together with either generation or supply of the latter.¹²⁶ Now it's high time we examined the ISO model step by step and in detail.

¹²² Michael Pollitt, The arguments for and against ownership unbundling of energy transmission networks, Judge Business School and ESRC Electricity Policy Research Group University of Cambridge p.8, 2007.

¹²³ Michael Pollitt, The arguments for and against ownership unbundling of energy transmission networks, Judge Business School and ESRC Electricity Policy Research Group University of Cambridge p.8, 2007.

¹²⁴ Michael Pollitt, The arguments for and against ownership unbundling of energy transmission networks, Judge Business School and ESRC Electricity Policy Research Group University of Cambridge p.8, 2007.

¹²⁵ Michael Pollitt, The arguments for and against ownership unbundling of energy transmission networks, Judge Business School and ESRC Electricity Policy Research Group University of Cambridge p.9, 2007.

¹²⁶ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And

Due to Article 13(1) and (3) of the Directive 2009/72/EC, the proposal of the model has to be done by the owner of the interested transmission system.¹²⁷ Thereafter, the interested Member State has to approve the Independent System Operator and designate it as such¹²⁸, **only** on condition that the prerequisites listed in Article 13 (2) of the Directive are fully complied.¹²⁹

In order an ISO to be certified, the Regulatory Authority of each Member State has to make sure that the interested undertaking complies first with the rules of Article 11 of the Directive 2009/72/EC and then with the conditions set out in Article 13(2) of the latter.¹³⁰ The operator is required to adhere to the rules of ownership unbundling of Article 9(1)(b), (c) and (d) of the 2009/72/EC Directive that were developed above. Secondly, the operator has to demonstrate its financial, technical, physical and human resources sufficiency in order to achieve the goals set out in Article 12.¹³¹ The operator is moreover obliged to follow and demonstrate its ability

Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.11, 2010.

¹²⁷ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.11, 2010.

¹²⁸ The designation is also subject to the Commission's approval.

¹²⁹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.11, 2010.

¹³⁰ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.11, 2010.

¹³¹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.11, 2010.

to comply with a ten-year development plan designed and surveilled by each Member State's regulatory authority, whereas the owner of the transmission system must demonstrate its ability and attitude to follow the rules set out in Article 13(5).¹³² At this point I would like to highlight, that the burden of proof for the fulfillment of the above conditions is either on the electricity transmission operator or on the system owner and by no means on the regulatory authority.¹³³

The tasks of an Independent System Operator are first the tasks of a regular TSO. Particularly, **every ISO is responsible for the granting and monitoring of third party access**¹³⁴ which contains access charges collection, collection of congestion charges, along with payments through the internal compensation mechanism of the TSO.¹³⁵ Furthermore, the ISO is responsible for the operation, maintenance and development of the transmission system as well as any other task that suits a transmission system operator.¹³⁶ As far as investments are concerned, the ISO is fully responsible to safeguard the systemic ability to satisfy the market demand

¹³² Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

¹³³ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

¹³⁴ The system owner has nothing to do with the granting and management of third party access.

¹³⁵ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

¹³⁶ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

via investment planning.¹³⁷ In other words, at the point of development of the transmission system the ISO has to obtain all the necessary authorizations regarding the construction and assignation of new infrastructure.¹³⁸ Needless to say, the system owner is again out of the investment planning context.¹³⁹

On the other hand, the tasks and obligations of the owner of the transmission system are various and different and they are all listed in Article 13(5) of the 2009/72/EC Directive.¹⁴⁰ First, the owner of the system has to be collaborative towards the ISO and conduct cooperative activities in order to help the latter fulfill its tasks.¹⁴¹ The system owner is liable for all the assets of the network except for liability related to the tasks of the independent system operator.¹⁴² Pursuant to that,

¹³⁷ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

¹³⁸ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

¹³⁹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

¹⁴⁰ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

¹⁴¹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

¹⁴² Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And

the owner of the network will be responsible for the good or bad condition of the network and its performance, but won't be responsible for the system's management which as above explained is on ISO's responsibility. ¹⁴³

The network's financing is traditionally on the network owner's responsibility. According to that, the system owner is required to finance the investments decided by the ISO, but not all of them. ¹⁴⁴ Only the investments complying with the conditions the regulatory authority of each Member State demands in order to give its approval are financed by the network owner. ¹⁴⁵ The owner has the discretion not to finance an investment, but still must give its agreement for the investment's finance even in the case that the sponsor is the ISO itself. ¹⁴⁶ However, in that case, the new parts of the system are not going to be under its ownership. ¹⁴⁷ The financial issues are after all

Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.12, 2010.

¹⁴³ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁴⁴ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁴⁵ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁴⁶ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁴⁷ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And

also subject to the regulatory authority's approval and the latter is entrusted with the obligation to give its consultations whenever needed.¹⁴⁸

Article 37 (3) of Directive 2009/72/EC lays down all the obligations of the regulatory authorities when a TSO is ISO designated. Along with the certification duties, regulatory authorities have plenty of responsibilities.¹⁴⁹ As we have already stated, the regulatory authorities first have to keep an eye not only on the system owner's and the TSO's adherence to the rules, but also on the communications between those two entities.¹⁵⁰ Regulatory authorities are responsible to examine the contracts between the above two, act as a mediating authority when there are disputes that need settlement and especially when it comes to complaints submitted pursuant to Article 37(11).¹⁵¹ They are also empowered to approve the investment planning and the pluriannual network development plan that the ISO presents.¹⁵² On a similar basis,

Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁴⁸ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁴⁹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁵⁰ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁵¹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁵² Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And

the regulatory authorities monitor the use of congestion charges¹⁵³ and make sure that the network access tariffs ISOs collect contain remuneration for the owner of the system.¹⁵⁴ This remuneration is required for the network assets and for new investments made in the network.¹⁵⁵ They moreover are competent to exercise inspections and supervise even without prior announcement the system owner and the ISO.¹⁵⁶ On condition that the latter violate their obligations, with respect to Article 37(4)(d), penalties of non-compliance accordant to the proportionality principle are issued against the infringer.¹⁵⁷

One final requirement of the ISO model is the unbundling of the transmission system owner. Article 14(1) of the 2009/72/EC Directive explicitly requires that the

Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.13, 2010.

¹⁵³ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.14, 2010.

¹⁵⁴ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.14, 2010.

¹⁵⁵ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.14, 2010.

¹⁵⁶ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.14, 2010.

¹⁵⁷ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.14, 2010.

transmission system owner is legally unbundled while Article 14(2) highlights the need for functional unbundling of the latter.¹⁵⁸ Unbundling of accounts is also mentioned in Article 31 of the Directive as necessary for the system owner.

E.4. INDEPENDENT TRANSMISSION OPERATOR (ITO)

The Third Unbundling Model is that of **Independent Transmission Operator (ITO)**. Applying only to vertically integrated undertakings, according to the ITO model, the TSO can remain its part under a vast variety of rules.¹⁵⁹ The ITO must be autonomous, meaning that it has to be able to exist and function as an independent organism, a self-governing entity, fitted out with its own economic, technical, physical and human resources that are needed to succeed in fulfilling its obligation of electricity transmission.¹⁶⁰ Article 17(2) of the 2009/72/EC Directive encompasses the most important activities of a TSO under the ITO model, (referring also to Article 12 which sets out the activities of a TSO in general)¹⁶¹ among which, the representation of the TSO in its conducts with third parties, the representation of the TSO in the European Network of Transmission System Operators for Electricity, the equal granting and management of third party access, the collection of charges, the

¹⁵⁸ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.14,2010.

¹⁵⁹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.14,2010.

¹⁶⁰ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.15,2010.

¹⁶¹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.15,2010.

preservation of good function, maintenance and development of the transmission system, the drafting of investment planning, the establishment of the appropriate types of joint undertakings, the exercise of corporate services.¹⁶²

The assets of the network system and generally any sort of assets necessary for the electricity transmission must belong to the ITO's ownership.¹⁶³ The required amount of human resources has to be employed by the ITO, while the corporate services have to be carried out on a day-to-day basis, by qualified personnel also employed by the ITO.¹⁶⁴ Exceptionally and as long as the ITO had already employed sufficient number of people, it can cooperate with third-party service providers, as regards the exercise of corporate services and repair services.¹⁶⁵ At this point it is important to point out that, responsibilities of the ITO exclusively belong to the latter and cannot be transferred for example to another ITO, whereas the aforementioned required autonomy of an ITO is not full but relative, since the ancillary activities that have nothing to do with the electricity transmission, can also be carried out by people that are not ITO's employees.¹⁶⁶

¹⁶² Directive 2009/72/EC, Article 17(2).

¹⁶³ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.15,2010.

¹⁶⁴ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.15,2010.

¹⁶⁵ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.15,2010.

¹⁶⁶ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.15-16,2010.

According to Article 17(1)(c), the ITO can provide its services towards other sectors of the vertically integrated undertaking it belongs to, under the preconditions that; a) this provision of services is equal and not discriminatory against other users of the system, b) generation and supply are not restricted to compete and c) the competent regulatory authorities have approved the aforementioned provision of services.¹⁶⁷ Furthermore, the ITO must be the exclusive owner of its equipment, its location place and security systems and cannot cooperate with the same consultants as other sections of the vertically integrated undertaking.¹⁶⁸ Its financing for future investment projects and new assets comes from other sectors of the same vertically integrated undertaking,¹⁶⁹ since the request has been appropriately submitted, approved by the Supervisory Body¹⁷⁰ and has been taken into consideration by the competent regulatory authority.¹⁷¹¹⁷²

Due to Article 17(3) the ITO has to be organized in the legal form of a limited liability company.¹⁷³ The ITO's corporate identity, location, branding and other elements that particularize it, have to be clear and undisputable, creating neither

¹⁶⁷ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.16,2010.

¹⁶⁸ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.16,2010.

¹⁶⁹ Directive 2009/72/EC, Article 17(1)(d).

¹⁷⁰ Directive 2009/72/EC, Article 20.

¹⁷¹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.16,2010.

¹⁷² Directive 2009/72/EC, Article 18(8).

¹⁷³ Council Directive 68/151/EEC, Article 1.

misunderstandings, nor confusion to consumers.¹⁷⁴ Consumers should be able to identify the difference and independency of the ITO towards the vertically integrated undertaking.¹⁷⁵ With respect to **its independency**, the ITO must have the exclusive right to make decisions concerning not only the assets required for the function, maintenance and expansion of the transmission system, but also the determination of its competitive conduct.¹⁷⁶ Article 20 of the Directive under judgment further specifies the above principle; First, the ITO ought to have the power to raise money on the financial market.¹⁷⁷ Production and supply subsidiaries are not allowed to hold shares of the ITO and vice versa the ITO cannot hold shares or receive dividends by any electricity generating or supplying undertaking.¹⁷⁸ Complying with market terms and conditions, the ITO must inform the competent regulatory authority about any loans or other formally agreed financial relations with other sections of the vertically integrated undertaking.¹⁷⁹ Finally, other parts of the vertically integrated undertaking

¹⁷⁴ The suggested point of reference regarding consumer confusion on the ITO's identity is the European Union Trademark Law.

¹⁷⁵ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.17,2010.

¹⁷⁶ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.17,2010.

¹⁷⁷ Directive 2009/72/EC, Article 18(1)(b).

¹⁷⁸ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.17,2010.

¹⁷⁹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.17,2010.

ought not to impede the ITO from complying with its obligations and compliance programme it has drafted itself.¹⁸⁰

Not only the ITO itself, but also its staff and management must conform to the independency guarantees of Article 19. When talking about management we mean the executive managers or any board member except for the supervisory body, which is the body in charge of the ITO's management and its decisions are notified to the regulatory authority before becoming binding.¹⁸¹ More specifically, for three years before the TSO's management appointment any activity exercised towards any part of the vertically integrated undertaking but the TSO is unacceptable.¹⁸² (This rule applies only for the majority of the staff). Accordingly, the personnel constituting integral part of the ITO's management together with its employees, can neither have any other professional position, interest or responsibility within the vertically integrated business, nor receive economic benefits from other sectors of the latter.¹⁸³ Finally, the aforementioned staff must respect its duty of allegiance towards the ITO and for four years after their term of office, not have any type of link with any part of the vertically integrated undertaking.¹⁸⁴

¹⁸⁰ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.17,2010.

¹⁸¹ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.84, Electricity, Directive 2009/72/EC.

¹⁸² Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.84, Electricity, Directive 2009/72/EC.

¹⁸³ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.84, Electricity, Directive 2009/72/EC.

¹⁸⁴ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.84, Electricity, Directive 2009/72/EC.

Another important aspect of the ITO model is the appointment of a Supervisory Body, which is going to be the Head of decision making as regards the assets of the ITO's shareholders.¹⁸⁵ On the other hand, it cannot interfere with the regular management of the ITO, the network management or the drafting of the multi-annual network development plan.¹⁸⁶ Pursuant to Article 20(3) half of the Supervisory Board Members minus one have to comply with the following rules; a) any issue relating to the term of office of those members has to be notified to the regulatory authority which safeguards their independence,¹⁸⁷ b) three years before their appointment the people constituting the Supervisory Board personnel are required not to perform any sort of activity within the vertically integrated undertaking,¹⁸⁸ c) the staff of the Supervisory Board ought not to possess any other status along the vertically integrated undertaking,¹⁸⁹ d) nor receive any financial

¹⁸⁵ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.17,2010.

¹⁸⁶ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.17,2010.

¹⁸⁷ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.20,2010.

¹⁸⁸ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.20,2010.

¹⁸⁹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.20,2010.

benefit from the latter. Finally, for four years after the term of their office they cannot possess any other sort of decisive status within the whole undertaking.¹⁹⁰

The ITO is also responsible for the effective development of the network and the rationalized decision making regarding investments. So as to fulfill the above obligations, the ITO annually submits a ten-year plan of network development in order to let the market actors know which is the transmission infrastructure that needs to be built the following years, the investments that are necessary to be made and a timeframe in which this will happen, along with assumptions about the course of action of the electricity functions regarding other countries.¹⁹¹ The drafting of the above plan has to be done under the consultations of the regulatory authority and is required to be published.¹⁹² In case the ITO doesn't fulfill its commitments for overriding reasons, the regulatory authority shall take some action.¹⁹³

In a nutshell, the regulatory authority undertakes specific duties as far as the ITO model is concerned. Those duties are indicatively set out in Article 37(5) and in few words dictate the following: First, the issuing of penalties in the case of discriminatory behavior in favor of the vertically integrated undertaking,¹⁹⁴ surveillance of communications between the TSO and the vertically integrated

¹⁹⁰ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.20,2010.

¹⁹¹ Commission Staff Working Paper Interpretative Note On Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas The Unbundling Regime, p.20,2010.

¹⁹² Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.88, Electricity, Directive 2009/72/EC.

¹⁹³ Directive 2009/72/EC, Article 22(7).

¹⁹⁴ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.100, Electricity, Directive 2009/72/EC.

undertaking,¹⁹⁵ dispute settlement between the above, monitoring of commercial and financial issues,¹⁹⁶ along with examination of contracts and agreements,¹⁹⁷ justification requests towards the vertically integrated undertaking,¹⁹⁸ carrying out of inspections on the premises of both the TSO and the vertically integrated undertaking,¹⁹⁹ assignment of the TSO's activities to another one in case of continuous breaches especially of the non-discriminatory behavior doctrine.²⁰⁰

After scrutinizing the application of all the aforementioned principles of the ITO unbundling, will the Commission ensure its full and effective independence.

F. THE ESTABLISHMENT OF THE INDEPENDENT POWER TRANSMISSION OPERATOR (IPTO/ADMIE)

Another innovation introduced by the Third Energy Package and particularly, Directive 2009/72/EC and implemented in compliance with Law 4001/2011, was the

¹⁹⁵ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.100, Electricity, Directive 2009/72/EC.

¹⁹⁶ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.100, Electricity, Directive 2009/72/EC.

¹⁹⁷ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.100, Electricity, Directive 2009/72/EC.

¹⁹⁸ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.100, Electricity, Directive 2009/72/EC.

¹⁹⁹ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.100, Electricity, Directive 2009/72/EC.

²⁰⁰ Part II Acquis Communautaire, Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, p.100, Electricity, Directive 2009/72/EC.

establishment of The Independent Power Transmission Operator (IPTO or ADMIE) S.A. Pursuant to that Law, ADMIE is the undertaking responsible for the transmission of electricity in the Hellenic Electricity Transmission System, in other words it is the Transmission System Operator for Greece.²⁰¹ It assumed its role of system operator on 1st February 2012, when the System Operation Code of 2012 came into force.²⁰² Its duties include the conservation and development of the system's operation so as to safeguard the safety, efficiency and reliability of electricity supply.²⁰³ ADMIE is in PPC's full ownership. PPC is a vertically integrated power generation and electricity supply company, which is both state-owned (51.12 per cent) and owned by not only private and institutional investors but also pension funds (48.88 per cent), through its listing on the Athens and London Stock Exchanges.²⁰⁴ However it is entirely independent from PPC as regards its operation and management and hence has retained all its decision-making as laid down by Law 4001/2011 and Directive 2009/72/EC.²⁰⁵

F.1. THE STORY OF PRIVATIZATION OF ADMIE

After the privatization of DESFA, which was the Greek Natural Gas System Operator, in August 2013, the Independent Power Transmission Operator would be the second entity of the energy sector imminent to be privatized²⁰⁶. Due to its 11,300 km of transmission lines with the potential of further expansion and interconnection, IPTO constitutes a promising infrastructure for European energy investors.²⁰⁷ Initiated with a view to the enhancement of the country's credibility after Greece's

²⁰¹ <http://www.admie.gr/nc/en/home/>

²⁰² Norton Rose Fulbright, The privatization of the Greek electricity system, p.1, 2013.

²⁰³ <http://www.admie.gr/nc/en/home/>

²⁰⁴ Norton Rose Fulbright, The privatization of the Greek electricity system, p.1, 2013.

²⁰⁵ <http://www.admie.gr/nc/en/home/>

²⁰⁶ Norton Rose Fulbright, The privatization of the Greek electricity system, p.1, 2013.

²⁰⁷ Norton Rose Fulbright, The privatization of the Greek electricity system, p.1, 2013.

public debt crisis of 2010, the privatization aimed both at the attraction of direct investment and significant flow of capital to the infrastructure.²⁰⁸ But we shouldn't face IPTO's privatization as mere sale of public assets. On the contrary, the Hellenic Republic Asset Development Fund S.A. (HRADF or the Fund), which is the entity running the project, struggled to maintain professionalism and efficiency of the programme on high levels along with discouraging the government from unnecessary interventions.²⁰⁹ IPTO's assets could be categorized into three groups: company shares, real estate and voting rights. After transferred to the Fund, they could be sold, developed or liquidated.²¹⁰

The responsibilities of an Independent Transmission Operator have already been analyzed above; hence I won't come to details regarding its scope and responsibilities. In a very succinct and concentrated presentation I would say that ADMIE is responsible for the insurance of the system's ability to meet reasonable electricity demand, it is fully responsible for an efficient and environmentally healthy transmission system let alone its safeguarding role of the system's security of supply, adequacy and systemic reliability.²¹¹ It furthermore grants access to the system to third parties, provides network interconnection and is the manager cross-border flows of electricity, settles system imbalances, compensates generation capacities at regulated prices, etc.²¹² As far as the charges attributable to the transmission services provided are concerned, they are set by IPTO and approved by the Regulatory

²⁰⁸ Norton Rose Fulbright, *The privatization of the Greek electricity system*, p.1, 2013.

²⁰⁹ Norton Rose Fulbright, *The privatization of the Greek electricity system*, p.1, 2013.

²¹⁰ Norton Rose Fulbright, *The privatization of the Greek electricity system*, p.1, 2013.

²¹¹ Norton Rose Fulbright, *The privatization of the Greek electricity system*, p.2, 2013.

²¹² Norton Rose Fulbright, *The privatization of the Greek electricity system*, p.2, 2013.

Authority for Energy in Greece.²¹³ Every March IPTO drafts the system development programme for the following decade and submits it to RAE for approval.²¹⁴

Pursuant to the Greek economic adjustment programme, the Greek government announced the restructuring and privatization of PPC. This project would include full separation of IPTO from PPC and IPTO's partial privatization in two phases: First, IPTO's share capital would be increased through a share purchase agreement.²¹⁵ After the separation the hypothetical investor would hold 51 per cent of IPTO's shares and have operational control, whereas PPC's shareholding would come to 49 per cent, which was considered as a rather unattractive proposal.²¹⁶ After that, the plan was revised and was decided that sale of 66 per cent of IPTO's shareholding would be made in an international tender.²¹⁷ According to that plan, the State of Greece would retain a minority stake of 34 per cent of IPTO directly and not through PPC.²¹⁸

F.2.THE END OF THE STORY

Around the mids of 2014, international tender procedures for the sale of the 66 per cent stake in IPTO were going very well but a little behind the schedule.²¹⁹The

²¹³ Norton Rose Fulbright, The privatization of the Greek electricity system, p.2, 2013.

²¹⁴ Norton Rose Fulbright, The privatization of the Greek electricity system, p.2, 2013.

²¹⁵ Norton Rose Fulbright, The privatization of the Greek electricity system, p.2, 2013.

²¹⁶ Norton Rose Fulbright, The privatization of the Greek electricity system, p.2, 2013.

²¹⁷ Norton Rose Fulbright, The privatization of the Greek electricity system, p.2, 2013.

²¹⁸ Norton Rose Fulbright, The privatization of the Greek electricity system, p.3, 2013.

²¹⁹ A.Metaxas & Associates, Political, legal woes a concern for IPTO privatization, energypress.eu, 2014, <http://energypress.eu/political-legal-developments-concern-ipto-sale>.

tender's candidates, Terna, SGCC, Elia, and PSP were fully interested and there had arisen legitimate expectations for a good deal.²²⁰ However, despite this prosperous climate, the project is about to run aground for two reasons.²²¹ First because of the legal action union groups have taken against PPC, claiming unconstitutionality of the foregoing project and accusing PPC for withholding workers' contributions in order to sponsor its project.²²² Another reason causing the derail of the project would be political instability due to the appointment of a new President,²²³ which came true on the 25TH of January 2015, after the early called national elections.²²⁴

And as if the aforementioned were not enough, the new Minister of Production Reconstruction, Mr. Panagiotis Lafazanis stated that the new government will directly **freeze** any privatization relating to PPC and specifically the privatization of ADMIE, because they do not believe in the efficiency of privatizations relating to infrastructures that assist the development of a country,²²⁵ giving an unfortunate end to a far-reaching project.

²²⁰ A.Metaxas & Associates, Political, legal woes a concern for IPTO privatization, energypress.eu, 2014, <http://energypress.eu/political-legal-developments-concern-ipto-sale>.

²²¹ A.Metaxas & Associates, Political, legal woes a concern for IPTO privatization, energypress.eu, 2014, <http://energypress.eu/political-legal-developments-concern-ipto-sale>.

²²² A.Metaxas & Associates, Political, legal woes a concern for IPTO privatization, energypress.eu, 2014, <http://energypress.eu/political-legal-developments-concern-ipto-sale>.

²²³ A.Metaxas & Associates, Political, legal woes a concern for IPTO privatization, energypress.eu, 2014, <http://energypress.eu/political-legal-developments-concern-ipto-sale>.

²²⁴ A.Metaxas & Associates, Political, legal woes a concern for IPTO privatization, energypress.eu, 2014, <http://energypress.eu/political-legal-developments-concern-ipto-sale>.

²²⁵ <http://www.skai.gr/news/finance/article/274143/lafazanis-stamatame-amesa-tis-idiotikopoiiseis-tis-dei-kai-tou-admie>.

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17. <http://www.admie.gr/nc/en/home/>
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