European Energy Law

Nord Stream Conference
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Overview

- Some figures

- Energy Policy for Europe
  - brief history
  - follow-up
    - third package internal energy market
    - 2nd Strategic Energy Review

- Final remarks
## Energy import dependency

<table>
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<th>All fuels</th>
<th>Solid</th>
<th>Oil</th>
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NORDSTREAM – EUROPEAN ENERGY POLICY | 3
The EU energy mix

2005

- Natural gas: 24.6%
- Oil: 36.7%
- Nuclear: 14.2%
- Renewables: 6.7%
- Solid fuels: 17.7%

1800 Mtoe

Source: EUROSTAT and PRIMES 2005

2030 (BaU)

- Natural gas: 27%
- Oil: 34%
- Nuclear: 11%
- Renewables: 12%
- Solid fuels: 16%

1990 Mtoe
## Proven natural gas reserves

<table>
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<tr>
<th>Rank</th>
<th>Country</th>
<th>Reserves (bcm)</th>
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</table>

Diversification of gas supply

- Share of imports in total consumption expected to increase to possibly 80% by 2030
- Imports are also likely to rise in absolute terms

[Graph showing gas supply sources: Russia (44%), Norway (26%), Algeria (12%), Others (18%)]
Shape of EU energy policy

- October 2005 Hampton Court: EU Heads of State recognised the need for a more coherent EU energy policy
- December 2005: EU-Council calls for an “integrated approach” to energy
- 10 January 2007: Commission proposes “an Energy Policy for Europe”
10 January 2007 – An Energy policy for Europe

- strategic objectives to guide EPE: 20-20-20
  - a 20% reduction of emission of greenhouse gases
  - a 20% share of renewable energies in EU energy consumption
  - saving 20% of energy consumption through energy efficiency
10 January 2007 – Action Plan

- Prospects for IEM
- Renewable Energy Road Map
- Progress in renewable electricity
- Sustainable power generation from fossil fuels
- Strategic Energy Technology Plan
- Progress report on biofuels
- Nuclear illustrative programme
- Priority interconnection plan
  - 10 gas pipelines of “European interest” (also Nordstream)
Commission proposals endorsed by European Council in March 2007

- integrated approach to climate and energy policy
  » mutually supportive
- 3 objectives EPE
  » increasing security of supply
  » ensuring the competitiveness of European economies and the availability of affordable energy
  » promoting environmental sustainability and combating climate change
- HOWEVER these objectives:
  » fully respecting MS’s choice of energy mix and sovereignty over primary energy sources
  » underpinned by a spirit of solidarity amongst MS
Competitiveness

integrated and mutually reinforced

Sustainable Development

Security of supply

- Internal market for gas and electricity
- Security of Supply: need for
  - effective diversification of energy sources and transport routes
  - develop more effective crisis response mechanism
  - improving oil data transparency and reviewing EU oil supply infrastructures and oil stock mechanisms
  - thorough analysis of the availability and costs of gas storage facilities in the EU
  - assessment of the impact of current and potential energy imports
  - establishing an Energy Observatory
- International Energy policy
Follow-up EPE

- 19 September 2007: Commission proposes 3rd package for internal energy market
  - proposal to amend gas Directive 2003/55
  - proposal to amend electricity Directive 2003/54
  - proposal to amend electricity Regulation 1228/2003
  - proposal to amend gas Regulation 1775/2005
  - proposal for new Regulation establishing an Agency for the Cooperation or Energy Regulators
- 13 November 2008: second Strategic Energy Review
Key issues in third package

- effective separation of supply and production activities from network operations (unbundling)
- further harmonisation of the powers and strengthening of the independence of national energy regulators
- establishment of an independent mechanism for national regulators to cooperate and take decisions on important cross-border issues (ACER)
- creation of new Community mechanism for TSOs (ENSTOE and ENTSOG)
- increased transparency in energy market operations
- better consumer protection
Before liberalising energy market

Vertically integrated company

<table>
<thead>
<tr>
<th>Production</th>
<th>Transmission</th>
<th>Distribution</th>
<th>Supply to end consumers</th>
</tr>
</thead>
</table>

Production, Transmission, Distribution, Supply to end consumers
After liberalising energy market
Why preference for ownership unbundling?

- Currently legal unbundling
  - TSO may treat affiliated companies better than competing third parties
  - Non-discriminatory access to information cannot be guaranteed
  - Investment incentives with integrated company can be distorted

- THUS: risk of underinvestment and risk of privileging own sales companies
Now 3 unbundling options on the table

- European Commission’s proposal
  - Ownership Unbundling (OU) – preferred option
  - Independent System Operator (ISO) – second best
- European Council's common position:
  - Independent Transmission System Operator (ITO)
  - Member States are given the freedom to choose between OU, ISO or ITO
- Position of the European Parliament
  - Ownership Unbundling
  - ITO + trustee
First option: ownership unbundling

- TSO owns, operates, maintains and develops the transmission system
- TSO cannot be controlled by undertakings with supply and/or generation interests, and *vice versa*
- Persons controlling generation and/or supply cannot:
  - Nominate management or supervisory board to the TSO
  - Be member of representative bodies of TSO
  - Exercise voting rights
- If state is owner of TSO and generator/supplier at the same time, TSO should be under control of separate public body
Independent System Operator (ISO)

- Operates, maintains and develops the transmission system
- Transmission assets can remain with integrated undertaking
- Must not be controlled by generator/supplier
- Plans for new investment
  - Transmission Owner must facilitate investments decided by ISO
- Manages TPA and collects network tariffs
- Network owner cannot be responsible for TPA, nor for investment planning
- Must possess the necessary financial, technical and human resources
Independent Transmission Operator (ITO)

- TSO controlled by a vertically integrated undertaking
  - must have effective decision-making rights with respect to assets necessary to operate, maintain and develop network
- Has to comply with strict unbundling measures
  - Restrictions on shared services
  - Separate identity
  - Independent decision-making
  - Supervisory Board appoints/sacks management after involving the Regulator
  - ‘warm up’ and ‘cool down’ periods for majority of management
  - Compliance program + compliance officer
  - Regulatory involvement in investment decisions
Position of EU-Parliament

- ITO + Trustee
  - appointed by NRA, on proposal of VIU
  - responsible for appointment, renewal and dismissal of members of Supervisory Board
  - exercise voting rights in SB
  - has right of veto with respect to decisions that in his/her view may significantly reduce the asset value of the transmission system operator
Power and independence of regulators

- Already NRAs in second gas Directive
- Powers:
  - clear mandate to cooperate on European level, in close collaboration with ACER;
  - strengthen market regulation power
    - compliance monitoring TPA, unbundling obligations, balancing mechanisms, congestion management
    - reviewing investment plans of TSOs
    - monitoring transparency obligations
    - monitoring market opening and competition
    - ensuring that consumer protection measures are effective
Independence of NRAs

- Functionally independent of any other public or private entity
- Staff and members of decision-making body must act independently of any market interest and neither seek nor take instruction from any government or other public entity
- NRA must have legal personality, budgetary autonomy, appropriate human and financial resources and independent management
Independent mechanism for national regulators to cooperate and take decisions

**Why?**
- builds upon already existing cooperation
  - Self-regulatory forums
  - European Regulators Group for Electricity and Gas (ERGEG), established by EC in 2003
- Resulted in non-binding guidelines, recommendations and advice
- However, no real push towards cross-border issues
  - E.g. quite some differences in national grid codes

**How? Agency**
Agency for the Cooperation of Energy Regulators

- **Tasks:**
  - Provide framework for national regulators cooperate
  - Regulatory oversight of the cooperation between TSOs
  - Individual decision powers
  - General advisory role

- **Governance:**
  - Administrative Board
  - Regulatory Board
Also more cooperation between TSOs

- voluntary existing structures
  - Gas: Gas Transmission Europe (GTE)
  - Electr: European Transmission System Operators (ETSO)
- European Network of Transmission System Operators
  - Market and technical codes
  - Coordination of grid activities
  - Investment planning
    - Community-wide 10-year network development plan
Network development and investment decisions

- Every year: TSO must submit to NRA 10-year network development plan based on existing and forecast supply and demand
- If doubts on consistency with Community-wide IP: NRAS must consult Agency
- If TSO does not execute investments (other than for overriding reasons beyond its control)
  - NRA must act
    - Require TSO to execute investments
    - Organise tender procedure to any investors, or
    - Oblige TSO to accept capital increase
3rd country clause in Commission proposal

- aim: companies from 3rd countries wishing to acquire a significant interest or even control over an EU network have to comply with same unbundling requirements as EU-companies
- text:
  - no control over TSO by a person or persons from 3rd country, unless agreement between EU and third country
3rd country clause in common position

- general prohibition is removed: agreement with 3rd country no longer prerequisite
- certification procedure
  - ensure compliance with any of the unbundling options
  - refuse certification if it puts at risk security of supply of MS concerned or of Community
- TSO shall notify NRA of any circumstances that would result in a person(s) from 3rd countries acquiring control of TSO
- decision by NRA
  - must consult Commission
  - shall take utmost account of Commission’s opinion
Level playing field

- allows MS to take measures to ensure a level playing field provided these measures are
  - proportionate, non-discriminatory and transparent
  - comply with EC Treaty
- measures need to be approved by Commission
TPA exemptions Article 22

- Allows for exemption for new gas infrastructure (IC, LNG & storage)
  - limited in time/partial
- procedure is clarified
- minimum requirements for new investment:
  - assess market demand for capacity
  - measures to prevent capacity hoarding (UIOLI)
  - tradability on secondary market
- prevention of site hoarding: limit exemption validity
3rd package – indicative timetable

- European Council reached political agreement – 10 October 2008
- Several rounds of discussions between Council/EP/EC – until April 2009
- EP second reading – May 2009
- Council formal adoption – September 2009
- if no agreement in second reading
  » conciliation under SE presidency
Second Energy Review

- **approach:**
  - from long-term energy security viewpoint: 20-20-20 strategy is right direction to go
  - in short to medium term: proposal of EU Energy Security and Solidarity Action Plan
  - need to start looking beyond 2020 to 2050

- **content**
  - Focus on Security of supply
  - Green Paper on energy infrastructure
  - Communication on security of gas supply
  - Offshore wind energy
  - Revision of oil stocks directive
  - Up-date of the PINC
  - Energy efficiency package
Green Paper on energy infrastructure

- Part of the Strategic Energy Review package

- **Main focus:**
  - Re-position network policy within EU Energy policy
  1. Identification of geographic “priority areas”
  2. How the Internal Energy Market tools can help network development
  3. Better coherence between EU institutions and MS in realisation of priority projects

- The current TEN-E guidelines need revision
NORDSTREAM – EUROPEAN ENERGY POLICY

Southern Corridor gas corridor

Baltic interconnection plan

Mediterranean energy ring

LNG

North Sea offshore grid

N-S interconnections within Central and Eastern Europe

Southern Corridor gas corridor

Mediterranean energy ring
Also focus on international relations

- Energy must be political priority in EU’s international relations
- Need to develop trust and deeper and legally binding ties between EU and producer and transit countries
  - Russia will remain the EU’s main energy partner far into the future
  - EU and Russia:
    - Partnership and Cooperation Agreement: need for New Agreement
    - create stability and predictability of demand or Russian gas
    - clarify conditions under which Russian companies may invest downstream in the EU
  - Also EU-OPEC, but also US, Canada, African continent
- Europe needs to speak with one voice and act accordingly
Improved oil and gas stocks and crisis response mechanisms

- Revision of strategic oil stocks mechanism
  - EU publishes already strategic oil stock of each MS
  - Need also for more transparency on commercial oil stocks held in the EU

- Also security of Gas Supply Directive
Directive 2004/67 of security of natural gas supply

- MS must
  - define role and responsibilities of the different gas market players on SoS
  - specify minimum SoS standards that must be complied with
  - ensure that SoS measures are compatible with requirements of internal gas market
  - ensure that supplies for households are protected in the event of
    - partial disruption of national gas supplies
    - extremely cold temperatures
    - periods of exceptionally high gas demand

- Gas Coordination Group: facilitate the coordination SoS-measures
Commission will propose revised SoS Directive

- Need for
  - Greater harmonisation of SoS standards
  - Predefined emergency measures

- Insufficient evidence at this stage for EU to decide on obligatory strategic gas stocks
Elements of security of gas supply

- **Long term:**
  - Management of demand (20-20-20 by 2020)
  - Completion of the internal market
  - Investment in infrastructure
  - Promotion of indigenous production
  - Diversification of sources and good relations with producer and transit countries
Internal Market is also about Security of Supply

- long-term security of supply and investment
  - Coordinated investment planning of ENSTOE and ENTSOG
  - Cross-border regulatory oversight by the Agency
  - Transparency on infrastructure use will provide information on need for and value of investment

- short term
  - TSOs to publish historic and forecast data on aggregated supply and demand
  - Storage and LNG system operators to publish data on capacity use and gas in stock
  - Development of network codes that will facilitate flow of gas across borders
EU’s energy challenge

- build a truly interconnected European energy network
- recent gas crisis
  - especially Eastern European MS had virtually no alternative for lost supplies
  - need to
    - increase capacity of import networks and flexibility of supplies
    - have new import routes
    - north-south movement of gas
- need for €150 billion on gas networks – excluding import pipelines from 3rd countries
Map 4

Main transmission projects in Eurasia to 2015

- **Main existing gas pipeline**
- **Planned/proposed gas pipeline**
- ○ Production area
- ★ Existing LNG terminal
- ★★ Planned/proposed terminal

The boundaries and names shown and the designations used on maps included in this publication do not imply official endorsement or acceptance by the IEA.
Huge investments in energy sector (IEA)

Total investment = $20.2 trillion (in year-2005 dollars)
Nordstream from EU perspective

- In light of declining domestic gas supplies and increasing natural gas demand
  - Additional pipeline capacity very important
- It will help to improve long-term security of natural gas supplies to Europe
  - Cfr. TEN-E guidelines
- Of course, EU legislation must be met (a.o. environmental issues)
Conclusions – security of supply

- Security of Supply is of paramount importance to the development of the EU gas market
- Significant infrastructure investments have to be made
- Increased diversity of supply enhances not only security but also competition
- European market is also crucial for natural gas producers
Conclusions – internal market

- Independence of networks = optimisation of networks
- Interconnection = flexibility
- Liberalisation = diversification
- One single market = one single voice
- Large flexible networks are robust to deal with shocks
- Transparency = security
- Reliable market signals = effective investment
THANK YOU FOR YOUR ATTENTION