

[Energy: Commission refers Belgium to the Court for failing to comply with EU rules on electricity and gas markets](#)

Today, the European Commission has decided to refer **Belgium** to the Court of Justice of the EU for failure to ensure the correct implementation of EU electricity market rules (Electricity Directive, [Directive 2009/72/EC](#)) and of the EU gas market rules (Gas Directive, [Directive 2009/73/EC](#)). Both Directives are part of the [Third Energy Package](#) and contain key provisions for the proper functioning of energy markets.

Belgium did not correctly transpose certain rules on the powers of the national regulator. In particular, the Belgian regulator has not been given the powers to take decisions that are binding on electricity and gas undertakings, and can only make proposals to the government to take such decisions. Likewise, the conditions for connection to the electricity and gas networks are set by the government rather than by the regulator, as required by EU law. Finally, Belgian law does not ensure that transmission system operators actually control the whole of the electricity or gas network for which they are responsible, so they may not be in a position to fully ensure non-discriminatory access of electricity or gas suppliers to the grid.

The Commission decided to open EU infringement proceedings against Belgium in October 2014 by sending a letter of formal notice, followed by a reasoned opinion in [February 2016](#). Since Belgium has not addressed all the issues raised, the Commission decided to refer the case to the Court of Justice of the EU.

Background

The [Third Energy Package](#) is composed of two Directives (the Electricity Directive, [Directive 2009/72/EC](#) and the Gas Directive, [Directive 2009/73/EC](#)). This package also contains three EU Regulations (the Electricity Regulation [\(EC\) No 714/2009](#), the Gas Regulation [\(EC\) No 715/2009](#) and the ACER Regulation [\(EC\) No 713/2009](#)) and establishes key provisions for the proper functioning of energy markets to the benefit of consumers.

The package includes EU rules on the unbundling of transmission system operators from energy suppliers and producers in order to ensure non-discriminatory access of all suppliers and producers to electricity and gas transmission networks. When Member States choose the so-called 'independent transmission operator' (ITO) unbundling model – under which it is permitted that an undertaking active in production or supply of electricity or gas also owns a transmission system (vertically integrated undertaking) – they have to make sure that the transmission system is effectively run separately from the other activities of the vertically integrated undertaking.

A core element of the electricity and gas market framework is the stronger independence and the powers of national regulators under the Electricity and Gas Directive. In particular, the Directives provide that national regulators should be independent of the government or business interests and should have the power to independently determine tariffs or the methodologies for calculating tariffs for the use of electricity and gas networks and other terms and conditions for access to those networks. The Electricity and Gas Regulations also lay down rules on the calculation of network tariffs, which shall take into account all actual costs incurred to network operators.

At the same time, given the increased independence and competences of national regulators, the Directives establish, as a guarantee for transparency and legality, certain rules on regulators' accountability. The requirement for the Member States to ensure a possibility for appeal (before a court or another independent body) by parties affected by the regulator's decisions is a central aspect of this accountability.

For More Information