

# Infringement – Internal energy market: Commission refers Germany and Hungary to the Court of Justice of the EU for failure to fully comply with the Third Energy Package

The European Commission is referring **Germany** to the Court of Justice of the EU to ensure a correct implementation of the Electricity Directive ([Directive 2009/72/EC](#)) and of the 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.

Germany has not ensured full respect of rules concerning the powers and independence of the national regulatory authority. In particular, the regulator does not enjoy full discretion in the setting of network tariffs and other terms and conditions for access to networks and balancing services, since many elements for setting these tariffs and terms and conditions are to a large extent laid down in detailed regulations adopted by the Federal government. Furthermore, Germany has incorrectly transposed into national law several requirements concerning the independent transmission operator (ITO) unbundling model. For example, the rules on the independence of the staff and the management of the ITO do not fully respect these Directives and the definition of vertically integrated undertaking incorrectly excludes activities outside the EU.

A letter of formal notice was sent to Germany in February 2015, followed by a reasoned opinion in April 2016. Since compliance with EU law is not yet in place, the Commission has to refer these matters to the Court of Justice.

## **The Commission takes Hungary to Court regarding its legislation on energy network tariffs**

The European Commission is referring **Hungary** to the Court of Justice of the EU to ensure a correct implementation of the Third Energy Package's requirements on network tariffs. The Third Energy Package requires that tariffs applied by network operators for the use of electricity and gas networks are regulated in order to prevent anti-competitive behaviours, and entrusts national regulatory authorities with the task of setting these tariffs or their methodologies.

After it assessed the legislative measures adopted by Hungary in the energy field, the Commission found that Hungarian law excludes certain types of costs from the calculation of network electricity and gas tariffs, in violation of the principle of cost-recovery of tariffs provided for in the Electricity and Gas Regulations. In addition, the Commission found that Hungary adopted amendments to its energy legislation which jeopardise the

right of market operators to a full judicial review of the national regulator's decisions on network tariffs.

The Commission addressed to Hungary a letter of formal notice on these issues in February 2015, and two reasoned opinions, respectively in December 2016 and April 2017. Since compliance with EU law is not yet in place, the Commission has decided to refer these matters to the Court of Justice.

## **Background**

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

These include new 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**

- On the key decisions in the July 2018 infringements package, see full [MEMO/18/4486](#).
- On the general infringements procedure, see [MEMO/12/12](#).
- On the [EU infringements procedure](#).