Contribution of
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Introduction

Following the adoption of the Network Codes and Guidelines, we now need to work towards their full and effective implementation. Implementation has started for many of them, but more work is needed. In most areas, we have built on the progress already achieved, through the voluntary early implementation process, before the Network Codes and Guidelines entered into force. I would like to take today's opportunity, as we celebrate the completion of the NC/GL development process, to thank all those who have worked hard over these years to develop the target models and the NC/GLs – from Asta and Walter onwards – for providing us with the opportunity of this occasion, but also the many more around Europe – in the National Regulatory Authorities (NRAs), the TSOs and the Power Exchanges, in the industry and other stakeholders, as well as in the Commission, the Agency and the ENTSOs - who have worked on the early implementation process.

What we have learned from this process - and it is a lesson that I believe will come useful for the future as well - is that success needs a concerted effort by all parties involved, TSOs, NRAs and PXs, where relevant, at national level, and, at EU level, the ENTSOs, the Agency and the European Commission, but also stakeholders. This is a necessary condition to ensure the proper, timely and "in spirit" implementation of the Network Codes and Guidelines. It is a necessary, but not necessarily a sufficient condition.

Need for clarity of roles

In fact, we need more. We need clarity of roles, we need proper monitoring, but, above all, we need resolution and a strong, shared belief that a well-functioning EU-wide market is best for European consumers. In this respect, and before I elaborate on the

other conditions for success, let me pause one moment to share my concerns regarding some reactions to the European Commission's proposals in the Clean Energy for All European Package. I believe that those 900 or so pages outline an ambitious vision for a future-proof market design. Some details might need to be improved and further elaborated, but overall the Package definitely moves in the right direction. Perhaps it is not a Fourth Package, and gas is missing for the time being, but, if implemented as proposed, it will significantly help the EU electricity sector successfully and efficiently to handle the challenges that it will face in the next ten years and beyond. Yet, while I hope that most of us here today share and support such a vision, I have heard more than one voice criticising the Commission for having gone too far. I hope we will not face the same attitude in the implementation of the Network Codes and Guidelines. The experience so far gives us reasons to be optimistic.

Let me now go back to the other two conditions. First of all, clarity of roles. In fact, while - as I have already mentioned, but I want to emphasise this again - successful implementation does very much rely on effective cooperation of all concerned parties, it is also important to maintain the roles and responsibilities of the different actors clear and clearly specified. Like a ship, the Internal Energy Market cannot sail without the concerted effort of the full crew; but like in a ship, in order to ensure "smooth sailing", each crew member should be clear as to what his/her role is … and stick to it.

Such clarity, and avoiding any duplication of effort, but in a constructively cooperative framework, is even more important if we consider the resource limitations we all face, severe on the NRAs' side, even more so in the case of the Agency – with the ENTSOs easily outnumbering us 2 to 1 on any topic. Therefore, we should be smart in defining a governance framework for this process which makes the most of the resources we collectively can devote to it.

How to achieve an effective monitoring

And here, inevitably, I need to turn to consider the most efficient and effective approach to the monitoring of the implementation of Network Codes and Guidelines, so that any problem can be identified as soon as possible and the appropriate remedial

actions designed and put in place. In his presentation earlier this morning, Klaus-Dieter also highlighted the importance of providing guidance in this process. Therefore, I will try to address this aspect as well.

When it comes to monitoring, the existing legislation is, in parts, not as clear as we would like. However, I believe we can resort to "first principles" to interpret it.

Let me try to have a go at it in the few minutes that I have.

First of all, let me stress that there are two types of monitoring: "compliance monitoring" and "effect monitoring". The first type of monitoring is checking whether the rules have been put in place and implemented. The second type of monitoring is assessing whether these rules deliver the intended results and benefits. If such results and benefits do not accrue, it may be a matter of the rules being implemented in a legally correct, but market-unfriendly way. This is possible when, for example, rules allow variants, but not all combinations of them deliver a market-conducive framework. It may also be that rules are implemented in different, yet legally admissible ways in different jurisdictions.

That said, let me share my vision regarding the different roles.

I believe it is undisputable that TSOs are primarily responsible for the implementation Network Codes and Guidelines and that is why I mentioned them first when listing the involved actors. I believe it is equally undisputable that NRAs have primary responsibility for monitoring national implementation and they should be able – without too much of a problem – to perform compliance monitoring and effective enforcement, ensuring compliance with all the obligations laid down in the Network Codes and Guidelines. They may also be able to perform effect monitoring at national level.

However, a well-functioning Internal Market needs more. It needs consistent implementation across the EU. This is where the ENTSOs and the Agency come to play. In fact, legislation assigns a somewhat concurrent role to the Agency and the ENTSOs in monitoring the implementation of the Network Codes and Guidelines EU-wide level.

However, the Agency is also responsible for monitoring the ENTSOs in the execution of their tasks, including clearly monitoring. This aspect creates, if not a hierarchy, at least a logical sequence between the monitoring activities of the ENTSOs and those of the Agency.

Therefore, I would say that, at least for what compliance monitoring is concerned, the ENTSOs should be in the front row. Having more technical resources, they can also more easily ensure that the information which is collected – which they collect - across the 28 Member States is assembled consistently and that it is of adequate quality. Unfortunately, today there still seems to be some distance to travel in terms of quality of the data collected by the ENTSOs.

This information, together with the results of ENTSOs' compliance monitoring, should then be passed on to the Agency for verification and further analysis, just to ensure an unbiased assessment of progress in the implementation of Network Codes and Guidelines. This information should also be accessible to NRAs as they have primary responsibilities for enforcing the implementation of and compliance with Network Codes and Guidelines. In this way, we should be able to avoid duplication of data collection. NRAs have already indicated that, as long as the information collected through the ENTSOs is of adequate quality, they would stop collecting information separately at national level.

Effect monitoring is more complex, as it involves taking a view as to how markets and systems function. This inevitably requires an EU-wide approach, since the Internal Energy Market is based on EU-wide systems and markets. Here I welcome the initiative of the ENTSOs. At the same time, I believe that effect monitoring is an area where the Agency has a comparative advantage. It also ties well with the more general responsibility of the Agency for monitoring developments in the Internal Energy Market which we have been doing since 2012, even though this year the lack of resources is most unfortunately forcing us to scale back our effort in this area.

For effect monitoring, the results of compliance monitoring clearly represent a starting point, but more is needed. Then the question is how this additional information is most

efficiently collected. Different ways are possible and have been suggested, but I firmly believe that, in the case of information owned by the TSOs or which the TSOs can easily collect, the same process as for compliance monitoring should be used. And very much for the same reasons. This information could be collected and verified by the ENTSOs together with the information required for compliance monitoring. In the past, the ENTSOs have not been enthusiastic about taking on this role – which has led to long debates as to what is a proportionate information request - but I hope that by now such a reluctance has been overcome.

Powers for requesting data

There is also information which does not come from TSOs and for which TSOs would have no comparative advantage in collecting. Since last year, the Agency is also successfully using, for Network Code/Guideline implementation monitoring purposes, the data that it receives under REMIT, obviously in an aggregated and anonymised format. However, and more generally, I believe it is to everybody's benefit that the Agency be given the power to request and obtain from any party, including NRAs, the information that it requires for its extensive monitoring responsibility, something that we are asking to be included in the Winter Package. Without it, we will continue to struggle to obtain the information necessary effectively to monitor developments in the market, and more so in those areas where problems might exist.

The role of stakeholders

Effect monitoring can also enormously benefit from input from stakeholders. We need therefore to have effective and efficient ways of involving stakeholders in this monitoring process and to collect their views as to what is working, but more importantly, as to what is not working. Here the electricity and gas sectors have gone down different routes and it could be useful to compare results – even though it might be too early to draw any definite conclusion.

The Network Codes and Guidelines in electricity envisage the establishment of Stakeholder Committees, where representatives of European associations of stakeholders sit. In the gas sector, the Functionality Platform was launched a year ago

by the Agency and ENTSOG. It allows any stakeholder, not just European associations, to submit issues regarding the implementation of Network Codes and Guidelines. Therefore, it provides a wider audience with the opportunity to input directly into this process. However, so far, no stakeholder has taken advantage of this opportunity, and this is something we should reflect upon. We should also consider whether Stakeholders Committees could be usefully established for the implementation of the gas Network Codes, especially for those, like the Balancing Network Code, where there is greater variety of implementation options.

Guidance

Before I conclude let me briefly address the benefits of guidance for effective and consistent implementation of Network Codes and Guidelines. This is particularly important in the electricity sector where a number of terms and conditions or methodologies are still to be developed, some of them at regional level. Clearly, the Commission can steer the process, formally – by providing interpretation of legislation – but almost more importantly, by "moral suasion", which so far, when used, has delivered. However, the Agency can also play an important role in ensuring consistency of NRAs' action and, through this action, of the implementation process more widely. This is one of the responsibilities assigned to the Agency by the Third Package and we have used it, parsimoniously, when we have seen this to be beneficial – for example with our recent recommendation on high-level principles for capacity calculation and remedial action cost sharing methodologies, but also, although in a different area, on criteria for cross-border cost allocation for PCIs.

Such guidance can also be provided on a more ongoing and detailed basis, and I wonder whether the positive experience with the Question & Answer document in REMIT could be replicated in the area of NC/GL implementation. The Q&A document addresses questions received from stakeholders by providing the joint view of the Agency and NRAs. It is not formal guidance, but it provides a useful reference for stakeholders and, in REMIT, it has been welcomed.

Cooperation

So, now that the job of developing the Network Codes and Guidelines is completed, the work starts. The previous sessions already provided interesting take-aways. Klaus-Dieter's presentation proposed useful suggestions for the development of a joint approach towards effective monitoring of implementation based on stronger cooperation of the involved parties which we, of course, welcome. This process must be inclusive, transparent and dynamic to allow the exchange of information, the cross fertilisation of best practices and the effective cooperation of all those involved to address any identified obstacle. I look forward to hearing your reactions to what I have just outlined or any other suggestion on how regulators - NRAs and the Agency – can best assist the process for the implementation of Network Codes and Guidelines to ensure that EU energy consumers can benefit the most from the Internal Energy Market.