Sector-specific regulation

States that have implemented a sector specific regulation to ensure competitiveness in their energy sector are for example:

A. EU Member states

I. CROATIA

1. REGULATORY APPROACH

In the last decade Croatian energy sector has undergone significant structural changes in order to meet the legal and institutional EU requirements. It has been liberalized by the implementation of sector specific regulation in order to establish and maintain market competition.

Such approach ensures objective, transparent and non-discriminative carrying out of energy activities and adaption of principles of regulated access to the network/system as well as development of methodologies for determination of tariffs systems and tariff itself in order to establish efficient and competitive energy market and protect consumers and energy operators.

In general, there are three basic objectives of the regulatory regime:

1. security of energy supply;
2. competitive energy system;
3. sustainable energy sector development.

Furthermore, the regulator stipulates that a goal of the regulatory approach is to build a sustainable energy system that makes a balanced contribution to security of energy supply, competitiveness and environmental protection and provides security and availability of energy supply to consumers and business sector. Such energy supply is a perquisite for economy and social development.

2. LEGAL FRAMEWORK

The mayor tools for liberalization and market opening were two Acts, Energy Act and Act on the Regulation of Energy Activities, and a number of laws and bylaws regulating specific energy activities.

All these legal acts create a frame for independent energy regulation fully harmonized with the EU standards.

3. REGULATORY AGENCY

Croatian Energy Regulatory Agency (HERA) is an autonomous, independent and non-profit public institution which regulates energy activities in the Republic of Croatia with the function to establish and implement the regulation of energy sector in order to promote a viable, sustainable and efficient energy sector.

In particular, the Agency is mandated for licensing of carrying out any energy activities, activities aimed at ensuring transparent and non-discriminatory functioning of the energy market, activities aimed at ensuring transparent and non-discriminatory performance of energy activities subject to public service obligation and carrying out activities related to regulation of energy prices to be set on the basis of tariff systems.

HERA’s obligations, authorities and responsibilities are based on the Act on the Regulation of Energy Activity, the Energy Act and other regulating specific energy activities.
The Agency is led by the Board of 5 Commissioners, responsible to the Croatian Parliament, and the Expert Services divided in 5 sectors, providing expert, administrative and technical services for HERA.

4. ADVANTAGES AND DISADVANTAGES OF THE REGULATORY APPROACH

The regulation of energy activities in Croatia promotes efficient and rational use of energy, entrepreneurship and investments in the sector, the use of renewables and protection of environment.

However, a full implementation has not been achieved and not because of insufficient legal framework but for need to overcome traditional bureaucratic inertia and widespread corruption. Lately, a situation has been improved with considerable opening of the market and in future competition will continue.

Nevertheless, the major problem of the energy sector is a lack of substantial investments in modernizing the whole energy sector and energy infrastructure and consequently high import dependency.

II. ROMANIA

1. REGULATORY APPROACH

The Romanian energy market has developed significantly in the last years, a period during which the legislation has been harmonised with the EU legal framework. The preferred regulatory approach appears to be specifically targeting energy markets and providing tailor made rules for trade in electricity and gas market as the energy products and regulatory priorities in energy markets do significantly differ from others markets.

2. LEGAL FRAMEWORK

The legal framework includes both primary and secondary legislation.

The primary legislation has been substantially amended through the enactment of Law regarding energy and natural gas no. 123/2012 (“Energy Law”) published in the Official Gazette no 485 as of July 16, 2012, that implements into the national legislation the provisions of Directive no. 2009/72/EC and Directive no. 2009/73/EC.

The main objectives of the Energy law refers, amongst others, to: ensuring sustainable development of the national economy, diversification of the energy resources, establishment and functioning of a competitive energy market, granting non-discriminatory and regulated access to the energy market and to the public electrical networks to all participants, ensuring transparency with respect to the determination of any tariffs, taxes and prices in the energy sector, environment protection, efficient use of energy etc.

The secondary legislation – published on ANRE’s website (www.anre.ro) - includes all the decisions, orders, instruction, guidelines issued by the Romanian regulatory institutions and energy related organizations in order to achieve the objectives set by the Energy Law and to ensure that all the EU’s requirements are met accordingly.

3. REGULATORY INSTITUTIONS AND ENERGY RELATED ORGANIZATIONS

The Romanian electricity market is regulated by several institutions, the main ones and their roles being briefly detailed herein: (a) Ministry of Economy - Specialized body of the central public administration with the status of legal entity, whose main tasks include the drawing up and implementation of the national energy strategy; (b) National Energy Regulatory Authority (ANRE) - is the Romanian energy regulatory authority, acting as an autonomous administrative authority with legal personality, under parliamentary control, financed autonomously, responsible for regulating and providing a competitive electricity and gas market environment.

The heat energy field is regulated by a special national regulatory (ANRSC). Moreover, Romania also developed the necessary infrastructure (regulatory and monitoring authorities) for nuclear energy in line with the standards and requirement of International Atomic Energy Agency.

4. ADVANTAGES AND DISADVANTAGES OF THE REGULATORY APPROACH

The regulatory approach implemented in Romania, generated both advantages and disadvantages. The main advantages come mainly from the steps undertaken for deregulated the electricity and gas market, for introducing and consolidation the competitive energy market through centralizing transactions, implementing new trading platforms in natural gas sector, regulating the market operator activity etc.
Despite such steps and even if the energy market has been under continues development the investors were still reluctant to invest in such market as the regulations do not always keep pace and may be incomplete, instable, unpredictable or not correlated with the market realities.

Moreover, there is still a lack of transparency in implementing the legal provisions issued by the regulatory institutions (mainly those for establishing the prices on the regulated market). This lack of transparency (mainly in setting the regulated prices) might generate discrimination between companies obliged to sell energy on the regulated market. Moreover, in fact, the prices set on the regulated market by ANRE may influence also the competition on the competitive market as the companies acting on the regulated market are not able to recover losses generated by selling energy at the prices set by ANRE in the regulated market (NB: the prices set by ANRE are most often not covering the production costs).

As per a study issued recently by the Romania European Institute with respect to the liberalisation of the energy market, the main disadvantages comes from the fact that the regulation in the energy sector was also used in order to solve some social problems. Maintaining for a long period the system of regulated prices generated losses for the companies active in such markets and discourage the investment in energy sector. Due to the way the legislation was used and implemented the infrastructure is still characterised by the persistence of old economic structures.

(written by Mihaela Ion)

III. Hungary

The Hungarian energy sector has changed radically in the last decades. The market is now liberalised and the regulation is in line with European law. Until last year, it was unambiguous that Hungary is following a sector specific regime in the energy sector but through a recent act, the approach is now can be defined as multi-sectoral. However, as important sectors such as telecommunications or transportation is regulated separately, I would still not consider the Hungarian legislation as one size fits all.

The multi-sectoral Hungarian regulatory agency is called Magyar Energetikai és Közműszabályozási Hivatal (Hungarian Energy and Public Utility Regulatory Authority, MEKH) and was established by the Act No. XXII of 2013 on the Hungarian Energy and Public Utility Regulatory Authority, entered into force on 4th April 2013. The MEKH is an independent regulatory body which is subject only to legislation. Its functions can be determined only by law or regulations based on law. Concerning its supervisory powers, the decisions of the MEKH cannot be amended or annulled, and the authority cannot be ordered to initiate a proceeding. The President of MEKH is appointed by the Prime Minister for seven years (can be re-appointed one time).

The MEKH performs functions concerning the sector of electricity, natural gas, district heating, water public utility and waste management. If the law does not provide otherwise, the authority supervise the activities of people and organisations falling within the scope of the act on gas supply, on strategic stockpiling of natural gas, on electricity, on district heating, on water public utility and waste management and on regulations based on these acts. The MEKH is responsible for regulating fixed transmission line licenses in the energy sector, pricing application, consumer protection and supervision of the competitive market, which – of course - means constant monitoring.

A strong, multi-sectoral regulator has certainly its advantages. It is able to achieve higher efficiency by leveraging information gathering capacities, by sharing knowledge and human resources. In addition, a strong authority might be more credible for investors and for consumers as well. However, it is possible that these efficiencies are not realised because the regulator is not able to specialise, thus it lacks industry-specific expertise. Some also fear that one single authority can be influenced easier by the government or by an industrial actor.

In Hungary, the establishment of the MEKH as a new multi-sectoral authority is far too recent to assess its functioning but the strength of its legal status was widely criticised by opposition parties and industrial actors. While the decisions of the MEH were subjects to judicial review, it is not any more the case, as the new authority has the power to issue decrees which can be challenged only at the Constitutional Court in case of non-compliance with the Constitution or with international treaties.

1Its predecessor, the Magyar Energia Hivatal (Hungarian Energy Office, MEH) - with different legal status and scope of authority - acted as a sector specific regulator from 1994.
2Act No. XXII. of 2013 § 1 (1)
3Act No. XXII. of 2013 § 2 (1)
4Act No. XXII. of 2013 § 2 (2)
5Act No. XXII. of 2013 § 6 (1)
6Act No. XXII. of 2013 § 1 (1)
IV. Germany

General regulatory approach and goals

The Bundesnetzagentur is the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway. It is a separate higher federal authority and an independent regulatory agency within the scope of business of the Federal Ministry of Economics and Energy, and has its headquarters in Bonn. The main goals of the Agency are

- promoting effective competition in the regulated areas,
- ensuring non-discriminatory access to networks,
- protecting important consumer rights and
- responsible for implementing the Grid Expansion Acceleration Act.

The Bundesnetzagentur’s sector specific regulatory acts

The Bundesnetzagentur’s ensures compliance with the following main regulatory acts:

- Telecommunications Act (TKG)[1],
- Postal Act (PostG) and[2],
- Energy Act (EnWG). [3]

In this way, it guarantees the liberalisation and deregulation of the markets for telecommunications, post and energy via non-discriminatory network access and efficient system charges. Since 2006, the Bundesnetzagentur is as well responsible for rail regulation. Here, as in the other regulatory areas, it monitors non-discriminatory access to the networks under transparent circumstances, and examines the access charges. To achieve its regulatory aims, the Bundesnetzagentur has effective procedures and instruments at its disposal, including rights of information and investigation along with the power to impose graded sanctions.

Decision making in the Agency

The Bundesnetzagentur’s decisions in the fields of electricity, gas, telecommunications and post are made by its Ruling Chambers. Firms and business circles which are stakeholders and affected by actions of the Bundesnetzagentur may participate in Ruling Chamber proceedings. The Bundesnetzagentur’s decisions are based on the above named provisions and can be challenged before court. In the case of a legal dispute, the supervisory authority, namely the Federal Ministry of Economics and Technology (BMWi), cannot overturn a decision made by the Ruling Chamber. In contrast to the provisions of the Competition Act (GWB) a ministerial decision is not provided.

The Bundesnetzagentur as well has regional offices which keep provide the opportunity to keep in touch with consumers and industry throughout Germany.

Advantages and disadvantages of the regulatory system

Advantages:

- The system of regulation is working and suitable to achieve the main targets of the Bundesnetzagentur
- Corresponding and coherent to European legislation
- Set of sector specific regulations in order to address sector specific regulatory tasks

Disadvantages:

- Large administrative apparatus, with many employees and large costs, in order to regulate the transportation and distribution network and its 1500 network operators for the electricity market and more than 600 network operators in the gas market
- Sector specific legislation provides a complex system of regulation, which is not very transparent
- Time-lags; e.g. long-lasting approval proceedings for energy grid investments
All target sectors have benefitted from the actions of the Bundesnetzagentur and undergone a process of liberalisation. With focus to
the energy sector, old market structures where broken up. The German electricity (1998) and gas markets (2003/04) went through a
process of liberalisation. First, third party access to transmission and distribution networks was guaranteed. Second, network usage
charges and grid connection requirements where regulated. And third, the network operators were unbundled (legally, functionally and
informational unbundling, as well as unbundling of accounts - §§ 7, 8, 9 and 10 EnWG) to enable third party access and non-
discriminatory competition. The Bundesnetzagentur is responsible for the regulation of natural monopolies of the transport and
distribution networks.

From an effective competition perspective, the German market structures are developing. Taking a look to the energy value chain -
generation, transmission/distribution, retail supply - since liberalisation, the last two stages have raised less concerns to competition
issues. For generating electricity, the independent advisory group “Monopolkommission” in 2009 still found a concentration of
companies and dominant positions for the generation of electricity. Nevertheless in 2013, the same advisory group argued that
there is no more dominant position in the generation sector compared to less recent market surveys. For the gas market, the same
arguments are suitable for the transmission and distribution stages. But the generation/production of gas remains a less competitive
market.

B. Non EU Member states

I. Chile

Since 1982, with the enactment of the General Law of Electric Services, Chile’s energetic policy has within their objectives to satisfy
the energy demand in conditions of economic efficiency, security and sustainability. For more than 30 years, the operation and the
development of the energy sector has been totally in hands of private undertakings, and the role of public institutions has been limited
to establish a regulatory framework for the energy sector, supervise its functioning and project its development for the future years in
order to accomplish the above mentioned objectives.

Chile has specific sector legislation and specialized institutions and agencies for the accomplishment of its energy objectives. The
General Law of Electric Services (DFL No 1 of 1982 and further amendments) governs the current legal regulatory framework for
electricity. With the enactment of the law, it was created an unbundled and privately owned sector. The law recognized generation,
transmission and distribution as separable activities; introduced a pool-type market in generation and third-party access to the
transmission network; and set up a system operator to co-ordinate the operations of competitive generators. Regarding the Gas
sector, when was introduced natural gas in central Chile in the mid-1990’s, the government decided to follow a free market approach
in which the degree of public intervention was the lowest possible.

For the gas transport and distribution, the Gas regulation demands the obligation of private undertakings to be the concession holders,
which are valid indefinitely and without exclusivity. There is no price fixation by the Authority.

The most relevant legislation for the gas sector is: the Gas Law (DFL No. 323 of 1931 and further amendments); the Regulation on
Provisional and Definitive Concessions for the Distribution and Transportation of Gas (DS No. 263 (Ministry of Economy) 1995); the
Regulation of Gas Services (DS No. 67 (Ministry of Economy) 2004).

The state institutions and agencies that play the most important role in the design, supervision and enforcement of energy sector
regulations are: The Ministry of Energy, the National Commission of Energy and the Superintendence of Electricity and Fuel.

The Ministry of Energy develops and coordinates the plans, policies and norms for the proper performance of the energy sector,
supervises its performance and advises the government in all matters related to energy.

The National Commission of Energy (CNE) is a public and independent agency in charge of the analysis of prices, tariffs and technical
rules for companies dealing with the production, generation, transportation and distribution of energy with the purpose of having
the most secure, reliable and efficient energy system.
The Superintendence of Electricity and Fuel (SEC) is also a public State organization in charge of monitoring and supervising the implementation of the laws, regulations, and technical standards for the generation, production, storage, and transportation of liquid fuels, gas and electricity.

For the last 30 years, Chilean energy policy has been very successful in guarantee, at reasonable prices, a stable energy supply for the industrial and domestic sector, which nowadays covers almost the 99% of the population. On the other hand, the current energy regulatory framework is based on the incentive of private investment for the construction of new network infrastructure, which, consequently, puts the development of the energy market, not in hands of a public decision and, therefore, more exposed to the instability of the economic cycle when facing increments in the demand of energy.

II. Peru

(written by Bonilla Acosta, Juan)

On the decade of 1990, the Peruvian state had changed his active role in the economy by becoming a promoter and supervisor of it. By 1997, the privatization process of the electricity and mining sector was in its first years. In order to regulate the activities of this new private undertakings that were going to be a natural monopoly, the presence of specific sector regulators were necessary. Specific regulators for water supply, energy, telecommunications and transport were created. The energy sector is regulated by one specific National Regulatory Office in Peru. It is Osinergmin (Supervisor Organism of the Investment in Energy and Mining), the public office who is in charge of monitoring all activities related to gas, electricity and mining.

The creation of Osinergmin was on December 31, 1996, but the office only started his functions until October 15, 1997. The main goal of Osinergmin is to regulate and supervise all the activities of the undertakings from the energy and mining sector. The functions of Osinergmin are to supervise, regulate, monitor, sanction, rule, solute complaints and controversies. The functions of Osinergmin are stated on the law 27332 (Law of the Regulatory Organism of the Private Investment in Public Services).

The framework of the energy regulatory office is different according to its sectors. The development of the infrastructure in electricity, gas and mining has different scenarios. In the case of mining, Peru is very depending on exporting mining resources and it makes Osinergmin to put a lot of its efforts on supervising environmental issues in this activity. On electricity sector, Peru is a country that nowadays is working more in production of electricity and gives important support to those firms who want to invest in production infrastructure. In this case Osinergmin supervise the activities of these undertakings, making them comply all the tasks they promised to perform when they received an electricity concession. Finally, in the gas sector, the development has just started. Since 15 years ago, Peru has discovered gas deposits in its territory. On the first 10 years the main activity has been the gas extraction and Osinergmin was supervising all the environmental rules. Nowadays, the principal task is supervising the behavior of the undertakings who are supplying the citizens with gas. The pipes are still in building process and only 15% of the population has gas connections in their houses.

The advantages and disadvantages of having specific regulatory office in energy have changed during the years. On the first decade, these private firms acted with a lot of freedom and there was some inconformity from the population. With the pass of the years, the regulatory office has corrected his behavior and has developed investment in infrastructure good tariffs fix in all the energy sectors. Its presence has been very helpful for a sustainable and continuous growth.

Some advantages of the presence of Osinergmin are:

- Regulation of tariffs.
- More electricity access for population.
- More gas access for population.
- Growth in electricity transmission infrastructure.
- Development of gas transmission infrastructure.

On the opposite side, some disadvantages are:

- Political inherence in decisions.
- Bureaucracy on decisions.
- Superposition of functions between Osinergmin and Ministry of Energy.
- Controversy between National Competition office and Osinergmin.