Problems of multi-regulation: The potential impact of European rules and regulations on the organization of national energy sectors

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Introduction

This paper addresses an issue which is of a certain novelty - the impact of Community rules and regulations on the way in which energy sectors are organized and indeed regulated at the national level. I have deliberately chosen to qualify the word 'novelty' for several reasons. Firstly, as is generally well-known, the three Treaties establishing the European Communities (the EEC, ECSC and Euratom Treaties) have, at least in theory, applied to national energy sectors since the 1950s. Nevertheless, many of the powers available to the European Commission, the institution entrusted with the role of guardian of the Community constitution, have never been fully exercised. The reasons for the 'benign neglect' of energy are complex, and can largely be attributed to the sensitive political and economic nature of the sector.
Since 1988, following the adoption of the Commission's Working Paper on the Internal Energy Market, the Community has become more actively involved in matters relating to the organization and regulation of national energy industries, and especially the gas and electricity industries. The 1988 Working Paper comprises in the main of a long litany of the obstacles to the creation of a genuine internal or single energy market and proposes a type of action programme, designed to lead to the gradual removal of these same obstacles.

As part of this action programme, the Commission has now commenced a so-called 'staged' or gradual approach to the creation of the internal energy market. The 'first stage' of the programme has led to the adoption of a series of Directives on transit through high-voltage electricity grids, on transit through high-pressure gas pipelines, and finally on price transparency. The 'second stage' of the process involves further market liberalization, in the form of proposed Directives on common rules for the completion of the internal market in electricity and gas, as well as a concerted effort on the part of the Commission to eliminate unnecessary state subsidies to the energy sector as a whole.

Although this recent initiative demonstrates a rather novel exercise of the Communities' powers as far as the energy sector is concerned, those powers themselves are by no means new. They have been applied in numerous other sectors of the economy, ranging from food to funerals and football, and have been used to regulate activities from marketing to massages.

This is not to deny that the exercise of Community powers over the organization of national energy markets raises a number of specific regulatory problems. These problems are in part to be attributed to the nature of the sector itself and in part to the nature of the Community regulatory process. These problems may be conveniently grouped under the heading 'multi-regulation'. The first part of this paper deals in some detail with the various dimensions of multi-regulation as a general phenomenon. The second part goes on to discuss the current Commission proposals for the electricity market in some detail.

What is multi-regulation?

The nature of community regulation

Before examining the process of regulation in a single sector, some comments on the general Community executive process and the