



Photo: Image Source/Corbis

EU energy regulators struggle for power

With the adoption of the third directive on the liberalisation of the energy market, European regulators have won a battle, but not the war. Watchdogs with teeth may seem to be required in a free market, this does not mean they are now automatically springing into being across the EU. Politicians don't always like to give away their powers.

| by Hughes Belin

European energy regulators have become much more visible in recent years. They have been involved in almost every issue dealing with the electricity and gas markets, often through their European associations. They even have their European School for Regulation in Florence.

Such visibility is quite new. Many countries, with Germany as the most conspicuous example, found an energy regulator superfluous. In France in the early years of the decade, Science-Po Paris, the elite's graduate school, gave a series of lectures in which packed amphitheatres debated on regulation, a genuine UFO for the French legal system. When Jorge Vasconcelos, the first Portuguese regulator, undertook a drastic review of Energias de Portugal's tariffs just after his appointment in February 1997, he had to face fierce opposition from the

Portuguese ex-monopoly, which was used to more consensual, even secretive negotiations with government officials.

All this has changed. 'Regulatory independence has become accepted in Europe because of the need for regulatory certainty and detachment from the inevitable short term pressures of the political world', explains Lord Mogg, President of the EU Energy Regulators and Chairman of the UK regulator Ofgem. 'What investors want is a coherent, consistent, known, predictable, set of rules.' Regulators offer the investment market predictability and therefore a readiness to make those investments, argues Mogg.

Battle |

Nevertheless, thirteen years after the adoption of the first European electricity

directive – which required a national regulatory authority to be set up in each member state – EU regulators still have to fight to get more power to do their jobs. This may be because the same politicians who are able to give more powers to regulators to enforce the rules are the very ones who will lose these powers. As a result, many regulators in the EU feel they do not have the necessary tools nor the power to create the legal sanctions that they need to enforce the legislation that they are legally obliged to. 'You have to give the tools to the regulators to do the tasks that the Commission is now asking us to do', says Mogg.

The battle culminated during the negotiations on the third liberalisation package in 2008–9. Heavily supported by the European Parliament, regulators did secure an improvement of their independence and some enforcement powers.

Mogg: 'The new legislation will give a new independence, recognisable in law, to the national regulators. All regulators throughout Europe will have powers and independence to be able to operate the system, the power to issue binding decisions, to carry out investigations, to request information and to impose penalties'.

Another step forward for the regulators is the creation of the Agency for the Cooperation of Energy Regulators (ACER). ACER, which will replace the Regulators Group for Electricity and Gas (ERGEG), will play an important role in the process for developing new EU-wide network codes. 'We have less than we would have wished', says Mogg, but then nonetheless feels that significant changes will occur in practice. Regulators will have to establish framework guidelines which will then be given to European organisations of TSOs to create EU-wide codes. Moreover, ACER's advisory role will be expanded and apply not just to the Commission but also to other European institutions. It is highly likely that ACER will get more power and influence in the years ahead. ■