

2. Key national legislative developments

2.1. Transposition of Directive 2012/27/EU

Article 15 of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, which addresses the transformation, transmission and distribution of energy, imposes a number of targets for Member States to improve energy efficiency in the management of transmission and distribution systems, such as the adoption of measures promoting demand management and load shedding, in both wholesale and retail markets and in balancing or ancillary services markets.

In accordance with Article 6 (1) VII, of the Special Law of 8 August 1980 on institutional reform, regions are responsible for regional aspects of energy and, in particular, "the rational use of energy". It is generally considered that energy efficiency falls under the rational use of energy and that, therefore, it is the regions that have the remit in this area. The transposition of Directive 2012/27/EU is thus mainly the responsibility of the regions. However, insofar as Article 15 of that directive refers expressly to measures to be taken, most notably in the transmission systems, e.g. in tariffs, it was considered that the Federal State, which has jurisdiction in electricity and gas transmission, was competent to partially implement the directive. This, particularly, was the purpose of the Law of 28 June 2015¹ amending, for this purpose, the Law of 29 April 1999 on the organisation of the electricity market (hereafter: "the Electricity Law") and the Law of 12 April 1965 on transmission of gas and other products by pipelines (hereafter: the "Gas Law"). On the one hand, this law assigns a new mission to CREG - to "encourage resources affecting demand, such as load shedding, from the wholesale market, as well as resources affecting supply". Secondly, it adds a new guideline to those that the CREG must comply with in the development of tariff methodologies for gas and

electricity transmission. According to this guideline, tariffs may not include any incentives that are harmful to overall market efficiency and the power system, and must not impede the participation of load shedding, balancing markets and the provision of ancillary services.

It is important to emphasise that preparatory work for the above-mentioned Law of 28 June 2015 recognized that other provisions of Directive 2012/27/EU, particularly Annex 11, would have to be transposed at federal level.²

2.2. Adaptation of the Gas Law to enable the extension of the balancing zone

The Law of 8 July 2015³ amended the Gas Law to allow the natural gas transmission system operator to set up a joint venture responsible for commercial balancing in a zone comprising of several national territories.

This change in the law was introduced to make it possible to create a common balancing zone covering Belgium and the Grand Duchy of Luxembourg.

Such a joint venture can only be undertaken by transmission system operators certified in accordance with Articles 9 and 10 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, or TSOs exempt from certification under Article 49.6 of the same directive. Insofar as the Luxembourg transmission system operator is part of a vertically integrated undertaking, the law provides measures to ensure the independence of the commercial balancing joint venture and the absence of discriminatory practices.

Thus, the new Article 15/2*bis* of the Gas Law provides for the establishment of a compliance programme by the joint venture. Pursuant to Article 7 of Directive 2009/73/EC, such a programme includes measures to ensure the exclusion of discriminatory and anticompetitive practices. Such a programme - like any changes made to the programme - is subject to the approval of ACER, after obtaining the opinion of the CREG.

Moreover, the Gas Law provides for the appointment, in the joint venture following CREG approval, of a manager responsible for compliance. The CREG's approval seeks to ensure the independence of this manager and his/her professional capabilities. Likewise, the CREG is responsible for approving the terms and conditions of the manager, to ensure his/her independence; it may, if necessary, instruct the joint venture to dismiss the manager for breach of his/her obligations of independence or professional capacities. The law also defines incompatibilities applicable to the compliance manager and his/her powers and duties.

The creation of a balancing zone that is wider than the national territory and of a common balancing undertaking is without any prejudice to the responsibilities of the the transmission system operator in terms of security of supply. Accordingly, the extension of the balancing zone and its subsequent amendments are subject to prior notification of the Federal Authority responsible for the security of the gas supply, the Directorate General for Energy of the FPS Economy, SMEs, the Self-employed and Energy (hereafter: "Directorate-General for Energy").

Finally, the Law of 8 July 2015 makes the common balancing undertaking subject, on the one hand, to the network code on gas transmission system balancing (Regulation (EU) No 312/2014) and on the other hand, to the provisions of the Gas Law relating to the powers of the CREG. It makes the CREG

¹ The Law of 28 June 2015 embodying various energy provisions (Moniteur belge, 6 July 2015).

² Doc. *Parl.*, Chamber, sess. 20014-2015, No. 541046/1, p. 10).

³ Law of 8 July 2015 amending the Law of 12 April 1965 on the transmission of gaseous and other products by pipelines (Moniteur belge, 16 July 2015).

responsible for approving: 1. The balancing contract and, where appropriate, the balancing code that governs the rights and obligations of the joint venture and network users in the context of the balancing activity; 2. the balancing programme, which describes the balancing model; 3. balancing tariffs to be applied by the joint venture to network users.

2.3. Change of regulations on electricity load shedding

Following the legal uncertainties surrounding possible activation of the load shedding plan during the winter of 2014/2015, the legislation governing this area underwent substantial adaptation: first, a Royal Decree of 6 October, 2015⁴ amended the Royal Decree of 19 December 2002, by establishing a technical regulation for transmission system operation and access thereto (hereinafter: the "technical regulation"); secondly, the Ministerial Decree of 13 November 2015⁵ amended the Ministerial Decree of 3 June 2005 by establishing an electricity transmission system load shedding plan.

Pursuant to the Electricity Law and the technical regulations, the CREG issued an opinion on the two draft texts⁶ (cf. section 3.4.5.3 hereof).

The technical regulations, which provide the general framework for the electricity transmission system operator to address network security problems, were amended by the inclusion of scenarios covering electricity shortages, threat of shortage and sudden phenomena - all situations

that may cause load shedding - which were absent until now. These scenarios are added to the list of definitions appearing in the technical regulations (art. 1(2)) and refer to emergency situations that justify the intervention of the transmission system operator (except for threat of shortage) (art. 19).

Moreover, the Royal Decree of 6 October 2015, cited above, has the merit of specifying more precisely the range of measures available to the transmission system operator to deal with an emergency (Article 303): first, activation of the backup code (art. 312, (1 to 3)), established by the system operator, which allows for change in the supply of active or reactive power and change in the offtakes set in interruptible contracts; secondly, the interruption of interconnections, both with foreign networks and with networks located in the control area (Article 312, § 4.); finally, activation of the load shedding plan, established by the Minister for Energy to allow: (i) imposition of offtake limitations; (ii) prohibition on the use of electricity for certain purposes; and (iii) suspension of offtakes (Art. 312 (5)).

The Royal Decree of 6 October 2015 finally reviews the list of priority connections, which must in principle be exempted from load shedding measures or, if they do actually undergo load shedding, must be restored first. This is the case, among others, of hospitals and emergency call management centres. In addition, the technical regulations empower Ministers for Energy and the Economy to determine additional connections for priority re-supply for economic, security, public order, public health or system operation reasons.

The amendments to the Ministerial Decree of 3 June 2005 primarily seek to clarify the roles of the operators of the

different systems - transmission and distribution - and the consequences for distribution of implementation of the load shedding plan; in order to comply with the division of powers between the Federal Government and the regions, distribution (and local transmission) system operators participate in the implementation of the load shedding plan only where provided for in the regional technical regulations and according to the technical conditions laid down therein.

Another amendment to the ministerial order addressed the distinction between load shedding in the event of sudden phenomenon and in case of shortage. Although the distinction remains - especially in terms of the decision on activation of load shedding⁷ - its terms, most notably its priorities, are now aligned.

Substantial amendments addressed load shedding methods. While the Ministerial Decree maintains the subdivision of the network into electrical zones - albeit with a reduction in the number of areas - and zones into tranches, it now stipulates that the tranches are established so that: (i) the ratio between the load to be shed and the total load of the electrical zone in question should be roughly equal to the same proportions in other electrical zones of the same tranche; and (ii) the division of tranches does not violate the rules and obligations between operators of European networks in relation to maintenance and restoration of frequency and balance. In addition, transmission system operators are asked to limit, as far as possible, load shedding of customers connected to the transmission system or having a transmission function, as well as supply to the Brussels-Capital Region, the town centres of provincial capitals and the town centres of

4 Royal Decree of 6 October 2015 amending the Royal Decree of 19 December 2002 establishing technical regulations for the management of the electricity transmission system and access thereto (Moniteur belge, 15 October 2015).

5 Ministerial Decree of 13 November 2015 amending the Ministerial Decree of 3 June 2005 establishing the electricity transmission system load shedding plan (Moniteur belge, 23 November 2015).

6 Opinion (A) 150706-CDC-1430 on a draft Royal Decree amending the Royal Decree of 19 December 2002 establishing technical regulations for operation of the electricity transmission system and access thereto, as well as draft Ministerial Decree amending the Ministerial Decree of 3 June 2005 establishing the electricity transmission system load shedding plan.

7 Load shedding in response to a sudden phenomenon is decided by the system operator; load shedding in response to shortages is decided jointly by the Ministers for the Economy and Energy.

municipalities with a population of at least 50,000. Finally, it is provided that offtake interruption measures must take account of the technical factors and structure of the networks and the principle of proportionality.

Ultimately the load shedding plan maintains the power of the transmission system operator to establish different zones and tranches, through an "internal procedure for application of the load shedding plan", drafted following consultation with the FPS Economy and the government coordination and crisis centre.

2.4. Varia

• Abandonment of the tender

The CREG's 2013 and 2014 Annual Reports reported on developments in the tender for the establishment of new electricity production facilities within the meaning of Article 5 of the Electricity Law. This tender was launched following the publication of a ministerial order on 18 November 2013.

The agreement of the federal government, dated 9 October 2014, mentions in this regard that "in order to comply with European rules, the opportunity of the ongoing tender for new gas plants will be reviewed" (p. 96).

Following notification of the tender by Belgium to the European Commission, in order to receive its endorsement of the compatibility of the chosen mechanism with EU rules on state aid, the European Commission drafted a somewhat critical preliminary evaluation. Following this evaluation, the Minister for Energy decided to halt the tender procedure⁸. He based this on Article 14 of the tender specifications on the establishment of new gas-fired open or combined-cycle power generation facilities in Belgium to ensure security of supply, established by the Directorate General of Energy and published in January 2014, which provides that: "The DG Energy reserves the right to withdraw the tender if the financial incentive [...] is declared to be unlawful state aid by the European Commission."

• Creation of a budget fund

Following the extension of the Doel 1 and Doel 2 nuclear power plants, approved in principle by a law of 28 June 2015 amending the Law of 31 January 2003 on the gradual exit from nuclear energy for the purposes of industrial electricity production to ensure security of energy supply,⁹ the law of 28 June 2015, laying down miscellaneous provisions on energy, already mentioned, creates a budget fund called the "energy transition Fund"; this fund is financed by the fees paid to the state by the owner of the above nuclear power plants in exchange for the extension of the duration of the permit for the industrial production of electricity in these plants.

According to preparatory work for the Law of 28 June 2015, the fund seeks to encourage research and development in innovative projects in the area of energy, notably in respect of the development of energy storage and production¹⁰.

• VAT on electricity

On 21 March 2014, a Royal Decree introduced a reduced VAT rate of 6% on the supply of electricity to residential customers from 1 April 2014. The Royal Decree provided for an evaluation of the impact of this measure by no later than 1 September 2015.

Following the completion of the economic, social, environmental and budgetary impact study, the Royal Decree of 23 August 2015¹¹ put an end to the application of the reduced rate as from 1 September 2015. The Royal Decree provides that the VAT rate to be applied depends on the time of consumption.

⁸ Ministerial Order of 27 March 2015 on suspension of the tender procedure for the establishment of new gas-fired open or combined-cycle power generation facilities in Belgium (Moniteur belge, 31 March 2015).

⁹ Moniteur belge, 6 July 2015.

¹⁰ Doc. Parl., Chamber, sess. 2014-2015, No. 541046/1, p. 6).

¹¹ Royal Decree of 23 August 2015 amending Royal Decree No. 20 of 20 July 1970, laying down value added tax rates and the classification of goods and services according to those rates (Moniteur belge, 31 August 2015).