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**Does the Impact Assessment on the
'Third Package' provide the correct economic
forecast for the liberalisation of the EU
energy markets?**

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Abstract

The EU proposal on liberalisation of the energy markets has been widely debated in policy, stakeholder and academic circles both for its content and the potential consequences to the gas and electricity markets. However, little has been said about the empirical evidence produced by the European Commission to support this legislative package. Since the Impact Assessment system has been in place, there have been concerns regarding quality and adequateness, especially when quantifying costs, benefits and risks. This paper analyses how these crucial issues were factored into the Impact Assessment on the third legislative package. It investigates the interaction between the legislative proposals on energy liberalisation and its Impact Assessment.

Keywords

Better regulation, cost-benefit analysis, Impact Assessment, energy markets, risk analysis

Introduction

Even before the third legislative package on energy liberalisation was issued on 19th September 2007, a heated discussion about its content and potential consequences was already taking place in policy, stakeholder and academic circles.

In the policy arena, the focus was on the divergencies between the European Commission and a number of Member States, including France and Germany. These opposed the Commission's initiative towards "ownership unbundling", by arguing that splitting up energy firms is not the only measure for accelerating the dynamics of competition (BWT, 2007). The UK, Denmark and the Netherlands, on the other hand, were active promoters of "ownership unbundling". As to business stakeholders, the consultation carried out by the European Commission showed a significant level of support for the unbundling measures put forward in the third legislative package. However, there were some significant exceptions. State-owned group Gaz de France, for instance, stepped up criticism of "ownership unbundling", describing the measure, to be unveiled by the Commission as "inefficient" and "dangerous".¹

Academic debates, as far as this author is concerned, have evolved around the following issues: the economic advantages (Lowe et al, 2007) and drawbacks (Thomas, 2007) of ownership unbundling (Glachant, and Lévêque, 2007); the effects of liberalising the energy market (Ranci, 2007a); the changing role of energy regulators (Groenendijk, 2007); co-operation amongst energy regulators (Ranci, 2007b); the limited options to consumers to influence the generation mix (Brenda and Palmer, 2007); the French position on European energy policy (Meritet, 2007); and the risks coming from liberalisation (Domanico, 2007).²

In order to empirically support the proposal, the European Commission carried out an Impact Assessment (IA) which was then criticised by European Parliament and Germany. Angelika Niebler, MP pointed out that:

Members saw a lack of empirical data in the Impact Assessment on why privatised and state owned energy companies should be treated in the same way.

The German government made the following statement to the European Council:

We do not regard the impact assessment as a suitable basis on which to propose that all EU Member States be required to scrap the legal unbundling system just brought in and introduce ownership unbundling of transmission systems.

This dissatisfaction with the IA raises questions as to the quality of the report: does the IA meet the requirements of the guidelines? How were the analytical findings of the IA taken into account in the proposal communication? This paper aims to investigate the interaction between the legislative proposals on energy liberalisation and the empirical evidence that supports, i.e. the IA on the third package. The paper commences by providing background information regarding Impact Assessments in EU policy-making. It critically describes the third legislative by examining how "better regulation"

1 Didier Sire, head of strategy at Gaz de France, speaking to press said that ownership unbundling "does not resolve the real issues" such as lack of regulatory and market integration at European level (Brussels, 18th September 2007, see also <http://www.euractiv.com/en/energy/gdf-warns-dangerous-eu-energy-liberalisation-plans/article-166849>).

2 In addition, the discussion on the media has certainly been centred on the divide between actors in the energy sector. For instance: "Le projet de libéralisation du marché de l'énergie à l'origine d'une intense bataille entre Bruxelles, les industriels du secteur, et les Etats" (Source : Le Monde, Philippe Ricard, Article published on 19 Septembre 2007). A recent study by Osservatorio di Pavia (2007) and Extrapola defined the priority topics of the media as to the topic on liberalisation of the EU energy market as follows: environment, finance, performance and technology. The study mainly consisted in a content analysis of online information running between 1 July and 30 September 2007.

principles have been taken into account. It examines the IA on the third package and confronts its content with the proposals for energy liberalization in the EU.

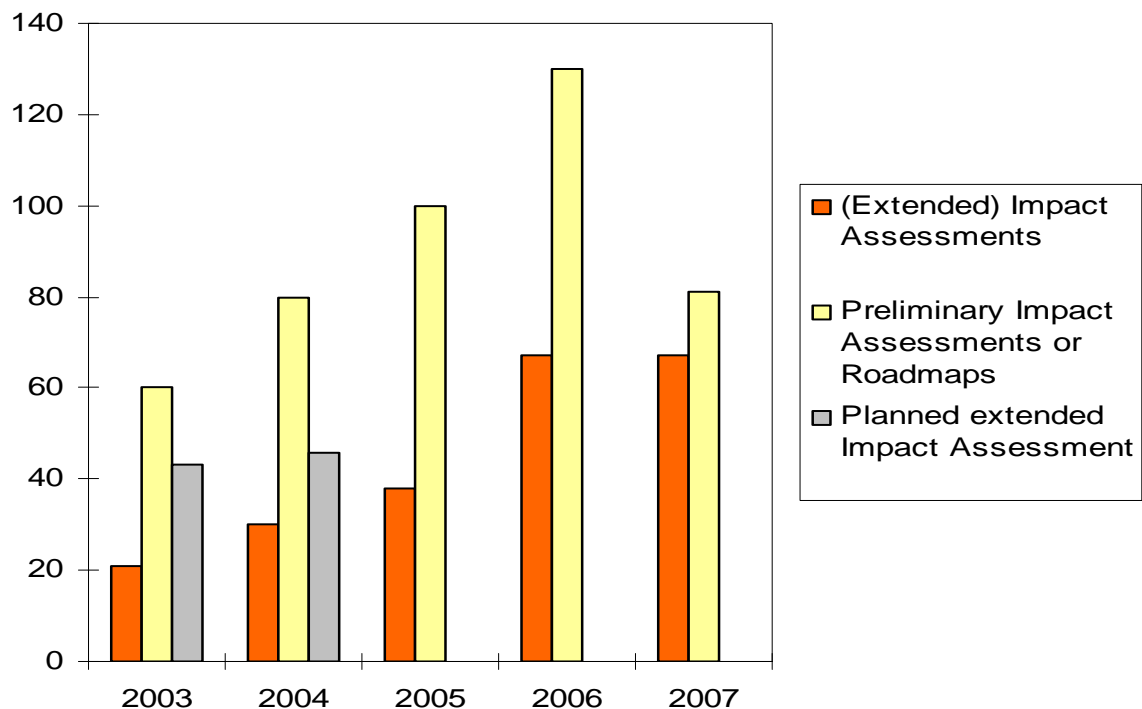
The Impact Assessment system by the European Commission

Since the year 2003 the European Commission has employed an integrated Impact Assessment (IA) system to estimate *ex ante* the impacts of its policy and regulatory proposals in economic, social and environmental terms. In principle, IAs are intended to provide a groundwork for evidence-based policy-making, not only by assessing the impact of the proposals in terms of cost, benefit and risk, but also by opening the spectrum of policy alternatives and systematically including stakeholder opinions in the decision-making.

The EU IA procedure is based on two stages: a roadmap (or preliminary Impact Assessment) and an (extended) Impact Assessment. Roadmaps are automatically made for all legislative and non-legislative proposals. The extended version of an IA is intended to be ‘a more in-depth analysis of the potential impacts on the economy, on society and on the environment’ (EC, 2005). The decision on the depth of the analysis is left to the DG responsible for the policy proposal (Allio, 2007).

To the date of this paper the European Commission has carried out more than 200 IAs. Figure 1 displays the number of preliminary and extended Impact Assessments carried out between 2003 and 2007. Until 2004, the European Commission planned the exact number of extended Impact Assessments in their Strategic Planning and Programming Cycle. As it is explained below, to an increase in the quantity of IAs it did not necessarily correspond and increase in their quality (Renda, 2006).

Figure 1-Number of EU Impact Assessments (2003-2007)



The IA reports vary substantially in terms of content and length. In principle, all Impact Assessments address the three pillars of economics, the environment and social issues. They integrate the features of regulatory impact analysis, sustainable impact assessment and other types of *ex ante*

policy evaluation. The template of the Impact Assessment report consists of the following sections (EC, 2005):

- Executive summary
- Procedural issues and consultation of interested parties
- Problem definition
- Objectives
- Policy options
- Analysis of impacts
- Comparing the options
- Monitoring and evaluation

The academic and policy literature agrees when defining the sections on policy options, consultation and analysis of impacts as the core elements of an IA. It is conveyed that IAs are potentially very useful instruments in policy-making, provided that the European Commission (i) selects the policy options according to a transparent rationale (Radaelli, 2003); (ii) includes stakeholder concerns and addresses them (Majone, 2001); and (iii) applies economic and risk analysis techniques to quantify and - where possible- monetise costs, benefits and risks (Hahn and Litan, 2005; Viscusi, 2006).

On the other hand, when (i) policy alternatives are created merely to support implicitly a pre-determined regulatory line; (ii) the ideas put forward by stakeholders during the consultation process are not taken into account; and (iii) useful methods for estimating impacts have not been used, probably due to deficiencies in knowledge and expertise of officials, IAs become merely procedural instruments that do not serve the purpose for which they were instituted. They develop into some sort of justification for regulatory intervention.

Indeed, the performance of Impact Assessment at EU level in most cases did not fulfil the expectations (Löfstedt, 2007). A number of evaluative studies, based on various scorecards, content and function tests, underline that existing IAs do not sufficiently quantify the benefits and costs of future legislation (Vibert, 2004; Torriti, 2007a); do not include sustainable development issues (Kirkpatrick and Franz, 2006; Opoku and Jordan, 2004; IEEP, 2004); and do not take into consideration a sufficiently wide range of policy alternatives (Renda, 2006).

The issue of the variable quality of IAs has been dealt with at the institutional level, by introducing an oversight unit within the European Commission.³ Whilst it is too early to know whether the Impact Assessment Board brings about positive effects on the IA system, our review of the IA on the third package on energy liberalisation takes into account the opinion produced by this new body.⁴ It draws on both academic and policy literature (including the opinion by the Impact Assessment Board) to focus on essential aspects of IAs, such as how policy alternatives are considered; how consultation is taken into account; and what use is made of quantitative economic appraisals. It seeks to examine how these aspects were developed within the IA on the third package. While the empirical effort of this paper is devoted to analysing data on the IA for the third package gathered from official documents and archival records, the broader theoretical endeavour is dedicated to understanding the interaction between 'better regulation' principles and actual policy-making instruments.

3 The Impact Assessment Board, which was established in December 2006, issues opinions on the quality of Impact Assessments conducted by the DGs with the aim of ensuring that they are of high quality and that they examine different policy options. The Impact Assessment Board is composed of 5 high level officials, in particular, the Deputy Secretary General of the Commission, and four Directors coming from DG ENTR, DG ENV, DG EMP and DG ECFIN.

4 See below.

The third legislative package on energy markets liberalisation

The package presented by the European Commission's President José Manuel Barroso on 19 September 2007 consists of five legislative proposals.⁵ These entail a set of measures aimed at ensuring "the effective separation between the operation of electricity and gas transmission networks from supply and generation activities" (EC, 2007b: 3). To achieve effective separation, the Commission proposed two main policy alternatives and a set of additional measures.

Two alternatives towards market liberalisation

The first alternative is "ownership unbundling". This alternative is clearly the one preferred by the Commission (EC, 2007h). It would prevent companies involved in transmission of gas and electricity from being involved in energy generation or supply at the same time. In simple words, such companies would be obliged to sell part of their assets. Investors would be able to keep their participation in the dismantled groups via a system of 'share-splitting' where they are offered two shares for each one that they already own.

The second alternative involves the introduction of Independent System Operators (ISOs). The Commission had to put forward this second alternative after that in July 2007 France, Germany and seven other member states had sent a letter expressing their opposition to full unbundling. Under this second alternative, companies involved in energy production and supply would be allowed to retain their network assets. However, they would not manage commercial and investment decisions, which would be left to an independent company –the ISO– to be designated by national governments. It is foreseeable –as the Commission warned– that this derogation would come at a higher price in terms of regulatory burden for two reasons. First, each network owner would have to follow ISO's decisions to finance investments in transmission capacity. Second, network owners would have to comply with a ten-year network investment plan proposed by the national energy regulator. Moreover, the designation of the ISO by national governments will have to receive prior approval from the Commission to guarantee a satisfactory level of independence.

More powers to national regulators; new EU agency; co-operation between transmission system operators (TSOs) and market transparency

The European Commission deems that the lack of consistency in the powers and remits of national energy regulators has been one of the biggest hurdles towards a well-functioning EU energy market to date (EC, 2007e). The third liberalisation package aims to resolve the discrepancies between national energy regulators by (i) harmonising and strengthening the powers and duties of national regulators so that they are able to issue binding decisions on companies and impose penalties on those that fail to comply; (ii) ensuring that all national regulators are truly independent of industry interests and government intervention and; (iii) mandating all national regulators with a binding requirement to co-operate with each other.

To close the current "regulatory gap for cross-border transaction in gas and electricity" (EC, 2007a: 48), the Commission proposes to create a European agency for the co-operation of energy regulators. The agency will have decision-making power to review "on a case-by-case basis" decisions made by

5 (i) Proposal for a Directive of the European Parliament and the Council Amending Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity; (ii) Proposal for a Directive of the European Parliament and of the Council Amending Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas; (iii) Proposal for a Regulation of the European Parliament and of the Council Establishing an Agency for the Cooperation of Energy Regulators; (iv) Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 1228/2003; and (v) Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 1775/2005.

national regulators and ensure there is enough co-operation between network operators. Nevertheless, the agency's powers will be strictly limited to cross-border issues. The agency is not supposed to be a substitute for national regulators, nor is it a European regulator (EC, 2007h).

Co-operation between national transmission system operators (TSOs) for gas and electricity currently occurs only on a voluntary basis. Under the third legislative package, co-operation will be formalised thanks to the establishment of a European Network for Transmission System Operators. The Network entails three core functions. The first function is to develop harmonised standards regarding companies' access to pipelines and grids. The second function is to ensure co-ordination, principally in the case of electricity, to allow synchronous network operation and prevent possible blackouts. The third function is to co-ordinate and plan network investments.

Companies will be subject to rigorous scrutiny, as they will have to keep records of their daily operations to help possible market-abuse investigations.

At the moment, regulators cannot effectively assess allegations of market abuse. For regulators to be able to act they must be able to study the behaviour of market participants in the past, to investigate if their operational decisions were based on sound economic reasoning or if their decisions tried to manipulate market prices (EC, 2007i).

Electricity generators, gas network operators, and supply undertakings will therefore be required to keep record of all data relating to operational decisions and trades (EC, 2007h).

The Impact Assessment on the third legislative package

The Impact Assessment accompanies all five legislative proposals on energy liberalisation.⁶ The Energy and Transport Directorate General (DG TREN) started working on the IA in September 2006 by assessing the policy options which were on the table at the time. The IA, which was concluded and published in July 2007, is based on both qualitative and quantitative data.

Origin of qualitative and quantitative data

Qualitative data are collected through stakeholder consultation, which took place early 2007 with regulators,⁷ transmission system operators,⁸ associations of electricity and gas companies,⁹ independent producers' associations,¹⁰ consumer associations,¹¹ industrial energy users' associations,¹² traders and new entrants,¹³ trade unions¹⁴ and NGOs.¹⁵ Overall, about 150 stakeholders participated in the consultation process (EC, 2007a).

6 Cfr note 5.

7 ERGEG (European Regulators' Group for Electricity and Gas).

8 ETSO and GTE.

9 Eurelectric, Eurogas, GEODE (small distribution system operators), GIE (Gas Infrastructure Europe).

10 EWEA (European Wind Energy Association), EREC (European Renewable Energy Council).

11 BEUC (European consumers' organisation).

12 IFIEC EUROPE (International Federation of Industrial Energy Consumers), EuroMetaux, EFMA (European Fertilizer Manufacturers Association), Cefic -European Chemical Industry Council, Cimeurope, VEMW Association for Energy, Environment and Water, VIK Verband der Industriellen Energie- und Kraftwirtschaft e.V., MEUC Limited (Major Energy Users Council), UEAPME (the European Association of craft, small, and medium size enterprises).

13 EFET – European Federation of Energy Traders, BNE Bundesverband Neuer Energieanbieter.

14 EPSU - European Federation of Public Service Unions, European Mine, Chemical and Energy Workers Association – EMCEF.

15 World Wildlife Fund (WWF).

Quantitative data comprise the relationship between ownership of TSOs and reinvested congestion revenue (from the Energy Sector Enquiry); the cumulative and aggregated electricity price changes in the EU (from Eurostat)¹⁶; the total private and public Research and Technology Development in the EU (from JRC); the development of stock prices after unbundling and the development of market shares after unbundling per each country (from own calculations provided by Datastream). These data are used to describe the *status quo* of the internal market which renders necessary a legislative intervention at EU level.

In addition to presenting descriptive quantitative data, the EC tried to measure the macroeconomic effects of an increase in total factor productivity in the electricity sector by running simulations based on QUEST model. The QUEST model is a standard New Keynesian macro-model of the world economy as described by Roeger and 'tVeld (2004). Production is modelled with a neoclassical production function using capital and labour as input. This model has been used in the past by the European Commission in a number of policy areas, including transmission mechanisms of specific monetary and fiscal policy shocks, standardised shocks agreed to facilitate comparison among models, as well as productivity shocks and shocks to the reservation wage.

The main assumption of the QUEST model is that regulatory reform in electricity sector could lead to price reductions of 20%. This assumption is based on the assumption that all EU 15 Member States align their regulatory conditions to those of the 'best practice' country and that prices adjust accordingly. A price reduction of 20% would be associated with a price decline of 0.6% in the non tradable sector. The QUEST model translates this reduction in prices into total factor productivity (TFP) and into a mark-up shock. The shocks associated with the 20% price fall in the electricity sector were thus assumed to correspond to a TFP increase of 25% or to a decline in mark-ups by 15 percentage points. The results are potentially negative in terms of employment with the efficiency channel, i.e. with TFP (see Table 1). The effects are even stronger with mark-ups. However, the IA does not present figures related to the mark-ups channel.

The suitability of the QUEST model for this IA is debatable for three reasons. First, the model provides estimates for macro-economic impacts, but does not infer on the type of findings that the Commission draws as a result of the IA (i.e. positive effects on investment, prices, and market concentration). Second, the QUEST model in the past did provide a certain degree of scientific certainty with regard to productivity shocks only, but does not describe adequately the type of legislative change involve in vertical unbundling. The latter could be interpreted as a “shock” only under a gross approximation as to the assumptions. Third, assuming that the total factor productivity increases by 25% and hence GDP goes up by 0.02 after one year goes beyond the point of the actual objectives of the proposal.

16 It is specified in the IA that the Commission decided to use EUROSTAT figures rather than those from the Competition Sector Enquiry because the former could create a useful basis for comparisons, being available for several consecutive years.

Table 1-Macroeconomic impacts (from QUEST model)

	Increase of TFP by 25%		
	GDP	employment	inflation
After 1 year	0,02	-0,1	-0,05
After 5 years	0,51	-0,01	-0,39
After 10 years	0,51	-0,05	-0,37

Source: EC, 2007a

The recently established Impact Assessment Board issued two opinions respectively on the first draft and final version of the IA report carried out by DG TREN. In summary, the Board recommends that the baseline scenario should be streamlined; the effects on investment should be better analysed; the effects on employment deserve further analysis; and the envisaged changes to the transparency regime should be stated more clearly (EC, 2007i). Some of the remarks produced by the Board – especially with reference to the lack of clarity on the effects of unbundling for investments vis-à-vis other factors that may also affect investment decisions- are taken into account below when analysing the content of the IA document.

The ISO alternative: against “better regulation” principles and IA guidelines?

The ISO alternative was generated as a response to the threat of veto posed by nine Member States. It is somewhat in contrast with the principles of “better regulation” mentioned in the previous section for the following reasons.

First, it is not decided on a cost-benefit basis, nor does it take into account environmental and social impacts. Not only is omitted any type of assessment on the costs, benefits and risks of this policy alternative, but also its comparison with other policy options is based on a rating system. The latter, illustrated in Table 2, is extensively used by consultants in charge of carrying out IAs for the European Commission.¹⁷ However, it is widely considered by both practitioners and academics as an inadequate substitute for cost-benefit analysis. It is an overused form of pseudo-analysis whose lack of rigour in the criteria for choosing between positive, negative and neutral impacts undermine the objectivity of the IA (KCRM, 2007).

Second, evidence on the ISO option is based on case studies on Scotland, Italy, Switzerland and USA. Although these case studies present an interesting tail over positive and negative experiences regarding ISOs in different countries, they say very little about the costs and benefits of this type of legislative framework. A satisfactory estimate of costs, benefits and risks of future policy scenarios is key to understand whether in the future ISOs will have enough capacity to invest in the development of the network, because under this policy alternative ISOs would be retained responsible for network

17 See for instance the BiPRO report for the IA on Sustainable Use of Pesticides, the GFA study for IA on Unfair Commercial Practices and the EPEC study on biometrics for VISA information systems.

planning. But an ISO without power and independence may be subject to the wrong or nil incentives to network expansion (Ranci, 2007a).

Table 2-Comparison of the impacts of TSO unbundling policy options

<i>Comparison of unbundling options</i>	<i>Full unbundling</i>	<i>ISO</i>	<i>Regulated unbundling</i>
Effects on competition	++	+	0 or +
Effects on investment	++	+	+
Effects on property/company ratings	0	0	0
Effects on the behaviour of companies (nondiscrimination)	++	+	+
Effects on security of supply	+	+	+
Effects on cross-border trade	+	+	0
Effects on prices in the long-term	+ or ++	+	0 or +
Regulatory oversight	+	-	--

Source: EC, 2007a

Third, the ISO alternative may involve a level of risk different from other unbundling options. Focusing on the legal dimension of risk only, it emerges from the IA that the ISO option would imply a high degree of legal uncertainty, where for instance vertically integrated energy companies would have to dispose of some of their assets or to hand over the operation of these assets to a third party. Leaving aside security issues, which are not discussed in this paper, the ISO policy alternative may not pass a risk-benefit test.

Fourth, it is stated both in the explanatory memorandum and the impact assessment that the ISO alternative may potentially increase the regulatory burden on industries and national regulators. Under this alternative, the number of regulations and regulatory monitoring activities increase, because it must be ensured that the ISO acts independently of the vertically integrated company. Consequently, the number of information obligations that energy companies must supply or have to retain for their records in cases of regulators' inspections increases. The European Commission's "better regulation" initiative has in the last two years focused predominantly on cutting "red tape" (Torriti, 2007b). To serve this purpose, the Standard Cost Model was introduced as a method for measuring the administrative burdens that businesses have to face due to excessive regulation. The ISO alternative increases the administrative burdens on both energy companies and regulators and therefore defies the European Commission's "better regulation" plans. *Prima facie* one could observe that even the 'third option for effective and efficient unbundling' put forward by a number of Member States, including France and Germany (RPFUE, 2008) would bring about a significant amount of red-tape and would not pass a Standard Cost Model test.

Fifth, the ISO option goes against the opinion of the majority of stakeholders, which was predominantly in favour of the unbundling option, as it appears from the consultation process.¹⁸ The European Transmission System Operators (ETSO, 2007), for instance, has called on Member States to fully implement the electricity directive. Moreover, ETSO encourages the Commission to put in place the draft guidelines on cross border trade and congestion management. Eurelectric (2007) argues that it is vital to maintain the momentum and reinforce trust in the liberalisation process. In particular, the power industry calls for the full and effective implementation of the liberalisation package by member states. According to the environmental pressure group, the liberalisation process has worked in favour of these large established utilities as demonstrated by the wave of takeovers that ensued after the opening of the market (Greenpeace, 2005).

Hence, although the proposal and the IA constantly refer to “better regulation”, one of the outputs of the Commission’s proposal, namely the policy alternative to establish ISOs, does not draw on “better regulation” principles. To clarify, this author does not stand against the ISO alternative. It is rather argued that, despite the abovementioned disadvantages or lack of information regarding the ISO alternative, the European Commission was forced to include in the IA and put it forward as a viable measure to overcome the skepticism on full unbundling by some Member States.

Conclusions: evidence based policy-making or policy based evidence-making?

This paper depicts some of the issues that the European Commission typically faces when carrying out Impact Assessments. Such issues relate to the quantification monetisation of costs, benefits and risks.

Two specific problems underpin the quality of the IA on the third package. Firstly, a technical problem relates to the use of the QUEST model to assess the macroeconomic impacts of ownership unbundling:

- the model does not infer on the type of findings that the Commission draws as a result of the IA (i.e. positive effects on investment, prices, and market concentration);
- the model does not describe adequately the type of legislative change involve in vertical unbundling; and
- the relation between total factor productivity and macro-variables, such as GDP, inflation and employment rate, transcends the objectives of the proposal.

Secondly, the European Commission put forward a second-best ISO alternative although:

- it is not based on an orthodox cost-benefit analysis;
- the only evidence for this alternative is based on case studies at national and sub-national level;
- it increases legal uncertainty and is unlikely to pass a risk-benefit test;
- it is against the general EU “better regulation” trend to reduce administrative burdens; and
- it does not follow the opinion of the majority of stakeholders.

As a result of the exogenous constraints that the Commission had to face in the phase of the proposal for the legislative package liberalisation of the energy market, not only the IA is limited in terms of analytical thoroughness, but it even diverges from the content of other official documents (e.g. EC, 2007b and EC, 2007c). It was observed that on the one hand the macro-economic model used in the IA does not address the objectives of the proposal and, on the other hand, the report is structured around the ownership unbundling alternative, not the ISO alternative

For IAs to play a key role in decision-making, a primary issue is that they are carried out to a high technical standard. The way IA processes presently interact with policy-making procedures does not

¹⁸ Cfr. Notes 7, 8, 9, 10, 11, 12, 13, 14 and 15 for a list of stakeholders consulted by the European Commission.

favour technically impressive assessments. It has been observed above, for instance, that the time gaps between the assessment phase and the crucial steps of the proposal procedure did affect the precision and significance of the IA. Hence, to complete the theoretical endeavour of this paper, a further question should be asked: why do IAs tend to prove less influential than it would be hoped for?

The European Commission is unlikely to pay much attention to those IAs sending contradictory signals. When the costs and benefits of are not monetised, the perceived ‘softness’ of the IA may reduce its impact on the policy or legislative process. In the case analysed in this paper it was observed that the lack of an exhaustive analysis of the benefits and costs may render the assessment ancillary -to use a euphemism- to the content of the directive. This is liable to be the case, especially where costs and benefits either cannot be estimated or can only be calculated on the basis of guesses about the use that various regulatory actors will make of their powers or about the strategies that will be deployed to apply regulatory rules. At the UK level, for instance, in 2006 the National Audit Office stated that weaknesses in assessments meant that Regulatory Impact Assessments are only occasionally used to challenge the need for regulation and influence policy decisions” (NAO, 2006).

A real problem arises from the tensions between the policy-making process and IA principles. Within the IA system policymakers are supposed to consider and compare the array of regulatory routes to a policy objective, but in practice a proposal may be the product of a process of negotiation between a widespread range of stakeholders. This can arise when compromises and concessions have been made between different interests and, as such, there may be only two feasible options (i.e. “ownership unbundling” and ISOs). At best, the IA system fits in EU-policy-making as a valid decision-making aid. At worst, it may exhibit some of the worst aspects of bureaucratic instruments of decision-making. The findings of this review seem to converge towards the latter view.

The findings of this paper should not be considered as a negative judgement to the Impact Assessment process as a whole. Although individual EU Impact Assessment reports could be improved, this author believes that providing empirical evidence about policy interventions in crucial policy areas, such as the liberalisation of the energy market, is vital for an informed, open and transparent policy-making process.

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