

Herbert Smith

EER - the European Energy Handbook 2012

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Introduction

I am delighted to introduce the 2012 edition of “EER - The European Energy Handbook” which will give an in-depth survey of current issues in the energy sector in 41 European jurisdictions.

In addition to the chapters authored by Herbert Smith lawyers, this year, we have contributions from Schoenherr (Albania, Austria, Bulgaria, Croatia, Czech Republic, Hungary, Montenegro, Romania, Serbia, Slovakia and Slovenia); Stibbe (Belgium, Luxembourg and the Netherlands); Karanovic & Nikolic (Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia); Georgiades & Pelides (Cyprus), Kromann Reumert (Denmark); Raidia Leijns & Norcous (Estonia, Latvia and Lithuania); Roschier (Finland); Gleiss Lutz (Germany); Kyriakides Georgopoulos & Daniolos Issias (Greece); BBA// Legal (Iceland); Arthur Cox (Ireland); Studio Legale Legance (Italy); Linkage & Mind LLP (Kazakhstan); Refalo & Zammit Pace Advocates (Malta); Arntzen de Besche Advokatfirma AS (Norway); WKB Wierciński, Kwieciński, Baehr (Poland); Esquivel Advogados (Portugal); Advokatfirman Vinge (Sweden); Homburger (Switzerland); Hergüner Bilgen Özeke (Turkey); and Sayenko Kharenko (Ukraine).

The review includes a summary of each legal and regulatory energy framework and analyses issues such as industry structure, Third Party Access, the framework applying to use of system both at the transmission and distribution levels, market entry, nuclear power and cross border interconnection. Special attention is given to the status of transposition and implementation of the Third Energy Package and the Climate Change Package into national law.

Although most elements of the Third Energy Package and Climate Change Package have now entered into force, they are slow to find their way onto national statute books. The Commission has highlighted its intention to prioritise the implementation the applicable energy market legislation and has commenced numerous infringement proceedings in this respect.

Whilst these packages are not yet fully implemented in all EU member states, further European measures have been announced and or adopted: The European Commission has been busy over the last twelve months and has put forward key initiatives for the European energy market, including in relation to the safety of offshore oil and gas operations, the improved co-ordination of the EU’s external energy policy, and the strengthening of Europe’s energy networks.

As 2012 will also see the coming into force of the unbundling provisions of the Third Energy Package, we can expect further lively debate and changes in the European energy sector in the year ahead.

Silke Goldberg

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January 2012

Third Energy Package

Throughout this publication, we refer to the two Directives and three Regulations adopted by the European Council and the Parliament on 13 July 2009 as the “Third Energy Package”. For ease of reference, the Directives and Regulations adopted as part of the Third Energy Package: EU Directives 2009/72/EC, 2009/73/EC and Regulations (EC) No 713/2009, No 714/2009 and No 715/2009 are referred to as the “New Electricity Directive”, the “New Gas Directive”, the “ACER Regulation”, the “New Electricity Regulation” and the “New Gas Regulation”, respectively. Where the context so requires, we refer collectively to the two Directives as the “New Electricity and Gas Directives” and to the Regulations as the “New Electricity and Gas Regulations”, as appropriate.

Climate Change Package

We refer to the four Directives, one Regulation and one Decision adopted by the European Parliament on 17 December 2008 and the European Council on 6 April 2009 as the “Climate Change Package”. For ease of reference, throughout this publication, we refer to EU Directives 2009/29/EC, 2009/28/EC, 2009/31/EC and 2009/30/EC as the “New EU ETS Directive”, the “Renewable Energy Directive”, the “CCS Directive” and the “Biofuel Directive” respectively. Further, we refer to EU Decision No 406/2009/EC and Regulation (EC) No 443/2009 as the “GHG Reduction Decision” and the “Emissions Standards Regulation”, respectively.

Where required, we have referred to the previous internal energy market directives 1996/92/EC and 1998/30/EC as the “First Electricity Directive” and the “First Gas Directive”, respectively and to Directives 2003/54/EC and 2003/55/EC as the “Second Electricity Directive” and the “Second Gas Directive”, respectively.

Throughout the publication, we refer to Transmission System Operators as “TSO” and to Distribution System Operators as “DSO”.

Legal advice

Please note that the content of this publication does not constitute legal advice and should not be relied on as such. Specific advice should be sought about your specific circumstances.

Energy law in Latvia

Recent developments in the Latvian energy market

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An LNG terminal project

On 14 December 2010 the government of Latvia indicated that it was in favour of an LNG terminal project in Latvia and instructed the state-owned AS Latvenergo to carry out an initial feasibility study of the project. AS Latvenergo submitted the feasibility study to the Ministry of Economics in July 2011. It is believed that there are a number of advantages in constructing the terminal in Latvia as opposed to elsewhere in the region; the most important of these is the relatively well developed existing gas infrastructure in Latvia, especially its underground storage facility at Incukalns, which is crucial for the successful operation of a large-scale LNG terminal. In addition, the possibility to expand the storage capacity of the existing Incukalns underground gas storage facility up to a capacity of 3.2bcm could result in significant cost savings. It is thought that construction of the terminal would contribute to diversifying the routes of supply of natural gas, creating competition to the current supplier of natural gas, and strengthening the energy independence of the country.

The final decision regarding the location of the regional LNG terminal is expected towards the end of 2011, as soon as feasibility studies in each of the Baltic States have been completed and agreement reached among the respective governments.

Visagina nuclear power plant: still searching for the strategic partner

In 2011, the Lithuanian government selected a strategic partner for the construction of the Visagina nuclear power plant – Hitachi GE Nuclear Energy. It is expected that the concession agreement with the strategic investor will be concluded by the end of 2011, and that the construction process will commence by the end of 2013. The expected investment in the project amounts to €3–5 billion.

Overview of the legal and regulatory framework in Latvia

A. Electricity

A.1 Industry structure

The key market player in the Latvian electricity market is AS Latvenergo, a fully state-owned joint stock company. According to the Energy Law, a framework law for the Latvian energy sector, AS Latvenergo must remain the property of the State and its privatisation, as well as any other form of alienation, is prohibited. Furthermore, the power plants and the electricity transmission and distribution networks may not be used as collateral or transferred to any entities other than those fully owned by the State or AS Latvenergo.

AS Latvenergo has three subsidiaries which are all joint stock companies fully owned by AS Latvenergo:

- the distribution system operator (“DSO”)
 - AS Sadales tīkls;
- the transmission system owner (“TSO”)
 - AS Latvijas elektriskie tīkli; and
- the independent transmission system operator
 - AS Augstsprieguma tīkls.

Since 2006, SIA Enefit, a limited liability company owned by AS Eesti Energia, an Estonian electricity producer, has been operating on the Latvian market by offering electricity to corporate clients. According to information provided by SIA Enefit itself, the company has continuously increased its market share which has now reached 5% of the electricity market in Latvia.

The Ministry of Economics is responsible for the overall supervision of the electricity industry. The tariffs and market conditions in the electricity industry are regulated by the Public Utilities Commission (*Sabiedrisko pakalpojumu regulēšanas komisija*), an institution in charge of the licensing of generation, transmission, distribution of and trade in electricity. A licence for each of these activities is necessary where the volume of the relevant activity exceeds the thresholds stipulated by the Cabinet of Ministers’ Regulations on Types of Regulated Public Services. Licences for generation, transmission and distribution of electricity are issued for a period of twenty years and licences for the trade in electricity for a period of five years. The Public Utilities Commission is also in charge of the gas market where similar licences, ie, for transmission, storage, distribution of and trade in natural gas, should be obtained prior to commencement of the respective activity.

The basic legislative framework governing the electricity industry consists of the Energy Law, the Electricity Market Law, the Law on Regulators of Public Services, as well as several subordinated regulations issued by the Cabinet of Ministers and the Public Utilities Commission.

The Electricity Market Law implements the New Electricity Directive into Latvian legislation. As regards the unbundling regime, Latvia has opted for the independent system operator model. Ownership unbundling was rejected due to the fact that, as mentioned above, according to Latvian law neither AS Latvenergo nor any of its subsidiaries or significant assets may be alienated to a private party. In addition, the Latvian government has pointed out that ownership unbundling model would be inappropriate for Latvia as the domestic electricity market is too small and ownership unbundling would cause extensive fragmentation of the industry with adverse effect on consumers.

A.2 Electricity trading

Electricity trading is regulated in Latvia by the Electricity Market Law and the Grid Code, as approved by the Public Utilities Commission, which provides for various trading mechanisms, including pooling. Electricity trading is considerably encumbered in Latvia, however, by the inadequate availability of generation capacities and the insufficient number of market participants.

Ensuring the system balance is the responsibility of the TSO. The TSO provides balancing services to the users, electricity generators and DSOs connected directly to the transmission system. The users, electricity generators and other DSOs connected to the distribution system receive the balancing service from the DSO.

Electricity can usually be traded in the balancing market. Although there is a general prohibition to engage in electricity trading, an exception exists which entitles the TSO to engage in electricity trading for the purposes of balancing.

The supply of electricity to customers is regulated by the Electricity Trade and Usage Regulations issued by the Cabinet of Ministers, which provides detailed regulations regarding the relationship between electricity suppliers and customers. The supply of electricity to captive customers (ie those electricity users who have not exercised their right to freely select the electricity supplier) is subject to tariffs approved by the Public Utilities Commission. These tariffs are calculated in accordance with the methodologies approved by the Public Utilities Commission.

It is expected that in 2012 the Latvian bidding area with the Nord Pool Spot, the leading power market in Europe, will be implemented. However, electricity market players from Latvia have been actively involved in electricity trading in the Estonian bidding area. In addition, AS Latvenergo offers the opportunity to purchase electricity for the bourse price, though significant caution by potential purchasers has been noted due to the price risks involved in this type of electricity trading.

AS Latvenergo has also expressed the opinion that implementation of the Latvian bidding area will not result in substantial changes to the Latvian electricity market.

A.3 Third party access regime

The Electricity Market Law generally provides for the right of market participants to use the transmission and distribution systems at the tariffs approved by the Public Utilities Commission. Access to the transmission and distribution systems is subject to market participants complying with the technical requirements of the system operator. The system operator may refuse such access where it lacks the necessary capacity, giving duly substantiated reasons to the market participant within 30 days of receipt of its application.

It has been established that access to the grid by developers of renewable energy source ("RES") – produced electricity projects is limited due to excessive connection costs and bureaucratic requirements imposed on those willing to acquire connection to the grid. However, the same could be said in respect of potential customers of AS Latvenergo – connection costs for newly built production units, for example, are significant thus increasing substantially the amount of necessary investment.

A.4 Market entry (supply and generation)

Electricity generation, transmission, distribution and supply are all subject to obtaining a licence issued by the Public Utilities Commission unless the applicable thresholds are not exceeded. The issuance of the licence is normally decided within one month although in exceptional cases this period may be extended to four months.

Where the entrant intends to use the existing transmission and/or distribution system for transportation of the electricity, an agreement needs to be entered into with the operator of the relevant system(s).

In addition, entities intending to engage in electricity supply are subject to requirements relating to the relationship with the electricity end users, as stipulated by the Electricity Trade and Usage Regulations issued by the Cabinet of Ministers.

A.5 Public service obligations and smart metering

The Electricity Market Law imposes certain obligations on the so-called 'public trader' which is to be established by the entity as having the distribution licence with the largest area of operation and the largest number of users switched to its networks. Among other things, the public trader is under an obligation to supply electricity to all captive customers in the entire territory of Latvia, as well as to purchase electricity generated in the cogeneration process and from RES.

At present, smart metering of electricity is not regulated in Latvia and it is unlikely that such a regulation will be introduced in the near future.

A.6 Cross-border interconnectors

Within the boundaries of the EU, Latvia is interconnected with Lithuania and Estonia via long established grids, as well as with Finland via the so-called Estlink – an undersea cable between Finland and Estonia. In addition, Latvia is interconnected with the Russian/CIS electricity network via interconnectors constructed in 1990.

According to information from the European Commission, additional interconnectors are planned with Finland via Estlink-2, as well as with Sweden via Nordbalt – an undersea cable between Sweden and Lithuania. The Nordbalt project would also involve electricity network improvement (ie, strengthening) in the Baltic States.

B. Gas

B.1 Industry structure

Latvia is a natural gas importer, the only supplier of natural gas being AOA Gazprom, a Russian state-owned company. Together with Lithuania and Estonia, Latvia forms the so-called Baltic energy island. Though natural gas transmission systems of the Baltic States are mutually interconnected, they lack interconnection with the rest of the EU, which means that Latvia and the other Baltic States are fully dependant on the natural gas deliveries from AOA Gazprom.

Nevertheless, although Latvia does not produce natural gas, the country benefits from its geological advantage; one of the largest storage underground facilities in Eastern Europe is situated in Incukalns, Latvia. This storage facility is intensely exploited by AOA Gazprom which uses the site to store its natural gas reserves intended for distribution in Latvia, Estonia, North-West Russia, and to a lesser extent Lithuania. Latvia is thus also involved in the exportation of natural gas.

The Latvian natural gas market has so far been purely monopolistic, the only entity licensed to transmit, distribute, store and supply natural gas being AS Latvijas Gaze, a vertically-integrated undertaking owned by E.ON Ruhrgas International AG (47.23%), AAS Gazprom (34%), SIA Itera-Latvija (16%), and several minority shareholders (2.77%).

In a similar structure to that of the electricity market, the overall supervision of the gas industry is performed by the Ministry of Economics. The Public Utilities Commission is the institution in charge of issuing licences for the provision of public services in the gas industry (please refer to Section A.1 above for a more detailed description).

The basic legislative framework governing the gas industry consists of the Energy Law, the Law on Regulators of Public Services, and a series of subordinated regulations of the Cabinet of Ministers and the Public Utilities Commission. The Energy Law implements the Second Gas Directive but it is uncertain as to when and to what extent the New Gas Directive will be implemented; this very much depends on an eventual development of a regional liquefied natural gas terminal

in Latvia which is currently a subject of discussion among the Baltic States.

Latvia is currently exercising its rights of derogation under Article 28(2) of the Second Gas Directive which allows Member States qualifying as emergent markets (ie those countries which, due to implementation of the Second Gas Directive, would experience substantial problems) to derogate from a series of articles of the Second Gas Directive until the relevant Member State no longer qualifies as an emergent market. According to the transitory provisions of the Latvian Energy Law, it was decided that the natural gas market would remain closed until 4 April 2014. This date was determined based on the fact that Latvia received the first commercial supply of natural gas on 5 April 2004 under its first long-term natural gas supply contract entered into on 18 July 2003.

The transportation, distribution, storage and supply of natural gas as well as the supply, distribution, storage and refilling of liquid natural gas are regulated activities and therefore subject to obtaining a licence, which is issued by the Public Utilities Commission. The transportation, distribution and storage licences are issued for a period of twenty years, while supply licences are issued for a period of five years.

Since the Latvian natural gas market is monopolistic, no product sharing regime exists for the time being.

On 7 July 2010 the Parliament of Latvia passed amendments to the Energy Law which implemented Council Directive 2009/119/EC of 14 September 2009, imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products. The Ministry of Economics has been appointed as the central stockholding entity for the purposes of acquisition, maintenance and sale of the oil stocks. The oil stocks are purchased from economic operators which (1) are authorised to engage in commercial activities with oil products in Latvia or a Member State of the EEA, or (2) import oil products into Latvia for their own consumption, in each case selected as a result of an open tender process.

B.2 Gas trading

Natural gas is supplied to customers only by AS Latvijas Gaze. Supply of natural gas to customers is regulated by the Gas Supply and Usage Regulations issued by the Cabinet of Ministers, which provides detailed regulations concerning the relationship between the gas supplier and customers. Supply tariffs of natural gas are established by the Public Utilities Commission and are calculated in accordance with the methodologies approved by the Public Utilities Commission.

B.3 Third party access regime to gas transportation networks

The natural gas transportation and distribution networks are operated by AS Latvijas Gaze. Due to the monopolistic character of the Latvian natural gas market, no third party access to the gas transportation and distribution networks is guaranteed by Latvian law.

B.4 LNG and gas storage

There are currently no LNG terminals in Latvia. However, in July 2011 AS Latvenergo submitted to the Ministry of Economics a feasibility study regarding eventual construction of a regional LNG terminal in Latvia.

The Baltic States have previously agreed that they should co-operate in the construction and operation of a LNG terminal with capacity to serve the Baltic States. A joint final decision by the governments of the Baltic States on the location of a LNG terminal will be made as soon as each country finishes its feasibility study regarding a regional LNG terminal for the East Baltic Sea region.

As regards gas storage, Latvia has substantial advantages in this respect (see also Section B.1 above). It already operates one underground natural gas storage facility at Incukalns. Recent studies by the European Commission suggest that the capacity of Incukalns could be significantly increased and that one more large scale underground storage facility in Dobeles could eventually be constructed. Studies also suggest that in future storage facilities in Latvia could serve as facilities of regional importance, serving not only the Baltic States, but also Finland, Poland, and even Norway (for natural gas eventually extracted in the Barents Sea).

B.5 Market entry

Since the transitory provisions of the Energy Law provide for the Latvian natural gas market to remain closed until 4 April 2014, entry to the Latvian natural gas market will not be possible until that time.

B.6 Public service obligations (including smart metering to the extent relevant)

This section is not applicable in Latvia.

B.7 Cross-border interconnectors

Please refer to Section B.1 above for information on cross-border interconnectors.

For further integration of Latvia into a common European natural gas network system a number of conditions have to be met. Firstly, it is essential that the Baltic States have interconnectors with the rest of the EU, for example via Poland – Lithuania or Estonia – Finland interconnectors. Secondly, interconnection capacity among the Baltic States has to be increased. The respective infrastructure projects are envisaged in the Baltic Energy Market Interconnection Plan.

C. Climate change and sustainability

C.1 Climate change initiatives

In most regards, implementation of the EU Climate Change Package is still pending in Latvia. While the New EU ETS Directive has been implemented in Latvia in order to comply with those requirements which had

to be implemented by 31 December 2009, the legislative acts necessary to implement the Renewable Energy Directive and the Biofuel Directive have not yet been finally adopted.

C.2 Emission trading

The legislative framework for emission trading is provided by the Law on Pollution and the Regulations on Activities with Emission Allowances and Organisation of Pools of Installations issued by the Cabinet of Ministers, which implements the relevant provisions of Directive 2003/87/EC. The emission allowances are allocated by the Ministry of Environment, while the Latvian Environment, Geology and Meteorology Agency operate and maintain the issue and register of allowances. No national emission trading schemes are available in Latvia that operate in addition to the EU ETS.

C.3 Carbon capture and storage

Currently there are no existing carbon capture and storage projects in Latvia. There are no laws, or guidelines issued by the State regulating this issue. Taking into account the costs and complexity of this new technology, the private sector needs economic incentives in order to apply it. If the cost of this technology is not reduced, it is probable that these kinds of projects will not be used in Latvia in the near future.

C.4 Renewable energy

The Energy Law generally defines RES as wind, solar, geothermal, tidal, and hydro-energy, waste landfill site and sewage treatment plant gas, biogas and biomass (ie, the biologically degradable fraction in products, industrial and household waste, agricultural, as well as forestry and similar section residual materials). In practice, the two most exploited RES are wood-pulp and hydro-resources, with wind energy and biogas also used but in considerably smaller volumes.

The share of energy from RES has always been high in relation to the gross final consumption of energy in Latvia, constituting 29.7% in 2007 and 29.9% in 2008. The target of using 40% energy from RES by 2020, as provided by the Renewable Energy Directive is, however, considered to be ambitious and not easily achievable.

The Electricity Market Law provides that a certain percentage of the total energy consumption by end users should be electricity produced from RES. The Electricity Market Law requires that the percentage of electricity produced from RES be gradually increased so that by 31 December 2010 it is not less than 49.3% of the total electricity consumption. Latest figures from 2010 show that 48.5% of the gross energy consumption in Latvia was RES-produced electricity. Most of this came from big hydropower plants owned by AS Latvenergo. Other producers of electricity from RES – small hydropower plants, biomass cogeneration stations, onshore wind energy plants – provide a considerably smaller amount of RES-produced electricity, though current legislative

framework is aimed at facilitating further growth of electricity production from RES (eg, via feed-in tariffs, allocation of EU Structural Funds, etc).

The Electricity Market Law also requires the public trader (as defined in section A.5 above) to purchase a certain amount of electricity generated from RES. The price of such electricity and the amount to be purchased by the public trader are determined by the Cabinet of Ministers each year. Entities producing electricity by using RES may acquire the right to sell the produced electricity to the public trader, provided they have received a special permit from the Ministry of Economy. Such a permit also confirms that the electricity has been produced by using RES.

A draft of a new Renewable Energy Resources Law has been introduced into the legislative process which aims to implement the Renewable Energy Directive. It is not yet known when this new Renewable Energy Resources Law will be finally adopted.

C.5 Biofuel

Production and sale of biofuel is regulated by the Biofuel Law which establishes the government's responsibilities in relation to these activities as well as the requirements applicable to economic operators engaged in the biofuel industry. The Ministry of Economics annually assigns a financial aid quota for the minimum amount of biofuel that must be produced during the respective year.

Amendments to the Biofuel Law have been set in motion with the aim of implementing the Biofuel Directive but it is not yet known when such amendments will be finally adopted.

C.6 Energy efficiency

In the field of energy efficiency, the government of Latvia is concentrating on the heat insulation of buildings, as well as on enhancement of the district heating grids. For this purpose, the government is offering various incentives, including the Climate Change Financial Instrument, State aid schemes for the heat insulation of apartment houses, and allocation of the EU Structural Funds for improvement of energy efficiency.

D. Nuclear energy

No nuclear energy is generated in Latvia. The only Latvian research reactor, a pool-type IRT-2000 research reactor with a 5000kVt capacity, was shut down in 1998.

The Visagina nuclear power plant project, which is the product of a joint effort between Lithuania, Latvia, Estonia and Poland, is progressing. The government of Lithuania has attracted a joint venture partner, Hitachi GE Nuclear Energy, as the strategic investor in the Visagina nuclear power plant project. The concession agreement with the strategic investor is expected to be concluded by the end of 2011.

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