Flux 50 Focus Session "*Kunnen innovatieve energieconcepten de markt veroveren?*"

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How can regulation be innovative?

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Context and Introduction

- New circumstances and challenges in the energy sectors require innovative regulation
- Classic regulatory boundaries are not necessarily up to date – quest for adapted (case-specific) regulation boundaries and guidelines

Recent examples of regulatory innovation in Flemish Region

- **Heat Networks:**
- **Legal source:** Flemish Decree of the 10th March 2017
- **Main components and particularities:**

✓ Non-applicable for industrial use (art.5, 12°, 133°/2)

✓ Enabling the VREG for follow-up, litigation and information (art.8)

✓ Tasks and obligations pertaining to the Heat network Operator (art. 14):

- Notably "Onderafdeling IV." concerning the use of personal data
- Technical Prescriptions, notably Section 1, art. 4/1.1.1 §2, 7° (cogeneration and green heat) and 8° (information to VREG/ Building energy efficiency)

✓ Not in force yet: need for a decision of the Flemish government (art. 31)

Recent examples of regulatory innovation in Flemish Region

Energy-Efficiency and Energy Saving Companies:

- New definitions in Project Decree of 6 July 2018 (e.g. art.2, 7° for ESCO)
- Currently, challenges in relation to level playing field concerning energy vectors (e.g. spread between natural gas and electricity vs. heat pumps) and calculation method of electricity price e.g. inclusion of green certificates costs, low price of individual gas installations, …)
- Possible ways forward :
  - ✓ Revision of the price formation and invoicing (e.g. exiting green certificate costs on electricity invoice only, introduction of CO2 levy)
  - ✓ Exiting the 'NMTO (NMDA) principle' and use individual heatpump as reference to demonstrate advantages of collective heat systems

Recent examples of regulatory innovation in Flemish Region

Smart meters :

- Project Decree of the 6 July 2018 - project decision of 13 July 2018 of the Flemish Government
- Taking into account remarks of Council of State (advices 62.977/3 of 20 March 2018 and 63.544/3 of 21 June 2018)?
- Currently, political choices to make: still rewarding of decentralised energy injection (PV)?
  - ✓ Art. 80 of the project Decree: decentralized production-installations with maximum 10 kVA AC-capacity (existing and future until 31 December 2020) : compensation system for 15 years between injected and off-taken electricity
  - ✓ Art. 81 of the project Decree: as from 1 January 2021, all electricity injected by PV-installations with maximum 10 kVA AC-capacity must be purchased in accordance with terms and conditions to be determined by the Government

Recent examples of regulatory innovation in Flemish Region

Smart meters :

- Data operator under the control of VREG (art. 3-9 Project Decree)
- DSOs must delegate certain tasks to the data operator and comply with certain degree of independence (art. 10-12 Project Decree)
- Data operator status is regulated (art 14-30 Project Decree, with obligations including non-discrimination, reimbursing of possible damages to privacy protection, …)
- The project of decision of the Government determines execution modalities of tasks, procedures and conditions of the Data Operator

Recent examples of regulatory innovation in Flemish Region

Dynamic pricing:

- Installation of smart meters pre-condition for smart tariffs: flexible tariffs depending on the customers' behaviour
- Supported by the EU (Directive 2012/27/EU), reinforced by Clean Energy Package
- Price vs tariffs, market vs regulation, static vs dynamic
- Possible modalities for tariffs:
  - ✓ ToU (Time of Use><night tariffs)
  - ✓ Critical Peak pricing
  - ✓ Real time pricing
  - ✓ Capacity tariffs
  - ✓ …

Recent examples of regulatory innovation in Flemish Region

Dynamic pricing

Project decision of the Flemish Government: explicit date given (1 April 2020) for the implementation of dynamic tarification and

Art. 8. In hetzelfde besluit, het laatst gewijzigd bij het besluit van de Vlaamse Regering van 26 januari 2018, wordt een artikel 3.1.38/1 ingevoegd, dat luidt als volgt:

"Art. 3.1.38/1. Als de elektriciteitsleverancier op het toegangspunt dynamische prijzen aanbiedt, informeert hij de elektriciteitsdistributienetgebruiker op laagspanning over de al dan niet dynamische gebruiksperiodes en de dynamische energieprijzen die daarop van toepassing zijn, zodat de elektriciteitsdistributienetgebruiker een bewuste, geïnformeerde keuze kan maken.

De leverancier informeert de elektriciteitsdistributienetgebruiker over:

1° de **toestemming om verbruiksgegevens per elementaire periode te gebruiken**, die de elektriciteitsdistributienetgebruiker moet verlenen om aggregatie van verbruiken over de gebruiksperiodes mogelijk te maken;

2° de **mogelijke prijsschommelingen van een dergelijk product** en de implicaties ervan.

Op voorwaarde dat de elektriciteitsdistributienetgebruiker toestemming geeft om verbruiksgegevens per elementaire periode te gebruiken en voorwaarde dat de meetinrichting het mogelijk maakt voor de elektriciteitsdistributienetgebruiker om te kiezen voor een meetregeling waarbij verbruiksgegevens per elementaire periode beschikbaar worden gesteld, stelt de databeheerder **vanaf 1 april 2020** gevalideerde verbruiksgegevens per kwartier, die de basis vormen voor de aanrekening van de dynamische energieprijzen door de toegangshouder, ter beschikking aan de toegangshouder voor het desbetreffende toegangspunt.".

"Elementaire"= according to VREG (advice of 31 August 2018 on the project decision), must be interpreted as hourly data for natural gas and quarterly-hour date for electricity

Boundaries and guidelines for future regulations

- **Classical boundaries**:
  - ✓ Equality of treatment (non-discrimination principles)
  - ✓ Obedience to higher norms (European Law – Belgian Constitutional Law requirements)
  - ✓ Enhancing the independence principle (VREG - status of data operator)
  - ✓ Impartiality and transparency principles (selection procedures)
  - ✓ Proportionality principle (sanctions)

Boundaries and guidelines for future regulations

- **Inherent (sector-specific) boundaries**:
  - ✓ Change in law: respect of vested rights - legitimate expectations of investors
  - ✓ Enabling prosumers – what about demand-response/flexibility?
  - ✓ Intervention of grid operator(s) – data protection particularities
  - ✓ How to anticipate technology developments (evolutions of spreads, trajectory towards grid parity)?
  - ✓ …

Conclusion

- Shift towards (and combination of) classic and innovative (sector-specific) boundaries
- Benchmarking possibilities with (neighbouring) countries and EU (DG Comp) scrutiny

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