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Title- Regulatory Transparency and Interaction with the Government

Good Regulatory Practice

A good regulatory regime should be designed in such a way that it is practical to implement. Furthermore, regulation should be predictable. Key mechanisms for providing predictability in regulation include a transparent decision making process, avoiding ambiguities and discretionary rights, along with the provision of clear timetables for price reviews (submission of information, consultation process and final determinations). Regulation should be accountable. Accountability concerns the obligation to explain processes and reasons behind decisions, fulfilled functions and utilised resources and to specify appeals procedures. Finally, regulation should not create an excessive administrative burden for the regulatory authority and the regulated companies.

A regulatory framework based on the principles mentioned above will give the sector stakeholders confidence. However, it must be pointed out that it will not be sufficient to devise an energy sector regulatory framework if uncertainties over economic and political developments exist. The credibility of the political and economic framework and the detailed regulatory arrangements are closely interlinked.

Role of Government

The role of government is principally to establish the general framework for the sector's operation and to take decisions regarding specific issues with either wider social implications or of a potentially high cost to consumers and industry players. The regulator is an institution that implements more than it does set policy. The formulation of the nation's overall policy for the sector is the responsibility of the government. This includes issues such as fuel diversity, promotion of technologies, subsidies, environmental policy and the level of competition to be permitted. It is the regulator's responsibility to both inform the government and to monitor the implementation of the government's policy. Once the policy has been established, however, the regulator should be permitted to interpret, implement and monitor these policies without the day-to-day interference of the government.

Governments may set sector targets leading to substantial costs on industry and household (taxes, levies). These objectives can be far reaching and could include; environmental standards, the support of other sectors of the economy, e.g. coal mining, renewables energies or gas exploration, and wider social objectives such as imposing limitations on cutting off supplies to low income families. It is the role of the government to establish the extent of such objectives and by association the cost incurred to the industry and consumers. It is then the regulator's role to ensure that these objectives are met and that the costs incurred are appropriate and passed on.

Areas of Dependence and Conflicts

It should be emphasised that the implementation of the normative criteria for regulatory independence may be rather restricted in practice. The regulators are often appointed by the government for a fixed term. Moreover, they may report to the government and their budget may be subject to approval by the government. The government may also keep certain competences, e.g. end-user price control. Furthermore, the government may informally intervene and influence the work of the regulators by imposing administrative pressure, steering public opinion and media, promoting populist views (e.g. promises to limit price increases or to revoke licenses) etc. There might also be inherent conflicts between the governmental objectives and those of the regulators. On some occasions, superordinate economic / social objectives might play a role in limiting regulators in their actions. For example, constraints like inflation control, regional development policy, subsidies to population or/and technology promoters may influence the work of the regulators.

There are multiple examples from developed and emerging countries of such conflicts. In the emerging countries conflicts have traditionally been observed in the tariff area. In several cases, the introduction of cost reflective tariffs would lead to substantial price increases for specific customer groups. The latter is particularly relevant when the existing electricity prices do not allow the electricity sector to recover its costs fully and/or when there has been significant cross-subsidy between consumers. While the computation of cost reflective tariffs is a quantitative effort and mainly depends on the quality of available data and professional knowledge, their implementation cannot be completed overnight and requires political acceptance. Furthermore, regulators should work together with the government on a framework to protect low- income consumers from the effects of the tariff increases.

In developed countries, the conflicts are more related to the changes in the electricity industry arising from regional / national policy with respect to climate, competition and security of supply on the one hand, and from the economic and technical development on the other. The typical examples here are related to the limited compatibility among the energy policy components like the promotion of renewable policy and non-discriminatory funding of above-market cost, the penetration of renewable technologies and competition on energy markets, decarbonisation objectives and maintaining the competitiveness of national economy, etc.

Mitigation Measures

There is no universal way for responding to these challenges. They should be addressed in the context of the specific situation. In the emerging countries, the remedy usually consists in a series of measures related to strengthening regulatory capacity, measures to improve transparency, constructive / responsible political conduct and stakeholder engagement. The latter also appears relevant to the developed countries. In addition, and more important is the coordination between government, regulators and industry, on a national and regional level. For example, the Third Energy Package has established an institutional basis for enhancement for coordination in the European Union. Typical examples related to the establishment of a European Regulator (Agency of Cooperation of European Regulators), implementing a series of supranational rules (codes) governing the electricity and gas markets, a regional approach towards specific infrastructure projects and the harmonisation of certain cross-border issues.