

Main Findings

of the

Survey on the application of procurement rules at the national level by the TSOs of the GRI SSE Member States and Contracting Parties

The survey on procurement rules applied by utilities acting as gas and electricity TSOs was designed and assessed by E-Control to investigate the procurement practices in place in both European Member States and Contracting Parties that are members of the Gas Regional Initiative South-South East.

The survey was sent to 13 Member States (MS) and 7 Contracting Parties (CP) in April 2020.

Answers were received from 10 MS and 4 CP.

The survey addressed 5 topics:

- Shareholding structure and certification of both gas and electricity TSOs
- The National Regulatory Authority's (NRA's) awareness of procurement rules followed by TSOs
- Costs transparency in the local regulatory framework and exemptions
- Role of the NRA in verifying costs incurred by TSOs
- General questions and potential suggestions and improvements

The aim was to try to determine how TSOs comply with the procurement obligations and how much the NRAs are aware of and oversee the procurement process carried out by TSOs.

With the exception of the procurement of energy products, the Third Energy Package does not explicitly confer any specific supervisory power to the National Regulatory Authorities over the procurement activities carried out by TSOs (and DSOs) in the gas and electricity sectors.

Nevertheless, the national transposition of the European Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, imposes obligations for undertakings active as transmission and distribution system operators to abide by the disposition of such laws in matters of procurement, unless exemptions are granted.

Against this background, NRAs should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective by taking fully into account the need for system integrity and by reflecting the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator.

The survey investigated specific aspects of the single regulated systems in order to gain an overview of how NRAs approach the issues related to procurement and taking into account that the Contracting Parties of the Energy Community do not have an obligation to transpose Directive 2014/25/EU, the results can be summarised as follows:

TSO:

- While the majority of the electricity TSOs are public undertakings, the majority of the gas TSOs are privately owned, and different interpretations of the obligation to apply procurement law emerge between the two groups.
- Some TSOs carry out the service to operate the network on the basis of a concession granted by means of a procedure based on objective criteria for which adequate transparency has

been ensured (Art 4 (3) Directive 2014/25/EU); others leave open the question as to whether they enjoy special or exclusive rights.

- No TSO has ever applied for an exemption according to Article 35 of the Directive 2014/25/EU.
- The combination of the specific ownership structure (privately owned or public undertaking), the activity carried out by the shareholder (e.g. TSO as well) and the certification in place (ITO; O.U), reveals that some TSOs could have an interest in directly awarding contracts to their shareholders or their affiliate companies.
- Some TSOs do not apply the national procurement law, as they have their own internal procurement rules that in some cases are not public.
- Several cost methodologies (e.g. cost-based regulation) could implicitly incentivize the TSO to have high infrastructure costs.

NRA:

- Some NRAs stated that they do not carry out any monitoring of the procurement activities of the TSOs as they trust the national procurement supervision offices which should be responsible for this duty.
- A few NRAs stated that, during their activities, they have dealt with the topic of procurement carried out by TSOs; the majority are not aware how TSOs carry out this task.
- From the moment that important investments are approved by the NRA, to the moment that these investments are realized and the cost included in the regulated asset base, the majority of the NRAs have no control over the activities of procurement and execution of the project carried out by the TSO.
- Due to the weak link between the Third Energy Package and procurement law, some NRAs reported difficulties related to the ability to verify that the procurement activity of the TSO is compliant with the principle of non-discrimination and the arm's length principle.

In light of the above, some NRAs explicitly asked for a better link between the Third Energy Package and the Procurement Directive and that more transparency regarding the procurement activities of TSOs at the European level should be envisaged. Indeed, some NRAs believe that the NRAs should be equipped with legal powers to monitor the procurement activities of the TSOs and to directly fine TSOs for disregarding the obligation set by the law.