ACER

Agency for the Cooperation of Energy Regulators

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Thüga Aktiengesellschaft position on the ACER Consultation „European Energy Regulation: A Bridge to 2025“

Introduction – who we are

The Thüga group constitutes the largest municipal network in Germany. It holds minority shares in over 90 municipal utility companies in Germany active in the sector of gas, electricity, water and heating distribution and supply. The companies of the Thüga group stand for 2,1 Mio. Gas customers and 3,6 Mio. Electricity customers in 12 federal states and in over 450 cities and municipalities.

Thüga welcomes the opportunity to comment on ACER’s public consultation paper “European Energy Regulation: A Bridge to 2025”. For the companies in the Thüga group it is important to take part in the debate on the future European regulatory framework. Investments in the energy sector are long lasting and need very stable regulative environment. The holistic long term approach on the various aspects of the gas and electricity distribution, supply and production is very much appreciated as it shows the interdependencies between the sectors.

Nevertheless we would like to comment on certain aspects of the concept.

Unbundling

Thüga Aktiengesellschaft appreciates that ACER sees the full implementation of the Third Package – applied and enforced – as the important first step (section 3.33). Since the present regulatory framework already ensures neutrality and non-discrimination, currently there is no need for further unbundling on DSO level.

However ACER links the discussion of the roles and responsibilities of the DSOs with the question of the level of unbundling requirements and in the end with the legal form of the DSO companies. From our point of view, linking these aspects is not appropriate.

According to the rules established under the 2nd (2003) and 3rd Energy Package (2009), DSOs are obliged to apply informational and account-level unbundling (Directive 2009/72/EC; Article 27 and 31). If fully implemented and enforced like in Germany, these requirements are sufficient to guarantee – also for the future - that DSOs act neutrally and fulfill their tasks in a non-discriminatory manner. In Germany, the legislation has been adapted accordingly since 2005, respectively 2011, so every DSO has to fulfill the requirements on informational and account-level unbundling.

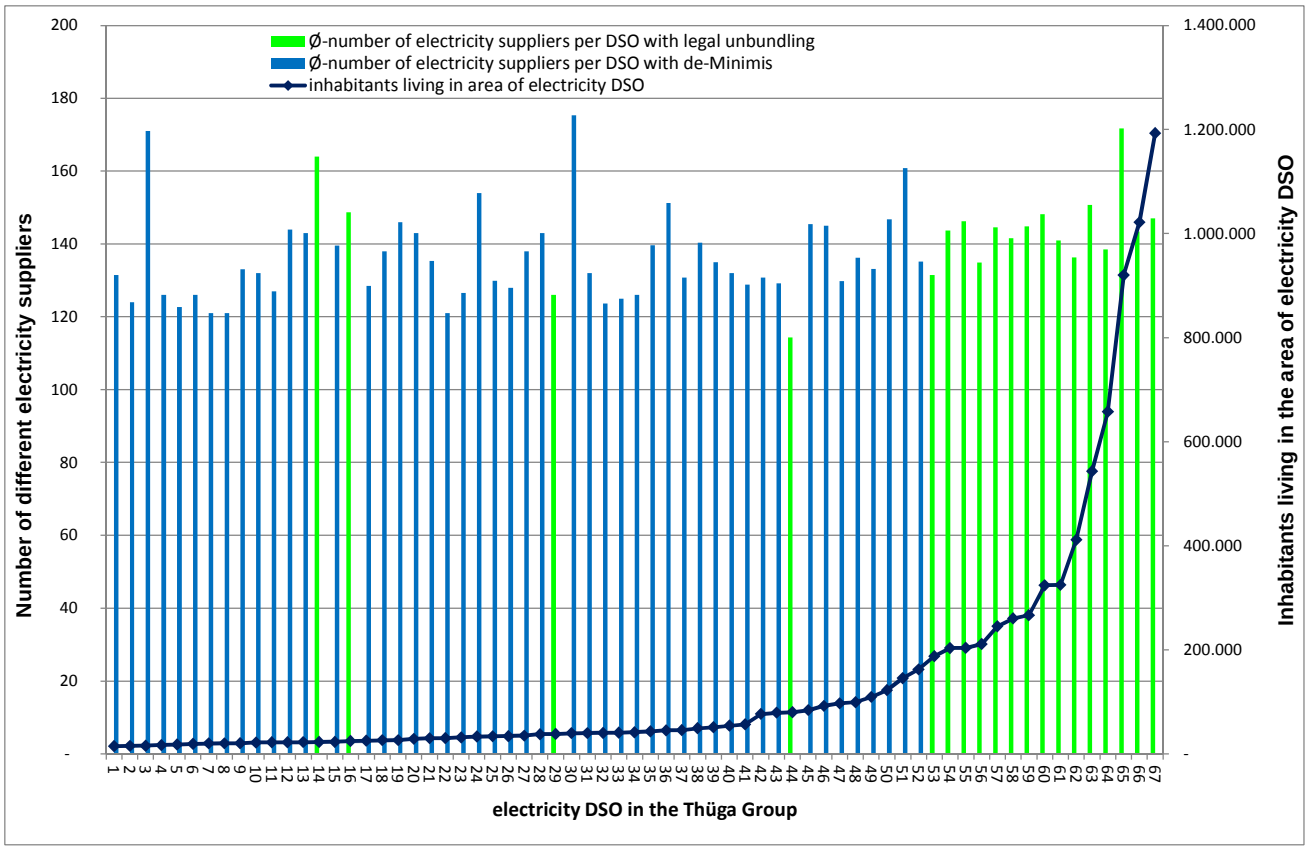
De minimis

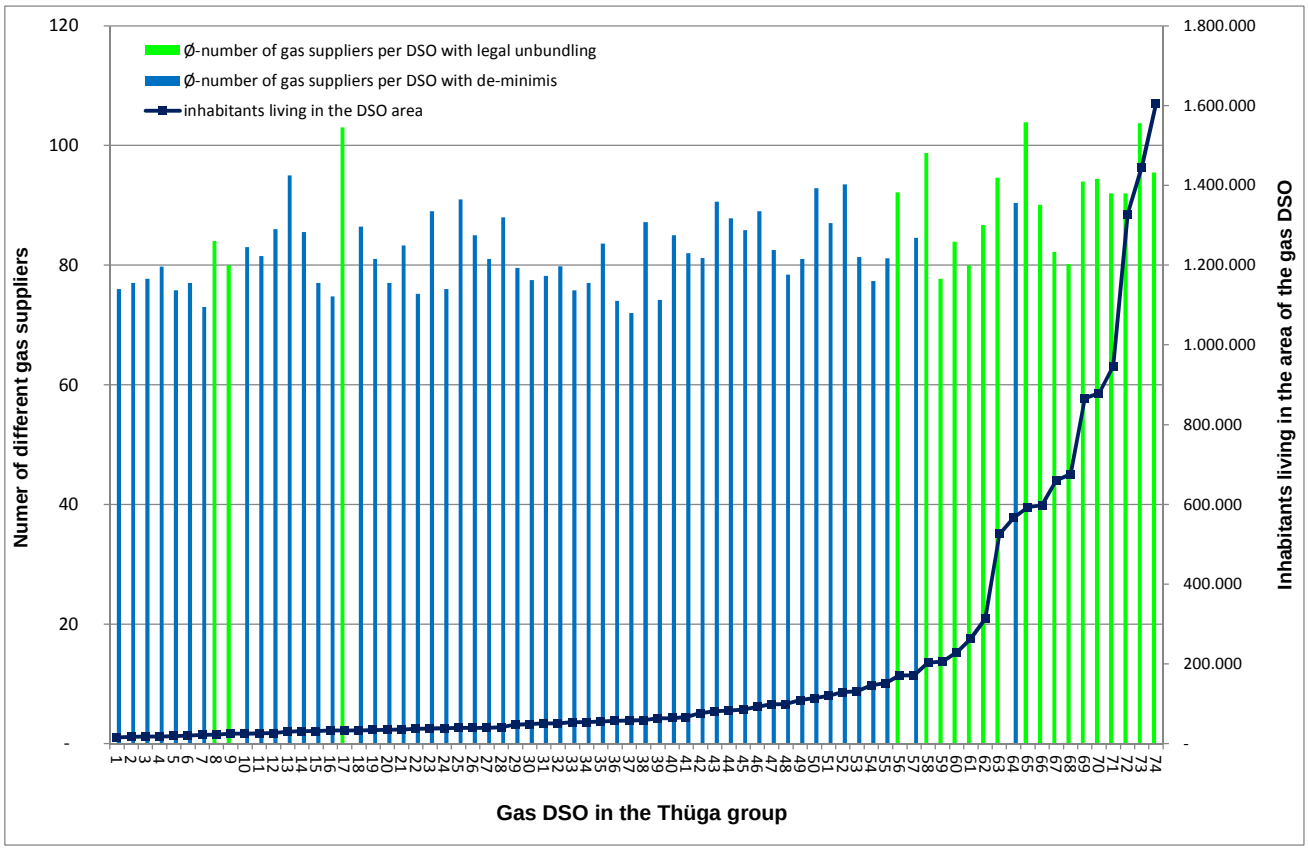
ACER states that many DSOs are exempted from unbundling (section 3.35). This is not correct After Article 27 of Directives 2009/72/EC (Electricity) and 2009/73/EC (Gas), all DSOs – regardless of their size – have to respect the confidentiality obligations, saying that they have to preserve the confidentiality of commercially sensitive information obtained in the course of carrying out their business, and they have to prevent information about their own activities which may be commercially advantageous being disclosed in a discriminatory manner. After the 2nd and 3rd Package informational and account-level unbundling applies to all DSOs (see above).

The de minimis threshold only allows member states to decide not to apply certain unbundling rules (legal and operational) to network operators serving less than 100,000 connected customers (Directive 2009/72/EC; Article 26 (4)). This threshold was introduced primarily on the grounds „*(29) To avoid imposing a disproportionate financial and administrative burden on small distribution companies, […]*"

The objective reasons justifying the de minimis threshold are still valid. This threshold has proven to be an instrument which allows smaller companies to operate their networks efficiently. This is why Thüga Aktiengesellschaft sees no need to question the existing and proven de minimis rules.

Since the first sentence of section 3.35 is not correct, we don't agree ACER's following affirmation, saying that customers connected to small distribution networks may not benefit to the same extent as those connected to larger systems. An in depth analysis of all Thüga companies has proven, that on average 84 gas suppliers and 138 electricity suppliers are active. A comparison between the companies with legal unbundling and de-minimis shows no significant difference. Also for regional DSO no logic can be established between the number of gas or electricity suppliers active in very small concession communities or in larger ones.


Ø-number of electricity suppliers per DSO with legal unbundling
Ø-number of electricity suppliers per DSO with de-Minimis
inhabitants living in area of electricity DSO
Number of different electricity suppliers
Inhabitants living in the area of electricity DSO
electricity DSO in the Thüga Group


Ø-number of gas suppliers per DSO with legal unbundling
Ø-number of gas suppliers per DSO with de-minimis
inhabitants living in the DSO area
Numer of different gas suppliers
Inhabitants living in the area of the gas DSO
Gas DSO in the Thüga group

Furthermore the large range of products offered by the different suppliers gives the customer the best choice. This proves that Germany is a very competitive market for gas and electricity and that the de-minimis unbundling rules implemented by the NRA are working effectively. The Bundesnetzagentur has established a strict ruling for switching procedures, the grid access and balancing contracts involved as well as the data formats to be used.

ACER statement that small DSOs often have limited or zero interactions with TSOs as they may only be connected to a larger DSO is also misleading. ACER does not provide evidence why this constellation of network operators would be detrimental to customers or hamper the market. On the contrary, Thüga Aktiengesellschaft does not see any relevance of the size of a DSO for the possibilities of the connected customers to benefit from the possibilities of the energy markets and to participate as active grid users. In contrast to some countries the physical situation of the DSO is irrelevant in the German market. Neither in gas nor in electricity the interconnection points between TSO-DSO and DSO-DSO play any role for the switching process. Suppliers don´t book exit capacities on the TSO grid to gain grid access at the DSO level. In fact suppliers offering their products in the internet in general don´t know or care where the DSO is connected.

Consequently the statements in section 3.35 are misleading to conclusions which are not justified by valid arguments. Thüga Aktiengesellschaft pledges to delete this section in order to avoid misunderstanding and misleading deductions for policy decisions. In addition we would be happy to provide ACER with further information on the situation in the grids of the Thüga Group.

Service levels

German grid operators are among the world leaders when it comes to security of supply and grid quality levels (SAIDI), which is a clear benefit to the customers of all sizes and the economy as a whole. Nevertheless it should be questioned whether there is a real need for EU-wide guaranteed minimum standards along with compensation arrangements. Due to geographical (rural areas/cities), regulatory and RES differences (connection requests per day) it will be difficult to find a European wide minimum standard. Exemptions will be necessary to cover all these differences. At the end there will be a huge financial and administrative burden for grid operators, whereas socio-economic benefits are small. The intense discussion at the CEER hearing on quality of services has shown, that certain steps in the discussed processes cannot be influenced neither by DSO nor suppliers as for example the weather or permits from local governments. Furthermore national legislation in various aspects differ strongly which leads to inhomogeneous processes across the EU. With this in mind we see the national regulators as the relevant institution to define quality of service levels according to the national rules together with the energy industry and the consumer organizations. Nevertheless best practice analysis between member states can help to identify good solutions in serving the customers.

The principle of subsidiarity:

ACER wishes to delegate responsibilities from the national level to EU Agencies.

Thüga Aktiengesellschaft is convinced that there is no necessity to transfer regulatory tasks to central EU Agencies such as ACER. In our view such action would strongly impede market developments. All EU agencies still have to consider in their decisions the existing national legislation, competition levels and the characteristics of the national energy markets. ACER would have to

build up a tremendous knowledge regarding all existing legal frameworks in the 28 member states. The national energy markets are bound in a tight net of many national laws regarding for example billing, competition, metering, accounting, taxing but also a surrounding technical framework for the construction or operation of the grid. We consider it very inefficient if one EU agency would have to build up this knowledge and a contradiction to the principle of subsidiarity. The principle of subsidiarity is fundamental to the functioning of the European Union (EU). The principle includes that in all cases, the EU may only intervene if it is able to act more effectively than Member states. It guarantees that action is taken at national/local level where it proves to be necessary. Some elements of the principle of subsidiarity can be find in **DIRECTIVE 2009/72/EC, for instance in Number 29: „**To avoid imposing a disproportionate financial and administrative burden on small distribution system operators, Member States should be able, where necessary, to exempt the undertakings concerned from the legal distribution unbundling requirements.“

Electricity market design and generation adequacy

We share the view that the physical connection of wholesale markets through cross border capacities will lead to an alignment of market prices. But we do not share the opinion that cross border capacities will ensure the level of security of supply and quality of the grid that the customers in Germany expect for the following reasons:

- The future electricity demand in every member state has to be ensured through the installation of secured capacity. Not programmable RES generation is only in a small portion considered as secured capacity.
- The delivery of cross border secured capacity can lower the need for national investment in some member states if in projected the moment of peak demand the simultaneity factor between the member states is less than a 100 %. Otherwise the sum of the capacities stays the same, only distributed differently between the member states. It is difficult to imagine that this will lower electricity costs.
- The delivery of secured capacity across borders will need very special contracts. It can only be counted to the secured capacity if the delivery is 100 % assured at all times even in case of national emergency situations in the adjacent member states. We foresee that these contracts will only be negotiated between large international companies which will lead to an oligopoly on this sector.
- The energy only market does not deliver timely incentives for the future new power plants. Even if the installed secured capacity in Germany surpasses the peak demand of 78 GW by 47 %, the lines of death are showing a clear deficit in 8 years when the last nuclear power plant will be switched off. The missing capacities cannot be substituted through cross border investments. Cross border capacities will not be sufficient to solve the various grid congestion situations. Production capacity is needed at certain grid points close to the large industrial consumers.

Due to these reflections Thüga together with the two associations BDEW, VKU and other Germany utilities have proposed a new market based model for the electricity market. In the core of the model the customer decides which the level of security of supply he needs. Power plants with secured capacity will be paid a capacity fee for the delivery of the secured capacity. Customers with self-generation of storages have the possibility to order a lower level of security of supply. This model shall trigger new investment for future power plants and put the customers and the market

up front. To give a brief explanation of the model we attach a short presentation that was given at the JRC Round table “Energy transition from a European perspective” on July 22nd 2014.

Supplier switching:

The envisaged shortening of the supplier switching period from its present maximum of three weeks to within 24 hours seems very ambitious and costly compared to the benefits for the customers. Germany has currently implemented a switching period of 10 working days to ensure that existing supply contracts are not breeched. This step was considered important by the law makers, the regulator and the energy industry to ensure that a switching process does not leave the customer with legal confrontations with his existing and/or new supplier.

Secondly the minimum contract cancellation periods for the supplier of the last resort is fixed in the ordinance (GVV). Cancellation periods in all other competitive supply contracts can vary and are subject to the product the customer choses. Moreover, a 24 hour switching process unduly increases the risk of all suppliers and shippers to procure gas and electricity medium term. Procurement would have to move to short term spot market with all known risks. This could lead to higher prices as the risk would have to be included in the price calculation.

Thirdly we would point out that customers mostly use internet platforms to switch to electricity and gas suppliers. According to Directive 97/7/EC on the protection of consumers in respect of distance contracts, the German Civil Code (Bürgerliches Gesetzbuch) requires a 14 days right of rescission for customers who enter contracts in the internet (cooling off period for door-step selling and online commercial transactions). If a 24 h rule is established as e.g. in the Netherlands the DSO follows a strict procedure. He cannot check whether the customer has the possibility to switch according to his supply contract or whether the supply contract has been concluded in the internet. To avoid cost intensive re-transactions and unnecessary red tape for suppliers a time shift for at least 10 working days between the day where the customer chooses a new supplier and the day of beginning supply is necessary.

Therefore we do not share the opinion that the implementation of a 24 hour switching period should be prioritized.

Single based output regulation

In our opinion a single based output regulation would not lead to sustainable results at low economic cost, but it rather encourages the opposite (inefficiencies). We also do not see any added-value compared to the status quo in Germany or to be more specific to an input based regulation with selected output elements.

As mentioned above, on international and EU level Germany has a very high and stable level of security of supply in electricity (low SAIDI) and gas, whilst integrating millions of RES into the distribution grid in the last years. This is a clear benefit to the customers and the economy as a whole.

The German DSOs are in the second period of incentive regulation (Anreizregulierung). Beside input based parameters output based parameters are included in the efficiency benchmarking (served area, connection points, annual peak load). Moreover, the German NRA has introduced an additional output parameter with the quality-element in 2012 for the electricity grids, first expe-

riences are collected. All in all the German regulatory framework has a quite a fair balance between input and output parameters.

The official process of evaluation of the first regulatory period currently takes places and all relevant parties (NRA, TSOs/DSOs, investors) just start to understand the regulatory framework in its entirety. Further developments therefore should be well balanced (evolutionary rather than a revolutionary process) and only implemented if any added-value is clearly identifiable.

Against this background, any substantial change of the regulatory system harbours the risk of destabilizing the market and making investors feel insecure. For the Thüga group stable long term tariff regulation is of utmost importance. According to the Dena DSO study from 2012 up to 42.5 billion € are needed for future investments in the German distribution grids. These investments will only take place if shareholders have trust in the return of this investment and therefore require a stable regulatory framework.

Thüga Aktiengesellschaft

„Integrated-Market-Model“

Contribution of the Thügagroup to the creation of a German Electricity Market Model 2.0

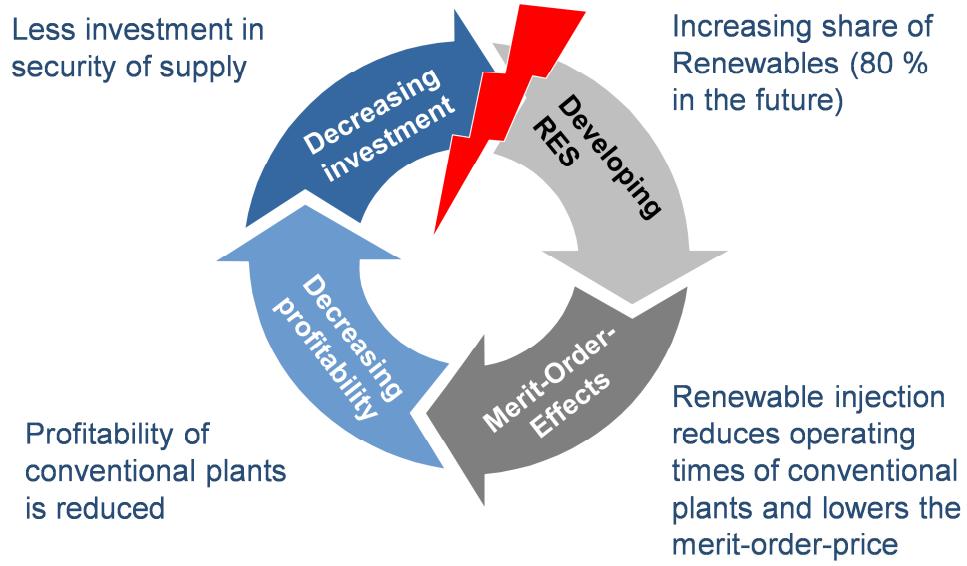
Eva Hennig
Brussels, 22 July 2013

Key parameters for the development of the proposed model

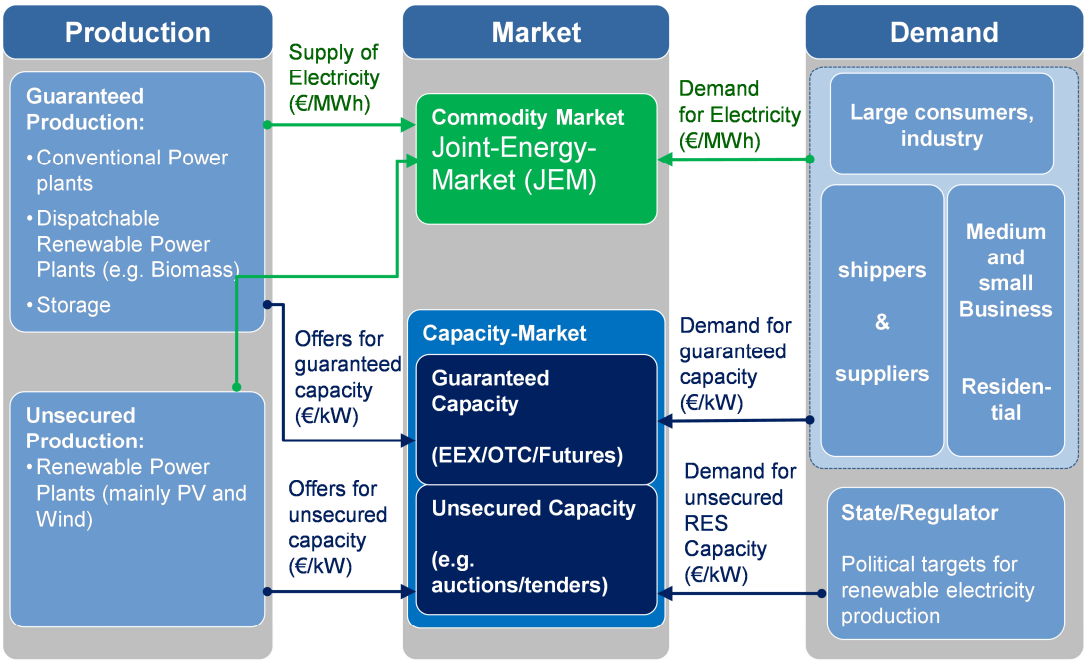
- **Strong elements in favour of competition**
- **Free of discrimination against any market participant**
- **Technology neutral**
- **Full acceptance of German renewable energy targets**
- **Shared responsibility for security of supply between all producers**
- **Compatible with the European energy markets**

Due to missing economical incentives Investments in guaranteed capacities will not happen

Simplified presentation of the current dilemma on the production side



In the „Integrated-Market-Model“ the consumer chooses his level of security of supply



The „Integrated-Market-Model“ fosters a variety of entrepreneurial activities and the state to steer and set targets

Consumer

- Consumers define their required level of secure supply and pay for it accordingly
- Demand side management and energy efficiency measures become more important to consumer to actively influence his bill

Supplier

- New Business models with new products
- Can act as broker to buy security of supply certificates for the his costumers

Storage

- New technologies can be developed e.g. P2G to convert unsecured capacity

Producers

- Unsecured capacity can be converted into guaranteed capacity trough pooling
- Shared responsibility for security of supply between all producers
- Conventional plants generate new income
- Direct marketing for RES commodities

State

- Auctions/tenders allow the state to steer RES deployment cost effectively
- Location of renewable power plants can be influenced and coordinated with grid situation
- Secure the European integrity of the model with the other member states

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