

TechLaw - Fall Meeting
11 November 2011

Understanding and Dealing
with the Regulatory,
Development and Production
Issues Outside the US



Regulatory and
Development Hurdles to
Energy Projects

The Netherlands

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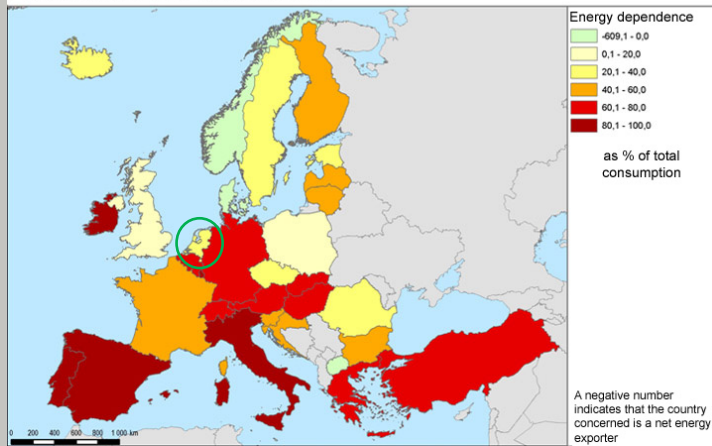
Introduction

- The Netherlands - a snapshot
- Unbundling
 - EU Third Energy Package
 - NL (Ownership Unbundling Act)
- NL 'energy projects'
 - production / generation, incl. LNG and gas storage
 - transmission / distribution
 - supply

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The Netherlands - a snapshot

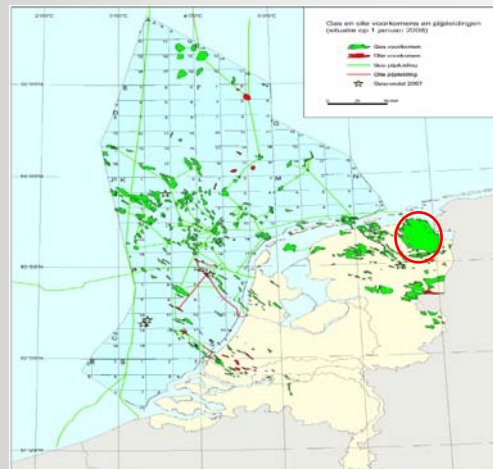
European energy dependence



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The Netherlands - a snapshot

- Groningen field
- one of top 10 largest gasfields
- approx. 3,000 billion m³ gas
- ≈ same size as Panhandle-Hugoton field (Texas, USA)

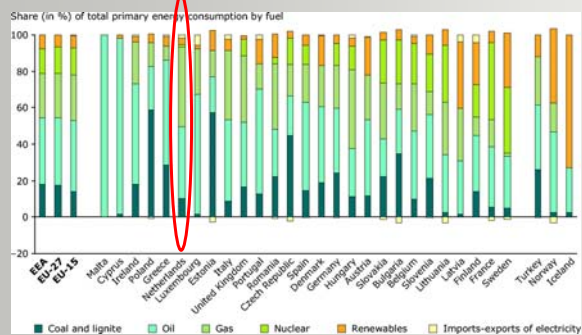


Source: www.cgenpower.com

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The Netherlands - a snapshot

EU: energy consumption / member state

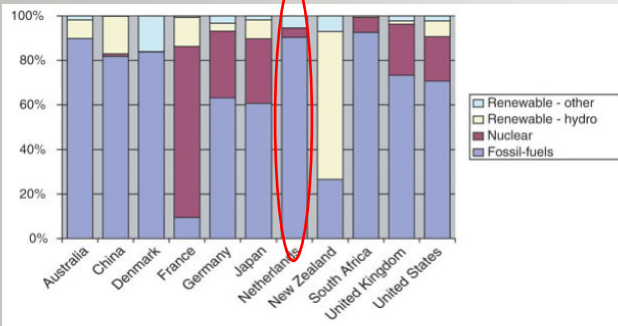


Year: 2005. Source: European Environment Agency, Energy and environment report 2008.

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The Netherlands - a snapshot

Electricity generation sources



Year 2002. Source: www.mfe.govt.nz

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EU Third Energy Package

- Electricity
 - 3rd Electricity Directive (2009/72/EC) - 13 July 2009
 - Regulation No. 714/2009 (cross border)
- Gas
 - 3rd Gas Directive (2009/73/EC) - 13 July 2009
 - Regulation No. 715/2009 (cross border)
- Agency for the Cooperation of Energy Regulators (ACER)
 - Regulation No. 713/2009

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EU Third Energy Package

- a key provision: effective unbundling of TSOs
 - full ownership unbundling
 - default rule proposed by Commission
 - independent system operator (ISO)
 - derogation proposed by Commission
 - independent transmission operator (ITO)
 - alternative proposed by Council (Germany, France)

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EU Third Energy Package - unbundling models

- why unbundle?
 - decreases possibility to discriminate against competitors
 - improves (cost) transparency grid companies
 - stimulates attention grid company for security of supply
 - stimulates grid company to improve information systems
 - simplifies supervision energy sector

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EU Third Energy Package - unbundling models

- NB: all unbundling models
 - apply to electricity and gas
 - apply to publicly and privately owned companies alike
 - apply only to transmission (TSO's) not to distribution (DSO's)

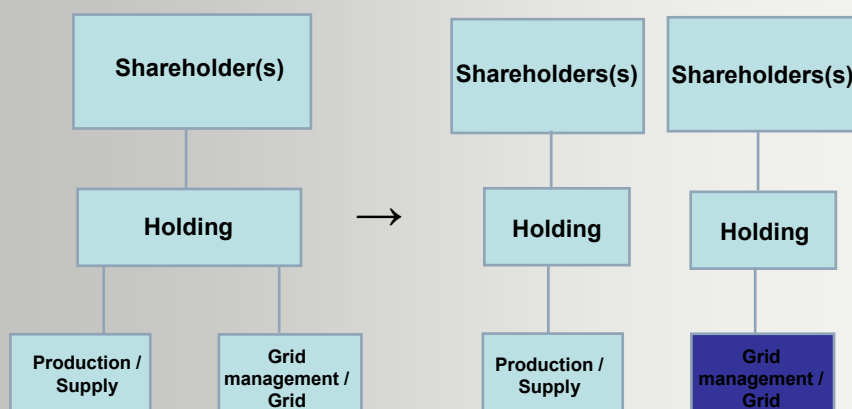
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EU Third Energy Package - unbundling models

- **full ownership unbundling** (art.9 E-dir.; art.9 G-dir.)
- essence: same person(s) may not control or majority-own a production/supply company and a transmission company or a transmission system (grids), and vice-versa
 - control: same definition as in EC Merger Regulation (No. 139/2004)
 - exercise a right:
 - exercise voting rights
 - appoint supervisory or management board member or member of body legally representing a company
 - hold a majority share (i.e. holding minority share is permitted)
 - same person may not be a supervisory or management board member or member of a body legally representing a production/supply company and a transmission company or grids
 - NB: two separate public bodies ≠ same person(s) (same applies for ISO)
 - temporary exemption may apply for major new gas infrastructure (i.e. interconnectors, LNG and storage facilities)

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EU Third Energy Package - unbundling models



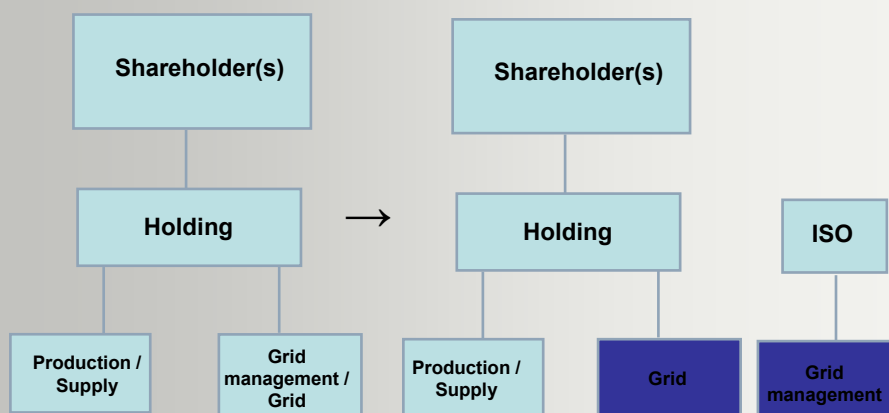
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EU Third Energy Package - unbundling models

- independent system operator (ISO) (art.13 E-dir.; art/.14 G-dir.)
 - production/supply company (vertically integrated)
 - may retain ownership of grids, but transmission system (grid) owner must be independent from non-transmission activities (production/supply) in legal form, organisation & decision making
 - ISO
 - independent party responsible for technical & commercial management grids
 - responsible for granting & managing TPA
 - responsible for operating, maintaining and developing grids
 - responsible for investment planning
- NB: option if grids belong to vertically integrated company on 3 Sep 09

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EU Third Energy Package - unbundling models



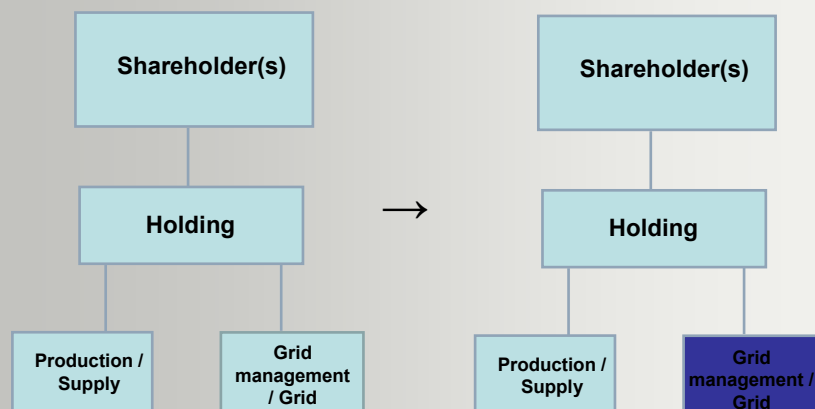
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EU Third Energy Package - unbundling models

- independent transmission operator (ITO) (Chpt V, E-dir.; Chpt IV G-dir.)
- part of vertically integrated company
- owner + technical & commercial manager of grids
- independent decisions re. operating, maintaining & developing grids
- supervisory body has strong influence on investments
- NB: option if grids belong to vertically integrated company on 3 Sep 09

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EU Third Energy Package - unbundling models



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The Netherlands - unbundling

- [Ownership Unbundling Act \(WON\)](#) of 23 November 2006
 - NB: not based on European legislation
 - but, goals very similar to EU Third Energy Package
 - ensuring independence and integrity NL grids (e.g. no cross subsidies)
 - creating level playing field for all energy suppliers in NL
 - simplifying supervision of energy sector

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The Netherlands - unbundling

- [Ownership Unbundling Act - core provisions](#)
- Act prescribes unbundling of TSOs and DSOs
 - group prohibition (entered into force 1 July 2008)
 - transposition period of 2.5 years (1 January 2011)
- creation 'fat' grid manager (in-house management of core (strategic) tasks)
- prohibition on (side) activities not in the interest of grid management and on using the grid as collateral for financing group companies
- prohibition of privatisation: all grids and all shares in grid managers (except in GTS) must remain publicly owned

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The Netherlands - unbundling

- Ownership Unbundling Act - [legal proceedings](#)
- all major NL energy companies (Essent, Nuon, Eneco and Delta) filed lawsuits against the Act
- in the first instance (District Court, The Hague, 11 March 2009) energy companies lose
- in appeal (Appeals Court The Hague, 22 June 2010) energy companies win
 - group prohibition and prohibition on side activities are ruled to be in breach of EU law, in particular the free movement of capital
 - grid manager may not invest in foreign commercial party with activities in NL and vice-versa
 - group of which grid manager is a part may not invest in foreign party performing side activities
 - no compelling reasons of general interest which justify these breaches of the free movement of capital

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The Netherlands - unbundling

- consequences
 - commercial activities (generation / supply) and grid management may again be performed within a single group of companies
 - grid manager may perform side activities
- NB: prohibition on privatisation remains in force
 - prohibition has been tightened to emphasize its 'absolute'(as opposed to relative) character, in an attempt by the Dutch State to ensure that the group prohibition does not fall under the free movement of capital rules
- Dutch State has filed for appeal in cassation before the NL Supreme Court

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The Netherlands - unbundling

- [status quo](#)
- Essent and Nuon unbundled
- commercial businesses sold to RWE and Vattenfall (both 'bundled' players) before unbundling deadline - both EUR 9 bn deals



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The Netherlands - unbundling

- [status quo](#)
- Eneco and Delta remain 'bundled', but for how long?
 - 23 December 2011 NL Supreme Court ruling; referral to ECJ for preliminary ruling(s) expected
- grid companies strengthened by substantial capital
- trend: consolidation grid companies

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NL - production / generation

- gas production
 - approx. 80 billion m³ a year
 - licensing system under Mining Act
 - gas >100 m below surface
 - license only if economically recoverable
 - applicant judged on technical, financial expertise, previous activities and proposed production method
 - approval MEA required
 - shale gas exploration - controversial



NL - production / generation

- gas - storage
 - approx. 6 UGS facilities -> NL
 - storage license required (Mining Act)
 - appointment gas storage installation manager required
 - nTPA on basis of indicative tariffs and conditions
 - exceptions: no capacity or making available capacity can not reasonably be required or (temporary) exemption MEA with EC approval



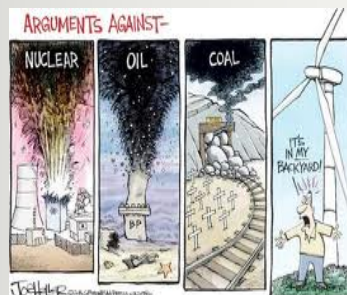
Public information meeting re. UGS Bergermeer
White board: "Nature, Green, Energy Saving, Safe"

NL - production / generation

- gas - LNG
 - GATE terminal operational (port of Rotterdam)
 - appointment LNG installation manager required
 - rTPA on basis of regulator approved tariffs and conditions
 - exceptions: no capacity or (temporary) exemption MEA with EC approval
- electricity generation
 - power plants largely gas and coal fired
 - no licensing requirement under Electricity Act
 - area permit (bundling of building-, environmental permit, etc.) required
 - duty to notify change of control in (company managing) power plant >250 MW -> Minister; Minister can veto on basis of public safety or security of supply
 - feed-in tariffs re. renewables (power and gas) for 12-15 years (capped)

NL - transition towards renewables?

- no energy source ruled out / broad fuel mix during transition period, but:
 - second nuclear power plant: second thoughts
 - NL small; densely populated: spatial planning / permitting issues



NL - transmission

- **electricity** (unbundling in accordance with EU 3rd Energy Package)
- Dutch State (Ministry of Finance) is sole shareholder in TenneT Holding
- TenneT TSO is TSO of transmission grid (110kV en higher)
- TenneT TSO is 100% subsidiary of TenneT Holding
- privatisation grid and TenneT prohibited



NL - transmission

- **gas** (unbundling in accordance with EU 3rd Energy Package)
- Dutch State (Ministry of Finance) is sole shareholder in Gasunie
- GTS is TSO high pressure gas grid
- GTS is a 100% subsidiary of Gasunie
- privatisation grid prohibited

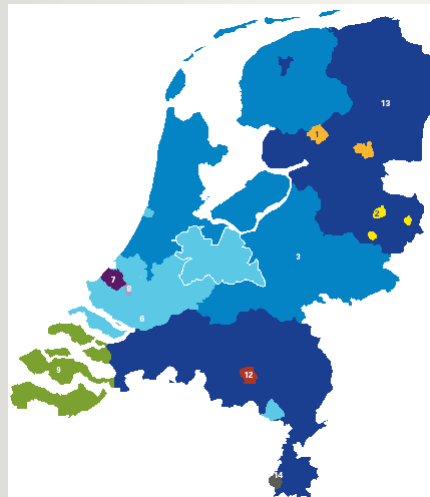


NL - opportunities?

- Minister of Economic Affairs has recently announced that he will amend the prohibition on privatisation to allow for the [minority privatisation](#) of the TSOs, [TenneT](#) and [GTS](#), for instance by issuing new shares or depository receipts for shares in these TSOs

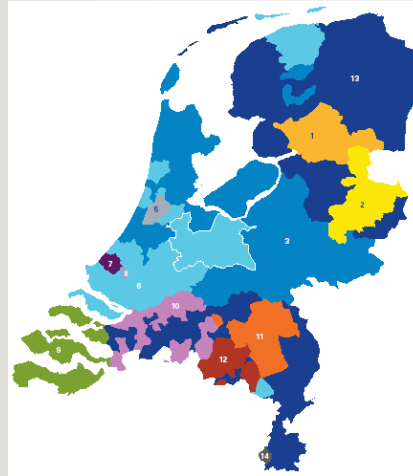
NL - distribution

- [electricity](#)
- approx. 8 regional DSOs
- grids and DSOs must remain in public hands (provinces / municipalities)
- construction grids: exclusive right of regional DSOs



NL - distribution

- gas
- approx. 12 regional DSOs
- grids and DSOs must remain in public hands (provinces / municipalities)
- construction grids: no exclusive rights for regional DSOs



NL - supply

- electricity / gas
 - large (business) consumers: no supply license required
 - small (household) consumers: supply license required
 - electricity: consumer with a grid connection with a maximum throughput value of 3*80 A
 - gas: consumer with a grid connection with a maximum capacity of 40 m³(n) per hour
 - consumer protection: reasonable tariffs / conditions; content / duration supply agr; prohibition on shut down during winter

Thank you!

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