Risk Preparedness: ownership risks

ECG 22 September 2020
Legal Basis

• Article 7(4) of Regulation (EU) 2019/941:
  
  • Within four months of identification of regional electricity crisis scenarios in accordance with Article 6(1), Member States shall inform the ECG and the Commission of their assessment of the risks in relation to the ownership of infrastructure relevant for security of electricity supply, and any measures taken to prevent or mitigate such risks, with an indication of why such measures are considered necessary and proportionate.

• Recital (14) of Regulation (EU) 2019/941:
  
  • […] When identifying risks at national level, the Member States should describe any risks that they identify in relation to the ownership of the infrastructure relevant for security of electricity supply and any measures taken to address those risks such as general or sector-specific investment screening laws, special rights for certain shareholders, with an indication why they consider such measures to be necessary and proportionate.
Notification requirements

• Notification to the EC by 7 January 2021:
  • Possibility to use appropriate tools to handle sensitive information, if necessary.

• Information to the ECG in January 2021:
  • *Tour-de-table* at the ECG meeting in January 2021
  • Notification uploaded in Circabc – public versions only, if necessary.
Risks associated to ownership

• Specific to the energy sector

• Risks affecting security and public order
How are risks assessed

• Vulnerabilities
  • Nature of the asset

• Threats
  • Nature of the owner/acquirer

• Consequences
  • Consider the consequences of a reasonable worst case scenario
What are the measures adopted

• Specific to the energy sector
• Screening mechanisms (general or sectoral)
• Other measures: special rights to stakeholders
• Mitigation measures?

**IMPORTANT**
Indication why you consider such measures to be necessary and proportionate.
Useful material

• Study: Review of national rules for the protection of infrastructure relevant for security of supply
  

• Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union

• EC Communication (COM(2020) 1981) with guidance concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe’s strategic assets
FDI Regulation – enabling framework

Examples of factors to be considered:

- **impact on critical infrastructure** (e.g. energy, transport, data storage, sensitive facilities)
- **effects on critical technologies** (e.g. cybersecurity, space or nuclear technology)
- security of supply of critical inputs;
- access / ability to control sensitive information;
- control by foreign governments (e.g. through significant funding).
- freedom and pluralism of the media
FDI Regulation – enhanced cooperation

• MS may provide comments if FDI in other MS threatens security or public order / COM may issue opinion

• MS / COM may request additional information on FDI

• Final decision left to MS (due account of other MS comments / COM opinion)

• Establishment of contact points in MS
Thank you