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NEWGOV

New Modes of Governance

Integrated Project
Priority 7 – Citizens and Governance in the Knowledge-based Society

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RE	Restricted to a group specified by the consortium (including the Commission Services)	
CO	Confidential, only for members of the consortium (including the Commission Services)	

Summary

The second workshop of the EUROSERVICE-Project took place at the University of Granada on the 26th and 27th of March, 2007. Two topics were discussed. The first topic was the study and validation of the European Community energy policy, especially focusing on the new package of measures adopted on the 10th of January 2007. Due to the fact that two of the main pillars of this package of measures are sustainable development and security of supply, the second topic of our workshop was the use of renewable energies, particularly wind power.

The Workshop on the EU energy policy has helped to define two research lines closely related to the NEWGOV project. The first refers to the means that the European Commission will use to try to make the member States achieve the objectives and action plans. These objectives and plans are not binding because the European Union lacks specific powers in relation to the common energy policy and because the legal basis of the internal market has not achieved a genuine common energy market. Furthermore, the communitarian objective of encouraging independent regulatory authorities conflicts with the German Constitution and the Spanish Law which prevent these authorities from being independent and from having regulatory capacity. This involves a study of the internal laws which hinder the communitarian policy drawn up by the European Commission with regards to energy.

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I. Main issues of the Workshop

The workshop took place at the University of Granada on the 26th and 27th of March. Two topics were discussed. The first topic was the study and validation of the European Community energy policy, especially focusing on the new package of measures adopted on the 10th of January 2007. Due to the fact that two of the main pillars of this package of measures are sustainable development and security of supply, the second topic of our Workshop was the use of renewable energies, particularly wind power.

Professors of Administrative Law and members of the central government and the Andalusian regional government responsible for the regulation of renewable energies, as well as employers and members of electricity companies took part in our Workshop. We managed to create a meaningful dialogue between academics and practitioners. We got the chance to find out first hand what problems and challenges the energy policy poses, particularly when it comes to renewable energies.

Participation in our Workshop was also high. More than 50 Law and Combined Law/Business Administration students attended, as well as lawyers specialized in the energy sector and professors of Administrative Law.

The topics we discussed were the following:

Professor Juan Carlos Hernández analysed the content of the new package of measures adopted by the Commission as a step towards a common energy policy. He examined the pillars of this package, the objective it tries to reach, and the proposed action plan. When it came to the pillars of the package of measures, he pointed out that the aim of sustainable development is to avoid reaching Hubbert's peak; security of supply means that we need to diversify supply sources and create international bonds, even with those countries where human rights or environmental protection is not acceptable by European standards. He finally stressed that, with respect to the competition pillar, the internal energy market had to be renewed because, in practice, it is practically non-existent.

Professor Christian Pielow analyzed the new German Energy Law (Energiewirtschaftsgesetz 2005), with regard to the new challenges we have to face when it comes to security of supply. These refer, among others, to the ex ante and ex post regulation on energy, due to two obstacles that German Law poses. The first obstacle is that the German Constitution forbids the creation of independent regulatory authorities with power to dictate general rules, because they lack democratic legitimacy. The second obstacle is the application of concepts such as security of supply and others. German judges will be required to have economic knowledge they lack.

Mr. Mariano Cabellos and Mrs. María Romera, representatives of the employers group of the electricity sector offered the point of view of electricity companies regarding the package of Community measures - approved on the 10th of January 2007. They criticized the fact that the Community energy policy had given especial relevance to sustainable development, against security of supply. The strong environmental commitment this measure requires will negatively affect the European Community when it comes to competition with China or India. These countries do not enter into environmental agreements to prevent them from becoming less competitive internationally. They also criticized the European objectives as unrealistic, and stated that it is bound to fail.

Professor Leonor Moral Soriano analyzed the effects of the liberalization of EU electricity and gas markets had on the institutional design and the normalization of both sectors. She pointed out the differences between the gas sector, where the liberalization promoted by the European Union led to the dismantling of the state monopoly and the introduction of public

and private agents in its management, and the electricity sector, where the liberalization entailed the replacement of a model close to auto-regulation by a model more controlled by the state.

Professor Javier Sako focused his speech on the detailed analysis of the measures related to renewable energies and wind power included in the package adopted on 10 January 2007. Regarding the transposition of these measures into Spain, he emphasized that it was the market, more than the regulations, which gave a boost to wind power in Spain. The increase is so remarkable that nowadays Spain is the world's third largest producer of wind power.

Mr Juan José Romero pointed out the difficulties that the transposition of the measures adopted on 10 January 2007 will encounter: The objectives are binding, however, the European Union lacks necessary powers in energy policy and the legal instruments necessary to impose these objectives on the Member States. The success of the European Union's measures depends on the capacity of the European Commission to convince the Member States of the benefits they will obtain if the objectives are achieved.

Mr Jose Antonio Luque analyzed the important problems of regulatory insecurity in Spain, as for example the complex administrative process for building a wind park. Due to the fact that the powers of the different organizations are not well defined, it is extremely difficult and slow to process the authorization for building a wind park in Spain.

Finally, Mr Carlos Gascó and Rafael Pérez Pire offered the point of view the wind energy companies have of the current situation. They denounced the regulatory insecurity in the processing of the authorizations for wind parks and the Ministry of Industry's poor treatment of wind power. According to the speakers, this Ministry is trying to discourage the sector with measures which toughen its financial obligations and which are applied retroactively.

II. Conclusions: Further steps to be taken

This Workshop on the EU energy policy has helped to define two research lines closely related to the NEWGOV project. The first refers to the means that the European Commission will use to try to make the member States achieve the objectives and action plans. These objectives and plans are not binding because the European Union lacks specific powers in relation to the common energy policy and because the legal basis of the internal market has not achieved a genuine common energy market. Furthermore, the communitarian objective of encouraging independent regulatory authorities conflicts with the German Constitution and the Spanish Law which prevent these authorities from being independent and from having regulatory capacity. This involves a study of the internal laws which hinder the communitarian policy drawn up by the European Commission with regards to energy.

Annex 1: Programme

II JORNADAS INTERNACIONALES DE DERECHO ENERGÉTICO:

“LA POLÍTICA COMÚN ENERGÉTICA”

LUNES 26 DE MARZO DE 2007

8:30 H.: Entrega de documentación.

9:00 H.: INAUGURACIÓN DE LAS JORNADAS.

9:15 H.: Primera ponencia: “Hacia una política energética para Europa: los documentos de la Comisión de 2006/2007”.

Ponente: Juan Carlos Hernández, Profesor Ayudante de Derecho Administrativo. Universidad de Navarra.

10:30 H.: PAUSA-CAFÉ.

11:00 H.: Segunda ponencia: “El sector eléctrico entre competencia y seguridad del suministro – una perspectiva alemana”.

Ponente: Christian Pielow. Catedrático de Derecho Administrativo. Universidad de Bochum. Director of the Energy Institute in Bochum.

13:00 H.: Tercera ponencia: “Aciertos y desaciertos de la Política Energética Europea desde la perspectiva de la patronal eléctrica”.

Ponentes: Mariano Cabellos Velasco. Director General Adjunto de UNESA.

María Romera Martínez. Jefa de División de la Dirección General Adjunta de UNESA.

16:30 H.: Cuarta ponencia: “Regulación energética y competencia”.

Ponente: Javier Vías Alonso. Subdirector del Área Jurídica de la Competencia de CEPSA.

18:00 H.: PAUSA-CAFÉ.

18:30 H.: Quinta ponencia: “Nuevas formas de gobernanza en los sectores gasista y eléctrico españoles”.

Ponente: Leonor Moral Soriano. Profesora Titular de Derecho Administrativo. Universidad de Granada.

MARTES 27 DE MARZO DE 2007

10:00 H.: Primera ponencia: “Situación actual de las energías renovables dentro de la política común energética. Especial referencia a la energía eólica”.

Ponente: Masao Javier López Sako. Profesor de Derecho Administrativo. Universidad de Granada.

11:30 H.: PAUSA-CAFÉ.

12:00 H.: Segunda ponencia: “Análisis económico-financiero de un proyecto energético”.

Ponente: Juan José Romero Zamora. IDAE (Instituto para la Diversificación y Ahorro de la Energía)

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- 16:30 H.: Tercera ponencia: “Tramitación administrativa de los parques eólicos”.
Ponente: José Antonio Luque. Unión FENOSA.
- 18:00 H.: PAUSA-CAFÉ.
- 18:30 H.: Cuarta ponencia: “Retos y perspectivas de la energía eólica. Visión y postura del sector privado”.
Ponente: Rafael Pérez Pire. Representante de APREAN (Asociación de Promotores y Productores de Energía Eólica de Andalucía).
- 20:00 H.: Presentación de Comunicaciones.
- 21:00 H.: CLAUSURA DE LAS JORNADAS.

Annex 2: List of Participants

1. Prof. Dr. Juan Carlos Hernández. Lecturer in Administrative Law, Navarra University.
2. Prof. Dr. Christian Pielow. Profesor Bochum University, and Director of the Energy Director.
3. Mr. Mariano Cabellos Velasco. General Chief Executive UNESA.
4. Mrs. María Romera Martínez. Assistant to the General Chief Executive UNESA.
5. Mrs. Javier Vías Alonso. Vice-director Competiton Law Department CEPSA.
6. Prof. Dr. Leonor Moral Soriano. Professor Titular Administrative Law, Granada University.
7. Mr. Masao Javier López Sako. Lecturer in Administrative Law, Granada University
8. Mr. Juan José Romero Zamora. Director of IDAE (Institute for Diversification and Energy Saving)
9. Mr. José Antonio Luque Frías. Legal Advisor of ENEL and Unión FENOSA.
10. Mr. Carlos Gascó Traveso. Research Department IBERDROLA.
11. Mr. Rafael Pérez-Pire Angulo. President of APREAN (Association of Producers of Wind Energy in Andalucía).

In addition, more than 50 Law and Combined Law/Bussiness Administration students attended.