



EUROPEAN WORKS COUNCILS IN THE ENERGY SECTOR: 2012



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Steve Thomas PSIRU, University of Greenwich

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1. Introduction

This paper examines the European energy companies that have set up European Works Councils (EWCs). It is an update of earlier reports, the last of which was published in 2007. In the first part, it identifies which companies have set up EWCs and shows major changes in employment and employment issues in these companies since 2010. In the second part, the paper examines the strategic issues that will shape the companies and their employment prospects over the next few years. These include:

- Policies to reduce greenhouse gas emissions;
- Policies on indebtedness and credit rating;
- Divestment and acquisition of assets particularly in Russia;
- Social issues arising from increases in energy costs and from the introduction of ‘smart meters’;
- Implications if elements of the UK’s Electricity Market Reforms are adopted more widely;
- The increase and influence of non-European investors, such as investment funds such as that of China particularly in networks; and
- Changes in ownership of the transmission and distribution networks including the emergence of international network companies and private equity/sovereign wealth funds.

2. European Works Councils

2.1 Requirement for an EWC

The European Works Councils (EWC) Directive, initially adopted in 1994¹, aims to improve the right of workers to information and consultation in trans-national companies. It requires transnational companies to establish information and consultation agreements covering their entire European workforce, if they have not already done so. The content of these agreements is largely left to negotiation between management and employee representatives, but minimum requirements where management refuses to negotiate include the requirement of annual reports to the EWC on the company’s business prospects, and the right to be informed about exceptional circumstances affecting employees’ interests, such as closure or collective redundancy.

The original Directive was extended to the UK by another Directive 97/74/EC and a third Directive 2006/109/EC was passed to take account of the accession of Bulgaria and Romania. The Directive also applies to companies in the European Economic Area (Norway, Iceland and Liechtenstein) but not to Switzerland. The original Directive (94/95/EC) was revised in 2009 (2009/38/EC)² and had to be transposed into national law by June 2011. The aims of the revision were to:³

- Ensure the effectiveness of employees’ transnational information and consultation rights;
- Increase the number of European Works Councils; and
- Enable the continuous functioning of the existing ones.

¹ Directive 94/45/EC was adopted by all EU member states except the UK on 22 September 1994, under Article 2(2) of the Agreement on Social Policy (the "Social Chapter") and was later extended to cover the rest of the European Economic Area (Norway, Liechtenstein and Iceland). The deadline for national implementation in these member states was 22 September 1996. The original Directive was extended to cover the UK by directive 97/74/EC in December 1997. The new member states that joined the EU in 2004 and 2007 are also now covered by the Directive.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:122:0028:0044:EN:PDF>

³ <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=211>

These revisions underline that European Works Councils will be a permanent part of Europe's industrial relations and hence will play a role in the social and human resource policies of major companies. The EWC directive applies to companies,⁴ or groups of companies⁵, with

- at least 1000⁶ employees across the member states⁷, and
- at least 150 employees in each of two or more distinct member states.

These criteria represent a lower bound – companies meeting them are obliged to establish an EWC, but companies which do not meet them may nonetheless choose to establish one voluntarily. In a number of instances companies have chosen to do so, whether it be for purposes of labour relations, prestige (to demonstrate Europe-wide coverage), or (in the case of UK during its opt out and of non-EU countries in the process of becoming members of the EU) in the expectation of the future introduction of a legal obligation. Public ownership does not exempt the company from obligations on EWCs and many of the companies with EWCs are fully (e.g. Statkraft and Vattenfall) or partly publicly-owned (e.g. EDF and Fortum). The eligible companies and the companies that have chosen to set up EWCs are shown in Table 1.

2.2 Recent changes in the major companies

2.2.1 Fortum

Fortum's main business is in the Scandinavian countries, Russia and the Baltics. In 2011, it completed major new investments in Russia commissioning new power stations and Russia is its third largest country in terms of installed capacity behind only Finland and Sweden, employing more than 4376 employees. It employs more than 150 people in Finland (2683), Sweden (2040), Poland (859) and Estonia (331).

2.2.2 Vattenfall

Vattenfall's core markets are Sweden, Germany and Netherlands with smaller holdings in Belgium, Poland, UK, Denmark, Finland and France. Vattenfall's major acquisition was the Nuon company in the Netherlands where it employs 6333 workers giving it a major presence in Netherlands and also Belgium and also its first major gas business. 90 per cent of its generating capacity is in its core markets and its main retail markets for its 7.7m consumers are Germany (36 per cent), Netherlands (29 per cent), Poland (13 per cent) and Sweden (13 per cent). It has more than 150 employees in Germany (19408), Sweden (8613), Denmark (649) and Netherlands/Belgium (5417). In 2011, Vattenfall took the decision to concentrate on three core markets, the Nordic market, Germany and the Netherlands. In August 2011, it sold its Polish Vattenfall Heat business to the Polish company, PGNiG, for €721m and its GZE distribution business to another Polish company Tauron for €1100m.⁸ In December 2011, it sold its Finnish network operator business and its Finnish heat supply business to a consortium led by 3i Group

⁴ Strictly speaking, the requirements apply to "undertakings", a term which may include partnerships or other forms of organisation as well as companies. <http://www.dti.gov.uk/er/consultation/ewcover2.htm>

⁵ A group of companies (undertakings) includes a controlling company and any companies it controls ("exerts a dominant influence over"), whether by virtue of ownership, financial participation or the governing rules of the controlled company.

⁶ Based on the average number of employees, including part-time employees, employed during the previous two years calculated according to national legislation and/or practice. http://europa.eu.int/comm/employment_social/social-dialog/labour/directive9445/9445euen.htm

⁷ "Member states" means the member states of the European Union, but for the purposes of the EWC Directive includes since 1996 the rest of the European Economic Area (Norway, Liechtenstein and Iceland). The UK opted out of the EWC directive until December 1997. From 1995 to 2003 the EU had 15 members (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, UK), with 10 more countries expected to join in 2004.

⁸ SeeNews Nordic 'Vattenfall divests of Polish business for EUR 1.8bn' August 23, 2011.

and Goldman Sachs for €1.54bn. In January 2012, it completed the sale to the Italian company, ENI, of its Belgian businesses, acquired when it took over Nuon, for €157m.⁹

2.2.3 E.ON

E.ON is the most geographically diversified of the major European energy companies having a significant presence in 8 European markets. Its major corporate moves in 2010 and 2011 were:

- Sales of 4.8GW of German generating capacity to EDF and EnBW following earlier sales to Statkraft, Electrabel and Verbund to meet regulatory concerns about their market share in Germany;
- Sale of its German transmission network to the Dutch state-owned company, TenneT, to meet regulatory concerns;
- Sale of its US utility, formerly known as LG&E (\$7.6bn);
- Sale of its UK distribution networks (€4.7bn).

Of its 78889 employees, most are in Germany (35133), UK (12264), Romania (6457), Hungary (5337), Russia (4912), Sweden (3530), Czech Rep (3477), Bulgaria (1999) and Spain (1287).

In October 2010, E.ON outsourced a large part of its IT services.¹⁰ It signed an IT outsourcing deal worth £2bn with IT services providers HP and Deutsche Telekom's T-Systems. In May 2012, E.ON also changed from an 'AG' into an 'SE' (European Company).¹¹ An SE entails a significant shift in how a company is managed. E.ON stated:

'The Board of Management and Supervisory Board had proposed this measure in order for the increasing internationalization of the company's workforce, customers, and shareholders to be reflected in the form of its incorporation. Approximately half of E.ON's employees, customers, and shareholders now reside in European countries other than Germany. E.ON management has already conducted extensive discussions with employee representatives and trade unions in Germany in preparation for the transformation. Over the next six months, it will negotiate with employee representatives from all European countries to determine the main aspects of employee representation in the company.'

2.2.4 RWE

RWE's main acquisition in the past couple of years was the Dutch company, Essent giving it a major presence in the Dutch market. Its main markets are now Germany (41632 employees), UK (13790), Czech Rep (4953), Netherlands (3716), Poland (1412), Slovak Rep (301), Belgium (177) and Switzerland (168).

2.2.5 EDP

EDP has only three major markets, Portugal, Spain and Brazil where nearly 5000 of its 12305 employees work. For most of its European operations, it does not split up its operations between Spain and Portugal. In December 2011, as part of the government's bail-out package, the government sold a 21.35 per cent stake in EDP to the Chinese Three Gorges Corporation for €2.69bn beating bids from E.ON and the Brazilian state-owned company, Eletrobras.¹² The government also gave up its Golden Share in EDP. Three Gorges became the largest shareholder in EDP as a result.

⁹ ENP Newswire 'Vattenfall completes the sale of business in Belgium' January 12, 2012.

¹⁰ <http://www.computing.co.uk/ctg/news/1906726/eon-signs-gbp35bn-outsourcing-deal-hp-systems>

¹¹ <http://www.eon.com/en/media/news/press-releases/2012/5/3/shareholders-approve-resolution-to-transform-EON-into-SE.html>

¹² Shanghai Daily 'Three Gorges wins bid for EDP stake' December 24, 2011

2.2.6 EDF

The main developments for 2010/11 were the sale of its UK distribution networks to the Hong Kong Cheung Kong group for €3.7bn and of its share in the German company EnBW in 2011 for €4.7bn. It restructured its US holdings in the Constellation group in 2010. In 2012, EDF completed a complicated deal that allowed them to take over Edison. EDF has taken control of Edison, while A2A, Iren and other shareholders in Delmi (the holding company for the Italian shareholders in Edison) have taken charge of Edipower and its electrical production plants, with 7.6GW of capacity.¹³ Of its 161,000 employees, more than 112,000 work in France. Most of the rest work in the UK (15536) and Italy (3818). In the rest of Continental Europe, it employs 7149 workers, in Poland, Belgium, Switzerland, Hungary, Netherlands and Germany.

2.2.7 ENEL

Of ENEL's 75360 employees, 36842 were employed in Italy and of the 38518 employed outside Italy, 11649 were employed in Brazil and 3870 in Russia. The main non-Italian business is Endesa which employs 11670 in Spain and Portugal and 11092 in Latin America. ENEL Romania employs about 5000 people. ENEL owns 66 per cent of the shares of the Slovak company, Slovenske Elektrarne, which employs 4857 people.

2.2.8 GDF Suez

GDF Suez employs 218900 employees of whom 80450 are in the environment division with the rest in either electricity and gas or energy services. Its energy services division, which employs 77,000 people, is through its Cofely subsidiary. Its major recent acquisition was the UK-based International Power IPP company.¹⁴ Excluding the Environment Group, GDF Suez employs 73337 people in France, 18326 in Belgium, 30561 in the rest of the EU.

The EWC of GDF Suez was critical of the attempts by GDF Suez to open the capital of the company to participation by the Chinese sovereign wealth fund, Chinese Investment Company.¹⁵ The EWC was particularly concerned about the ethical issues raised by Chinese investors, in particular its commitment to Corporate Social Responsibility.

2.2.9 Iberdrola

Iberdrola employs 32809 people. Its European activities are in Spain (12007 employees) and UK (7854).

2.2.10 EVN

Only 2578 of EVN's 8250 employees work in its home territory, Austria with most of the rest located in Bulgaria (2829) and Macedonia (2447).

2.2.11 CEZ

CEZ employed 31420 people at end 2011, of whom, 20559 were based in the Czech Rep, 4523 in Albania, 3910 in Bulgaria, 1975 in Romania and 421 in Poland.

2.2.12 Delta

Delta is unusual amongst the energy companies in Europe in that it is still a multi-utility having interests in cable, internet & telecoms and waste management as well as energy, although its energy business accounted for nearly three quarters of its revenue in 2011. However, in 2010 it decided to concentrate on its core capabilities of energy and water and industrial waste management. Its energy business is based in

¹³ ANSAMED Energy: EDF controls Edison, birth of Italian Edipower; The French group ends "Italian campaign" with 80% of capital' May 25, 2012.

¹⁴ <http://www.gdfsuez.com/en/journalists/press-releases/full-ownership-of-international-power-gdf-suez-reaches-a-strategic-milestone-for-development-in-high-growth-markets/>

¹⁵ <http://www.epsu.org/a/8056>

mainly in the Netherlands, while its waste management business (Indaver) is based mainly in Belgium. It does not provide a breakdown of its employment by country.

2.2.13 Statkraft

Statkraft is based in the EEA and therefore requirements for EWCs apply. In 2010, Statkraft entered into an agreement with the European Federation of Public Service Unions (EPSU) concerning the establishment of a European works council (Statkraft European Works Council, SEWC).

2.2.13 Stadtwerke Leipzig

Stadtwerke Leipzig's business focuses on providing the energy infrastructure for the city of Leipzig, supplying customers all over Germany with energy and services, generating power, and supplying heating to the Pomerania region of Poland.

2.2.14 MVV

MVV is based on the former Stadtwerke for Mannheim. Its main business is in Germany but most of the 641 employees outside Germany are at its Czech subsidiary.

2.2.15 TenneT

TenneT was founded in 1998 as the owner and operator of the Dutch electricity transmission network. In January 2010, with the takeover for €885m of E.ON's German electricity transmission network, Transpower Stromübertragungs GmbH, it became the first electricity transmission company to have major operations in more than one European country. It employs 1111 people in the Netherlands and 944 in Germany.

2.2.16 Elia

Elia was set up in 2001 as the electricity transmission operator for Belgium after this activity was spun off from Electrabel. It became the second transmission company with activities in more than one European country when it became part owner (with Australian Industry Funds Management (IFM)) for €810m of the Vattenfall's German transmission system (50 Herz Transmission) in March 2010.

2.2.17 Gazprom

Gazprom employs 404,000 workers worldwide, of whom 25.9 thousand work outside Russia. Gazprom does not publish a breakdown of the location of its workforce, but it does not have major assets in the European Union yet with its main activity trading.

2.2.18 ENI

ENI, the Italian oil and gas company, has become an important international downstream energy company with its acquisition in 2012 of the assets in Belgium Vattenfall divested when it took over Nuon and the acquisition of Distrigaz from GDF Suez in 2009

3. Policies to reduce greenhouse gas emissions

Up until the last two years, the major utilities relied on three main policies to meet the requirement to reduce their carbon emissions:

- Increasing their nuclear capacity;
- Deployment of carbon capture and storage (CCS) on new coal fired power stations; and
- Investment in renewable technologies

However, if we examine the accounts of the major companies, it is clear the sums spent on renewables have been small compared to those spent on nuclear power and CCS.¹⁶ One of the consequences of the Fukushima disaster is likely to be that for the large companies based in countries that have decided to phase out nuclear power, especially RWE, E.ON, ENEL and to a lesser extent GDF Suez, further investment in nuclear power will be hard to justify. RWE and E.ON have announced they were selling their 50/50 UK joint venture, Horizon Power, which was set up to build nuclear power plants in the UK.¹⁷ Some companies, such as Delta, part-owner of the Dutch nuclear power plant (Borssele) still remain in favour of nuclear power but recognise that proceeding at the moment is not a viable option.¹⁸

Regardless of their economic benefits, these very large and complex technologies would be favoured by the large utilities because their heavy technical and financial requirements would be a major barrier to entry for new smaller competitors. On the same grounds, the large scale renewable options of Desertec¹⁹ (large scale deployment of thermal solar in North Africa) and off-shore wind in the North Sea, would also be advantageous to the large utilities.

However, the Fukushima disaster and the poor experience with building new nuclear plants, and the lack of interest in CCS have meant that this policy now looks weak. EDF, which has shown little interest in CCS, had six target markets for new nuclear 2-3 years ago: France, UK, Italy, USA, India, China and South Africa. The prospects in all of these markets now look poor: in France, EDF will have to invest significantly in its existing plants to take account of regulatory requirements resulting from the Fukushima disaster;²⁰ in the UK, the government's promise that new nuclear power plants will not receive public subsidies is making it difficult to come to a deal that will be acceptable to financiers;²¹ the post-Fukushima referendum in Italy against nuclear power effectively closes the Italian market to new nuclear power plants; in the USA, its US partner, Constellation, has withdrawn from the joint venture, Unistar and it will be difficult for EDF to proceed without a US partner;²² in India, the agreement to buy up to six EPR reactors, initially two, signed in 2010 is being delayed by problems with India's nuclear liability laws;²³ China has ordered two EPRs in a joint venture involving EDF (it holds 30 per cent of the Guangdong Nuclear Power Company) but it seems likely that China will choose the Westinghouse AP1000 over the EPR for future reactor orders;²⁴ South Africa, did hold a call for tenders in 2009 which the EPR reportedly won, but the deal could not be financed and the tender was abandoned.²⁵ A new call for tenders is underway in which Areva/EDF are bidding but it is hard to see why finance would be any easier this time.²⁶

¹⁶ S Thomas (2010) 'An analysis of the company developments and corporate policies in the European energy sector' PSIRU, University of Greenwich, London.

¹⁷ <http://www.psiu.org/publications?sector=70&country=All&subject=All&author=10795>

¹⁸ <http://www.horizonnuclearpower.com/files/downloads/RWE%20nuclear%20National%20Press%20Release.pdf>

¹⁹ <http://www.desertec.org/>

²⁰ Inside NRC 'ASN issues 900 initial post-Fukushima requirements' July 2, 2012

²¹ Daily Telegraph 'EDF looks to spread UK nuclear costs' August 1, 2012

²² Nucleonics Week 'EDF CEO: US nuclear power revival not coming soon' February 3, 2011 and

http://www.energybiz.com/article/12/09/nrc-rejects-nuclear-reactor-too-much-foreign-ownership&utm_medium=eNL&utm_campaign=EB_DAILY2&utm_term=Original-Member

²³ SME Times 'France waits for India to clarify n-liability framework' April 6, 2012

²⁴ S Thomas (2010) 'The EPR in crisis' PSIRU, University of Greenwich, London.

<http://www.nirs.org/reactorwatch/newreactors/eprcrisis31110.pdf>

²⁵ S Thomas (2010) 'The EPR in crisis' PSIRU, University of Greenwich, London.

<http://www.nirs.org/reactorwatch/newreactors/eprcrisis31110.pdf>

²⁶ Pretoria News 'State breaks silence on nuke reactors; Proposed plants will cost R300bn' February 28, 2012

The problems are exacerbated by the continuing problems with the two EPR construction sites in Europe. The Olkiluoto plant in Finland was expected to take 4 years to build and cost €3bn when construction was started in 2005 is now expected to take more than 9 years and expected costs have doubled.²⁷ The Flamanville plant, expected to take 5 years to build and cost €3.3bn when construction was started in 2007 is now expected to take 9 years and costs have also doubled.²⁸

RWE and E.ON were hoping to life-extend their plants in Germany and build new capacity in the UK, but following the Fukushima disaster, the phase-out policy in Germany has been re-imposed and RWE and E.ON have withdrawn from their UK joint venture, Horizon, to build nuclear capacity in the UK. Three out of four of the large German utilities (E.ON, RWE and Vattenfall, but not EnBW) have said they will sue the German government for compensation for the early closure of their plants, with E.ON claiming it would seek at least €8bn in compensation.²⁹ Whether compensation will be given remains to be seen but the outcome of the case will not affect the phase-out.

Most of the other utilities were relying on nuclear phase-out policies being withdrawn in their home markets and using these to build foreign markets, such as in the UK. The countries where phase-out policies have existed include Italy (ENEL), Sweden (Vattenfall), Spain (Iberdrola and ENEL), and Belgium (GDF Suez).

The issue in Belgium has become particularly contentious. The 2003 phase-out legislation required that existing plants be closed after 40 years of operation requiring that the three oldest units with a capacity of about 1900MW (Doel 1, Doel 2 and Tihange 1) be closed by 2015. Electrabel announced in 2012 that it was going to close three fossil fuel plants (920MW) in 2013 because they were not profitable. There were fears that the closure of the nuclear and the fossil fuel capacity could not be covered by new capacity leading to electricity shortages.³⁰ In July, the Belgian Cabinet was reported to have decided that the largest of three nuclear plants to be closed, Tihange 1, 1000MW, would be life-extended to 2025.³¹ Things were complicated further by the discovery of cracks in the reactor vessel of one of the newer reactors, Doel 3. The vessel for Tihange 2 was produced by the same supplier and if the existence of cracks is proven, it is highly likely these two plants (2000MW) would have to close permanently.³² There were reports that the supplier of the vessel, Rotterdam Drydocks, now no longer in business, had supplied about 20 vessels including vessels to Sweden, Spain, Switzerland, Germany and the USA³³. In mid-August, it was not clear how many reactors would be affected.

Most markets for new nuclear are in Eastern Europe, for example, in: Slovak Rep (completing the 30 year old Mochovce plant); Romania (completing the 30 year old Cernavoda order); Czech Rep (a new tender being decided in 2013; Poland (a new tender being evaluated in 2012), Lithuania and Finland. However, none of these are firm orders yet and there will be serious financing issues to be overcome before these orders can be placed. For CCS, deployment is going slowly and it is still far from clear whether CCS will be a viable commercial technology. Indebtedness and credit ratings

In recent years, the period of expansion of the major companies has come to an end, partly because there are now few available companies that would usefully expand their scope, but also because the levels of debt these acquisitions have led to have begun to adversely affect the perceptions of the companies by financial analysts and credit rating agencies.

²⁷ Agence France Presse 'Finnish firm TVO says EPR nuclear reactor not ready in 2014' July 15, 2012

²⁸ Nucleonics Week 'Flamanville-3 operations delayed to 2016' July 21, 2011.

²⁹ Agence France Presse 'Vattenfall says suing Germany over nuclear exit' July 12, 2012

³⁰ Nucleonics Week 'Belgian government prepares to reconsider 2015 reactor closures' June 21, 2012.

³¹ European Daily Electricity Markets 'Belgium to prolong life of 962MW Tihange 1 reactor' July 4, 2012

³² Agence France Presse 'Belgium's nuclear watchdog may close two reactors' August 8, 2012

³³ Agence France Presse 'Belgian nuclear chief 'sceptical' reactor can be restarted' August 10, 2012

Table 1. Indebtedness of the large European energy companies (€bn)

	Net debt 2010	Turnover 2010	Debt/turnover 2010	Net debt 2011	Turnover 2011	Debt/turnover 2011
	34.4	63.9	0.54	33.3	65.3	0.51
RWE	37.7	92.9	0.40	36.6	113.0	0.32
E.ON	29.0	53.3	0.54	29.9	51.7	0.54
ENEL	44.9	73.3	0.61	44.6	79.5	0.61
GDF Suez	41.6	84.5	0.49	37.6	90.7	0.49
Iberdrola	33.0	30.4	1.08	34.5	31.6	1.08
Vattenfall*	144.1	213.6	0.67	141.1	181.0	0.67

Notes: Figures for Vattenfall are in Swedish Kroner. In August 2012, €1=SKr8.2

Nearly all the major energy companies have seen a reduction in their credit rating in recent years, mainly because of the high levels of debt being carried but also to take account of the financial crisis. For example, in August 2012, Fitch announced that it had reduced ENEL's long-term rating to BBB+ from the previous A-with a negative watch on this and the short-term rating.³⁴ This followed an earlier similar downgrading by Moody's in May.³⁵

There is no ideal indicator of the level of debt of a company. Debt as a proportion of net assets gives an indication of how leveraged the company is. Debt as a proportion of profits gives an indication of how capable it is of servicing its debts but profits can be quite volatile so this indicator is not stable. Debt as a proportion of turnover is a more stable indicator although if, for example, energy prices go up as happened in 2011, levels of debt will appear more under control.

Most of the large utilities have reduced their levels of debt mostly by divestments (see Table 1), but by relatively small net amounts. Even the companies with the lowest debt/turnover ratio, such as RWE and Vattenfall, are seeking to reduce their debts.

4. Divestments, acquisitions, markets and new investors

The period of rapid expansion into other European markets for the large European companies is over and new acquisitions will increasingly have to be balanced by sales of existing companies. For new markets, the companies are looking to the periphery of Europe, for example, Turkey and Russia. However, these markets are seen as risky and the commitment to them so far is small. The companies are looking to bring in new investors to improve their access to capital. The need to deal with debt and also changes in corporate priorities has led several of the companies especially EDF, RWE and Vattenfall to carry out major restructuring within the companies. Another significant trend, particularly in Germany is the re-municipalisation of services including energy, the most spectacular example of which was the purchase by the Baden-Wuerttemberg government of EDF's 45 per cent stake in EnBW, one of the four dominant German utilities.

Another consequence of the consolidation on European markets and the relatively low growth potential is that some companies are aiming to have a larger share of their turn-over and profits realised in non-European markets such as Brazil and China, where growth prospects are much better. Good examples are E.ON, GDF Suez and ENEL

³⁴ http://www.enel.com/en-GB/media/press_releases/enel-fitch-reviews-long-term-rating-to-147-bbb-148-and-confirms-short-term-rating-at-147-f2-148/r/1654066

³⁵ http://www.enel.com/en-GB/media/press_releases/enel-moody-s-reviews-long-term-rating-to-baa1-and-confirms-prime-2-short-term-rating-outlook-is-stable/r/1652204

4.1 Acquisitions

The four major acquisitions in recent years were: the purchase of Nuon by Vattenfall, British Energy by EDF, Essent by RWE and additional shares in Edison by EDF. Vattenfall bought 49 per cent of the Dutch company, Nuon's shares in 2009, a further 15 per cent in 2011 and will buy the remaining shares in 2013 (15 per cent) and 2015 (21 per cent).³⁶ The value of the entire Nuon company in 2009 was €9.9bn. RWE bought the other major Dutch utility, Essent, also in 2009, for €7.3bn in one transaction.³⁷ EDF purchased British Energy in 2008 for £12.5bn.³⁸ In May 2012, EDF completed the acquisition of a further 30 per cent of shares in the Italian company, Edison, Italy's second largest utility, for €784m, taking its holding to about 80 per cent.³⁹ It expects to buy the remaining 20 per cent. These four transactions were strategic acquisitions in markets that were linked to their home markets. EDF was forced to sell its 45 per cent stake in the German utility, EnBW, to the state of Baden-Württemberg for €4.7bn in 2010.⁴⁰

4.2 Divestments

Divestments have been partly triggered by the need to lower debt but also to satisfy regulators by selling assets that would reduce their market dominance, for example, E.ON has sold generating capacity in the past to reduce its market share. Regulators are also more rigorously imposing unbundling requirements and this is dealt with separately in the next section.

For gas, E.ON sold its gas network business, Open Gas Europe, in May 2012 to a consortium led by the Australian MacQuarie group for €3.2bn.⁴¹ RWE sold its gas transmission business, Thyssengas, also to a Macquarie led consortium in 2011 for an undisclosed sum, rumoured to be of the order €1bn. In the Czech Republic, RWE put its Net4Gas gas transmission company up for sale in 2012. While a number of companies were reported to be interested, but by August 2012, after two deadlines had passed, only one company, KKCG, had placed a bid, reportedly in the region €1.4-2.4bn.⁴² GDF Suez and E.ON are also reportedly selling their 49 per cent stake (the balance is held by the Slovak National Property Fund (FNM)), in the Slovak gas transmission operator, Slovensky Plynárensky Priemysel (SPP)⁴³ to the Czech energy firm Energy and Industrial Holding (EPH).⁴⁴ The Slovak government has said it will not block the deal although by August 2012, terms were still being negotiated.

Of the other major companies, Vattenfall, Iberdrola and ENEL sold most of their networks some time ago. However, the large French companies, EDF and GDF Suez retain ownership of their electricity (RTE owned by EDF) and gas (GRTGaz owned by GDF Suez) transmission networks, as does the much smaller Dutch multi-utility Delta whose autonomous network management company DNWB posted good results for 2011.

4.3 Networks

The main issues now are ownership of the networks and the need for heavy investment to reconfigure networks to take account of the renewable sources that must be built in the next decades.

³⁶ <http://www.vattenfall.com/en/nuon.htm>

³⁷ <http://www.vattenfall.com/en/nuon.htm>

³⁸ Financial Times 'EDF seals British Energy deal' September 24, 2008

³⁹ <http://www.reuters.com/article/2012/05/03/edison-edf-idUSL5E8G3FXC20120503>

⁴⁰ Financial Times 'EDF quits Germany with EnBW sale' December 6, 2010

⁴¹ <http://www.bloomberg.com/news/2012-05-16/eon-sells-gas-grid-to-macquarie-led-group-for-4-billion-1-.html>

⁴² European Spot Gas Markets 'KKCG submits first firm bid for NET4GAS' July 31, 2012

⁴³ European Spot Gas Markets, 'Czech EPH to swoop for stake in Slovak gas incumbent' June 20, 2012

⁴⁴ Czech financial services companies PPF Group and J&T each hold a 40% stake in EPH. Czech businessman Daniel Kretínský owns the remaining 20%.

4.3.1 Ownership

As argued in earlier reports, the large companies are increasingly seeing the networks as non-core businesses and are selling them.⁴⁵ The Directives require legal unbundling of the networks, the high voltage/pressure transmission networks and the low voltage/pressure distribution networks. Inevitably, as regulators become more experienced the possibility of using ownership of the network to give an unfair advantage to competitive businesses becomes less. In the UK, EDF sold its three electricity distribution networks for £5.7bn to a Hong Kong based consortium, UK Power Networks.⁴⁶ E.ON sold its two UK electricity distribution networks in 2011 to the US utility, PPL for £4bn.⁴⁷ Some of the networks are being sold on for a second time. Wales and West Utilities, a gas distribution company owned by MGN, was bought by a consortium led by Macquarie from National Grid Transco in 2005 for £1.2bn.⁴⁸ However, in 2012, it was sold on again to Cheung Kong Holdings for £645m.⁴⁹

In Germany, ownership of the transmission networks has been the main issue. In 2009, E.ON sold its electricity transmission network to the state-owned Dutch company, TenneT, for €1.1bn.⁵⁰ In September 2011, RWE sold 74.9 per cent of the shares in its transmission company, Amprion to a consortium of German financial investors for €1.3bn. It expects to sell the remaining stake in the next few years. Vattenfall sold its German electricity transmission network to the Belgian transmission system operator Elia and to the Australian Industry Funds Management (IFM) for €810m.⁵¹ Only EnBW of the big four German utilities still owns its electricity transmission network.

4.3.2 Investment needs

European Network of Transmission System Operators for Electricity, in its Ten-Year Network Development Plan 2012 argued that across the European Union €104bn needed to be invested in the refurbishment or construction of roughly 52,000 km of extra high voltage power lines and cables.⁵²

It should be noted that the transmission companies have a vested interest in getting approval for a relatively high level of investment. In most countries, their tariffs are based on the value of the assets they own, so the more they invest, the more profit they are allowed to make. In addition, the more spare capacity there is in the transmission system, the easier it will be for the companies to operate a reliable transmission system. The process of regulation usually involves the companies arguing for a high level of investment and this figure is reduced in bargaining with the regulator

The policy to phase out nuclear power is creating a need for substantial investment in the networks in Germany, especially transmission. The four transmission companies have estimated that €20bn must be spent over the 10 years till 2022 building 3800 km of new transmission lines.⁵³ TenneT had earlier expressed concerns about whether it had not the 'human, material and financial resources' to complete the expansion.⁵⁴

⁴⁵ S Thomas (2010) 'An analysis of the company developments and corporate policies in the European energy sector' PSIRU, University of Greenwich, London.

⁴⁶ <http://www.bbc.co.uk/news/business-10813976>

⁴⁷ <http://www.E.ON.com/en/media/news/press-releases/2011/3/2/e-dot-on-sells-uk-power-distribution-business-to-ppl-corporation.html>

⁴⁸ <http://www.wvutilities.co.uk/WWUOverview.aspx?GroupKeyPos=02>

⁴⁹ Agence France Presse 'Hong Kong billionaire to buy UK gas company' July 25, 2012.

⁵⁰ AFP 'EON to sell power grid for 1.1 billion euros' November 10, 2009

⁵¹ <http://tdworld.com/business/vattenfall-sells-german-grid-0310/>

⁵² [https://www.entsoe.eu/news/announcements/newssingleview/browse/1/article/entso-e-releases-the-ten-year-network-development-plan-2012/?tx_ttnews\[backPid\]=43&cHash=a509cc4985ad30463b46b08d4f41c8aa](https://www.entsoe.eu/news/announcements/newssingleview/browse/1/article/entso-e-releases-the-ten-year-network-development-plan-2012/?tx_ttnews[backPid]=43&cHash=a509cc4985ad30463b46b08d4f41c8aa)

⁵³ SeeNews Renewables 'Tennet presents German network expansion plan enabling energy transition' May 30, 2012

⁵⁴ World Gas Intelligence 'German Offshore Wind Push Undercut by Weak Cable Links' December 7, 2012.

In the UK in July 2012, the regulator, Ofgem, forecast that £22bn would need to be spent on the electricity and gas networks in the period 2013-2021. Most of this, £15bn would be spent on the electricity (England & Wales) and gas (England, Wales & Scotland) transmission networks with £7bn spent on the gas distribution networks.⁵⁵ The electricity distribution networks, the Scottish electricity transmission network and Northern Ireland are covered in separate reviews.

4.4 New investors

The pressure on financial markets and the availability of capital in China and the Middle East is causing the large companies to look to new investors to improve their availability of capital.⁵⁶ A good example of this process was the purchase by the Chinese Three Gorges Company of a 21 per cent stake in the Portuguese company, EDP, making it the largest shareholder.

The Qatar sovereign wealth fund increased its stake in Iberdrola to 8.4 per cent in February 2012 for US\$3bn making it the second largest shareholder.⁵⁷ In November 2011, the China Investment Corporation (CIC) took a 30 per cent stake in GDF Suez's exploration and production division for €2.3bn.⁵⁸ The EWC of GDF Suez was highly critical of the deal on grounds that it signalled a move away from European markets but mainly because the fund does not have criteria regarding corporate social responsibility. New investors are also coming in to take up ownership of unbundled networks and the Chinese State Grid Co took a 25 per cent stake in the Portuguese grid company, Redes Energeticas Nacionais, for €387m in February 2012.⁵⁹

The Cheung Kong Group owned Li Ka-shing, the richest person in Asia, owner of the company formerly known as Hongkong Electric Holdings Limited through its Power Assets subsidiary has been particularly active in picking up stakes in electricity network assets mostly in Australia and New Zealand, but increasingly in the UK. As noted above, Power Assets and other companies owned by Li Ka-shing took a 90 per cent stake in Wales and West Utilities in July 2012. It already owned 88 per cent of Northern Gas Networks. However, its biggest acquisitions were EDF's three regional distribution networks, rebranded as UK Power Networks, in 2010 for about £5.8bn.⁶⁰ It also owns a stake in the Seabank gas-fired power station (1120MW) bought in 2010 for £217m from BG Group.⁶¹

The Macquarie Group through Macquarie Infrastructure & Real Assets division has frequently led consortia of investors taking over energy infrastructure, for example RWE's gas transmission company, Thyssengas, E.ON's Open Grid Europe gas distribution business, Wales & West Utilities (later sold on to Cheung Kong).

⁵⁵ <http://www.ofgem.gov.uk/Networks/Trans/PriceControls/RIO-T1/ConRes/Documents1/RIO%20T1%20Initial%20Proposals%20for%20NGGT%20and%20NGET%20Overview%202707212.pdf>

⁵⁶ <http://www.powerengineeringint.com/articles/2012/07/report-power-sector-must-face-up-to-challenges-of-cross-border-ma.html>

⁵⁷ Middle East and North Africa Financial Network 'Qatar sovereign wealth fund ups stake in Iberdrola' Feb 25, 2012

⁵⁸ http://www.chinadaily.com.cn/business/2011-11/01/content_14016063.htm and <http://www.gdfsuez.com/en/journalists/press-releases/gdf-suez-and-cic-have-closed-the-first-deal-of-their-partnership/>

⁵⁹ <http://www.investin.com.cn/invest-in-state-grid-corp-acquires-a-25-percent-stake-in-portugals-national-energy-network.html>

⁶⁰ Hong Kong Government News 'CKI and HK Electric Completed Acquisition of HK\$70 Billion UK electricity Distribution Asset' November 1, 2010.

⁶¹ China Knowledge Newswire 'Cheung Kong to buy stake in Seabank Power for HK\$2.51 bln' April 29, 2010.

New investors also include financial organisations and, for example, the German insurance company, Allianz (ALV.XE) and reinsurer Munich Re (MUV2.XE), are said to be considering investing in TenneT to help it finance the large investments needed in the German grid.⁶²

4.4 The Russian market

The Russian electricity system has been under reform for some time overtly to reach a structure and mechanisms comparable to those required by the EU Energy Directives. The IEA reported in 2012 that progress had included:⁶³

- unbundling and substantial privatisation of generation infrastructure;
- introduction of an investment mechanism including an investment obligation targeted at new build as well as a system of capacity payments for existing generation;
- implementation of a wholesale spot market covering European Russia, the Urals and Siberia;
- economic regulation and open access arrangements for transmission and distribution networks;
- progress toward more cost-reflective pricing; and
- establishment and strengthening of key market and regulatory institutions.

As usual, the IEA took a very pro-competition and privatisation stance and some of the reported achievements seem in conflict with the objective of introducing competition. For example, an investment obligation and progress towards cost-reflective pricing are hard to reconcile with a free market, which should be sufficient to provide investment signals and which should automatically generate cost-reflective pricing.

The major new market the large energy companies have invested in is Russia. Fortum, E.ON and ENEL have all made major new investments in the Russian market in recent years. Fortum's main business is as a generator of electricity and heat, mainly in the Central region of Russia (the TGC08 region) in 2008, in the Urals and Western Siberia, but with a stake in the Chelyabinsk region and a 25 per cent stake in the St Petersburg region (TGC01) in 2006.

E.ON Russia is a power generation company founded in 2005 and is based on the former OGK-4 region. ENEL claims to be the first foreign company to enter the Russian market owning 55 per cent of OGK-5 power generation company.

4.5 Re-municipalisation

In Germany, there has been a major expansion of direct municipal provision of energy services. Since 2007, 44 new local public utilities (Stadtwerke) have been set up and more than 100 concessions for energy distribution networks and service delivery have returned to public hands. This process is expected to continue and accelerate. Almost all existing concessions in the energy sector are up for renewal in the period up to 2016, and about two thirds of all German communes are considering buying back both electricity generators and the distribution networks, including private shareholdings in some of the 850 Stadtwerke. There are campaigns and referenda initiatives for municipalised energy in major cities like Hamburg, Stuttgart, Bielefeld, Bremen, Frankfurt and Berlin, which are gaining strong support from a German public which is very critical of energy privatisation, especially because of price rises. In addition, some municipal and regional authorities (Länder) have made huge purchases of electricity companies from the major groups. German energy companies have wanted to sell some of their

⁶² Climate Spectator 'TenneT seeks billions for offshore wind' August 14, 2012.

⁶³ Douglas Cooke, Alexander Antonyuk and Isabel Murray (2012) 'Toward a More Efficient and Innovative Electricity Sector in Russia' International Energy Agency, Paris, France.
http://www.iea.org/publications/insights/russian_electricity_reform.pdf

operations – partly because German and EU regulators have insisted on it, partly because they want to reduce debts, and partly because of problems with profitability, especially after the German government decision to phase out nuclear power. The CDU government of Baden-Wuerttemberg bought back 45 per cent of EnBW for €4.7 billion Euros from the French multinational EDF; E.ON sold Thüga, a holding for shares in many Stadtwerke, for €2.9 billion Euros; six communes in North Rhine Westphalia bought the fifth biggest German energy generating company, Evonik-Steag, for €649 million.^{64 65}

4.6 Existing markets

The continuing economic problems in Europe, particularly Southern Europe, are causing problems particularly for the companies with strong bases in Italy and Spain. In March 2012, ENEL was projecting a reduction in 'EBITDA' (profits) of €300m for its Spanish operations (Endesa) and €600m for its core Italian operations. This was only partly offset by increased sales in its Latin American and Russian businesses.⁶⁶ In the first quarter of 2012, Iberdrola's profits in its Spanish business fell by 10 per cent but this was offset by an increase in profits of its international business of 20 per cent.⁶⁷

The financial crisis in Hungary has led the Hungarian government in August 2012 to propose that energy distribution be transformed into a not-for-profit business. At time of writing it is not clear how realistic this plan is and what the implications for the foreign owners of the distribution companies, notably, EDF, RWE and E.ON would be.⁶⁸

5 Social issues and smart meters

The rise in fuel prices and the expansion of renewables are usually blamed for the rises in energy prices in Europe in recent years. There seems little prospect that energy prices will fall and this will raise serious social issues. A central pillar of energy policy is that energy supplies should be 'affordable', as well as reliable and clean. The issue of 'fuel poverty' – usually defined as consumers who have to spend more than 10 per cent of their household income on fuel and power – will therefore become more prominent.

This is recognised by the European Commission. The Energy Roadmap 2050 published by the European Commission in December 2011 (COM/2011/0885)⁶⁹ predicts that electricity prices will increase to cope with the demand for new investment amongst others. The Commission is aware of the social consequences and writes in a section on public acceptance of energy policy (3.4):

'Vulnerable consumers are best protected from energy poverty through a full implementation by Member States of the existing EU energy legislation and use of innovative energy efficiency solutions. As energy poverty is one of the sources of poverty in Europe, the social aspects of energy pricing should be reflected in the energy policy of Member States'.

And in the conclusions, 'The Way Forward', the Commission states:

'Energy prices need to better reflect costs, notably of the new investments needed throughout the energy system. The earlier prices reflect costs, the easier the transformation will be in the long run. Special attention should be paid for the most vulnerable groups, for which coping with the energy

⁶⁴ VKU 2011 The Local Public Utility Sector - Infrastructure partner for a capable Europe <http://www.vku.de/en/presse/publikationen/position-paper-of-the-german-association-of-local-utilities-vku-for-the-eu-legislative-period-2009-2014.html>

⁶⁵ EPSU November 2011 Germany: Trend toward re-municipalisation of energy sector <http://www.epsu.org/a/8107>

⁶⁶ International Oil Daily 'Enel Offers Gloomy Outlook for Core Euro Market' March 9 2012

⁶⁷ AFP 'Spain's Iberdrola posts 0.7% rise in quarterly net profit' May 10, 2012

⁶⁸ <http://www.euractiv.com/trade/hungary-collision-course-eu-ener-news-514392>

⁶⁹ http://ec.europa.eu/energy/energy2020/roadmap/index_en.htm

system transformation will be challenging. Specific measures should be defined at national and local levels to avoid energy poverty.’

As argued earlier,⁷⁰ we do not share the optimism of the European Commission that low-income households are best protected through a liberalised energy market (and note that the European Anti-Poverty Network (EAPN) reports that following an assessment of the national reform programmes of EU Member States a lot of action is needed: ‘Whilst some Member States are taking actions, the lack of a coherent integrated strategy, that tackles adequate income, prices and energy efficiency, undermines effectiveness (p.31).’⁷¹

This issue has been clearly illustrated in the UK. In 2000, the UK government passed the Warm Homes and Energy Conservation Act, followed by the UK Fuel Poverty Strategy in 2001.⁷² At that time, about 1.6million households were estimated to suffer from fuel poverty. This placed legal obligations on the government to take all vulnerable households (the vast majority of fuel poor households, out of fuel poverty by 2010 and take all consumers out of this category by 2016. Far from achieving this, the number of fuel poor households in the UK had risen to more than 5 million with a forecast the number could reach about 8.5 million by 2016 – about a third of households.

Using the social security system to deal with this problem is unlikely to be viable because of the sums of money required. The only feasible policy is to use energy efficiency measures to reduce consumption sufficiently to take people out of fuel poverty. Such a policy would also have major benefits in terms of reducing emissions of greenhouse gases. Energy companies would not benefit if their sales were to fall substantially unless the energy efficiency policies were channelled through them and they were allowed to the consumer benefits of reduced consumption.

Agreement was reached between the Council and the European Parliament on the European Commission Directive on energy efficiency in June 2012.⁷³ The earlier drafts (COM (2011) 370 final) stressed the importance in general of energy efficiency in reducing the scale of fuel poverty but there were no explicit measures targeted at fuel poverty.⁷⁴

A particular issue will be the introduction of ‘smart meters’ for electricity and gas. What distinguishes a smart meter from other meters is that there is constant two-way communication between consumer and supplier.⁷⁵ Smart meters, especially if time-of-day pricing is introduced, raise serious social issues, for example, if vulnerable consumers are required to pay very high costs for energy at the times they most need energy for their own welfare.

Under European Commission rules, it is mandatory for countries to install electricity smart meters for 80 per cent of consumers by 2020. Gas smart meters are also encouraged but there is no specific target timetable. The only proviso is that their installation in a given country should be subject to a cost benefit analysis and if there are not net benefits, installation is not required. The UK has more ambitious targets requiring gas and electricity smart meters to be installed with all consumers by 2018.

⁷⁰ Thomas, S (2008) ‘Poor choices: Energy’ Energywatch, London. <http://www.psiru.org/sites/default/files/2008-09-EW-PoorChoicesEnergy.pdf>

⁷¹ <http://www.eapn.eu/images/stories/docs/EAPN-position-papers-and-reports/2012-eapn-nrp-report-en.pdf>. An EU Worth Defending – Beyond Austerity to Social Investment and Inclusive Growth – EAPN analysis of the 2012 National Reform Programmes (NRPs) and National Social Reports (NSRs), July 2012

⁷² <http://www.legislation.gov.uk/ukpga/2000/31/contents>

⁷³ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/trans/131014.pdf

⁷⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0370:EN:NOT>

⁷⁵ For a review of the issues raised by ‘smart meters’ see <http://www.alphagalileo.org/ViewItem.aspx?ItemId=116499&CultureCode=en>

For the utilities, the costs will be huge. For example, it is estimated in the UK that installing 53 million smart gas (23 million) and electricity (30 million) meters in all households would cost £11.7bn or about £220 per meter over the period 2014-18. The benefits were estimated to be about £18bn over 20 years, but less than half of these (£7.3bn) would go to consumers. The energy companies will be unwilling to accept much of the cost risk of installing smart meters but regulators may be unwilling to write a 'blank cheque' for the energy companies to install smart meters.

A broad platform of civil society organisations in Flanders expressed serious doubts about the economic viability of smart meters.⁷⁶ As a result, in May 2012, Flemish minister of energy, Freya Vandenbossche, announced that she was considering scrapping plans to install smart meters in every Flemish household.⁷⁷

6 The UK's electricity market reforms

In February 2010, within a day of each other, the UK Energy Minister and the Regulator made remarkable statements on the state of the UK electricity market. The Energy Minister, Ed Miliband told the Times⁷⁸:

The Neta system [British wholesale market], in which electricity is traded via contracts between buyers and sellers or power exchanges, does not give sufficient guarantees to developers of wind turbines and nuclear plants. He said that one alternative would be a return to "capacity payments" - in which power station operators would be paid for the electricity they generate and also for capacity made available. The idea of such payments is to give greater certainty to investors in renewable and nuclear energy.

A day later, the Regulator said:⁷⁹

'The unprecedented combination of the global financial crisis, tough environmental targets, increasing gas import dependency and the closure of ageing power stations has combined to cast reasonable doubt over whether the current energy arrangements will deliver secure and sustainable energy supplies.' And 'There is an increasing consensus that leaving the present system of market arrangements and other incentives unchanged is not an option.'

Given that the changes to the UK energy markets are seen as a highly successful model other countries should emulate, these were remarkable statements, admitting as they do that the competitive model in the UK had failed. The result was the Electricity Market Reform (EMR) process which led to a draft Energy Bill in May 2012.⁸⁰ The Bill was seen as a 'shell' bill with none of the important details specified.

The effect of this bill will be less reliance on the market to provide the investment needed in new generation relying instead on what will essentially be a 'Single Buyer' to commission and provide long-term Power Purchase Agreements (PPAs) in the form of Contracts for Differences (CfDs) for new capacity. The Bill envisages three forms of support for new low carbon generating capacity in addition to the long-term PPAs:

- Capacity payments: These would be expected to be designed to give incentives for peaking plants to remain available;

⁷⁶ Vlaams ABVV et al 'Position Paper on the Development of Smart Grids and Roll-out of Smart Meters'

⁷⁷ <http://energytics.wordpress.com/2012/05/28/359/>

⁷⁸ The Times (2010) 'Labour prepares to tear up 12 years of energy policy' February 1, 2010

⁷⁹ Ofgem (2010) 'Action needed to ensure Britain's energy supplies remain secure' Press release R5, Feb 2010. <http://www.ofgem.gov.uk/Media/PressRel/Documents1/Ofgem%20-%20Discovery%20phase%20II%20Draft%20v15.pdf>

⁸⁰ <http://www.decc.gov.uk/en/content/cms/legislation/energybill2012/energybill2012.aspx>

- Emissions performance standards: These are expected to be set such that new coal-fired power stations would not be built unless they included CCS;
- Guaranteed Carbon price: This has already been introduced in the 2011 Budget which introduced a Carbon floor price rising from €12/tonne in 2013 to €36/tonne by 2020.

How these can be made compatible with the EU Directives is not clear. For example, the Single Buyer is no longer an option under the latest versions of the Electricity Directives, while PPAs for new nuclear capacity may be interpreted as unfair state aid and therefore illegal.

Nevertheless, if other countries come to the same conclusions as the UK and decide to go back to a more planned system, this will tend to suit the large companies who will be subjected to less investment risk than they would have been if countries had tried to maintain a more competitive system. The scale of investment will however be an important determinant of how well the large companies will do. For example, a policy based on small-scale investments such as on-shore wind, solar PV and energy efficiency will be much less attractive to them than one based on large scale renewables (off-shore wind and large-scale solar) and nuclear power (in the few countries this is politically viable).

7. Implications of EWCs beyond the European Union

The Energy Community Treaty of 2006⁸¹ between the EU, six former Yugoslav Republics (Croatia, Serbia, Bosnia & Herzegovina, Montenegro, Former Yugoslav Republic of Macedonia, Kosovo) and Albania. This Treaty essentially obliges the signatories to follow the EU energy Directives. For the candidate countries, including Croatia, Serbia, Macedonia and Montenegro as well as Turkey, this should not be a problem. However, for potential applicant countries such as Georgia, Moldova and Ukraine the need to implement the EU *acquis* is less evident.

The Energy Community is accompanied by an important memorandum of understanding on the social aspects of the Energy Community (2008). It commits the members of the energy community to a number of major EU social rights, social *acquis* and social policies including around information and consultation and restructuring. The European trade union federation EPSU argues that transnational companies that invest in these countries should also include the work force in the EWC (like with EVN-Macedonia and CEZ-Albania) even if not legally bound to do so.⁸² How this will affect Gazprom which has interests in Ukraine and is a significant owner of gas infrastructure in Moldova will be interesting to follow.

8. The Future of EWCs

There are many challenges for European Works Councils in transnational companies. This paper is not the place to deal with these. Based on our research over the years we would argue that the following points are important for EWCs in the energy sector.

- Continue to monitor European policy and legislative developments in the sector as these impact on the environment in which the companies have to work and affect their strategies. The EWC agreement of ENEL foresees this information specifically.
- Ensuring that the implications of European policy are addressed in the EWC (and not only from a company perspective as company proposals and prospects are often not clear and based on many assumptions) The EWC of GdfSuez draws regularly on expertise to question the company's strategic proposals and also analyses the position of competitors.

⁸¹ http://europa.eu/legislation_summaries/enlargement/western_balkans/127074_en.htm

⁸² <http://www.epsu.org/r/239>

- Ensuring active involvement of the EWC in the implications of the invest and disinvestment policies (ensuring contacts with trade union and workers' representatives of acquired or to be acquired companies)
- Consider the commitments on CSR and fundamental labour rights of Private Equity and Sovereign wealth funds often from countries not known for their positive attitude towards free and democratic trade unions).

Table 2. EWC eligible companies

Company	Major presence in Europe	Workers (2011/2010)			EWC	Home market	Ownership
		Worldwide	EU	Other			
Fortum	Nordic, Baltic, Germany, Poland, Russia	11010/11156	6294/6730	4716/4426	Y	Finland	50.8% national
Vattenfall	Sweden, Germany, Finland, Denmark, Poland, Netherlands	34685/38179	34664/38164	13/15	Y	Sweden	84.5% national
E.ON	Germany, Sweden, UK, Czech Rep, Bulgaria, Romania, Hungary, Spain	78889/85105	73977/80277	4912/4828	Y	Germany	Shareholder
RWE	Germany, UK, Netherlands, Turkey, Belgium, Czech Rep, Hungary, Poland	72068/70856			Y	Germany	Shareholder
EDP	Portugal, Spain, Brazil, USA/Canada	12305/12096	9410/9334	2895/2762		Portugal	Shareholder
EDF	France, Germany, UK, Italy, Austria, Hungary, UK, Brazil, Switzerland, Belgium, Slovak Rep, Netherlands, Poland, China, Laos, Vietnam	156168/158842			Y	France	85% national
ENEL	Italy, Spain, Slovak Rep, Russia, Romania, Argentina, Brazil, Chile, Colombia, Peru	75360/78313			Y	Italy/Spain	31.2% national
GDF Suez	Belgium, Poland, Italy, Netherlands, Hungary, France, Germany	218900/218350	191296/		Y	France/Belgium	36% France
Iberdrola	Spain, UK, Brazil, USA	32809/29623			N	Spain	Shareholder
EVN	Austria, Bulgaria, Germany, Macedonia	8250/8536			Y	Austria	51% Lower Austria
CEZ	Czech Rep, Bulgaria, Turkey, Albania, Romania, Poland, Hungary	31420/32627			Y	Czech Rep	69.8% national
Statkraft	Norway, Nordic, Germany	3358/3301	683/565	443/371	Y	Norway	100% national
Delta	Netherlands, Belgium, UK, Germany, Ireland	2960/2927			Y	Netherlands	100% Dutch municipalities
Leipzig	Germany, Poland	/2107			Y	Germany	Leipzig
MVV	Germany, Czech Rep, UK	5923/6068	5923/6068		Y	Germany	50.1% Mannheim
TenneT	Netherlands, Germany	1985/1879	1985/1879		Y	Netherlands	100% national
Elia	Belgium, Germany	1800			N	Belgium	47.9% Belgian municipalities

1. Number of employees is at 31 Dec 2011 and 31 Dec 2010.
2. For Fortum and E.ON, the main employment outside the EU is in Russia. For EDP, it is Brazil.
3. RWE does not break down by country its employment in SE and CE Europe where it employed 11328 and 11163 employees in 2011 and 2010 respectively.
4. In 2011, 9.5% of EDF employees worked outside the EU and 11.5% of employees worked for Dalkia International.
5. In 2011, ENEL employed 36842 people in Italy compared to 37383 in 2010. Of the remaining employees, the Iberia and Latin America division of ENEL employed 22877, compared to 24731 in 2012.
6. GDF Suez figures for employment are for Europe as a whole.
7. EVN figures are for FY 2010/11.
8. Delta does not provide a breakdown of its employment by country.
9. Stadtwerke Leipzig annual report for 2011 had not been published by August 2012



EPSU is the European Federation of Public Service Unions. It is the largest federation of the ETUC and comprises 8 million public service workers from over 275 trade unions; EPSU organises workers in the energy, water and waste sectors, health and social services and local and national administration, in all European countries including in the EU's Eastern Neighborhood. EPSU is the recognized regional organization of Public Services International (PSI).

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EUROPEAN FEDERATION
OF PUBLIC SERVICE UNIONS
45 rue Royale, Box 1- 1000 Brussels
www.epsu.org