bdew

Energie. Wasser. Leben.

**BDEW Bundesverband
der Energie- und
Wasserwirtschaft e.V.**
Reinhardtstraße 32
10117 Berlin
Germany
phone +49 30 300 199-0
fax +49 30 300 199-3900
e-mail info@bdew.de
www.bdew.de

## Position paper

# Article 36a of draft Electricity Directive

Arguments against the „DSO prohibition clause“ proposed by the European Parliament

Berlin, 19 June 2018

Energie. Wasser. Leben.

# BDEW criticisms of a „general DSO prohibition clause“ in Article 36a of the draft Electricity Directive

In its position for the review of the Electricity Directive (ElecDir), the European Parliament proposes a new article 36a with the following provisions:

- DSOs are not allowed to carry out activities beyond those which are explicitly specified in the ElecDir or in the Electricity Regulation (ElecReg) (“whitelist”-principle). This essentially comprises the operation of the electricity grid in the own grid area as well as some particularly described tasks (e. g. procurement of electricity to cover energy losses).
- Exceptions from this rule shall only be allowed if the activity is necessary for the DSO to fulfil its obligations under the Electricity Directive or Regulation or for a secure grid operation and if other parties have not expressed their interest to carry out the activity. Besides, the National Regulatory Authority has to grant its approval.

**BDEW firmly rejects this proposal.** The provision is **dispensable** and, moreover, **dangerous** with regard to the ability of the companies to cope with the increasing challenges arising from the energy transition. The reasons for this are described in this paper.

# 1. Existing unbundling requirements and additional provisions for certain activities are stringent and sufficient

## 1.1 Proven, effective set of rules

The “3rd Energy Package” from 2009 specifies the unbundling requirements for the electricity and gas markets. They provide that, among others, personal ties between the DSO and other parts of integrated electricity undertakings are not allowed on executive levels and instructions from parent companies for the DSO’s day-to-day operations are prohibited. Besides, the DSO business is regulated by the national regulatory authorities.

Thus, the unbundling provisions clearly determine what the DSO is **not** allowed to do (“black-list”-principle).

It is quite right that the draft versions of the revised ElecDir and ElecReg maintain these existing provisions. The **unbundling rules** are **effective**, they are a central pillar of a well-functioning competitive electricity market. BDEW supports the existing unbundling concept.

## 1.2 Additional regulations for certain activities of increasing importance

With regard to activities which become more important in the future, the new ElecDir further refines the clear separation between the regulated area and the competitive market areas with the help of specific rules:

- DSOs are allowed to own and/or operate storage facilities (Article 36) and recharging points for electric vehicles (Article 33) only if the respective service is not offered by third parties; the permission is only temporary.
- DSOs shall procure non-frequency ancillary services from market parties if such services are offered (Article 31.5).
- Where DSOs are involved in the management of data from smart meters, the Member States shall ensure a non-discriminatory access to the data (Article 34).

**Conclusion 1:**

➔ The effective enforcement of existing unbundling requirements and the appropriate market access rules are the basis for well-functioning competitive markets in the generation, trading and supply of electricity. The existing mechanisms already work today.

➔ Also the European Commission and the Council do not see the necessity to adapt the unbundling requirements in the ElecDir. Only for certain topics, further specifications to separate grids from markets are proposed. This approach is the appropriate way to tackle individual aspects.

## 2. Consequences in practice: already today, Article 36a would massively restrict the DSO's work

### 2.1 Article 36a would ban the laterally integrated operation of infrastructures

The provision would prohibit that companies operating electricity grids also operate gas grids, district heating/cooling grids and other infrastructures (e. g. water, telecommunication).

Such a ban can't be justified by considerations of competition law. Besides, it would be useless from an economic point of view:

- Having more than one natural monopoly in one undertaking **does not compromise the market areas of the electricity markets**; the existing unbundling requirements and the practice of national regulators ensure that competition in these areas works.
- The ban would inhibit synergies between the sections, e. g.:
  - joint company premises
  - pooled provision of external services, leading to lower prices
  - joint provision of material and storekeeping
  - joint contracting
  - joint control centres for grids / pipelines
  - joint contact offices for end customers, e. g. for house connection issues
  - joint use of IT systems
  - joint IT service
  - joint use of cross-divisional functions in the undertaking, e. g. fleets, canteens
  - joint documentations and information retrieval (position of cables and pipes)

Banning cross-sectoral infrastructure activities would result in high **one-time costs**, high **current expenses**, a high **coordination effort** and **disadvantages for the customer service**. As a consequence, the residents and companies would have, in general, various network operators in their town which they would have to contact individually. **Inevitably, the infrastructure provision would increase in price for the consumers.**

The provision would affect companies of all sizes, also a large number of municipal utilities. This would undermine the European Commission's intention to promote local involvement.

### 2.2 Article 36a would stop innovation

Article 36a and the implied legal uncertainty would eliminate the options and incentives for DSOs to promote innovative solutions. However, exactly such solutions will be needed to achieve the European energy and climate policy targets and to implement the digital agenda / the digitalisation of the energy transition. DSOs have to rely on innovative solutions in order to cope with the new challenges evoked by the shift of generation plants being connected at distribution rather than transmission level and from the rise in intermittent electricity feed-in.

If DSOs do not engage in innovative areas, this would have massive negative effects, e. g.:

bdew
Energie. Wasser. Leben.

- **sector coupling:** With regard to the DSOs, all efforts to link infrastructures of different sectors, which would bear significant potentials to support achieving the climate goals, would be tremendously hampered or totally eliminated.
- **Smart Metering:** If not explicitly clarified in the ElecDir, DSOs would not be allowed to carry out metering services, thus would not be able to support the smart meter roll-out.
- **Implementation of R&D results (e. g. from SINTEG projects or follow ups):** Many current research projects are meant to bring results which would support the implementation of the energy transition, e. g. in the fields of grid planning and system operation. In Germany, this applies especially to the SINTEG projects. With Article 36a the DSO would not be allowed to implement results from research activities as far as they are not on the “white list”. This would contradict the SINTEG approach which aims at connecting, by means of digital technologies, all parts of the energy infrastructure with all active parties in a smart, digital energy grid.

With article 36a, the DSO would only be allowed to carry out new activities after he has proven that it is in line with the EU provisions (he would, especially, have to prove that the costs are covered). This means that the DSO would have to wait until innovations have matured in a market area, rather than proactively invest in new technologies which sometimes would be the prerequisites for new markets. This would be contradictory to the fact that the European climate goals, the energy efficiency goals and the renewables goals as well as the digital agenda and the implementation of the digitalisation of the energy transition call for the DSOs to play an important part in the development of new business models in these areas.

**Conclusion 2:**

➔ Cross-sectoral infrastructure activities, which in no way hinder the well-functioning competition in the generation, trading and supply of electricity, would be prevented by Article 36a. This would cause higher grid costs which would have to be covered by the grid users.

➔ Article 36a would rule out innovative DSO activities which could create new markets and are urgently needed to make the energy transition happen and to achieve the energy and climate targets. This especially applies to the municipal area since Article 36a would establish new legal obstacles to cross-sectoral solutions and cooperation with the existing municipal utilities.

## 3. A general ban even prohibits activities which are not yet known and narrows the scope for future solutions

### 3.1 Blanket ban narrows the scope for future solutions

The proposed article 36a stipulates a blanket ban for DSOs with regard to all activities which are not explicitly listed as DSO's responsibility in the ElecDir oder ElecReg. Also adding to the "white list" in the ElecDir oder ElecReg further activities allowed for DSOs would not be a sustainable approach because these additions would base on today's state of knowledge. Future solutions which we do not yet know would not be covered. Neither legislators nor the industry would be able to list completely the activities DSOs will have to carry out in ten years in order to cope with all his requirements.

### 3.2 Blanket ban cannot be objectively justified

In contrast to the unbundling requirements, it remains unclear which concrete problem is addressed by Article 36a. It must not happen that prohibitions are established without explaining their intention and impacts. This must not be the basis for legislative decisions.

### 3.3 Rise in bureaucracy

The European Parliament's proposal says that exemptions from the general ban have to be approved by the regulatory authorities. This would extremely raise the administrative burden, both for DSOs and for authorities. In order to attain legal certainty, DSOs would be forced to request the regulators for permission for any activity which does not unambiguously belong to grid operation. This is inefficient. Already today regulators have all instruments to intervene if unbundling requirements are not respected. This is sufficient.

**Conclusion 3:**

- ➔ In practice, blanket bans are detrimental to the development of the industry since they limit the scope for future solutions.
- ➔ Establishing blanket bans for future activities that are unknown today cannot be objectively justified. Therefore, this procedure is highly problematic and must not be adopted in European legislation.

bdew
Energie. Wasser. Leben.

**Contact:**

Benjamin Düvel
Phone: +49 30 300199-1112
Mail: benjamin.duevel@bdew.de