



II-5.7: The Belgian Council of State overturns fines imposed by the Belgian Regulatory Commission for Electricity and Gas

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MAIN INFORMATION

On April 7, 2011, the Belgian Council of State handed down a ruling (n° 212.557) in which it overruled a decision by the Commission de Regulation de l'Electricité et du Gaz (CREG – Belgian Regulatory Commission for Electricity and Gas) to fine the City of Wavre for non-compliance with its annual reporting obligations.

CONTEXT AND SUMMARY

In Belgium, cities manage their own electricity and gas distribution networks. Thereby, the City of Wavre was designated the manager of its own electricity and gas distribution.

Each network manager has to transmit an annual report on the electricity it has sold to the CREG. On November 3, 2003, the City of Wavre submitted its report to the CREG. However, on November 20, 2003, the CREG informed the City of Wavre that its annual accounts had been submitted late, and were incomplete, because they did not include all of the necessary information and certain obligatory documents. The City of Wavre replied that it did not have the necessary means at its disposal to provide the required information.

On December 11, 2003, the CREG issued a document on gas and electricity tariffs as practiced by the City of Wavre, in which it questioned the reality and sincerity of the City's accounts, and insisted that the City comply with its legal obligations.

On April 5, 2004, the CREG convened the City of Wavre to a hearing before its sanctions commission, in view of imposing a fine for non-compliance with the legal obligations imposed on Belgian electricity and gas distributors. On May 6, 2004, the CREG decided to fine the City of Wavre 1,239.46 Euros per day of non compliance, starting retroactively on February 15, 2004.

The City of Wavre appealed this decision to the Belgian Council of State, which ruled against the CREG on April 7, 2011, on the grounds that the CREG's decision was illegitimate in that it did not have the right to retroactively impose penalties. Instead, the CREG would have had to impose fines only starting on the date its decision was notified to the concerned parties.

BRIEF COMMENTARY

The Belgian Council of State's decision is certainly an affront to the CREG's powers, which are doubtlessly reduced by this ruling. Indeed, one can imagine that the oversight of a system in which each city manages its own electricity and gas networks is extremely complicated. The rules established for such cities exist to ensure that they keep proper accounts, do not overcharge their citizens for electricity and gas, and that the network is managed safely and efficiently. The CREG's task of reviewing all of these parameters for a number of different local governments is a difficult one. That is most likely why Belgian legislation has provided the CREG with broad powers to fine local authorities that do not comply with the legal obligations for local electricity and gas distributors. This particular legal battle is characteristic of the more general struggle that takes place in every country of the world over the balance to be struck between broad, effective enforcement powers for regulatory agencies, and procedural rules, the traditional balance of powers, and accountability.