

Panacea or Overload?

An analysis of the latest legal developments in the EU network tariff regulation and its role in supporting the transformation to e-mobility

E-Mobility Power System Integration Symposium

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Agenda

1. Introduction
 1. What is it about?
 2. Why does it matter?
2. The EU network tariff regulation
 1. The analytical foundations: Purpose, structure, and competences
 2. The challenge: Systematizing the scattered legal framework and making it operational
 3. Breaking news: The latest legal developments
 4. The 'field test': Privileges for mobility?
3. Conclusion



Introduction

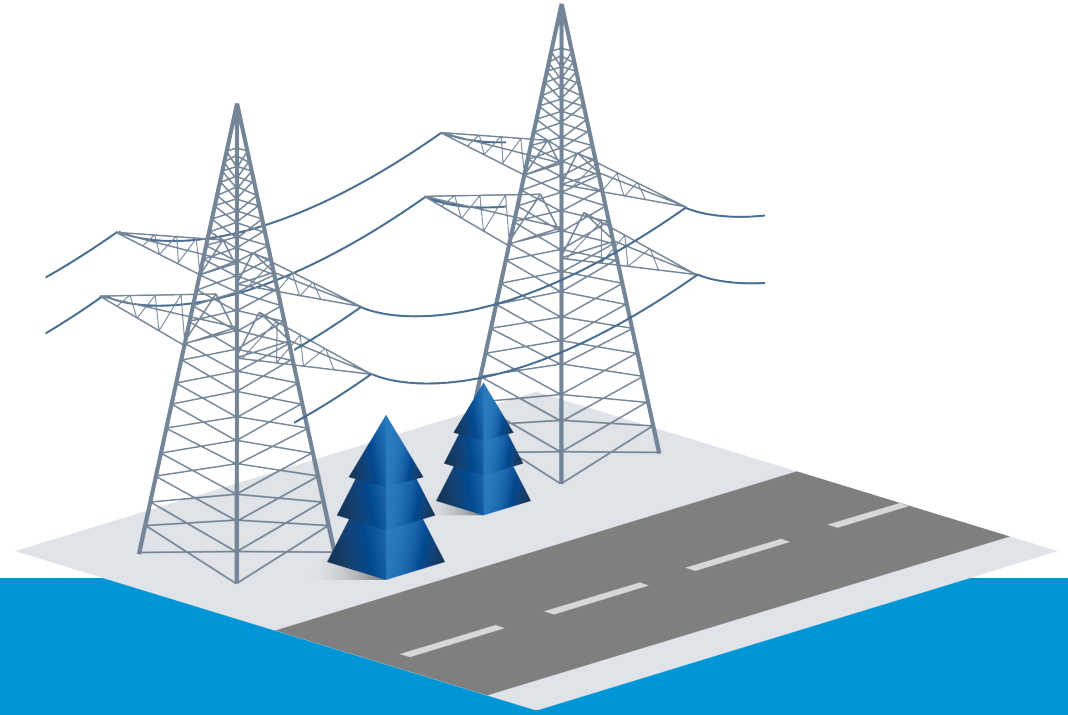
What is it about?

Network tariff regulation

- ▶ projection screen for a variety of regulatory desires
- ▶ tasks:
 - primary distributing grid costs
 - increasingly expected to fulfill a governance function in the context of the energy transition and to support the achievement of climate protection targets
- ▶ **panacea for the manifold problems?**
- ▶ **or becoming dysfunctional because it is overloaded with regulatory wishes?**

Why does it matter?

- ▶ **central economic factor** for the successful establishment of e-mobility
 - **electricity costs** are usually the **second largest cost factor** after depreciation costs In total cost of ownership assessments of electric vehicles
 - **grid charges** have reached up to **25% of total electricity costs**
 - **importance will increase** due the great need for grid expansion and digitalization.
- ▶ **reciprocal relation** between network tariff regulation and e-mobility because of the **high flexibility potential**
- ▶ **Legal Framework / legal analysis particularly relevant**
 - unlike other price components that are mainly de-pendent on external market results, network charges can be **determined** to a large extent **via regulation**.
 - legal framework -> defines network tariff structure -> directly impacts the economic attractiveness of e-mobility and thus its chances of success



The EU network tariff regulation

The analytical foundations

Purpose, structure, and competences

Purpose, structure, and competences

Purpose:

- (traditionally) to promote welfare

Structure:

1. Determination of grid costs ('allowed revenues')
2. Distribution of grid costs among grid users ('tariff structure')

Competences:

- national regulatory authorities decide on network tariff issues
- independently of national governments and parliaments

The challenge

Systematizing the scattered legal framework and making it operational

Central guidelines

1. **cost reflectiveness** (Art. 18 Energy Regulation)
2. **non-discrimination** (Art. 18 Energy Regulation)
3. **transparency** (Art. 18 Energy Regulation)
4. **efficiency** (Art. 27 Energy Efficiency Directive)

} used as starting point
for the systematisation

Notes on the legal structure:

- Generally, no hierarchy in the legal system
- Can or must be weighed against each other; but wide scope for discretion

What does cost-reflective non-discrimination mean?

- ▶ Non-discrimination:
 - **equal** situations must be **treated equally**
 - **unequal** situations must be **treated unequally**

Rephrased: equal situations may not be treated differently; unequal no be treated the same

- ▶ Cost-reflectiveness:
 1. Costs:
 - Not total costs actually incurred by a consumer
 - Only those that are **individually attributable** (because the consumer can influence them) ‘same load profile – same charges’ – independent from net structure, transmission losses...
 2. Reflectiveness
 - Costs and charges do **not** have to be **exactly the same**

Exceptions to the non-discrimination principle

- ▶ It is **possible to deviate** from the central tariff principles
- ▶ But only if the deviation
 1. **serves another regulatory objective**
 2. **is proportionate**

The proportionality requirement

- ▶ Not enough if a measure only serves a regulatory objective in an **indirect, uncertain, or risky way** + other (better/more direct) measures are available
- ▶ Not just a paper tiger
 - margin of appreciation for the NRAs
 - but close examination by the ECJ

Regulatory objectives

that may serve as justifications for exceptions to the non-discrimination principle

- ▶ Transparency
- ▶ Efficiency
- ▶ Promotion of social aims
- ▶ Security of supply
- ▶ Facilitate specific research activities
- ▶ ... (not exhaustive)

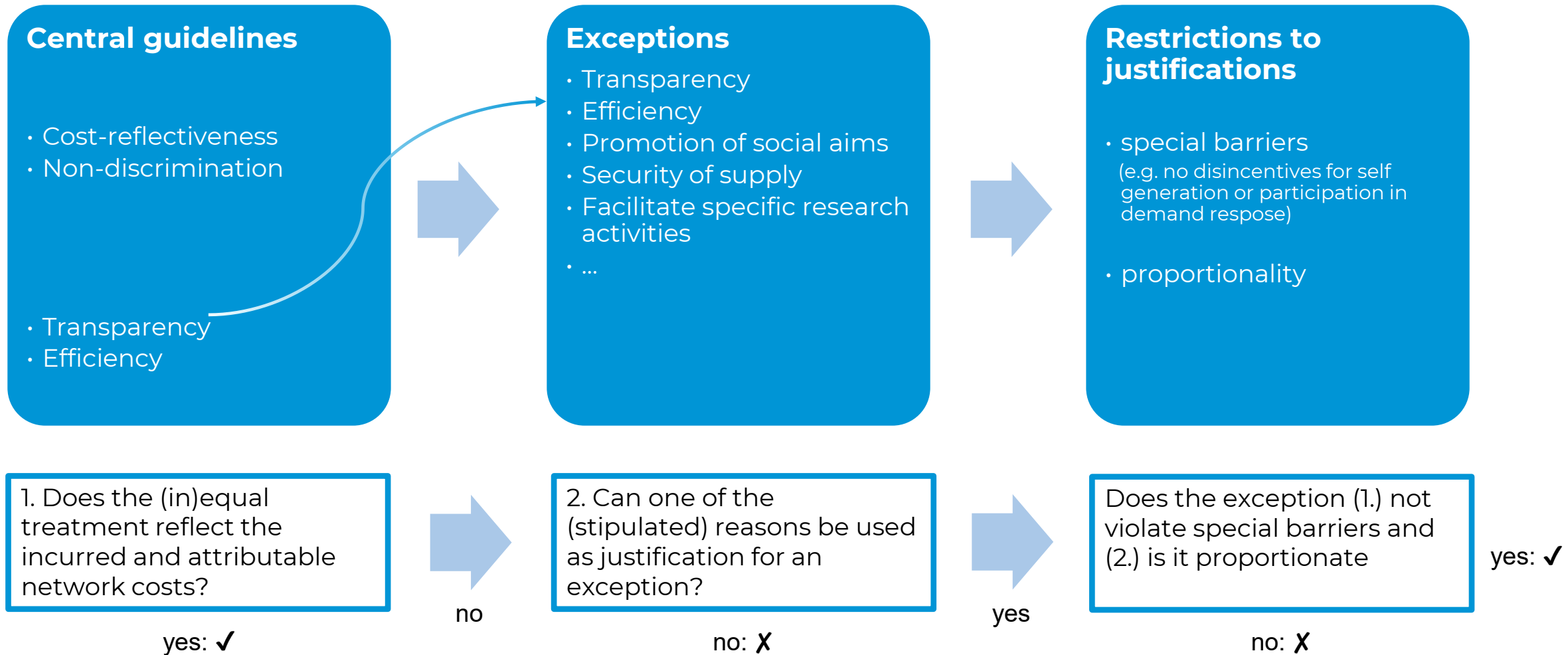
Latest legal developments

- ▶ Electricity Market Design Reform 2024
 - expanded list of regulatory objectives (and thus possible exemptions) considerably
 - especially as regards environmental and climate protection

The network tariff regulation shall now also

- foster the integration of renewable energy
 - contribute to the achievement of the objectives set out in the integrated national energy and climate plans
 - reduce the environmental impact
 - and promote public acceptance
-
- ▶ quite a list (for a network tariff structure)

Making the legal framework operational



The 'field test'

Privileges for mobility?

Privileges for mobility?

1. Does the (in)equal treatment reflect the incurred and attributable network costs?
 - not per se, but in most cases: yes
 - If no:
2. Can one of the (stipulated) reasons be used as justification for an exception?
 - Efficiency?
 - Integration of renewable energy?
 - Research activities?
3. Does the exception (1.) not violate special barriers and (2.) is it proportionate
 - depending on the individual case



Conclusion

Overarching observations

- ▶ **clear competence** specifications and rather **vague structural** specifications
- ▶ Network tariff regulation is currently in a **transition phase**.
 - originally: (only) cost-oriented, non-discriminatory distribution of grid costs
 - increasingly supplemented with additional targets
- ▶ vast and diffuse range of objectives
 - **increases the discretionary scope** of the NRAs (that have to reconcile various targets into a uniform and coherent system)
 - Rather **political decisions** (what is the best way to protect the climate and transform the energy system) tend to **conflict with the exclusive competence and independence** of the NRA

Privileging e-mobility?

- ▶ **legal framework** often **permits** and **sometimes even demands** (network tariff) **privileges** for electricity consumption in the context of e-mobility
 - but only in connection with the costs actually caused
 - or support for the objectives defined within the network tariff regulation (esp. efficiency)
- ▶ + demand side response is **protected against disincentives**

Panacea or overload?

- ▶ Panacea?
 - **No: diversity of objectives** runs the risk of the impact in the individual objectives being too small to achieve a **significant effect**
- ▶ Overload?
 - No: Still **possible to systematize** and **make it operable**
 - Yes: network tariff regulation is expected to provide for too many solutions in the transformation of the energy system
 - + while being democratically legitimized to do so, it **lacks the political awareness** and **attention to discuss** some of the new, sometimes **socially highly relevant questions** that come with the new tasks they have been assigned

Potential further developments

1. Procedures of the NRAs could be more politicized
 - leads to parallel structure to the national legislator
 2. Back to the core
 - concentrate more on original task of determining and distributing costs
 - strike out remote objectives like social aims and public acceptance
 - original task is often complex enough in itself
 - would help to better implement the required transparency for consumers
 - would clarify division of tasks in the political system
 - would make the fewer incentives more effective
- ▶ Functional and coherent legal framework would also benefit the successful transformation to e-mobility...

Thank you

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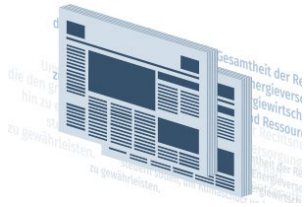
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Researching the legal framework of the energy transition

- ▶ Non-profit, specialised research institute
- ▶ Guiding Question: How must the legal framework change in order to achieve energy and climate policy goals?
- ▶ Interdisciplinary research partners, close exchange with practice
- ▶ Scholarly debate and advice in legislative processes

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