Comparing regulatory decision-making in the energy sector

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ABSTRACT

Since the beginning of the liberalization process in the energy sector the economic literature has devoted many efforts to the assessment of the relationship between the quality of the regulatory framework and the performance of energy markets. The prevailing wisdom relies on the construction of synthetic indicators, which should describe the main institutional variables. These indicators are then employed to run econometric regressions and rank each national regulatory system according to their results.

In this paper I argue that currently available synthetic indicators do not capture the institutional complexity of regulatory systems. While there is an urgent need to measure the quality of rules and institutions, this task cannot be accomplished without first developing a better understanding of their origins, complementarities and implementation. To advance this goal, I propose to use regulatory decision-making processes as the unit of analysis and as a common ground for the dialogue between legal scholars and economists. How such processes are organised directly affects the relationship between energy markets and institutions.

Two theoretical approaches offer a more realistic explanation of regulatory decision-making. Firstly, comparative law helps detect those institutions, sources of law or legal ideas most relevant for the workings of each national or supranational regulatory system. Secondly, behavioural law and economics helps understand the decision costs regulators must face and provides a standard of reference to set forth concrete proposals for improving the regulatory design.

After providing a general description of this new approach, the paper applies it to a specific regulatory problem, namely the development of network rules which support the transition of energy systems to large-scale deployment of renewable energy sources. The European and American regulatory systems are compared to find out how each legal tradition deals with the conflicts between traditional and new energy players and copes with economic and technological uncertainty.

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