

Márk Némedi (VSS2010)

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VSS Alumni Session

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**Legal issues concerning
energetics in the V4 area**

liberalisation

crisis

**the path through
the void**

Energy systems in early 90's

Bad condition both from technical and economic aspect.

State ownership, no foreign investment.

One buyer system: the state owned company is the only one to sell to as a generator, consumers can only purchase from the state owned company.

Governmental financing and control.

Government can freely encourage to make steps for modernization.

No competition, administrative pricing.

1. Supply security/niveau towards consumers
2. EU market liberalization

Conceptual questions of energy market related to legal regulation



THE VISIONS WE HAD



I. Supply security/niveau towards consumers

The legacy:

- bad condition infrastructure
- bad supply niveau
- poorly designed network – access difficulties
- high administrative prices

The aim:

- fast improvement
- minimalizing costs – find a way of financing

Obstacles:

- lack of funding
- slow EU accession
- other obstacles are technical

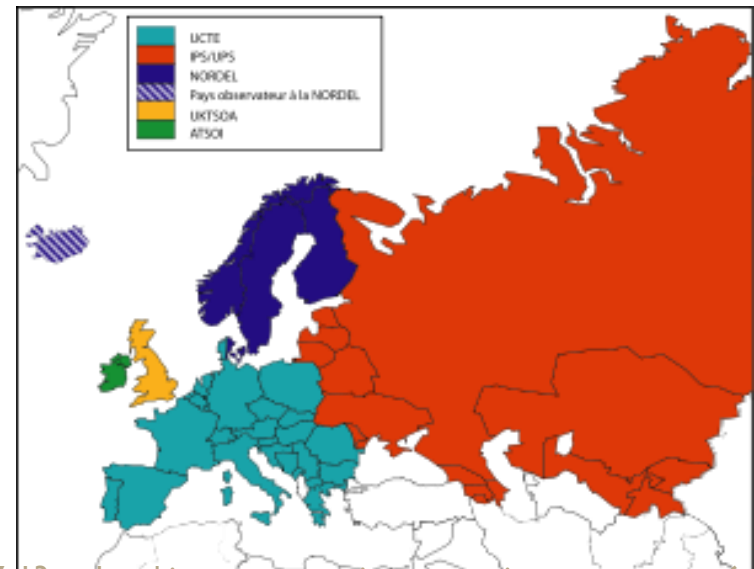
2. EU market liberalisation

The establishment of the internal market in energy matters.

- free choice of energy/supplier
- competition on market of suppliers (abolishing network monopolies)
- banning administrative pricing
- banning of overregulation

A story on state aid, crisis taxation and the watchout for money

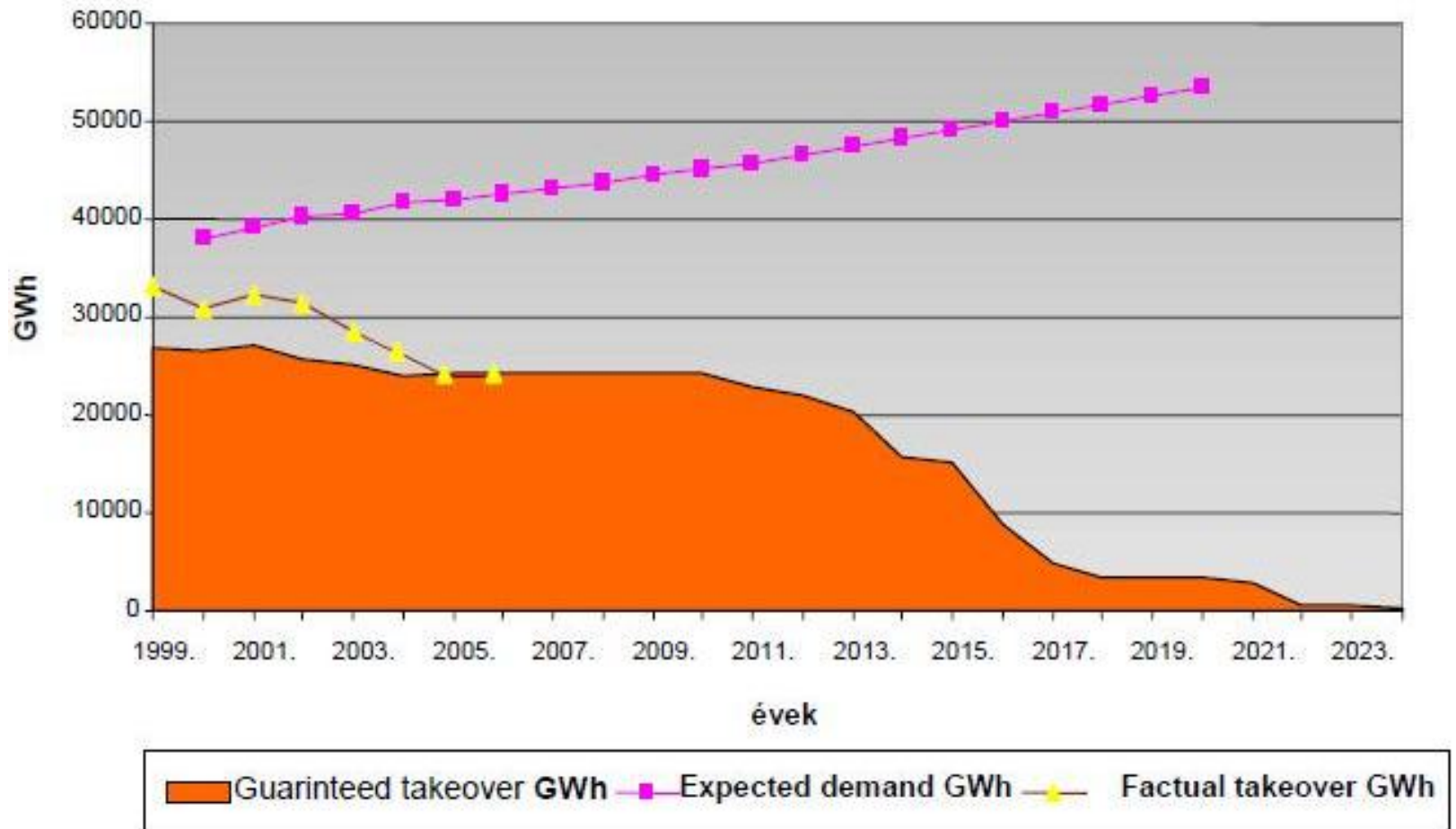
THE PATH WE WENT THROUGH



State aid

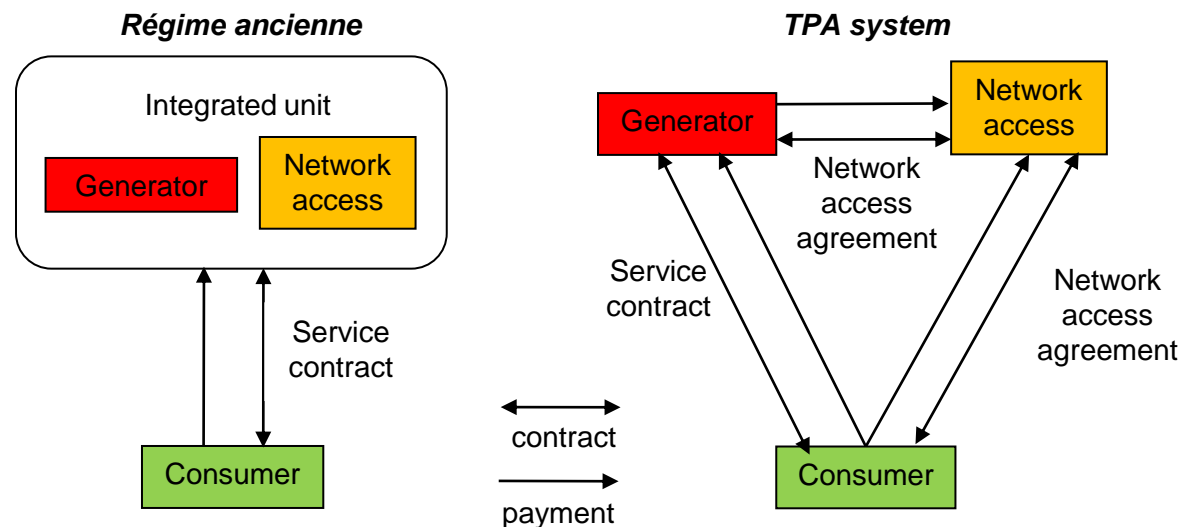
- **Long-term power purchase agreements (PPAs)** concluded:
 - concluded between the state (-owned incumbent) and the generator company;
 - state (-owned incumbent) purchases energy for a fixed price (8-10% guaranteed profit) for a long term (30-35) from the generator;
 - the difference between the market determined or the administrative price and the price set out in the PPA is there to cover development costs (so called stranded costs).

State aid



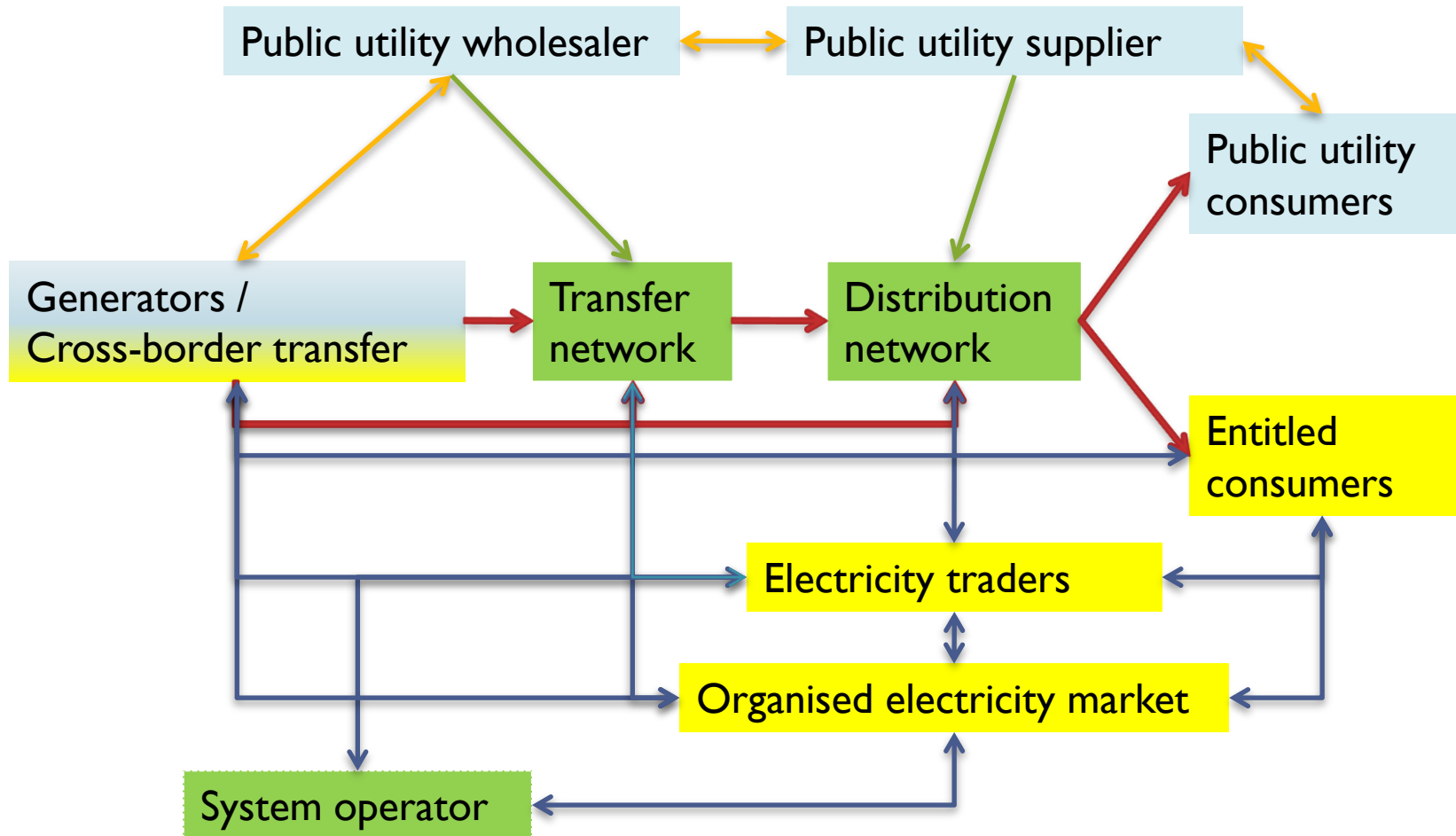
Liberalisation

- Change of perspective – Third Party Access (TPA)



- continuous introduction pursuant to consumer qualification

Hybrid market structure



State aid

- **ACCESSION** to the EU – EU law approaching:
 - legislative packages in energetics:
 - **electricity**: directives 96/92/EC, 2003/54/EC, 2009/72/EC
 - **gas**: 98/30/EC, 2003/55/EC, 2009/73/EC
 - EU competition law:

*„Save as otherwise provided in the Treaties, any **aid granted** by a Member State or **through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.** [TFEU Article 107 (ex Article 87 TEC) - AIDS GRANTED BY STATES]*

State aid

- **COMMISSION INVESTIGATIONS:**
 - on network monopoly and practices (also supported by national competition authorities)
 - on stranded costs (methodology – IP/01/1077)
- **ACT OF COMMISSION AS A RESULT:**
 - **Decision** on termination and refunding of the amount of identified state aid to the state (Hungary - C(2008)2223 fin)
- **TECHNICAL IMPLEMENTATION:**
 - Act No. LXX from 2008 on some issues related to electric energy:
 - **Termination – 31st December 2008**
 - **Repayment of state aid**
- **RESULT:** government money gone:
 - *Who will bare the costs?*

Other EU competition law issues

1. Problems related to continuing network monopoly.
2. Cooperation agreements and mergers between former monopolists.
3. Practices restricting consumers' choice of supplier.

Investment protection issues

Investment protection aims at preventing a state of treating FDI companies in a rather expropriative or discriminative manner.

Companies claim damages for violations:

1. Legitimate expectations in investment;
2. Expropriation;
3. Discrimination...



Besides ICSID arbitration: ECT arbitration, Court of the European Union...

Result: *AES Summit Generation Limited and AES-Tisza Erömü Kft. v. Republic of Hungary (ICSID Case No. ARB/07/22)*

*Similar faith approaches **crisis taxation.***



Where did we arrive so far and where to advance?

MARKET EFFECTS AND PERCEPTION



Frustrations

The crisis seriously slowed down improvement in financing, serious taxes were issued.

Dealing with finetuning becomes more and more urgent.

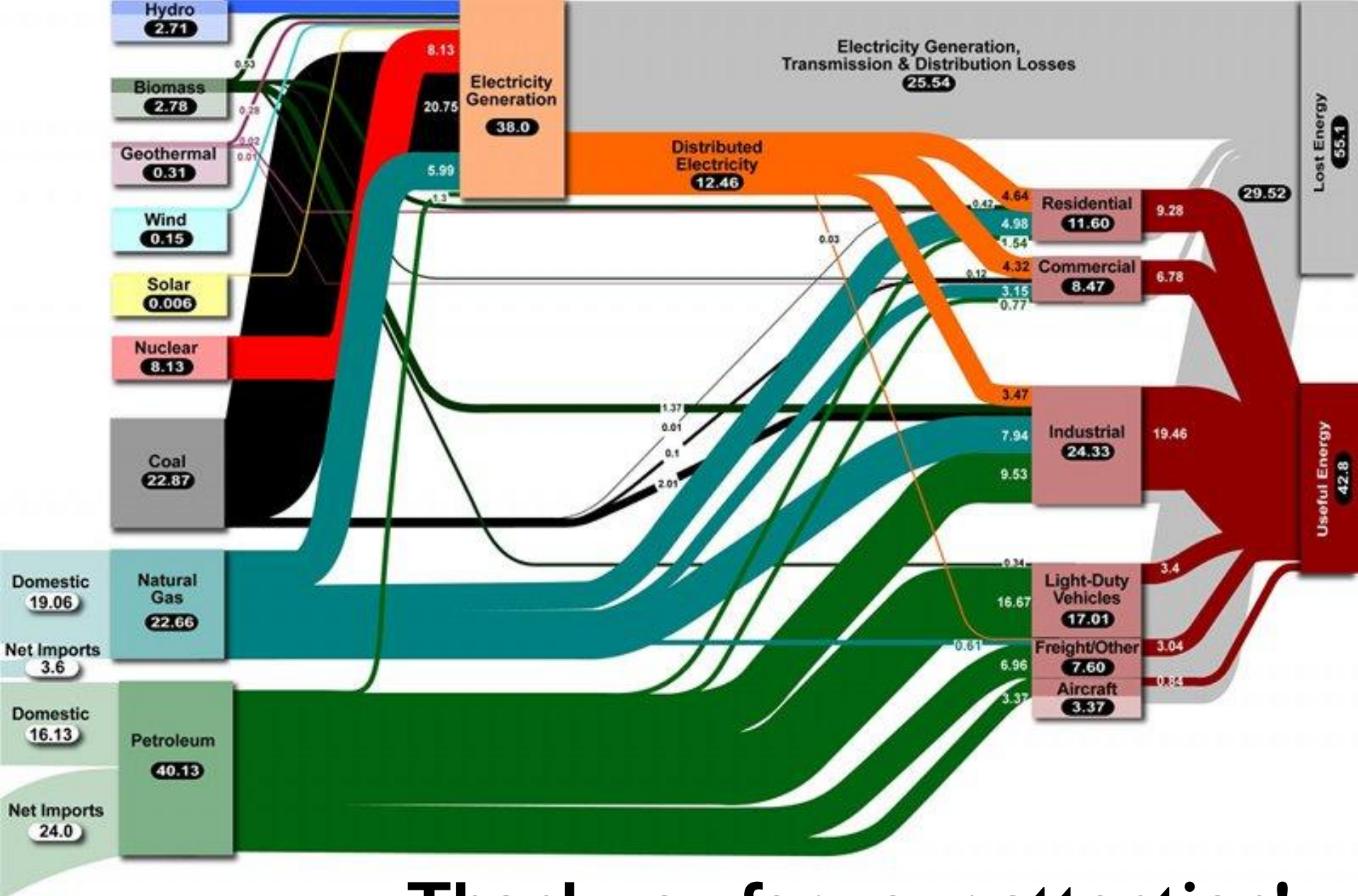
Frustrations arise:

- no low prices yet
- too few companies taking the chance
- slow development
- **stress:** more European legislation, too much space for national legislation? waiting or another way???
- **scepticism**

Why can we not achieve the competitiveness we are thriving for?



CONCLUSIONS – THE VOID



Thank you for your attention!

Questions

1. What is the right proportion between administrative regulation and competition in energy matters?
2. Who should bear the costs of modernization?
3. Is there an interest to regain sharehold of nationals in energy companies?
4. Would V4(+) level sustainable energy developments have an added value for the EU? What could be this added value?
5. Sustainable energy developments are yet another field where V4 countries are lagging behind. How should / could V4 countries close the gap? What do you see as the main challenges (esp. from policy and social aspects) in your country?