

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(COD) - 19/09/2007 - Legislative proposal

PURPOSE: to establish an **Agency for the Cooperation of Energy Regulators**.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: this proposal constitutes one element of a third package of legislative measures which aims to complement the existing rules to make the internal market work for all consumers whether large or small, and to help the EU achieve more secure, competitive and sustainable energy. The Commission is proposing a number of measures to complement the existing rules (see also [COD/2007/0195](#); [COD/2007/0196](#); [COD/2007/0198](#); [COD/2007/0199](#)).

The Commission Communication of 10 January 2007 entitled "An Energy Policy for Europe" (COM (2007)0001) highlighted the importance of completing the internal market in electricity and natural gas. It was backed by a comprehensive internal market report, the final results of the competition sector inquiry and in-depth reviews of the situation of the national electricity and gas market.

The 2007 Spring European Council invited the Commission to propose further measures, such as: i) the effective separation of supply and production activities from network operation; ii) the further harmonisation of the powers and enhanced independence of the national energy regulators; iii) the establishment of an independent mechanism for cooperation among national regulators; iv) the creation of a mechanism for transmission system operators to improve the coordination of networks operation and grid security, cross-border trade and grid operation; v) greater transparency in energy market operations. The European Council also underlined the need to strengthen security of supply in a spirit of solidarity between Member States.

In its Resolution on Prospects for the internal gas and electricity market adopted on 10 July 2007, the European Parliament expressed strong political support for a common energy policy, considering that "transmission ownership unbundling is the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market". It also underlined, however, that other measures were also necessary and that the differences between the electricity and gas markets might call for differing implementation arrangements. Parliament also called for enhanced "cooperation between national regulators at EU level, through an EU entity, as a way to promote a more European approach to regulation on cross-border issues" (see [INI/2007/2089](#)).

CONTENT: these following elements were taken fully into consideration in drawing up the current proposals:

Effective separation of supply and production activities from network operations: the concrete proposal in this respect makes it clear that the preferred option of the Commission remains ownership unbundling. Unbundling refers to the effective separation between the operation of electricity and gas transmission networks from supply and generation activities. In practice this means that Member States must ensure that the same person or persons cannot exercise control over a supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. This provision also applies vice versa, that is, control over a transmission system operator precludes the possibility of holding any interest in or exercising any right over a supply undertaking. Whilst the Commission considers that ownership unbundling remains the preferred option it does however

provide an alternative option for Member States that choose not to go down this path. This option must, however, provide the same guarantees regarding independence of action of the network in question and the same level of incentives on the network to invest in new infrastructure that may benefit competitors. This option, a derogation from the basic ownership unbundling approach, is known as the "Independent System Operator". This option enables vertically integrated companies to retain the ownership of their network assets, but requires that the transmission network itself is managed by an independent system operator - an undertaking or entity entirely separate from the vertically integrated company – that performs all the functions of a network operator. In addition, to ensure that the operator remains and acts truly independently of the vertically integrated company, regulation and permanent regulatory monitoring must be put in place. With a view to encouraging investment in new energy infrastructures by supply and production companies, the present proposal includes the possibility of a temporary derogation to ownership unbundling rules for the construction of new infrastructure. This exemption will be applied on a case by case basis, taking into account in the economics of the new investment, the internal market objectives and the security of supply objective. It should be noted that this proposal applies in the same way to publicly and privately owned companies.

Third country aspects: the present proposal requires the effective unbundling of transmission system operators and supply and production activities not only at national level but throughout the EU. It means in particular that no supply or production company active anywhere in the EU can own or operate a transmission system in any Member State of the EU. This requirement applies equally to EU and non-EU companies. The package contains safeguards to ensure that in the event that companies from third countries wish to acquire a significant interest or even control over an EU network, they will have to demonstrably and unequivocally comply with the same unbundling requirements as EU companies. The Commission can intervene where a purchaser cannot demonstrate both its direct and indirect independence from supply and generation activities.

National regulators: the present proposal aims to strengthen the powers of the regulatory authorities. First, they would be given a clear mandate to cooperate at European level, in close cooperation with the Agency for the Cooperation of Energy Regulators and the Commission, to ensure competitive, secure and environmentally sustainable internal electricity and gas markets within the European Union, and effective market opening for all consumers and suppliers. Second, it is proposed to strengthen their market regulation powers, in particular in the following areas: i) monitoring compliance of transmission and distribution system operators with third party access rules, unbundling obligations, balancing mechanisms, congestion and interconnection management; ii) reviewing the investment plans of the transmission system operators, and providing in its annual report an assessment of how far the transmission system operators' investment plans are consistent with the European-wide 10-year network development plan; monitoring network security and reliability, and reviewing network security and reliability rules; iii) monitoring transparency obligations; iv) monitoring the level of market opening and competition, and promoting effective competition, in cooperation with competition authorities; and v) ensuring that consumer protection measures are effective. It is proposed that the regulatory authority be legally distinct and functionally independent of any other public or private entity, and that its staff and any member of its decision-making body act independently of any market interest and neither seek nor take instruction from any government or other public or private entity.

The Agency for the cooperation of energy regulators: The Commission believes that if an independent body should be established which can make proposals to the Commission regarding decisions that involve substantive decisions and take individual regulatory decisions which are binding on third parties concerning detailed technical issues that are delegated to them, the only solution would be to establish an Agency. The Agency would complement at European level the regulatory tasks performed at national level by the regulatory authorities by: i) providing a framework for national regulators to cooperate; ii) regulatory oversight of the cooperation between transmission system operators; iii) individual decision powers; iv) general advisory role: the Agency would in general have an advisory role vis-à-vis the Commission as regards market regulation issues and could issue non-binding guidelines to publicise good

practices among the national regulators. The total annual costs of the Agency are estimated at approximately EUR 6-7 million per year.

Cooperation between transmission system operators: for market integration to take place, there also needs to be effective cooperation among transmission system operators (TSOs) and a clear and stable regulatory framework, including regulatory coordination. It is therefore proposed to task the transmission operators with strengthening their cooperation in a number of key areas, focusing on the following main issues: development of market and technical “codes”; research and innovation activities of common interest; coordination of grid operation and investment planning. It is important for the transmission system operators' cooperation structures to be fully recognised at European level as having the authority to carry out the above tasks. For that purpose, the Commission will formally designate the European Networks of (gas and electricity) transmission system operators in charge of these tasks. It should be noted that the network of operators can only cooperate successfully when all operators are on a level playing field. This means that all operators must be effectively unbundled.

Improving the functioning of the market: the proposed energy package also aims at improving the legislative framework to facilitate third party access to key infrastructures, to increase transparency on the market, to enhance market integration and to improve access to retail customers. With this in mind, the Commission proposes to make the good practice guidelines legally binding. The Commission also states that transparent rules on access to LNG terminals are needed. To reduce uncertainty on the market, the Commission will, in the coming months, provide guidance in an appropriate form on the compliance of downstream bilateral long-term supply agreements with EC competition law. Lastly, with a view to stimulating this process, the Commission is considering setting up a retail forum. This forum would allow to focus on specific retail issues, and it should serve as a platform for all stakeholders to promote the establishment of an EU wide retail market.

Reinforce the security of supply monitoring by transmission system operators: as a first step, the present proposals do not modify Directive 2004/67/EC and only address two issues: increased transparency obligations on the level of commercial stocks. Each storage operator would have the obligation to publish on a daily basis the amount of working gas it has in its facilities. This obligation would considerably increase mutual confidence for regional and bilateral assistance in case of severe supply disruptions. It is proposed that Member States cooperate in order to promote regional and bilateral solidarity. This cooperation is intended to cover situations which would be likely to result in severe disruptions of gas supply affecting a Member State . The Commission will adopt guidelines for regional solidarity cooperation, if needed.