Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 06/06/2008

The Council discussed the third package of legislative measures for the internal energy market. This package aims to complement the existing rules in order to make the internal market work for all consumers and to help the EU achieve the objective of more secure, competitive and sustainable energy supply.

Although not all Member States could agree with all elements of the package, the President concluded that the Council reached a broad agreement on the essential elements of this internal energy market package.

The agreement was reached on the basis of the Presidency compromise proposal amended during the Council and covering in particular certain elements.

Effective separation of supply and production activities from network operation: all delegations agreed that effective separation of supply and production activities from network

operations should be achieved in accordance with the orientations defined by the 2007 spring

European Council. However, while the majority of delegations and the Commission see full ownership unbundling as the first best option, an option allowing for an independent transmission operator has been developed in order to take account of cases where arrangements are in place for a transmission system that belongs to a vertically integrated undertaking, which guarantees more effective independence of the TSO. These provisions aim at balancing concerns on the scope, timeframe and enforceability of this option with keeping it workable and preserving the financial interest of the vertically integrated undertaking.

The ITO option will be available to both gas and electricity sectors for Member States where the transmission system belongs to a vertically integrated undertaking on entry into force of the directive. This option would allow companies to retain ownership of transmission systems on condition that they are managed by an independent transmission operator. A number of provisions will ensure:

- the effective independence of the operator, its management and the supervisory body;
- that conflicts of interest are avoided;
- fair and non-discriminatory network access;
- undistorted incentives to invest and the development of investments and interconnection infrastructure;
- independent access to means and resources for TSO's work.

The Commission will carry out a specific review of the ITO-related provisions, to be conducted two years after implementation on the basis of objective criteria, leading, where appropriate, to proposals to ensure full and effective independence of the TSO.

Third country clause: irrespective of the option retained to achieve effective separation, the text needs to ensure that the issue of third country control of networks is addressed in a non-protectionist way which guarantees that these companies respect the same rules that apply to EU undertakings and addresses Member State concerns about third country control. It also needs to address concerns about potential

implications on Community competence and the handling of existing investment as well as provide the criteria against which investment from third country would be assessed, in particular the EU security of supply.

Derogations: the Council agreed on derogations for small or isolated systems, with nominative derogations for Cyprus, Luxembourg and Malta for both gas and electricity sectors as well as derogation for Estonia, Finland and Latvia regarding gas until any of these Member States is directly connected to the system of other Member State than these countries.

Market functioning including retail markets: the texts will include provisions on extended record keeping (supply undertakings need to keep at the disposal of regulators the relevant data relating to transactions in supply contracts and gas/electricity derivatives) and on consumers' rights (guaranteeing that customers are properly informed on their energy consumption and costs frequently enough to regulate their electricity/gas consumption, give them the right to change supplier at any time and require energy companies that bills are sent within three months after a consumer switches supplier).

Agency for the Cooperation of Energy Regulators: the regulatory Agency to be established will be independent from the Member States and the Commission and will have well circumscribed tasks. It will focus on issues involving more than one Member State as far as binding decision-making is concerned. Its involvement in technical matters has been strengthened, but is still of an advisory nature; it generally allows for the national levels to play their parts. In all these tasks, market participants and authorities at national level are duly consulted and due account is taken of the outcomes of regional cooperation between TSOs and between regulators.

Other elements, which form part of the package, are the following: minority shareholding, public ownership, certification or designation of transmission systems operators, adoption of network codes, regulatory authorities, handling of cross-border cases, guidelines to be adopted through comitology, regional cooperation and gas specific issues.

This will be the basis for further work at working party and Coreper level.