

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(COD) - 12/01/2009 - Commission communication on Council's position

The common positions adopted by the Council on the five texts that make up the Third Package contain all the essential components of the Commission's proposal that are needed to ensure the proper functioning of the internal gas and electricity market. They can therefore be generally supported by the Commission.

The Commission recalls that the first reading focused on obtaining agreement within the Council. The amendments adopted by the European Parliament were therefore not formally incorporated into the common position. Negotiations to this end will take place during the second reading.

Some amendments adopted by the European Parliament are taken into account in the common position concerning the Agency Regulation. These amendments are on: issuing recommendations to Transmission System Operators (TSOs); drafting guidelines establishing principles for the harmonisation of network rules; the recommendation to the Commission where TSOs have failed to implement a network code; the consultation of market participants, consumers and end-users; the downscaling of the Administrative Board (AB) from 12 to 6 members; the Director of the Agency and the Chairman of the Board of Regulators (BoR) attending meetings of the AB; the independence of the members of the AB; the incompatibility of membership of the AB and the BoR; the role of the BoR when appointing the Director; strengthening the role of the BoR; the right of the European Parliament to call on the Director of the Agency to report on the performance of his duties.

In conclusion, the Commission supports the common position but **strongly recommends that the Commission's and the Agency's supervisory role be reinforced**. It also considers that a number of EP amendments that are not covered should be taken into account in the second reading. These amendments are on the following points:

- **the inclusion of new tasks for the Agency:** the promotion of interregional cooperation between energy markets; the coordination of communication between EU TSOs and third-country TSOs; the provision of an opinion to the Commission, the Member States and the regulatory authorities in question on the compliance of a decision of a regulatory authority with EC energy legislation; the monitoring of certain developments in the gas and electricity markets;
- **the possibility for the Agency to take suspensory decisions** in relation to TSOs which fail to implement network codes, that it should monitor the authorisation process for the construction of new cross-border infrastructure and that it should calculate the capacity of TSOs for such systems. The Commission could in principle accept the assignment of the above powers to the Agency, provided these powers are not genuine discretionary.

The Commission accepts the task of the Administrative Board to adopt an annual report on developments in the gas and electricity markets.