

# Internal market in electricity. Third energy package

2007/0195(COD) - 22/04/2009 - Text adopted by Parliament, 2nd reading

The European Parliament adopted with amendments, under the second reading of the codecision procedure, the Council's common position for adopting a directive of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC.

The amendments are the result of a compromise negotiated with the Council on the package of energy market legislation.

The compromise gives Member States the possibility to choose between three options for separating supply and production activities from network operations - both for gas and electricity markets: (a) full ownership unbundling; (b) the independent system operator (ISO); (c) the independent transmission operator (ITO).

MEPs obtained in the compromise a strengthening of energy consumers' rights. The main amendments are as follows:

**Subject matter and scope:** the compromise clarifies that the Directive establishes common rules for the generation, transmission, distribution and supply of electricity, together with consumer protection provisions, with a view to improving and integrating competitive electricity markets in the Community. It also lays down universal service obligations and the rights of electricity consumers and clarifies competition requirements.

**Public service obligations and customer protection:** the text stresses that consumer interests should be at the heart of this Directive and quality of service should be a central responsibility of electricity undertakings. Existing rights of consumers need to be strengthened and guaranteed, and should include greater transparency.

In this context, Member States shall ensure that all customers are entitled to have their electricity provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements. In this regard, Member States shall take all measures to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Member State.

Member States shall also ensure that: (i) where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; (ii) customers are entitled to receive all relevant consumption data. Member States shall ensure that these rights are granted to all customers in a non-discriminatory way as regards cost, effort or time.

Electricity suppliers shall specify in or with the bills and in promotional materials made available to final customers, information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute.

**Checklist:** the Commission should establish, after consulting relevant stakeholders including Member States, national regulatory authorities, consumer organisations and electricity undertakings, an accessible,

user-friendly Energy Consumer Checklist providing consumers with practical information about their rights. That Energy Consumer Checklist should be provided to all consumers and be made publicly available.

**Single points of contact:** Member States shall ensure: (i) the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute; (ii) that an independent mechanism such as an energy ombudsman or a consumer body is in place for an efficient treatment of complaints and out-of-court dispute settlements.

**Vulnerable customers:** each Member State shall define a concept of vulnerable customers which may refer to energy poverty and, *inter alia*, to the prohibition of disconnection of such customers in critical times. Member States shall ensure that rights and obligations linked to vulnerable customers are applied.

**Addressing energy poverty:** Member States shall take appropriate measures, such as National Energy Action Plans or benefits in social security systems for ensuring the necessary electricity supply to vulnerable customers or support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty. Such measures shall not impede the effective opening of the market and market functioning.

**Promoting energy efficiency:** Member States or the regulatory authority shall strongly recommend that electricity undertakings optimise the use of electricity, for example by providing energy management services, developing innovative pricing formulas, or introducing intelligent metering systems or smart grids where appropriate.

**Intelligent metering systems:** Member States shall ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the electricity supply market. Subject to the results of an economic assessment, 80% of consumers shall be equipped with intelligent metering systems by 2020.

**Promotion of regional cooperation:** Member States as well as the regulatory authorities shall cooperate among themselves for the purpose of integrating their national markets at one or more regional levels, as a first step towards a fully liberalised internal market. In particular, the regulatory authorities where Member States have so provided, or Member States, shall promote and facilitate the cooperation of transmission system operators at a regional level, including on cross-border issues, with the aim of creating a competitive European market and facilitating integration of the isolated systems forming electricity islands that persist in the Community.

**Authorisation procedure for new capacity:** in determining appropriate criteria for the granting of authorisations for the construction of generating capacity in their territory, Member States shall consider, *inter alia*: (i) the contribution of the generating capacity to meeting the overall Community target of 20% for energy from renewable sources by 2020; (ii) the contribution of the generating capacity to reducing emissions.

**Tasks of distribution system operators:** the distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity, for operating, maintaining and developing under economic conditions a secure, reliable and efficient electricity distribution system in its area with due regard for the environment and energy efficiency.

**Closed distribution systems:** the text provides that where a closed distribution system is used or a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system

operator and the users of the system. Industrial, commercial or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities or chemical industry sites can include closed distribution systems because of the specialised nature of their operations.

**Third-party access:** the transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal and based on objective, technically and economically justified criteria. The regulatory authorities where Member States have so provided, or Member States, shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure.

**Duties and powers of the regulatory authority:** the regulatory authority shall have the following duties: (i) fixing or approving, in accordance with transparent criteria, regulated transmission or distribution tariffs or their methodologies; (ii) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses; (iii) respecting contractual freedom with regard to interruptible supply contracts as well as with regard to long term contracts provided that they are compatible with Community law and consistent with EU policies; (iv) helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced; (v) monitoring technical cooperation between Community and third country transmission system operators; (vi) contributing to the compatibility of data exchange processes for the most important market processes at regional level.

**Congestion management:** the regulatory authorities shall monitor congestion management of national electricity systems including interconnectors, and the implementation of congestion management rules. To that effect, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to these rules.

In the recitals, the following points are highlighted:

- given the vital importance of a secure supply of energy, cross-border interconnections should be further developed in order to secure the supply of all energy sources at the most competitive prices to consumers and industry within the Community;
- a well-functioning internal market for electricity should provide producers with the appropriate incentives for investing in new power generation, including of electricity from renewable energy sources, paying special attention to the most isolated countries and regions in the Community's energy market;
- in order to secure competition and the supply of electricity at the most competitive price, Member States and national regulatory authorities should facilitate cross-border access for new providers of electricity from different energy sources as well as for new providers of power generation;
- any system for unbundling should be effective in removing any conflict of interests between producers, suppliers and transmission system operators, in order to create incentives for the necessary investments and guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for national regulatory authorities;
- Member States should encourage the modernisation of distribution networks, e.g. through the introduction of smart grids, which should be built in a way that encourages decentralised generation and energy efficiency;
- the development of a truly European electricity market, through a European connected network, as well as securing common rules for a truly European internal market and a broad supply of energy accessible to everyone, should be main goals of the Directive. To this end, undistorted market prices would provide an incentive for cross-border interconnections and for investments in new power generation while leading, in the long term, to price convergence.
- National regulatory authorities should **report to the competition authorities** and the Commission those Member States in which prices impair competition and proper functioning of the market.

the **public service requirements** should be defined at national level, taking into account national circumstances. Community law should, however, be respected by the Member States. The citizens of the Union and, where Member States deem it appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply and reasonable prices.