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

2007/0199(COD) - 13/07/2009 - Final act

PURPOSE: to set non-discriminatory rules for access conditions to natural gas transmission systems as well as to LNG facilities and storage facilities (third package of legislative measures concerning the internal energy market).

LEGISLATIVE ACT: Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775 /2005.

CONTENT: the Council unanimously adopted the package of legislative measures concerning the internal energy market, approving all of the European Parliament's second-reading amendments. The legislative package also includes: (i) a Directive concerning common rules for the internal market in electricity; (ii) a Regulation on conditions for access to the network for cross-border exchanges in electricity; (iii) a Regulation establishing an Agency for the Cooperation of Energy Regulators; (iv) a Directive concerning common rules for the internal market in natural gas.

The third package of legislative measures on the internal energy market aims to:

- supplement the existing rules so as to ensure that the internal market operates smoothly for all consumers and to enable the EU to achieve a more secure, competitive and sustainable energy supply;
- give energy consumers more protection and the benefit of the lowest possible energy prices;
- promote sustainability by stimulating energy efficiency and guaranteeing that small companies, too, in particular those investing in renewable energy, will have access to the energy market;
- ensure fair competition between EU companies and third country companies.

This Regulation aims at:

- setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the special characteristics of national and regional markets with a view to ensuring the proper functioning of the internal market in gas;
- setting non-discriminatory rules for access conditions to LNG facilities and storage facilities taking into account the special characteristics of national and regional markets;
- facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas and providing mechanisms to harmonise the network access rules for cross-border exchanges in gas.

The objectives referred to shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, but not to storage facilities, the establishment of third-party access services and harmonised principles for capacity-allocation and congestion-management, the determination of transparency requirements, balancing rules and imbalance charges, and the facilitation of capacity trading.

The main provisions of the Regulation are as follows:

Establishment of the European network of transmission system operators for gas (ENTSO): all transmission system operators shall cooperate at Community level through the ENTSO for Gas, in order to promote the completion and functioning of the internal market in natural gas and cross-border trade and to ensure the optimal management, coordinated operation and sound technical evolution of the natural gas transmission network.

By 3 March 2011, the transmission system operators for gas shall submit to the Commission and to the Agency the draft statutes, a list of members and draft rules of procedure. The Agency, after formally consulting the organisations representing all stakeholders, in particular the system users including customers, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

Cooperation and coordination among transmission system operators: increased cooperation and coordination among transmission system operators is provided for to create network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward-looking planning and sound technical evolution of the transmission system in the Community, including the creation of interconnection capacities, with due regard to the environment.

Those network codes should be in line with framework guidelines, which are non-binding in nature (framework guidelines) and which are developed by the Agency for the Cooperation of Energy Regulators. The Agency should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with the framework guidelines, and it should be enabled to recommend them for adoption by the Commission. The Agency should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Transmission system operators should operate their networks in accordance with those network codes.

Tasks of the ENTSO for Gas: the ENTSO for Gas shall elaborate network codes in the areas referred to in the Regulation upon a request addressed to it by the Commission. The network codes shall be developed for cross-border network issues and market integration issues and shall be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade.

The ENTSO for Gas shall adopt:

- common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incidents classification scale, and research plans;
- a **non-binding Community-wide ten-year network development plan**, (Community-wide network development plan), including a European generation adequacy outlook, every two years. Viable electricity transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan;
- recommendations relating to the coordination of technical cooperation between Community and third-country transmission system operators;
- an annual work programme and an annual report;
- annual summer and winter generation adequacy outlooks.

The ENTSO for Gas shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission in accordance with the Regulation, and their effect on the harmonisation of applicable rules aimed at facilitating market integration. The ENTSO for Gas shall report its findings to the Agency and include the results of the analysis in the annual report.

The Agency shall also provide an opinion on the national 10-year network development plans to assess their consistency with the non binding Community wide 10-year network development plan. If the Agency identifies inconsistencies between a national 10-year network development plan and the non binding Community wide 10-year network development plan, it shall recommend amending the national network development plan or the non binding Community wide 10-year network development plan as appropriate.

Monitoring by the Agency: the Agency shall monitor the execution of the tasks of the ENTSO for Gas and report to the Commission. Where the ENTSO for Gas has failed to implement any such network codes, the Agency shall request the ENTSO for Gas to provide a duly reasoned explanation as to why it has failed to do so. The Agency shall inform the Commission of this explanation and provide its opinion thereon.

Regional cooperation of transmission system operators: transmission system operators shall establish regional cooperation within the ENTSO for Gas. They shall publish a regional investment plan every two years, and may take investment decisions based on that regional investment plan. Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions.

Tariffs for access to networks: the Regulation specifies the criteria according to which tariffs for access to the network are determined, in order to ensure that they fully comply with the principle of non-discrimination and the needs of a well-functioning internal market and take fully into account the need for system integrity and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities.

Third-party access services: a common minimum set of third-party access services is necessary to provide a common minimum standard of access in practice throughout the Community, to ensure that third party access services are sufficiently compatible and to allow the benefits accruing from a well-functioning internal market in natural gas to be exploited. Transmission system operators shall:

- ensure that they offer services on a non-discriminatory basis to all network users;
- provide both firm and interruptible third-party access services;
- offer to network users both long and short-term services.

Principles of capacity-allocation mechanisms and congestion-management procedures: the transmission system operator shall implement and publish non-discriminatory and transparent congestion management procedures which facilitate cross-border exchanges in gas on a non-discriminatory basis.

Transparency requirements: the transmission system operator shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas network, transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.

The transmission system operator shall make public ex-ante and ex-post supply and demand information, based on nominations, forecasts and realised flows in and out of the system. The national regulatory authority shall ensure that all such information is made public.

In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the infrastructures, the **LNG** and storage facility operators or relevant regulatory authorities shall make public sufficiently detailed information on tariff derivation, methodologies and structure of tariffs for infrastructure under regulated third-party access.

Penalties: the Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation. The penalties provided for must be effective, proportionate and dissuasive.

Commission report: the Commission shall monitor the implementation of this Regulation. In its report referred to in Directive 2009/73/EC, the Commission shall also report on the experience gained in the application of this Regulation.

ENTRY INTO FORCE: 03/09/2009.