Internal market in electricity. Third energy package

2007/0195(COD) - 13/07/2009 - Final act

PURPOSE: to establish a fully operational internal market in electricity (third package of legislative measures concerning the internal energy market).

LEGISLATIVE ACT: Directive 2009/72/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC.

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 natural gas; (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; and (iv) a Regulation on conditions for access to the natural gas transmission networks.

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 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 EU. It lays down the rules governing the organisation and functioning of the electricity sector, open access to the market, the criteria and procedures applicable to calls for tenders and the granting of authorisations and the operation of systems. It also lays down universal service obligations and the rights of electricity consumers and clarifies competition requirements.

The main provisions of the Directive are as follows:

Separation of transmission from supply and generation activities: the Directive specifies several models for achieving the separation of transmission from supply and generation activities. It gives Member States the possibility to choose between three options for separating supply and production activities from network operations for the electricity market:

- full ownership unbundling;
- independent system operator (ISO);
- independent transmission operator (ITO).

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.

Strengthening consumer rights: the Directive lays down universal service obligations and the rights of electricity consumers and clarifies competition requirements. Member States shall, in particular:

- ensure that all household customers, and, where Member States deem it appropriate, small enterprises, **enjoy universal service**, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices;
- 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. In this regard, Member States shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Member State;
- 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;
- ensure that electricity suppliers specify in or with the **bills and in promotional materials** made available to final customers: (i) the contribution of each energy source to the overall fuel mix of the supplier over the preceding year in a comprehensible and, at a national level, clearly comparable manner; (ii) information on the environmental impact, in terms of at least CO2 emissions and the radioactive waste resulting from the electricity produced by the overall fuel mix of the supplier over the preceding year; (iii) information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute;
- 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 in order to ensure efficient treatment of complaints and out-of-court dispute settlements;
- ensure that there are **adequate safeguards to protect vulnerable customers**: each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of electricity to such customers in critical times;
- take appropriate measures, such as formulating national energy action plans, providing benefits in social security systems to ensure the necessary electricity supply to vulnerable customers, or providing for support for energy efficiency improvements, to **address energy poverty** where identified;
- 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;
- ensure the **implementation of intelligent metering systems** that shall assist the active participation of consumers in the electricity supply market. Where roll-out of smart meters is assessed positively, at least 80% of consumers shall be equipped with intelligent metering systems by 2020.

The Commission should establish, after consulting relevant stakeholders, an accessible, user-friendly energy consumer checklist providing consumers with practical information about their rights.

Promotion of regional cooperation: the Directive strengthens regional cooperation among regulatory authorities and among transmission system operators. 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. They shall 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: for the construction of new generating capacity, Member States shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria. 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 safety and security of the electricity system, installations and associated equipment; (ii) the protection of public health and safety; (iii) the protection of the environment; (iv) land use and siting; (v) energy efficiency; (vi) the contribution of the generating capacity to meeting the overall Community target of at least a 20% share of energy from renewable sources in the Community's gross final consumption of energy in 2020; (vii) the contribution of generating capacity to reducing emissions.

Tasks of distribution system operators: the Directive states that 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.

The system operator shall also: (i) ensure non-discrimination as between system users or classes of system users, particularly in favour of its related undertakings; (ii) provide system users with the information they need for efficient access to the system.

Closed distribution systems: the Directive 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 shall be possible to exempt the distribution system operator, under certain conditions, 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: Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems, applicable to all eligible customers. 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.

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.

Decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review and shall be available to the public while preserving the confidentiality of commercially sensitive information.

Regulatory authorities: the Directive strengthens the **independence and powers** of the national regulators. It sets out in great detail the objectives, duties and powers of regulatory authorities so as to improve consistency.

Each Member State shall designate a single national regulatory authority at national level. 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) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency; (iii) monitoring investment plans of the transmission system operators; (iv) monitoring compliance with network security and reliability rules; (v) monitoring the level of transparency and ensuring compliance of electricity undertakings with transparency obligations; (vi) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels; (vii) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses; (viii) monitoring the time taken by transmission and distribution system operators to make connections and repairs; (ix) helping to ensure that the consumer protection measures are effective and enforced.

The regulatory authority may: (i) issue **binding decisions** on electricity undertakings; (ii) carry out **investigations** into the functioning of the electricity markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market; (iii) require any information from electricity undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access; (iv) impose effective, proportionate and dissuasive **penalties** on electricity undertakings not complying with their obligations under this Directive. This shall include the power to impose or propose the imposition of penalties of up to 10% of the annual turnover of the transmission system operator.

Retail markets: in order to facilitate the emergence of well functioning and transparent retail markets in the Community, Member States shall ensure that the roles and responsibilities of transmission system operators, distribution system operators, supply undertakings and customers and if necessary other market participants are defined with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility. Those rules shall be made public.

The Directive also stipulates that large non-household customers shall have the right to contract simultaneously with several suppliers.

Safeguard measures: in the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may temporarily take the necessary safeguard measures. Such measures must cause the least possible disturbance in the functioning of the internal market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

The Member State concerned shall, without delay, notify those measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.

Reporting: the Commission shall monitor and review the application of this Directive and submit an annual overall progress report. The Commission shall, by 3 March 2013, submit, as part of the general review, to the European Parliament and the Council, a detailed specific report outlining the extent to which the unbundling requirements under the Directive have been successful in ensuring full and effective independence of transmission system operators.

ENTRY INTO FORCE: 03/09/2009.

TRANSPOSITION: 03/03/2011.

APPLICATION: from 03/03/2011, with the exception of Article 11 (certification in relation to third countries), which shall apply from 03/03/2013.