

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 03/02/2003 - Council position

All amendments of the European Parliament accepted by the Commission in its amended proposal are included in the common position. The main changes made by the Council are as follows: 1) Recitals : the Council added two recitals, one on the importance of third countries complying with the rules of the Regulation, the other outlining the basic principle of locational signals; 2) Subject-matter and scope : the Council has slightly changed the description of the subject and scope of the text. This Regulation shall apply to cross-border flows of electricity (instead of transit flows). This definition applies to physical flows on a transmission network of a member State resulting from the impact of the activity of generators and/or consumers outside of that Member State on its transmission network. The Council also adds that the specificities of national and regional markets shall be taken into account; 3) Definitions : the common position brings more precision to the definitions, without changing their substance, and includes a few further definitions in order to bring greater clarity to the text. Furthermore, it has complemented the definition of "cross-border-flows" by adding the possibility of an exemption to be applicable in case the transmission networks of two or more Member States form part of a single control block; 4) Compensation mechanism : the Council considered necessary to provide for payments to be made by both exporting and importing TSOs. The common position stipulates that compensations for cross-border flows, which transmission system operators will receive, shall be calculated on the basis of the costs of the infrastructure "used" for cross-border flows. The Commission had proposed "build" for cross-border flows; 5) Charges for access to networks : access charges shall be transparent and reflect the costs incurred in so far as corresponding to an efficient and structurally comparable network which notably reflect amendment made by the European Parliament. The provisions of this Article are not substantially changed, except for some useful clarification with regard to the provision of locational signals by network access charges. In particular, the text makes it clear that, firstly, the Regulation only deals with signals "at the European level" and, secondly, the principle of locational signals shall not prevent Member States from applying charges on consumers which are identical throughout the country; 6) Principles of congestion management : - curtailment procedures have to be applied in a non-discriminatory manner; - market participants must inform the relevant TSOs a reasonable time ahead of the operational period whether they intend to use allocated capacity and allocated capacity not used shall be reattributed to the market in an open, transparent and non-discriminatory manner; - transactions that relieve the congestion shall be taken under due consideration of security of supply. 7) New interconnectors : in order to facilitate new infrastructure investments, the Council made clear, by analogy with the relevant provisions of the common position on the (new) Gas Directive (see COD/2001/0077A), that the new direct current interconnectors may, under certain strict conditions, be granted exemptions from Article 6, paragraph 6, from the requirements of third party access and the fixing of tariffs/methodologies by regulatory authorities. The provision also strengthens the Commission's role in vetting Member States' decisions on exemptions. The restrictive way of interpreting these provisions is confirmed by a Commission statement; 8) Guidelines : - details of methodologies have to be set as regards the quantity of cross-border flows hosted and the designation of the amounts of such flows; - details of the treatment in the context of the inter-TSO compensation mechanism of electricity flows originating or ending in countries outside the EEA have to be set; - they shall make provision for appropriate and efficient harmonised locational signals at European level. 9) Provision of information and confidentiality : the only change in substance concerns the right of the Commission to seek necessary information directly from undertakings concerned: the Council felt that the Commission should have this right only in case the Member State concerned, or its regulatory authority, fails to provide the information in a time limit fixed by the Commission. Furthermore, the Council limits the possible addressee of a request for information to

"undertakings" only, whilst the Commission proposal included also "associations of undertakings" It should also be noted that : - the Council has clarified the role of Member States in the further development of the Regulation by retaining a regulatory procedure for the adoption and amendment of various guidelines, related to the mechanism of compensation between TSOs, capacity allocation, harmonisation of the principles for the setting of charges; - the Commission shall monitor closely the implementation of this Regulation, in particular as regards non-discriminatory and cost-reflective network access conditions and the putting into place of effective locational signals; - this Regulation shall apply from the same date as the first stage of market opening provided for in the common position on the Gas and Electricity Directives, i.e. 1 July 2004.