Energy: rules for the internal market in natural gas. 'Gas Directive'

2001/0077A(COD) - 03/02/2003 - Council position

The common position takes on board the parliamentary amendments splitting the Commission proposal in two separate texts, one amending the Electricity Directive 96/62/EC (please refer to COD/2001/0077) and one amending the Gas Directive 98/30/EC. Although the European Parliament adopted some of these amendment in relation to the Gas proposal the Council was of the opinion that they were also relevant to the Electricity one. The main elements of the common position are the following: 1) Public service obligations : the Council retained as a general principle, the protection of final customers and ensuring a high level of consumer protection. Examples of measures contributing to high standards of consumer protection and information are presented in an Annex (Annex A) which is mandatory for household customers. Moreover, household customers and, where Member States deem it appropriate, small enterprises, shall enjoy "universal service", i.e. the right to be supplied with electricity of a specified quality of reasonable prices. While this concept of universal service, and more generally, public service requirements, can be interpreted on a national basis, they have to be implemented in a transparent and non-discriminatory way. PSOs and universal service shall also be the subject of a detailed Commission report. 2) Unbundling of transmission system operators and unbundling of distribution system operators. These should be independent, in terms of their legal form as well as their organisation and decision making, from activities not relating to transmission, respectively, distribution. Moreover, they should have to fulfil four criteria on functional independence (compliance, managerial independence, etc.) However, functional independence regarding the decision-making rights of the unbundled operator should not prevent some form of co-ordination between the parent company and its subsidiaries. Distribution system operators serving 100 000 customers or less may be exempted from these provisions; the Commission will review this threshold in the framework of its reporting exercise. Besides Member States may postpone on the implementation of legal unbundling for DSOs until the full market opening. Furthermore in the context of the review procedure provided for in the Directive, a Member State may, under certain conditions related to the manner in which it has carried out network access, request to the Commission to be exempted from requirements such as the legal unbundling of DSOs. This request may lead to the Commission submitting proposals to the Parliament and Council to amend the relevant provisions of the Directive or provide for other appropriate means. 3) Access to storage : access to storage, linepack and ancillary services may be organised on the basis of either negotiated access or regulated access (with published tariffs) while noting that, where the market is sufficiently competitive, access to storage/linepack/ancillary services could rely on market-based instruments. Regarding LNG facilities, the text now ensures that a modicum of access, at published tariffs, is ensured to ancillary services and temporary storage exclusively in relation to LNG activities. At the same time, the text clarifies in which circumstances access to storage may be limited and recalls the important role of storage facilities to implement security of supply. The Commission will review third party access to gas storage in its detailed report to be submitted no later than 1 January 2006. 4) Market opening : the Council followed the two-step opening proposed by the Commission, with 2004 for all non-household customers and 2007 for all customers. Member States should take into account the situation of certain groups of non-household customers during the first step by applying for an 18-month derogation. By 1 January 2006 the Commission is due to produce a detailed reporting addressing i.a. public service and universal service issues as well as various issues related to the implementation and consequences of the market opening. The Directive shall be implemented no later than 1 July 2004. 5) Regulatory authorities : the common position, whilst confirming it is left to the Member States to define the institutional arrangements appropriate to carry out the regulatory tasks, states that the independent regulatory authorities are at least responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market, by least monitoring various rules and conditions listed in the Commission proposal. These authorities are also responsible for approving ex-ante at least the methodologies underlying the terms and conditions for connection and access to networks and for

balancing services, and have the authority to require ex-post modifications of these terms and conditions. The text also clarifies the provisions and concerning the prompt handling of complaints by administrative bodies. 6) New infrastructure : the Council included detailed provisions whereby new major gas infrastructures or significant modifications to existing ones would be totally or partially, exempt from Article 18 on third party access, Article 19 on access to storage and Article 25 on prior approval of terms and conditions for access. This exemption would take place under restrictive conditions and be subject to the Commission control. 7) Unbundling of accounts : gas undertakings have to keep separate accounts for their transmission, distribution, LNG and storage activities and for further gas activities. Supply activities to eligible and to non-eligible customers shall be separated in the accounts of these undertakings until full market opening. 8) Exemptions : further to exemptions already granted under Directive 98/30/EC (e.g. for Emergent and Isolated markets" and "Take-or-pay commitments") the common position introduces the possibility of time-limited exemptions for distribution infrastructure in specific geographical areas.