

Basic information	
<p><b>2007/0195(COD)</b></p> <p>COD - Ordinary legislative procedure (ex-codecision procedure) Directive</p>	Procedure completed
<p>Internal market in electricity. Third energy package</p> <p>Repealing Directive 2003/54/EC 2001/0077(COD) Repealed by 2016/0380(COD) See also 2007/0196(COD) See also 2007/0197(COD) See also 2007/0198(COD) See also 2007/0199(COD)</p> <p><b>Subject</b></p> <p>3.60.03 Gas, electricity, natural gas, biogas 3.60.06 Trans-European energy networks</p>	

Key players					
European Parliament	<b>Committee responsible</b>		<b>Rapporteur</b>	<b>Appointed</b>	
	<b>ITRE</b> Industry, Research and Energy		MORGAN Eluned (PSE)	09/10/2007	
	<b>Former committee responsible</b>		<b>Former rapporteur</b>	<b>Appointed</b>	
	<b>ITRE</b> Industry, Research and Energy		MORGAN Eluned (PSE)	09/10/2007	
	<b>Former committee for opinion</b>		<b>Former rapporteur for opinion</b>	<b>Appointed</b>	
	<b>ECON</b> Economic and Monetary Affairs		HUDACKÝ Ján (PPE-DE)	23/10/2007	
	<b>ENVI</b> Environment, Public Health and Food Safety		The committee decided not to give an opinion.		
	<b>IMCO</b> Internal Market and Consumer Protection		LAMBSDORFF Alexander Graf (ALDE)	03/10/2007	
	Council of the European Union	<b>Council configuration</b>		<b>Meetings</b>	<b>Date</b>
		Transport, Telecommunications and Energy		2835	2007-11-29
Transport, Telecommunications and Energy		2875	2008-06-06		
Transport, Telecommunications and Energy		2854	2008-02-28		
Transport, Telecommunications and Energy		2895	2008-10-09		

European Commission	<b>Commission DG</b>	<b>Commissioner</b>
	Energy and Transport	PIEBALGS Andris

Key events			
Date	Event	Reference	Summary
19/09/2007	Legislative proposal published	COM(2007)0528 	Summary
11/10/2007	Committee referral announced in Parliament, 1st reading		
29/11/2007	Debate in Council		
28/02/2008	Debate in Council		Summary
06/05/2008	Vote in committee, 1st reading		Summary
19/05/2008	Committee report tabled for plenary, 1st reading	A6-0191/2008	
06/06/2008	Debate in Council		Summary
17/06/2008	Debate in Parliament		
18/06/2008	Decision by Parliament, 1st reading	T6-0294/2008	Summary
09/01/2009	Council position published	14539/2/2008	Summary
15/01/2009	Committee referral announced in Parliament, 2nd reading		
31/03/2009	Vote in committee, 2nd reading		Summary
02/04/2009	Committee recommendation tabled for plenary, 2nd reading	A6-0216/2009	
21/04/2009	Debate in Parliament		
22/04/2009	Decision by Parliament, 2nd reading	T6-0241/2009	Summary
22/04/2009	Results of vote in Parliament		
25/06/2009	Act approved by Council, 2nd reading		
09/07/2009	End of procedure in Parliament		
13/07/2009	Final act signed		
14/08/2009	Final act published in Official Journal		

Technical information	
<b>Procedure reference</b>	2007/0195(COD)
<b>Procedure type</b>	COD - Ordinary legislative procedure (ex-codecision procedure)
<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Directive
<b>Amendments and repeals</b>	Repealing Directive 2003/54/EC <a href="#">2001/0077(COD)</a> Repealed by <a href="#">2016/0380(COD)</a>

	<a href="#">See also 2007/0196(COD)</a> <a href="#">See also 2007/0197(COD)</a> <a href="#">See also 2007/0198(COD)</a> <a href="#">See also 2007/0199(COD)</a>
<b>Legal basis</b>	EC Treaty (after Amsterdam) EC 047-p2 EC Treaty (after Amsterdam) EC 095 EC Treaty (after Amsterdam) EC 055
<b>Stage reached in procedure</b>	Procedure completed
<b>Committee dossier</b>	ITRE/6/71699

<a href="#">Documentation gateway</a>				
<b>European Parliament</b>				
<a href="#">Document type</a>	<a href="#">Committee</a>	<a href="#">Reference</a>	<a href="#">Date</a>	<a href="#">Summary</a>
Committee draft report		<a href="#">PE402.516</a>	12/02/2008	
Amendments tabled in committee		<a href="#">PE404.393</a>	17/03/2008	
Amendments tabled in committee		<a href="#">PE404.525</a>	19/03/2008	
Amendments tabled in committee		<a href="#">PE404.530</a>	19/03/2008	
Committee opinion	<a href="#">IMCO</a>	<a href="#">PE402.514</a>	09/04/2008	
Amendments tabled in committee		<a href="#">PE404.394</a>	11/04/2008	
Committee opinion	<a href="#">ECON</a>	<a href="#">PE400.564</a>	22/04/2008	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0191/2008</a>	19/05/2008	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0294/2008</a>	18/06/2008	<a href="#">Summary</a>
Amendments tabled in committee		<a href="#">PE421.270</a>	11/03/2009	
Committee draft report		<a href="#">PE421.366</a>	11/03/2009	
Amendments tabled in committee		<a href="#">PE421.420</a>	26/03/2009	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A6-0216/2009</a>	02/04/2009	
Text adopted by Parliament, 2nd reading		<a href="#">T6-0241/2009</a>	22/04/2009	<a href="#">Summary</a>
<b>Council of the EU</b>				
<a href="#">Document type</a>		<a href="#">Reference</a>	<a href="#">Date</a>	<a href="#">Summary</a>
Council position		<a href="#">14539/2/2008</a>	09/01/2009	<a href="#">Summary</a>
Draft final act		<a href="#">03648/2009/LEX</a>	13/07/2009	
<b>European Commission</b>				
<a href="#">Document type</a>		<a href="#">Reference</a>	<a href="#">Date</a>	<a href="#">Summary</a>
Legislative proposal		<a href="#">COM(2007)0528</a> 	19/09/2007	<a href="#">Summary</a>
Document attached to the procedure		<a href="#">SEC(2007)1179</a> 	19/09/2007	

Document attached to the procedure	<a href="#">SEC(2007)1180</a> 	19/09/2007	
Commission communication on Council's position	<a href="#">COM(2008)0906</a> 	12/01/2009	<a href="#">Summary</a>
Commission opinion on Parliament's position at 2nd reading	<a href="#">COM(2009)0318</a> 	23/06/2009	<a href="#">Summary</a>
Commission response to text adopted in plenary	<a href="#">SP(2009)3507</a>	25/06/2009	
Follow-up document	<a href="#">C(2011)3013</a>	06/05/2011	
Follow-up document	<a href="#">COM(2014)0356</a> 	17/06/2014	<a href="#">Summary</a>
Follow-up document	<a href="#">SWD(2014)0188</a> 	17/06/2014	
Follow-up document	<a href="#">SWD(2014)0189</a> 	17/06/2014	
Commission working document (SWD)	<a href="#">SWD(2014)0312</a> 	13/10/2014	<a href="#">Summary</a>
Commission working document (SWD)	<a href="#">SWD(2014)0315</a> 	13/10/2014	

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	<a href="#">CDR0021/2008</a>	10/04/2008	
EESC	Economic and Social Committee: opinion, report	<a href="#">CES0758/2008</a>	22/04/2008	

#### Additional information

Source	Document	Date
National parliaments	<a href="#">IPEX</a>	
European Commission	<a href="#">EUR-Lex</a>	

#### Final act

<a href="#">Directive 2009/0072</a> <a href="#">OJ L 211 14.08.2009, p. 0055</a>	<a href="#">Summary</a>
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## Internal market in electricity. Third energy package

2007/0195(COD) - 09/10/2008

The Council unanimously reached a **political agreement** on the package of legislative measures concerning the internal energy market.

The Council's common positions will be prepared on the basis of the political agreement and forwarded to the European Parliament for second reading under the co-decision procedure by the end of 2008.

The third package of legislative measures concerning the internal energy market was submitted by the Commission on 19 September 2007 at the behest of the 2007 spring European Council. On the basis of the agreement reached at the Energy Council on 6 June, the Council has continued working under the French Presidency to finalise the legal texts and agree on the two outstanding issues: 1) the third country clause and 2) the conditions for fair competition.

1) **The third country clause** addresses the question of control of networks by companies of third countries in a non-protectionist manner which ensures that the companies concerned abide by the same rules as those that apply to EU undertakings. The clause lays down criteria for the assessment of investments by companies of third countries, in particular the security of EU supply. The text approved by ministers establishes a procedure for certification of third-country investors wishing to take control of an energy distribution system or operator. It specifies in detail where responsibilities lie and the role of national regulators and the Commission.

2) **The provisions relating to conditions of fair competition**, as approved by the ministers, provide for the coexistence on the internal energy market of three different unbundling models for production and supply activities, on the one hand, and energy transmission activities on the other. In particular, the text prohibits companies engaged in the production or supply of gas or electricity from exercising control over a transmission network operator of a Member State that has opted for full unbundling.

The initial Commission proposal contains two options for effective separation of supply and production activities, on the one hand, and network management activities, on the other: 1) ownership unbundling (meaning that the same company could not simultaneously own a distribution network and produce or supply energy; and 2) the appointment of an Independent Transmission Operator (ITO).

The Council approved **a third solution (ITO)** whereby independent transmission network operators would be set up with a view to effective unbundling. This option would enable companies to retain ownership of transmission networks provided that the networks were operated by an independent transmission network operator and that additional assurances were given. This option should be applicable to the two sectors (electricity and gas) in Member States where the transmission network belongs to a vertically integrated company on the date of entry into force of the Directive.

## Internal market in electricity. Third energy package

2007/0195(COD) - 09/01/2009 - Council position

The Council unanimously adopted its common position in the form of a recast of Directive 2003/54/EC (the current legislative act will therefore be repealed). To the extent possible the Council has followed the Commission's approach regarding an identical treatment of the electricity and gas sectors.

Concerning the 156 amendments adopted by the European Parliament at first reading, the Council has followed the Commission in accepting, in part or in full, 21 amendments and in rejecting 38 other amendments.

Regarding the European Parliament amendments where the Council has deviated from the Commission position, the Council accepted one amendment and rejected 106.

The Council also introduced the following modifications to the Commission proposal:

**Effective separation of network operation from generation and supply activities:** in addition to the two options proposed by the Commission (ownership unbundling (OU) and the Independent System Operator (ISO)), the Council, in agreement with the Commission, considered it appropriate to introduce a **third option**, the **Independent Transmission Operator (ITO)**, in the case where a transmission system operator is part of a vertically integrated undertaking (VIU) at the entry into force of the Directive. The three options are on equal footing and will be available for both the electricity and the gas sector.

The ITO-provisions will ensure the effective independence of the operator, its management and the supervisory body and that conflicts of interest are avoided. Moreover, undistorted investment incentives and the development of interconnection infrastructure, as well as fair and non-discriminatory network access, will be ensured.

Additional powers and competences for the regulatory authorities have been added. In addition, a paragraph has been added regarding regional cooperation where ITOs are involved. Finally, the Commission will assess, as part of a general review, the implementation of the ITO option against certain criteria two years after the date of transposition of the Directive.

**Level playing field:** given the future presence of three different unbundling models on the Community market, provisions establish a number of criteria for measures which Member States have the possibility to take in order to ensure a level playing field.

**Certification of Transmission System Operators (TSOs) of the Community and of third countries:** the common position has a general Article on certification and one on certification in relation to third countries. This Article ensures on the one hand that TSOs of third countries have to respect the same unbundling rules as Community TSOs. On the other hand, it introduces the criterion of security of energy supply of the Member States and the Community which has to be taken into account when certification is granted.

The main decision on certification will remain with the national regulatory authorities while the Commission is requested to give its opinion on the certification. National regulators must take utmost account of that opinion.

**Regulatory authorities:** the common position ensures that the principle of a single regulator at national level combined with unique representation (e.g. at the Agency) is compatible with the current existence in some Member States of regulators at regional level or for small and isolated parts of the territory.

While ensuring the independence of the regulatory authorities, the text of the common position also clarifies that this does not mean that regulators are free from judicial control or parliamentary supervision or can ignore broader objectives e.g. on environmental sustainability or on public service obligations.

The common position also ensures that, when carrying out their duties, regulators have the possibility to act, where relevant, in close cooperation with other authorities, such as competition ones, while preserving their independence and without duplicating the tasks (e.g. monitoring) usually carried out by other authorities.

**Regulatory regime for cross-border issues:** the provisions setting out the role of the Agency have, for legal reasons, been transferred to the Agency Regulation. The Agency will be involved in cross-border issues as a last resort, at the request of national regulators or if national regulators don't reach an agreement within a certain time frame.

**Derogations:** the Council considered it appropriate to update the text, in particular regarding a derogation from the unbundling provisions for Member States with emergent or isolated markets.

**Minority shareholding:** the Council considered it appropriate not to exclude minority shareholding of producer/supplier in ownership unbundled TSOs as long as this does not entail any control or any influence of one on the other and cannot lead to a conflict of interest.

**Public ownership:** the common position contains the possibility to achieve ownership unbundling with two separate public bodies through a provision recognising that two distinct public bodies can be considered as two persons for the purpose of implementing ownership unbundling.

**Combined operators:** a provision provides that a combined operator can be operated, alternatively, either as an ownership unbundled operator, as an independent System Operator or as an Independent Transmission Operator.

## Internal market in electricity. Third energy package

2007/0195(COD) - 28/02/2008

The Council held a public policy debate on the internal energy market package on the basis of a presidency note.

There were different opinions voiced by delegations concerning the Commission's proposal, the proposal presented by eight Member States, the non-paper of the Commission as well as the United Kingdom contribution. During the debate, Member States showed support for further work towards a compromise solution at working group and the permanent representatives' committee level. Further work should lead to political agreement on the third package by the TTE Council in June 2008.

## Internal market in electricity. Third energy package

2007/0195(COD) - 12/01/2009 - Commission communication on Council's position

The common positions adopted by the Council on the five texts that make up the Third Package contain all the essential components of the Commission's proposal that are needed to ensure the proper functioning of the internal gas and electricity market. They can therefore be generally supported by the Commission.

Concerning the Electricity Directive, the Ownership Unbundling option and the Independent System Operator (ISO) option were adopted. The Commission continues to regard ownership unbundling as the best solution. In its common position, the Council has included a third option, the Independent Transmission Operator (ITO). The Commission can accept the ITO option as part of a general compromise provided that this option is not weaker than in the common position and contains the strongest possible features a political compromise will allow.

The Commission recalls that the first reading focused on obtaining agreement within the Council. The amendments adopted by the European Parliament were therefore not formally incorporated into the common position. Negotiations to this end will take place during the second reading.

Some amendments adopted by the European Parliament are however taken into account in the common position. These are amendments on: the definition of electricity undertakings; the definition of virtual power plants; the application of unbundling to public entities; monitoring of the implementation of safeguards measures; guidelines for public service obligations and power of regulatory authorities. The amendments partially covered by the common position are on: greater regional cooperation; the independence of national regulators and the duties of these national regulators; the methodology for approving tariffs.

The Commission considers that a number of the amendments that are not covered should be taken into account in the second reading. These amendments are on the following points:

**Role of regulators:** the Commission generally supports amendments that strengthen the role and independence of the national regulators. The principles behind amendments relating to the promotion of energy efficiency can generally be supported. However, the specific amendment calling for a pure obligation to introduce pricing formulas which increase in the case of greater levels of consumption cannot be accepted.

**Consumer rights:** the Commission generally supports amendments that increase consumer rights, in particular: the obligation on suppliers to set adequate prepayment bills; the cross-recognition of supply licences between Member States; the appointment of a single point of contact at national level to provide consumers with all the necessary information concerning their rights; and the appointment of an Ombudsman at national level. The proposal to roll out smart meters within a 10-year period can also in principle be supported although its precise scope and drafting would need to be carefully reviewed.

However, the Commission cannot support amendments that aim to incorporate an Energy Consumers Charter into the Directive. Furthermore, it considers that the current rules on universal service should not be changed. It therefore cannot support Parliament's request for a universal service for small enterprises at cost-based prices.

**Fight against energy poverty:** the Commission could support an obligation on Member States to define energy poverty within the confines of a definition of vulnerable consumers at national level, but does not support a definition of energy poverty at EC level.

Furthermore, the Commission believes that an obligation at EC level to ensure that the number of people suffering from energy poverty decreases would be inappropriate. Nevertheless, it could: (i) support a general objective to reduce the number of people suffering from energy poverty; (ii) support an obligation on Member States to ensure specific protection of pensioners and disabled people in winter and to report to the Commission on the measures adopted in this regard.

**Other issues:** the Commission can accept amendments which underline the obligations of TSOs on congestion management, investment in new capacity and transparency. It can also support the requirement of greater cooperation between Transmission System Operators (TSOs) in the operation of their systems.

Parliament wants to allow Member States to grant derogations to third-party access rules for industrial sites. The Commission supports in principle the derogation for industrial sites, which would also cover airports and railways. However, it considers that the amendment goes too far and outlines a solution consisting of a derogation limited to the most burdensome administrative obligations, i.e. ex ante tariff approval by regulators.

## Internal market in electricity. Third energy package

2007/0195(COD) - 06/06/2008

The Council discussed the third package of legislative measures for the internal energy market. This package aims to complement the existing rules in order to make the internal market work for all consumers and to help the EU achieve the objective of more secure, competitive and sustainable energy supply.

Although not all Member States could agree with all elements of the package, the President concluded that the Council reached a broad agreement on the essential elements of this internal energy market package.

The agreement was reached on the basis of the Presidency compromise proposal amended during the Council and covering in particular certain elements.

**Effective separation of supply and production activities from network operation:** all delegations agreed that effective separation of supply and production activities from network

operations should be achieved in accordance with the orientations defined by the 2007 spring

European Council. However, while the majority of delegations and the Commission see full ownership unbundling as the first best option, an option allowing for an independent transmission operator has been developed in order to take account of cases where arrangements are in place for a transmission system that belongs to a vertically integrated undertaking, which guarantees more effective independence of the TSO. These provisions aim at balancing concerns on the scope, timeframe and enforceability of this option with keeping it workable and preserving the financial interest of the vertically integrated undertaking.

The ITO option will be available to both gas and electricity sectors for Member States where the transmission system belongs to a vertically integrated undertaking on entry into force of the directive. This option would allow companies to retain ownership of transmission systems on condition that they are managed by an independent transmission operator. A number of provisions will ensure:

- the effective independence of the operator, its management and the supervisory body;
- that conflicts of interest are avoided;
- fair and non-discriminatory network access;
- undistorted incentives to invest and the development of investments and interconnection infrastructure;
- independent access to means and resources for TSO's work.

The Commission will carry out a specific review of the ITO-related provisions, to be conducted two years after implementation on the basis of objective criteria, leading, where appropriate, to proposals to ensure full and effective independence of the TSO.

**Third country clause:** irrespective of the option retained to achieve effective separation, the text needs to ensure that the issue of third country control of networks is addressed in a non-protectionist way which guarantees that these companies respect the same rules that apply to EU undertakings and addresses Member State concerns about third country control. It also needs to address concerns about potential implications on Community competence and the handling of existing investment as well as provide the criteria against which investment from third country would be assessed, in particular the EU security of supply.

**Derogations:** the Council agreed on derogations for small or isolated systems, with nominative derogations for Cyprus, Luxembourg and Malta for both gas and electricity sectors as well as derogation for Estonia, Finland and Latvia regarding gas until any of these Member States is directly connected to the system of other Member State than these countries.

**Market functioning including retail markets:** the texts will include provisions on extended record keeping (supply undertakings need to keep at the disposal of regulators the relevant data relating to transactions in supply contracts and gas/electricity derivatives) and on consumers' rights (guaranteeing that customers are properly informed on their energy consumption and costs frequently enough to regulate their electricity/gas consumption, give them the right to change supplier at any time and require energy companies that bills are sent within three months after a consumer switches supplier).

**Agency for the Cooperation of Energy Regulators:** the regulatory Agency to be established will be independent from the Member States and the Commission and will have well circumscribed tasks. It will focus on issues involving more than one Member State as far as binding decision-making is concerned. Its involvement in technical matters has been strengthened, but is still of an advisory nature; it generally allows for the national levels to play their parts. In all these tasks, market participants and authorities at national level are duly consulted and due account is taken of the outcomes of regional cooperation between TSOs and between regulators.

**Other elements,** which form part of the package, are the following: minority shareholding, public ownership, certification or designation of transmission systems operators, adoption of network codes, regulatory authorities, handling of cross-border cases, guidelines to be adopted through comitology, regional cooperation and gas specific issues.

This will be the basis for further work at working party and Coreper level.

## Internal market in electricity. Third energy package

2007/0195(COD) - 23/06/2009 - Commission opinion on Parliament's position at 2nd reading

At its Plenary Session of 22 April 2009, the European Parliament adopted a compromise package which had been agreed with the Council in view of reaching a second reading agreement.

These amendments concern essentially:

- the limited strengthening of some rules ensuring effective unbundling of transmission system operator;
- reinforced independence and powers of national regulators;
- provisions creating stronger obligations for Member States as regards consumer protection, energy poverty and the implementation of smart metering.

The Commission accepts the compromise package as it is in line with the overall purpose and the general characteristics of the proposal.

## Internal market in electricity. Third energy package

2007/0195(COD) - 18/06/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 449 votes to 204 and 19 abstentions, a legislative resolution amending the proposal for a Directive of the European Parliament and of the Council, amending Directive 2003/54/EC concerning common rules for the internal market in electricity. The report had been tabled for consideration in plenary by Eluned **MORGAN** (PES, UK) on behalf of the Committee on Industry, Research and Energy.

The main amendments – adopted in 1<sup>st</sup> reading of the codecision procedure – are as follows:

**Full ownership unbundling:** Parliament endorsed the views of its competent committee and gave its support to full ownership unbundling, indicating the break-up of large vertically-integrated energy firms, which simultaneously control the assets to produce and distribute electricity. Members rejected the alternative option of "Independent 'System Operator" that enabled vertically integrated companies to retain the ownership of their network assets. Member States must monitor the process of unbundling vertically integrated undertakings and submit a report to the Commission on the progress achieved.

**Energy poverty:** this is defined as the situation where a household cannot afford to heat its home to an acceptable standard based on the levels recommended by the World Health Organisation. Member States shall take appropriate measures to protect final customers, and shall in particular ensure that there are adequate safeguards to protect vulnerable customers, including prohibiting the disconnection of pensioners and disabled people in winter. In this context, Member States shall recognise energy poverty and provide definitions of vulnerable customers. They must ensure that rights and obligations linked to vulnerable customers are applied and, in particular, take measures to protect final customers in remote areas. Furthermore, Parliament stipulated that Member States must address energy poverty in national energy action plans in order to ensure that the number of people suffering energy poverty decreases. Such measures may include benefits in social security systems, support for energy efficiency improvements and energy production at the lowest possible prices.

**Consumer protection measures:** Parliament ensured that consumer protection measures are strengthened in the text, stating that customers should have:

- the right to withdraw from contracts with their electricity providers without charge;
- the right to compensation if service quality levels are not met (as with, for example, inaccurate and delayed billing);

- access to information on their rights through bills and electricity company web sites;
- access to information on procedures to be followed in case of disputes;
- the right to change supplier within two weeks;
- the right to be informed, at least quarterly, of actual electricity consumption and costs;
- access to smart meters within 10 years of the directive's entry into force;
- the right to have their electricity provided by a supplier regardless of the Member State in which the supplier is registered;
- the right to protection against market abuse. To that end, national authorities must be able to impose price caps in uncompetitive markets for a defined and limited period;
- independent complaints services and alternative redress schemes such as an independent energy ombudsman or a consumer body.

**Charter:** the Commission shall establish, in consultation with relevant stakeholders, a charter listing the rights of energy consumers set out in Community law including in the Directive. Member States shall ensure that energy suppliers take the necessary steps to communicate to all their consumers a copy of that charter and ensure that it is publicly available. National regulatory authorities shall ensure that energy suppliers fulfil those obligations and comply with the consumer rights set out in the charter.

**Energy efficiency and pricing formulas:** in order to promote energy efficiency, national regulatory authorities shall mandate electricity undertakings to introduce pricing formulas which increase in the cases of greater levels of consumption and shall ensure the active participation of customers and distribution system operators in system operations by supporting the introduction of measures to optimise the use of energy, particularly during peak hours. Such pricing formulas, combined with the introduction of smart metres and grids, shall promote energy efficiency behaviour and the lowest possible costs for household customers, in particular households suffering energy poverty

**Support for SMEs:** Member States shall ensure that all household customers and small enterprises, (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at cost-based and easily and clearly comparable, transparent and non-discriminatory prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort.

**Extended universal service obligation:** Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, renewable energy and climate protection. Such obligations shall be clearly defined, transparent, non discriminatory, verifiable and shall guarantee equality of access for EU electricity companies to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental and renewable energy targets, Member States may introduce the implementation of long term planning, taking into account the possibility of third parties seeking access to the system.

**Renewable energy:** national regulatory authority shall require the system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power except when technical balancing requirements or the safety and reliability of the grid would be compromised. Parliament added that in order to help consumers to reduce their energy costs, Member States may require that electricity revenues from household customers be spent to fund energy efficiency and demand-side measurement programmes for household customers.

**National Regulatory Authorities:** national regulatory authorities should be given a wider remit to ensure that the European consumer is taken into account in their work.

**Cross-border and regional cooperation:** national regulatory authorities shall cooperate among themselves for the purpose of harmonising the market design and integrating their national markets at least at one or more regional levels, as a first step towards a fully liberalised internal market. In particular, they shall promote the cooperation of network operators at a regional level and facilitate their integration at that level with the aim of creating a competitive European market, facilitating the harmonisation of their legal, regulatory and technical framework and, above all, integrating the electricity islands that persist in the EU. Member States shall therefore promote the cross-border and regional cooperation of national regulatory authorities.

## Internal market in electricity. Third energy package

2007/0195(COD) - 19/09/2007 - Legislative proposal

PURPOSE: to amend Directive 2003/45/EC concerning the common rules for the **internal market in electricity**.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: this proposal constitutes one element of a third package of legislative measures which aims to complement the existing rules to make the internal market work for all consumers whether large or small, and to help the EU achieve more secure, competitive and sustainable energy. The Commission is proposing a number of measures to complement the existing rules (see also [COD/2007/0196](#); [COD/2007/0197](#); [COD/2007/0198](#); [COD/2007/0199](#)).

The Commission Communication of 10 January 2007 entitled "An Energy Policy for Europe" (COM(2007)0001) highlighted the importance of completing the internal market in electricity and natural gas. It was backed by a comprehensive internal market report, the final results of the competition sector inquiry and in-depth reviews of the situation of the national electricity and gas market.

The 2007 Spring European Council invited the Commission to propose further measures, such as: i) the effective separation of supply and production activities from network operation; ii) the further harmonisation of the powers and enhanced independence of the national energy regulators; iii) the establishment of an independent mechanism for cooperation among national regulators; iv) the creation of a mechanism for transmission system operators to improve the coordination of networks operation and grid security, cross-border trade and grid operation; v) greater transparency in energy market operations. The European Council also underlined the need to strengthen security of supply in a spirit of solidarity between Member States.

In its Resolution on Prospects for the internal gas and electricity market adopted on 10 July 2007, the European Parliament expressed strong political support for a common energy policy, considering that "transmission ownership unbundling is the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market". It also underlined, however, that other measures were also necessary and that the differences between the electricity and gas markets might call for differing implementation arrangements. Parliament also called for enhanced "cooperation between national regulators at EU level, through an EU entity, as a way to promote a more European approach to regulation on cross-border issues" (see [INI/2007/2089](#)).

CONTENT: these following elements were taken fully into consideration in drawing up the current proposals:

**Effective separation of supply and production activities from network operations:** the concrete proposal in this respect makes it clear that the preferred option of the Commission remains ownership unbundling. Unbundling refers to the effective separation between the operation of electricity and gas transmission networks from supply and generation activities. In practice this means that Member States must ensure that the same person or persons cannot exercise control over a supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. This provision also applies vice versa, that is, control over a transmission system operator precludes the possibility of holding any interest in or exercising any right over a supply undertaking. Whilst the Commission considers that ownership unbundling remains the preferred option it does however provide an alternative option for Member States that choose not to go down this path. This option must, however, provide the same guarantees regarding independence of action of the network in question and the same level of incentives on the network to invest in new infrastructure that may benefit competitors. This option, a derogation from the basic ownership unbundling approach, is known as the "Independent System Operator". This option enables vertically integrated companies to retain the ownership of their network assets, but requires that the transmission network itself is managed by an independent system operator - an undertaking or entity entirely separate from the vertically integrated company - that performs all the functions of a network operator. In addition, to ensure that the operator remains and acts truly independently of the vertically integrated company, regulation and permanent regulatory monitoring must be put in place. With a view to encouraging investment in new energy infrastructures by supply and production companies, the present proposal includes the possibility of a temporary derogation to ownership unbundling rules for the construction of new infrastructure. This exemption will be applied on a case by case basis, taking into account in the economics of the new investment, the internal market objectives and the security of supply objective. It should be noted that this proposal applies in the same way to publicly and privately owned companies.

**Third country aspects:** the present proposal requires the effective unbundling of transmission system operators and supply and production activities not only at national level but throughout the EU. It means in particular that no supply or production company active anywhere in the EU can own or operate a transmission system in any Member State of the EU. This requirement applies equally to EU and non-EU companies. The package contains safeguards to ensure that in the event that companies from third countries wish to acquire a significant interest or even control over an EU network, they will have to demonstrably and unequivocally comply with the same unbundling requirements as EU companies. The Commission can intervene where a purchaser cannot demonstrate both its direct and indirect independence from supply and generation activities.

**National regulators:** the present proposal aims to strengthen the powers of the regulatory authorities. First, they would be given a clear mandate to cooperate at European level, in close cooperation with the Agency for the Cooperation of Energy Regulators and the Commission, to ensure competitive, secure and environmentally sustainable internal electricity and gas markets within the European Union, and effective market opening for all consumers and suppliers. Second, it is proposed to strengthen their market regulation powers, in particular in the following areas: i) monitoring compliance of transmission and distribution system operators with third party access rules, unbundling obligations, balancing mechanisms, congestion and interconnection management; ii) reviewing the investment plans of the transmission system operators, and providing in its annual report an assessment of how far the transmission system operators' investment plans are consistent with the European-wide 10-year network development plan; monitoring network security and reliability, and reviewing network security and reliability rules; iii) monitoring transparency obligations; iv) monitoring the level of market opening and competition, and promoting effective competition, in cooperation with competition authorities; and v) ensuring that consumer protection measures are effective. It is proposed that the regulatory authority be legally distinct and functionally independent of any other public or private entity, and that its staff and any member of its decision-making body act independently of any market interest and neither seek nor take instruction from any government or other public or private entity.

**The Agency for the cooperation of energy regulators:** The Commission believes that if an independent body should be established which can make proposals to the Commission regarding decisions that involve substantive decisions and take individual regulatory decisions which are binding on third parties concerning detailed technical issues that are delegated to them, the only solution would be to establish an Agency. The Agency would complement at European level the regulatory tasks performed at national level by the regulatory authorities by: i) providing a framework for national regulators to cooperate; ii) regulatory oversight of the cooperation between transmission system operators; iii) individual decision powers; iv) general advisory role: the Agency would in general have an advisory role vis-à-vis the Commission as regards market regulation issues and could issue non-binding guidelines to publicise good practices among the national regulators. The total annual costs of the Agency are estimated at approximately EUR 6-7 million per year.

**Cooperation between transmission system operators:** for market integration to take place, there also needs to be effective cooperation among transmission system operators (TSOs) and a clear and stable regulatory framework, including regulatory coordination. It is therefore proposed to task the transmission operators with strengthening their cooperation in a number of key areas, focusing on the following main issues: development of

market and technical "codes"; research and innovation activities of common interest; coordination of grid operation and investment planning. It is important for the transmission system operators' cooperation structures to be fully recognised at European level as having the authority to carry out the above tasks. For that purpose, the Commission will formally designate the European Networks of (gas and electricity) transmission system operators in charge of these tasks. It should be noted that the network of operators can only cooperate successfully when all operators are on a level playing field. This means that all operators must be effectively unbundled.

**Improving the functioning of the market:** the proposed energy package also aims at improving the legislative framework to facilitate third party access to key infrastructures, to increase transparency on the market, to enhance market integration and to improve access to retail customers. With this in mind, the Commission proposes to make the good practice guidelines legally binding. The Commission also states that transparent rules on access to LNG terminals are needed. To reduce uncertainty on the market, the Commission will, in the coming months, provide guidance in an appropriate form on the compliance of downstream bilateral long-term supply agreements with EC competition law. Lastly, with a view to stimulating this process, the Commission is considering setting up a retail forum. This forum would allow to focus on specific retail issues, and it should serve as a platform for all stakeholders to promote the establishment of an EU wide retail market.

**Reinforce the security of supply monitoring by transmission system operators:** as a first step, the present proposals do not modify Directive 2004/67/EC and only address two issues: increased transparency obligations on the level of commercial stocks. Each storage operator would have the obligation to publish on a daily basis the amount of working gas it has in its facilities. This obligation would considerably increase mutual confidence for regional and bilateral assistance in case of severe supply disruptions. It is proposed that Member States cooperate in order to promote regional and bilateral solidarity. This cooperation is intended to cover situations which would be likely to result in severe disruptions of gas supply affecting a Member State. The Commission will adopt guidelines for regional solidarity cooperation, if needed.

## 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.

## 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 CO<sub>2</sub> 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. Only 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.

## Internal market in electricity. Third energy package

2007/0195(COD) - 17/06/2014 - Follow-up document

The Commission presents a report on progress on the deployment of intelligent metering in

Member States in line with the provisions of the Third Energy Package, made up of the [Electricity Directive \(2009/72/EC\)](#) and the [Gas Directive \(2009/73/EC\)](#).

To recall, Member States are required to prepare a timescale (of up to 10 years in the case of electricity) for the deployment of intelligent metering systems, subject positive economic assessment of the long-term costs and benefits (CBA) to be completed by 3 September 2012. For electricity, there is a target of rolling out at least 80% by 2020, of the positively assessed cases.

The report looks at progress in the EU-27 to date and frames recommendations for the way forward. It notes that Intelligent metering systems should:

- be **equipped with fit-for-purpose functionalities** in line with standardisation and as proposed in [Commission Recommendation 2012/148/EU](#) in order to ensure technical and commercial interoperability, or ensure the possibility to add functionalities at a later stage;
- guarantee **data privacy and security**;
- enable demand response and other energy services to evolve; and
- support retail markets that deliver full benefits to consumers and the energy system.

Progress on smart metering deployment in the EU-27: appreciable progress has been made. **Following positive CBAs for electricity in over two thirds of cases**, Member States are now committed to proceeding with (or have already completed) the roll-out of smart metering. There are close to 45 million smart meters already installed in three Member States (Finland, Italy and Sweden), representing 23% of envisaged installation in the EU by 2020. The roll-out commitments amount to an investment of around EUR 45 billion for the installation by 2020 of close to 200 million smart meters for electricity (representing approximately 72% of all European consumers) and 45 million meters (around 40% of consumers) for gas. These figures are

encouraging. They demonstrate that where roll-out of smart metering is positively assessed, the expected penetration rate for electricity in these Member States exceeds the Third Energy Package target of 80% but falls short of an EU-wide penetration rate of 80%. This also indicates that the **business case for rolling out smart metering is not yet overwhelming throughout Europe, and this is something more of a challenge in the case of gas.**

#### Overview of the benchmarking results:

- **Electricity:** 16 Member States (Austria, Denmark, Estonia, Finland, France, Greece, Ireland, Italy, Luxemburg, Malta, Netherlands, Poland, Romania, Spain, Sweden and the UK) will proceed with large-scale roll-out of smart meters by 2020 or earlier, or have already done so. In seven Member States (Belgium, the Czech Republic, Germany, Latvia, Lithuania, Portugal, and Slovakia), the CBAs for large-scale roll-out by 2020 were negative or inconclusive, but in Germany, Latvia and Slovakia smart metering was found to be economically justified for particular groups of customers.
- **Gas:** five Member States (Ireland, Italy, Luxembourg, the Netherlands and the UK) have decided to roll-out smart meters by 2020 or earlier. In 12 Member States (Belgium, the Czech Republic, Denmark, Finland, Germany, Greece, Latvia, Portugal, Romania, Slovakia, Spain and Sweden), the results of the CBA were negative. Two Member States (France and Austria) have plans to proceed with a large-scale roll-out but have yet to take official decisions.

The Commission recommends that national authorities, in particular in those Member States not opting for large-scale roll-out (Belgium, the Czech Republic, Germany, Hungary, Latvia, Lithuania, Portugal and Slovakia), **consider a review of the critical parameters used and assumptions made in their current CBA scenarios** using relevant information from pilot programmes and 'real-life' experience to refine technology choices and assumptions as to associated costs and benefits.

The report notes that **smart metering systems are expected to deliver an overall benefit per customer of EUR 160 for gas and EUR 309 for electricity** along with assumed energy savings of 3%. The latter range from 0% in the Czech Republic to 5% in Greece and Malta. Of the countries that have completed roll-outs, Finland and Sweden have indicated energy savings of the order of 1-3%, but no data were available for Italy.

Member State authorities considering **next steps in the deployment of smart metering** are advised to reflect upon the following issues:

**Consumers' trust and confidence:** an intensive communication effort is required to help consumers understand: (i) their rights, (ii) the benefits of installing smart meters; (iii) the functionalities, what data will be collected, and what these data will be used for.

**Stakeholder incentives:** measures should be devised to provide incentives for all stakeholders involved to ensure the quick development of smart metering products and services so as to speed up their uptake. The [Internal Energy Market \(IEM\) Communication](#) Member States to produce action plans which reflect how to modernise the grid, including rules and obligations for distribution system operators (DSOs).

**Data protection:** the report recommends assessing the **need for a specific data privacy and security framework** under national and EU legislation prior to roll-out. Particular emphasis should be placed on:

- the implications for DSOs' regulated roles, incentives and obligations (in 15 out of the 16 Member States that have decided to proceed with a large-scale roll-out, the DSOs are responsible for implementation and own the meters);
- fostering more dynamic competition in retail through market rules allowing dynamic pricing; exploring possibilities in data management and synergies with the ICT sector.

**Smart metering functionalities:** it is strongly recommended that at least the minimum set of functionalities proposed in [Commission Recommendation 2012/148/EU](#), which are in line with standardisation work in this field, be adhered to at EU level. It will enable Member States to identify common means of achieving cost efficiencies in their roll-out plans, facilitate the necessary procurement and ensure the roll-out of fit-for-purpose smart metering systems that are worth the investment.

## Internal market in electricity. Third energy package

2007/0195(COD) - 13/10/2014

This Commission Staff Working Document on the report on the independent transmission operator (ITO) Model in the context of the Third Energy Package.

To recall, Directives 2009/72/EC (the **Electricity Directive**) and [2009/73/EC](#) (the Gas Directive) introduced new and stricter rules on the unbundling of transmission system operators (TSOs). Under these Directives, part of the Third Energy Package, three possible unbundling models were provided: ownership unbundling, independent system operator (ISO) and independent transmission operator (ITO).

The present Staff Working Paper aims to provide an assessment of the ITO model and the extent to which it is capable of sufficiently and adequately ensuring the effective separation of transmission networks from generation and supply interests.

**State of play:** where on the date of entry into force of the Electricity and Gas Directives, i.e. 3 September 2009, the transmission system belonged to a vertically integrated undertaking (VIU), a Member State could decide not to apply the rules of full ownership unbundling, but to provide for an independent transmission operator. **The ITO model** under the Third Energy Package permits TSOs to remain part of a vertically integrated undertaking as long as a set of detailed behavioural and structural criteria are respected.

At the time of writing of this document, there were **26 certified ITOs in 10 EU Member States** (Austria, Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Slovakia and Slovenia). The majority of the certified ITOs are operating in the gas sector (21), while only **five ITOs are active in**

**the electricity sector.** Moreover, there is a limited number of remaining TSOs which are likely to be certified as ITOs but for which a certification process at European level has not started yet.

As a first remark it needs to be underlined that ITOs have been certified only since 2012 and have been operating under the new rules for a very **short period of time**. It is therefore **too early to draw definite conclusions on the functioning of the model and the actual independence of the ITOs in practice**. Also, compliance checks are still ongoing to ensure the correct implementation of the existing unbundling requirements under the Gas and Electricity Directives in the national legislation of the Member States in which the ITO model is implemented.

That being said, the ITO study underlines the initial assessment of the Commission that at present, in the view of the Compliance Officers, but also of NRAs and the majority of network users who responded to the questionnaire, most requirements related to the ITO model seem to work in practice and are usually sufficient and adequate to ensure effective separation of the transmission business from generation and supply activities in the day-today business. This suggests that the notion that the positive effects that unbundling has on facilitating cross-border trade as well as security of supply can also materialize in market areas where the network is operated by an ITO.

Although ensuring compliance under the ITO model **appears to be burdensome** for both the NRAs and the TSOs involved, this does not mean that the ITO model is not effective in separating transmission and generation/supply and ensuring investments in the networks.

Provisions designed to ensure **autonomy, independence of the ITO and independence of the staff** and management seem to be working well. Equally, ITOs are actively consulting with the NRA with regards to commercial and financial agreements between ITOs and other parts of the VIU.

Nevertheless, **careful monitoring** is essential with regards to the requirements for the **Supervisory Board** and its independence from the VIU, provisions concerning Cooling On/Off period, effectiveness of the **Compliance Programme** and ITOs ability to ensure that the necessary investments are made in the network.

Whilst the ITO model so far appears to function well in practice, it may be **further improved**, for instance, by strengthening the independence of the Supervisory Board, specifying the scope of the Compliance Programmes and developing common guidance and a network of cooperation for Compliance Officers, as well as harmonising the timeframe for network development plans at national and European level.

Therefore, the Commission will continue to monitor the implementation and effectiveness of the unbundling requirements under the Third Energy Package. The Commission will also continue to be vigilant to ensure that ITOs and VIUs comply with the EU competition rules.