Basic information

2007/0197(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Agency for the Cooperation of Energy Regulators. Third energy package See also 2007/0195(COD) See also 2007/0196(COD) Repealed by 2016/0378(COD) Amended by 2011/0300(COD) See also 2007/0198(COD) See also 2007/0199(COD) **Subject** 3.60.15 Cooperation and agreements for energy 8.40.08 Agencies and bodies of the EU	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ITRE Industry, Research and Energy	CHICHESTER Giles (PPE-DE)	09/10/2007

Former committee responsible	Former rapporteur	Appointed
ITRE Industry, Research and Energy	CHICHESTER Giles (PPE-DE)	21/04/2008

Former committee for opinion	Former rapporteur for opinion	Appointed
BUDG Budgets	HAUG Jutta (PSE)	20/09/2004
CONT Budgetary Control	The committee decided not to give an opinion.	
ECON Economic and Monetary Affairs	LIPIETZ Alain (Verts/ALE)	23/10/2007
ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	CREȚU Gabriela (PSE)	21/11/2007

Council of the European Union	Council configuration	Meetings	Date
	Transport, Telecommunications and Energy	2835	2007-11-29
	Transport, Telecommunications and Energy	2875	2008-06-06
	Transport, Telecommunications and Energy	2895	2008-10-09
	Transport, Telecommunications and Energy	2854	2008-02-28
	Environment	2953	2009-06-25

European Commission	Commission DG	Commissioner
	Energy and Transport	PIEBALGS Andris

Key events

Date	Event	Reference	Summary
19/09/2007	Legislative proposal published	COM(2007)0530	Summary
11/10/2007	Committee referral announced in Parliament, 1st reading		
29/11/2007	Debate in Council		
28/02/2008	Debate in Council		Summary
28/05/2008	Vote in committee, 1st reading		Summary
05/06/2008	Committee report tabled for plenary, 1st reading	A6-0226/2008	
06/06/2008	Debate in Council		Summary
17/06/2008	Debate in Parliament		
18/06/2008	Decision by Parliament, 1st reading	T6-0296/2008	Summary
09/01/2009	Council position published	14541/1/2008	Summary
15/01/2009	Committee referral announced in Parliament, 2nd reading		
31/03/2009	Vote in committee, 2nd reading		Summary
03/04/2009	Committee recommendation tabled for plenary, 2nd reading	A6-0235/2009	
21/04/2009	Debate in Parliament		
22/04/2009	Decision by Parliament, 2nd reading	T6-0242/2009	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

Procedure reference	2007/0197(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	See also 2007/0195(COD) See also 2007/0196(COD) Repealed by 2016/0378(COD) Amended by 2011/0300(COD) See also 2007/0198(COD) See also 2007/0199(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/6/71698

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE400.717	11/02/2008	
Amendments tabled in committee		PE404.596	01/04/2008	
Amendments tabled in committee		PE404.630	01/04/2008	
Committee opinion	IMCO	PE402.532	21/04/2008	
Committee opinion	BUDG	PE400.646	07/05/2008	
Committee opinion	ECON	PE400.565	14/05/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0226/2008	05/06/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0296/2008	18/06/2008	Summary
Committee draft report		PE421.214	25/02/2009	
Amendments tabled in committee		PE421.288	05/03/2009	
Amendments tabled in committee		PE421.411	25/03/2009	
Committee recommendation tabled for plenary, 2nd reading		A6-0235/2009	03/04/2009	
Text adopted by Parliament, 2nd reading		T6-0242/2009	22/04/2009	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	14541/1/2008	09/01/2009	Summary
Draft final act	03650/2009/LEX	13/07/2009	

European Commission

Document type	Reference	Date	Summary

Legislative proposal	COM(2007)0530	19/09/2007	Summary
Document attached to the procedure	SEC(2007)1179	19/09/2007	
Document attached to the procedure	SEC(2007)1180	19/09/2007	
Commission communication on Council's position	COM(2008)0908	12/01/2009	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2009)0312	23/06/2009	Summary
Commission response to text adopted in plenary	SP(2009)3507	25/06/2009	
Follow-up document	C(2011)3198	10/05/2011	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0021/2008	10/04/2008	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2009/0713
OJ L 211 14.08.2009, p. 0001 Summary

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(COD) - 22/04/2009 - Text adopted by Parliament, 2nd reading

The European Parliament approved as amended, under the second reading of the codecision procedure, the Council’s common position for adopting a regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators.

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).

The main amendments are as follows:

General tasks: the Agency may, upon a request from the European Parliament, the Council, the Commission or on its own initiative, provide an opinion or a recommendation to the European Parliament, the Council and the Commission on all issues related to the purpose for which it has been established.

Tasks as regards the cooperation of transmission system operators: the Agency shall monitor progress in the implementation of projects to create new interconnector capacity. It shall monitor the implementation of the 10 year network development plans. If it identifies inconsistencies between the plan and its implementation, it shall inquire into the reasons for the inconsistencies and make recommendations to the transmission system operators concerned and national regulatory authorities or other competent bodies with a view to implementing the investments in accordance with the 10 year network development plans.

Tasks as regards the national regulatory authorities: the Agency shall provide a framework within which national regulatory authorities can cooperate. It shall promote cooperation between the national regulatory authorities and between regulatory authorities at regional and Community level.

Consultations and transparency: the Agency shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall make public, on its own website, at least the agenda, the background documents and, where appropriate, the minutes of the meetings of the Administrative Board, of the Board of Regulators and of the Board of Appeal.

The Agency should consult interested parties, where appropriate, and provide them with a reasonable opportunity to comment on proposed measures, such as network codes and rules.

Monitoring and reporting on the electricity and natural gas sectors: the Agency, in close cooperation with the Commission, Member States and relevant national authorities including the national regulatory authorities and without prejudice to the competences of competition authorities, shall monitor the internal markets in electricity and natural gas, in particular the retail prices of electricity and gas, access to the network including access of electricity produced from renewable energy sources, and compliance with the consumers' rights set out in the Directive concerning common rules for the internal market in electricity and the Directive concerning common rules for the internal market in natural gas.

The Agency shall make public an annual report on the results of its monitoring activity. When making public its annual report, the Agency may submit to the European Parliament and to the Commission an opinion on the measures that might be taken to remove any barriers.

The Agency should also contribute to the efforts of enhancing energy security.

Administrative Board: this shall be composed of nine members. Two members and their alternates shall be appointed by the Commission, two members and their alternates by the European Parliament and five members and their alternates by the Council. No member of the Administrative Board shall also be a Member of the European Parliament.

The Administrative Board should act independently and objectively in the public interest and should not seek or take political instructions.

Board of Regulators: the Board of Regulators should act independently from any market interest, should avoid conflicts of interests and should not seek or take instructions and not accept recommendations from any government of a Member State, the Commission or from any other public or private entity. The decisions of the Board of Regulators should, at the same time, be in compliance with Community legislation concerning energy, the environment, the internal energy market and competition. The Board of Regulators should report to the Community institutions as regards its opinions, recommendations and decisions.

Only one representative per Member State from the national regulatory authority may be admitted to the Board of Regulators.

Tasks of the Board of Regulators: the European Parliament may invite, while fully respecting his independence, the chairman of the Board of Regulators or his deputy to make a statement before its competent committee and answer questions put by members of that committee.

Director: the European Parliament may invite the Director to make a statement before its competent committee and answer questions put by members of that committee. The Director shall submit the draft work programme of the Agency to the European Parliament.

Report: the Commission should submit to the European Parliament and to the Council at the latest three years after the first director has taken up his duties, and every four years thereafter, a report on the Agency's specific tasks and the results achieved, accompanied by any appropriate proposals. In that report, the Commission should make suggestions on additional tasks for the Agency.

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(COD) - 19/09/2007 - Legislative proposal

PURPOSE: to establish an **Agency for the Cooperation of Energy Regulators**.

PROPOSED ACT: Regulation 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/2007/0195; COD/2007/0196; 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.

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(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 competences of the Agency regarding:

- monitoring progress in the implementation of projects to create new interconnector capacity;
- contributing to the implementation of TEN-E guidelines;
- monitoring competences regarding internal markets in electricity and natural gas in general and retail prices, access to the network and compliance with consumers' rights in particular.

The organisation of the Agency regarding:

- two members of the Administrative Board shall be nominated by the EP, two by the Commission and five by the Council;
- the European Parliament may invite the chairman of the Board of Regulators to make a statement before its competent committee.

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

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(COD) - 18/06/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 580 votes to 40 and 48 abstentions, a legislative resolution amending the proposal for a regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators. The report had been tabled for consideration in plenary by Giles **CHICHESTER** (EPP-ED, UK) on behalf of the Committee on Industry, Research and Energy.

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

Tasks of the Agency: Parliament gave the Agency for the Cooperation of Energy Regulators significant new decision-making powers and greater regulatory and financial independence. In particular, the Agency shall:

-issue opinions, recommendations and decisions addressed to transmission system operators, in relation to all technical matters pertaining to the good functioning of the internal energy market ;

-provide a framework within which national regulators can cooperate;

-supervise the execution of the tasks of the European networks of transmission system operators;

-establish economic and technical terms and conditions for the development of codes and rules drafted by the European networks of transmission system operators and approve the codes and rules in order to ensure the efficient and secure functioning of the internal energy market;

-set methodologies and tariffs for compensation mechanisms between transmission system operators, based on an assessment of their actual costs;

-coordinate the national regulatory authorities concerned in relation to their operations on regional electricity or gas markets;

-together with the Commission, promote interregional cooperation among energy markets and integrate regional energy markets into the internal energy market;

The Agency shall approve (rather than provide an opinion on) the 10-year investment plan of the European Networks of Transmission System Operators for Electricity and Gas, ensuring non-discrimination, effective competition and the efficient and secure functioning of the internal energy market .

By delegation of the Commission's powers and in compliance with the relevant provisions in Regulation (EC) No 1228/2003 and Regulation (EC) No 1775/2005, the Agency may take enforcement decisions and propose that the Commission impose fines in certain circumstances. It may also impose effective sanctions if barriers to cross-border trade are not removed.

Structure of the Agency: the Administrative Board shall be composed of six members. Two shall be appointed by the Commission, two by the Council and two by the European Parliament. No member of the Administrative Board shall also be a Member of the European Parliament. The term of office shall be five years, renewable once.

Administrative Board: Members of the Administrative Board shall undertake to act independently in the public interest. For that purpose, every year they shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence. Those declarations shall be made public. No member of the Administrative Board shall also be a member of the Board of Regulators. The Administrative Board may be removed from office upon the proposal of the Commission and by a decision taken by the European Parliament by absolute majority vote.

Board of Regulators: the Board of Regulators shall adopt its Rules of procedure. The rules of procedure shall set out in greater detail the arrangements governing voting, especially the conditions whereby one member can act on behalf of another and also, where appropriate, the rules governing quorums. The rule of procedures may foresee specific working methods for the consideration of issues arising in the context of regional cooperation initiatives.

Director:the Director of the Agency should be subject to a vote of approval by the European Parliament.

The European Parliament may invite any member or members of the bodies in the structure to make a statement before its competent committee and answer questions put by members of that committee.

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(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.

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 taken into account in the common position concerning the Agency Regulation. These amendments are on: issuing recommendations to Transmission System Operators (TSOs); drafting guidelines establishing principles for the harmonisation of network rules; the recommendation to the Commission where TSOs have failed to implement a network code; the consultation of market participants, consumers and end-users; the downscaling of the Administrative Board (AB) from 12 to 6 members; the Director of the Agency and the Chairman of the Board of Regulators (BoR) attending meetings of the AB; the independence of the members of the AB; the incompatibility of membership of the AB and the BoR; the role of the BoR when appointing the Director; strengthening the role of the BoR; the right of the European Parliament to call on the Director of the Agency to report on the performance of his duties.

In conclusion, the Commission supports the common position but **strongly recommends that the Commission's and the Agency's supervisory role be reinforced**. It also considers that a number of EP amendments that are not covered should be taken into account in the second reading. These amendments are on the following points:

- **the inclusion of new tasks for the Agency**: the promotion of interregional cooperation between energy markets; the coordination of communication between EU TSOs and third-country TSOs; the provision of an opinion to the Commission, the Member States and the regulatory authorities in question on the compliance of a decision of a regulatory authority with EC energy legislation; the monitoring of certain developments in the gas and electricity markets;
- **the possibility for the Agency to take suspensory decisions** in relation to TSOs which fail to implement network codes, that it should monitor the authorisation process for the construction of new cross-border infrastructure and that it should calculate the capacity of TSOs for such systems. The Commission could in principle accept the assignment of the above powers to the Agency, provided these powers are not genuine discretionary.

The Commission accepts the task of the Administrative Board to adopt an annual report on developments in the gas and electricity markets.

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(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.

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(COD) - 09/01/2009 - Council position

The Council unanimously adopted its common position. Concerning the 73 amendments adopted by the European Parliament at first reading, the Council followed the Commission in accepting, in part or in full, 25 amendments, and in rejecting 25 other amendments.

Regarding the European Parliament amendments where the Council has deviated from the Commission position, the Council accepted one amendment and rejected 23.

The Council also introduced modifications to the Commission proposal so as to provide for a regulatory Agency, independent from the Member States and the Commission, with well circumscribed tasks that strictly reflect the tasks entrusted to the Agency by the Electricity and Gas Directives and Regulations. These modifications are as follows:

- the Agency focuses on issues involving more than one Member State as far as binding decision-making is concerned. Its involvement in technical matters (establishment of network codes) has been strengthened, but is still of an advisory nature;
- in all these tasks, market participants and authorities at national levels are duly consulted and due account is taken of the outcomes of regional cooperation between Transmission System Operators (TSOs) and between regulators;
- the common position provides for a strong Regulatory Board, composed of senior representatives of national regulators, and a Director of the Agency acting in accordance with the Regulatory Board. It also foresees a lean and efficient Administrative Board, consisting of 6 members (as suggested by the EP), five of them being appointed by the Council and one by the Commission, with partial rotation ensuring adequate participation of Member States over time;
- with a view to improving democratic accountability, transparency provisions have been significantly strengthened, e.g. on the interests of Board members;
- lastly, the common position introduces a review mechanism with a strong input from the Regulatory Board.

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(COD) - 13/07/2009 - Final act

PURPOSE: to establish an Agency for the Cooperation of Energy Regulators (third package of legislative measures concerning the internal energy market).

LEGISLATIVE ACT: Regulation (EC) No 713/2009 of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators.

CONTENT: the Council unanimously adopted the package of legislative measures concerning the internal energy market, approving all of the European Parliament's second-reading amendments. The legislative package also includes: (i) a Directive concerning common rules for the internal market in electricity; (ii) a Regulation on conditions for access to the network for cross-border exchanges in electricity; (iii) a Directive concerning common rules for the internal market in natural gas; 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 Regulation establishes an Agency for the Cooperation of Energy Regulators. The new Agency will assist national regulatory authorities in exercising at Community level the regulatory tasks performed in the Member States and, where necessary, will coordinate their action. It shall issue opinions and recommendations addressed to transmission system operators, regulatory authorities, the European Parliament, the Council or the Commission. It shall take individual decisions in specific cases and shall submit to the Commission non-binding framework guidelines (framework guidelines).

The Agency's **mandate** shall include the following tasks:

- **General tasks**: the Agency may, upon a request of the European Parliament, the Council or the Commission, or on its own initiative, provide an opinion or a recommendation to the European Parliament, the Council and the Commission on any of the issues relating to the purpose for which it has been established;
- **Tasks as regards the cooperation of transmission system operators**: the Agency shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure of the ENTSO for Electricity. It shall participate in the development of network codes. The Agency shall monitor progress as regards the implementation of projects to create new interconnector capacity. It shall monitor the implementation of the Community-wide ten-year network-development plans. If it identifies inconsistencies between such a plan and its implementation, it shall investigate the reasons for those inconsistencies and make recommendations to the transmission system operators, national regulatory authorities or other competent bodies concerned with a view to implementing the investments in accordance with the Community-wide network-development plans. The Agency shall also monitor the regional cooperation of transmission system operators;
- **Tasks as regards the national regulatory authorities**: the Agency shall also formulate recommendations in order to help the regulatory authorities and economic actors to exchange best practice. It shall provide a framework within which national regulatory authorities can cooperate. It shall promote cooperation between the national regulatory authorities and between regulatory authorities at regional and Community level;
- **Tasks as regards terms and conditions for access to and operational security of cross-border infrastructure**: the Agency shall decide upon those regulatory issues that fall within the competence of national regulatory authorities, which may include the terms and conditions for access and operational security, in certain cases;
- **Monitoring and reporting on the electricity and natural gas sectors**: the Agency, in close cooperation with the Commission, the Member States and the relevant national authorities including the national regulatory authorities, shall monitor the internal markets in electricity and natural gas, in particular the retail prices of electricity and natural gas, access to the network including access of electricity produced from renewable energy sources, and compliance with the consumer rights laid down in the Directive concerning common rules for the internal market in electricity and the Directive concerning common rules for the internal market in natural gas.

The Agency shall be a **Community body** with legal personality, and shall comprise:

- an **Administrative Board**: this shall be composed of nine members. Two members and their alternates shall be appointed by the Commission, two members and their alternates by the European Parliament and five members and their alternates by the Council. No member of the Administrative Board shall also be a Member of the European Parliament. The Administrative Board should act independently and objectively in the public interest and should not seek or take political instructions;
- a **Board of Regulators**: this shall comprise senior representatives of the regulatory authorities and one non-voting representative of the Commission. Only one representative per Member State from the national regulatory authority may be admitted to the Board of Regulators.

  The Board of Regulators should act independently from any market interest, should avoid conflicts of interests and should not seek or take instructions and not accept recommendations from any government of a Member State , the Commission or from any other public or private entity. The decisions of the Board of Regulators should, at the same time, be in compliance with Community legislation concerning energy, the environment, the internal energy market and competition. The Board of Regulators should report to the Community institutions as regards its opinions, recommendations and decisions.

  The European Parliament may invite, while fully respecting his independence, the chairman of the Board of Regulators or his deputy to make a statement before its competent committee and answer questions put by members of that committee;

- a **Director**: the Director shall be appointed by the Administrative Board following a favourable opinion of the Board of Regulators, on the basis of merit as well as skills and experience relevant to the energy sector, from a list of at least three candidates proposed by the Commission, following a public call for expression of interest. The Director's term of office shall be five years.

The European Parliament and the Council may call upon the Director to submit a report on the performance of his duties. The European Parliament may also invite the Director to make a statement before its competent committee and answer questions put by the members of that committee. The Director shall submit the draft work programme of the Agency to the European Parliament.

Consultations and transparency: the Agency shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall make public, on its own website, at least the agenda, the background documents and, where appropriate, the minutes of the meetings of the Administrative Board, of the Board of Regulators and of the Board of Appeal.

The Agency shall make public an annual report on the results of the monitoring. When making public its annual report, the Agency may submit to the European Parliament and to the Commission an opinion on the measures that could be taken to remove any barriers.

Evaluation: the Commission, with the assistance of an independent external expert, shall carry out an evaluation of the activities of the Agency. The Commission should submit to the European Parliament and to the Council by three years after the first director has taken up his duties, and every four years thereafter, a report on the Agency's specific tasks and the results achieved, accompanied by any appropriate proposals. In that report, the Commission should make suggestions on additional tasks for the Agency.

ENTRY INTO FORCE: 03/09/2009. Articles 5 to 11 (the Agency's tasks) shall apply from 03/03/ 2011.

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(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.

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(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.