

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1228/2003 as regards the date of application of certain provisions to Slovenia'

(COM(2004) 309 final — 2004/0109 (COD))

(2004/C 302/10)

On 11 May 2004, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 June 2004. The rapporteur was Mr Simons.

At its 410th plenary session, held on 30 June and 1 July 2004 (meeting of 30 June 2004), the European Economic and Social Committee adopted the following opinion by 158 votes to two, with seven abstentions:

1. Introduction

1.1 Regulation 1228/2003/EC of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity (the 'Electricity Regulation') aims to set up a true single electricity market by stepping up cross-border trade in electricity. Fair, cost-oriented, transparent and directly applicable rules are to be introduced for the fixing of prices for cross-border transfers and the allocation of available connection capacity. These rules would take account of a comparison between efficient network operators from structurally comparable areas and supplement the provisions of Directive 96/92/EC so that cross-border transactions are guaranteed effective access to transmission networks.

2. The Commission's proposal

2.1 The Republic of Slovenia has submitted to the Commission a request for amendment of the Electricity Regulation, which would allow Slovenia to continue operating its current system of congestion management at the interconnections with Austria and Italy until 1 July 2007. At the moment, half of the total available capacity of the two interconnections in question is allocated by Slovenia on the basis of this system. In fact, according to an arrangement between the transmission system operators concerned, the other halves of the total capacity are allocated by the Italian or the Austrian system operator respectively. Under the current Slovenian system the available capacity, in case total demand for capacity exceeds the capacity available (congestion), is allocated to applicants for capacity on a pro rata basis. The capacity is allocated free of charge. Such a system cannot be considered a non-discriminatory, market-based solution in the sense of the Electricity Regulation. Slovenia has justified its request for a derogation on the grounds that the restructuring of Slovenian industry has not yet been completed and Slovenian electricity production is still adjusting to the new market conditions (high costs of investment in environmental protection).

3. General comments

3.1 The EU Commission proposal is based on Article 95 of the Treaty establishing the European Community, which is part of the chapter on the approximation of laws. The facts, however — Regulation 1228/2003 came out after the end of the accession negotiations and the signing of the accession treaty, so that Slovenia could not take part in the adoption process — justify in every respect an approach based on the relevant Accession Treaty and Act of Accession.

3.2 The latter contains provisions concerning the application of decisions taken by the institutions, and particularly if a new Member State has not been able to take part in the negotiations concerning a decision that has been taken between the date on which the Treaty or Act was signed and the country's actual accession on 1 May 2004. That is now the case for Slovenia.

3.3 It is in the spirit of these provisions that one must consider the request from the Slovenian government for a postponement until 1 July 2007 of the application of Article 6(1) of the Regulation and the provisions of the Annex relating directly to it, together with the present Commission proposal.

3.4 In line with the adage 'pacta sunt servanda', a refusal can only be considered if acceptance of the proposal would result in irreparable damage for the Union as a whole.

3.5 However, the Commission states in its proposal that the practical impact of the transitional period on the functioning of the internal electricity market would be very small. The EESC can go along with this view. It is also difficult to maintain that during the requested transitional period Slovenia can realise its potential of becoming a not unimportant regional hub within the internal market.

3.6 In addition, the argument that Regulation 1228/2003 was brought in for the very reason of at last getting proper international trade in electricity off the ground ⁽¹⁾ and the Slovenian request would be in breach of it does not, in view of the duration, scope and geographical area involved, carry enough weight for the request to be rejected.

3.7 The statement — which in itself is correct — that fair competition between, for instance, European aluminium and steel makers as well as between electricity producers is an essential component of the single market also does not apply here.

3.8 From another angle, it can be argued that ensuring a safe and reliable electricity system in Slovenia and enabling environmental investments to be made during the transitional period are grounds for accepting the Commission proposal.

3.9 The EESC is all the more inclined to recommend acceptance of the proposal since, in its opinion of 17 October 2001 ⁽²⁾ on Regulation 1228/2003, it said the following concerning the consequences for the applicant countries, as they were then: ‘... the electricity and natural gas sectors in the applicant countries ... maintain uncompetitive infrastructures and management methods. The immediate consequence of this could be considerable job losses in companies in these sectors, which in turn would cause unbearable social tensions in the applicant countries, particularly for those countries which do not have the same kind of social security system as found in the Member States. The European Union must share with these countries the experience that has been gained from the liberalisation processes currently underway in Europe, and provide funding to help them modernise their companies. Opening up these new markets is not enough; their energy sectors must also be restructured so that companies in the applicant countries can compete under the same conditions.’

Brussels, 30 June 2004.

4. Summary and conclusion

4.1 The arguments put forward in the Commission proposal for allowing Slovenia until 1 July 2007 to comply with Article 6(1) of Regulation 1228/2003 and with the relevant provisions concerning congestion management are not justified when considered purely from the point of view of the interests of fair competition in the single market.

4.2 However, after considering the facts of the time when the Regulation was produced and the accession negotiations were signed, the EESC feels that these arguments are justified. Authorisation of the short transitional period requested will not result in irreparable damage for the Union as a whole — on the contrary: security and reliability as well as environmental investments in the Slovenian system are ensured — and in its opinion on Regulation 1228/2003 ⁽³⁾, on the issue of competition from the applicant states as they were then, the EESC recommended that the EU should offer a helping hand. The EESC believes that it is quite clear that Slovenia was unable to take part in the negotiations concerning or in the approval of Regulation 1228/2003.

4.3 Quite apart from the explanation and the basis of the Commission proposal, which should be completed or adapted in line with the views set out above, the EESC recommends acceptance of the proposal to postpone the application of Regulation 1228/03 until 1 July 2007.

The President
of the European Economic and Social Committee
Roger BRIESCH

⁽¹⁾ See EESC opinion on the Proposal for a Regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity, OJ C 36 of 8.2.2002, page 10.

⁽²⁾ See EESC opinion on the Proposal for a Regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity, OJ C 36 of 8.2.2002, page 10.

⁽³⁾ Point 6.6 of the EESC opinion, OJ C 36 of 8.2.2002, page 10.