Opinion of the European Economic and Social Committee on a 'Proposal for a Directive of the European Parliament and of the Council concerning measures to safeguard security of electricity supply and infrastructure investment'

(COM(2003) 740 final — 2003/0301 (COD))

(2005/C 120/22)

On 23 January 2004 the Council 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 5 October 2004. The rapporteur was **Mrs Sirkeinen**.

At its 412th plenary session of 27 and 28 October 2004 (meeting of 28 October 2004), the European Economic and Social Committee adopted the following opinion by 134 votes to 7 with 14 abstentions.

1. Background

1.1 EU energy policy has during recent years followed three main lines:

— creating effective open markets for electricity and gas;

— ensuring security of energy supply; and

— reaching stringent environmental targets and in particular combating climate change.

Key legislation adopted in these areas includes the revised electricity and gas-market Directives, which open markets for non-household users in mid 2004 and all consumers in 2007. On security of electricity supply a Green Paper was published in 2001, highlighting demand-side management as one key action for both security of supply and combating climate change.

1.2 A reliable energy supply at reasonable prices is an important precondition for economic growth and welfare of the citizens of Europe. Consequently, the EESC has in its opinions supported the Commissions' objectives and approach.

1.3 The EU energy markets do not yet work in delivering the above-mentioned objectives. This is perhaps not even to be expected while key legislation is only approaching its implementation stage. According to the Commission the present draft legislation is a supplement to existing legislation aiming at improving present or future deficiencies.

1.4 A strong motivation for presenting the regulatory package was the electricity black-out in Italy in September 2003, as well as other incidents in Europe and the United States. The black-out was caused by a series of operational failures following a collapse in a heavily overloaded line in Switzerland. It also showed problems in the coordination between transmission-system operators. The unfortunate incident provides important lessons to be learned. Open markets will increase transmission and potentially problems linked to it.

1.5 It is surprising that the Commission merely mentions the most profound, underlying reason for blackouts. Some areas or countries have an undersupply of electricity generation and are continually in need of large amounts of electricity imports from neighbouring and even more distant regions with oversupply. Cross-border trade in the common electricity market is beneficial for effectively dealing with variations in supply and demand, and adds thereby to security of supply and enhances competition. But it cannot and should not compensate for insufficient generation capacity in some parts of the market.

1.6 According to the Commission, in a healthy market, when demand increases but supply does not, prices increase. In theory consumers react to higher prices by cutting use, but in electricity markets price elasticity is known to be weak for several reasons. At a certain price level investment in more supply becomes profitable, and so a continuing price increase is stopped. If sufficient investments do not occur, prices continue to grow creating, at least in the short and medium term, severe problems to consumers and industrial competitiveness, and thereby whole economies. A particular problem concerning investments in electricity generation is that price signals cannot be quickly responded to, as investment projects from planning through licensing to construction take a long time to execute. Although in certain cases, forward and future markets can alleviate this problem to some extent, these practices are recent for their viability to be assured.

1.7 The EU has decided to open its electricity and gas markets for competition. There is, however, concern about whether sufficient investment will take place in the open market, in particular in peak capacity. The electricity market Directive requires Member States to establish a system for monitoring the supply and demand balance and to put into place a tendering procedure for more power capacity when deemed necessary. Member States are responsible for the general structure of their energy supply and their choice of energy sources, and the draft Constitutional Treaty does not change this.

1.8 Reasons for insufficient investments may be both market failures (taking insufficiently into account long-term needs, environmental factors and regional and local circumstances etc.) and are not solely inefficient competition, lack of a stable regulatory framework, prohibitive permit procedures and/or public opposition. The requirement to make the network an independent economic entity (unbundling) means it will be managed without ambition, since innovation and added value are found in customer services. Thus, the network is caught between toll charges fixed by the regulators, and charges and investment imposed by the client operators, so it has no opportunity, or clear view of the need, for development.

1.9 Efficiency of energy end use, or energy saving, has for long been recognized as a powerful element of the energy market. Less use of energy saves money and contributes directly to both security of supply and often to reducing greenhouse gases by decreasing the need for generation and for investments in new production and transmission. New technologies can have much to offer here, and measures need to be taken to enhance their development and market introduction.

1.10 The Commission points out that the question of supply-demand balance cannot be neglected. An underlying cause of the increased stress on networks is demand growth, which can partly be counteracted by demand-side management. But appropriate incentives to invest in networks and electricity generation are also necessary.

1.11 According to the Commission, future growth in electricity demand will be taken care of by demand-side management. Some new investment is, however, seen to be needed simply to renew plants that have reached the end of their life. Much of this the Commission expects to take the form of renewables and distributed small scale combined heat and power generation.

1.11.1 The Committee strongly disagrees with this description of future trends and needs in the electricity sector. In a Communication on investments in infrastructure, much clearer and realistic information on future trends and potentials is to be expected. In particular when much better quantified information and scenarios are available, including material produced by the Commission itself. Nobody is served by avoiding clear and realistic — be it for many unpopular — baseline information.

1.11.2 A very rough calculation can provide an idea of the magnitude of the problem and options to solve it: Electricity demand grows presently at a rate of 1-2 % per annum in the EU. The EU target for increasing electricity generation from renewable energy sources means a yearly increase of less than 1 %. The target proposed for energy efficiency would cut yearly growth by 1 %. Renewables and efficiency could thus compensate the growth in demand, and in addition possibly substitute existing capacity by much less than 1 % per annum. Power plants run for 30-50 years, which means theoretically that substitution needs to take place at a yearly average rate of 3 %. The International Energy Agency (IEA) notes a need for new power plants in the EU of over 200 000 MW over the next 20 years.

2. The Commission proposal

2.1 The objective of the proposed directive is to promote investment in the European energy sector to both strengthen competition and help prevent the recurrence of blackouts. It emphasises the need of a clear EU legislative framework for the proper functioning of a competitive internal market for electricity, by safeguarding security of electricity supply and ensuring an adequate level of interconnection between Member States, through general, transparent and non-discriminatory policies.

2.2 The draft directive requires Member States to:

— have a clearly defined policy towards the supply-demand balance which allows for targets for reserve capacity to be set or alternatives such as demand-side measures; and to

— have defined standards to be met relating to the security of the transmission and distribution networks.

2.3 Transmission system operators are required to submit a (multi)annual investment strategy to its national regulator. The regulator can add important cross-border projects to the list.

2.4 National regulators are required to submit a summary of these investment programmes to the Commission for consultation with the European regulators group on electricity and gas and with account having been taken of the Trans-European energy networks axes of priority European interest.

2.5 National regulators obtain a right to intervene to accelerate the completion of projects and, where necessary, to issue a call for tender on certain projects in the event that the Transmission System Operator is unable or unwilling to complete the projects concerned.

3. **General comments**

3.1 The Electricity Market Directive and the Regulation on Cross-border Trade form the framework for a liberalised internal market for electricity. Their implementation starts on 1 July 2004. In order to provide investors and other actors in the market with regulatory stability, which is crucial for the right climate for investments, any changes to this framework should be approached with serious caution.

3.2 The Commission itself refers, more or less clearly, to the underlying reasons for concerns regarding security of supply, and for presenting the draft directive. The proposed directive does not, however, directly address these reasons.

3.3 The first reason is lack of sufficient generation capacity in some parts/Member States of the Union, due to the orientation of energy policy. The Commission describes this problem vis-à-vis reserve capacity, but the problem exists for base-load generation, too.

3.4 The second reason is lack of competition, due to political unwillingness by some Member States to act on incumbent monopolies, oligopolies or dominant market positions. The Commission notes this and refers to the limitations of its capacities to do much about it. The option chosen is to enhance competition from operators in other Member States by trying to ensure sufficient interconnection capacity.

3.5 A third reason is unwillingness or a lack of capability by some transmission system operators to implement existing guidelines to cross-border exchanges, even if these guidelines have been voluntarily agreed by transmission-system operators in their own organisations. A question is, whether one reason behind this could be insufficient unbundling of energy and network activities.

3.6 The most serious obstacle to investments in transmission networks is political and public resistance to such transmission projects. In some Member States almost any form of generation is not wanted. The right of people to be heard on projects that have influence on them is an important basic right. But planning and decision-making processes tend to get very cumbersome and prolonged, thus putting even the most urgent and necessary projects at risk.

3.7 The very relevant question that the directive addresses and needs a solution at EU level is to ensure, in one way or another, that sufficient investment in interconnectors takes place in a market-based manner.

3.8 The draft Directive provides for the regulator the right to interfere by altering the TSO's investment plan and require a certain investment to be made and finally introduces a tendering procedure. The present proposal goes further than the electricity market Directive, which provides for monitoring the supply and demand balance and, when needed, a tendering procedure for more power capacity. In order to avoid too frequent regulatory changes and overregulation, legislation should not be altered on this point before sufficient experience of the functioning of the present provisions have been gained.

3.9 Part of the contents of the draft directive, like the general provisions in Article 3, are relevant features of any good national energy policy and widely implemented. Presenting them as provisions in a directive may lead to confusion of responsibilities.

3.10 One issue that may have deserved the attention of the Commission is demand management. Enhancing the possibilities of energy users, in particular medium-sized energy users, to react to the price fluctuation of the wholesale price of electricity could contribute to cutting peak demand.

4. **Detailed comments**

4.1 Article 4: The EESC agrees on these provisions, given that the first subparagraph means that all TSOs have to sign up to the guidelines of ETSO.

4.2 Article 5: The EESC finds the approach of the article somewhat confusing as regards responsibilities of the EU and Member States. In principle, taken out of context, the EESC agrees with most of the measures mentioned in the article as being part of a sound national energy policy.

4.3 It remains unclear what is meant by 'reserve capacity' in the second paragraph of Article 5.1. The article should deal only with short-term technical reserves, needed for system reliability.

4.4 Article 6: It is difficult to find the sense in connecting network investments with demand-side management, even less in the way these are connected in Article 6(1). For 6(2), these requirements would primarily be taken into account, if possible, when setting the methodology for network-access tariffs. Concerning Article 6(2), actions are needed for interconnectors, as mentioned in point 3.7.

4.5 Article 7: The EESC is not in favour of the measures proposed in this article for reasons mentioned in point 3.8.

Brussels, 28 October 2004.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

APPENDIX

to the opinion of the European Economic and Social Committee

The following Section opinion text was rejected in favour of amendments adopted by the assembly but obtained at least one-quarter of the votes cast:

Point 1.8, last phrase:

'Frequently added new legislation and in particular legislation allowing public interference in the markets do not create the necessary stable regulatory framework but, on the contrary, increases the investor's risk, delays investment and thereby increases prices.'

Outcome:

78 votes for deleting the phrase, 67 against and 9 abstentions.