

Opinion of the Committee of the Regions on the ‘Third legislative package on European electricity and gas markets’

(2008/C 172/11)

THE COMMITTEE OF THE REGIONS

- stresses that all discussions on the liberalisation of energy should centre around the consumer;
- is therefore in favour of additional measures in the area of transmission unbundling;
- is pleased that the legislative package proposes to complete the internal market in energy through additional legislative measures intended to guarantee non-discriminatory access to transmission networks for new entrants and thus promote competition, to establish better coordination between regulators and TSOs, to promote investment in electricity generation and networks, and to increase market transparency;
- calls on the Commission to take appropriate measures to prevent market concentration and to encourage the diversity of private and public operators; Member States who so wish must be able to decide not to apply the rules on legal unbundling of supply system operators to integrated electricity companies serving less than 100 000 connected customers or serving small isolated networks;
- calls for encouragement of local and regional energy generation derived from renewable energy sources, which are suited to local environmental conditions while cutting energy transmission costs and emissions throughout the EU. Region-specific energy plans must therefore be encouraged; they should be properly coordinated and integrated at both national and Community level.

Rapporteur: Michel LEBRUN, Member of the Walloon Parliament (BE/EPP)

Reference documents

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

COM(2007) 528 final — 2007/0195 (COD)

Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas

COM(2007) 529 final — 2007/0196 (COD)

Proposal for a Regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators

COM(2007) 530 final — 2007/0197 (COD)

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity

COM(2007) 531 final — 2007/0198 (COD)

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks

COM(2007) 532 final — 2007/0199 (COD)

Policy recommendations

THE COMMITTEE OF THE REGIONS,

General recommendations

1. points out that local and regional authorities make an important contribution to the success of European initiatives and play an important role in European energy policy,
2. emphasises that energy is essential for citizens and business competitiveness. Local and regional authorities, as organisations close to citizens, want consumers to have uninterrupted access to electricity and gas, at a competitive price and with a good level of service,
3. stresses that all discussions on the liberalisation of energy should centre around the consumer,
4. notes that the liberalisation of energy has not yet yielded the anticipated results in many Member States and that there is no real single market for electricity and gas in the EU,
5. agrees with the European Commission's analysis of the malfunctioning observed in the electricity and gas markets: strong market concentration, high degree of vertical integration of energy companies, fragmentation of the markets, lack of transparency as regards price formation inter alia, and lack of coordination between transmission system operators (TSOs),
6. is pleased that the legislative package proposes to complete the internal market in energy through additional legislative measures intended to guarantee non-discriminatory access to transmission networks for new entrants and thus promote competition, to establish better coordination between regulators

and TSOs, to promote investment in electricity generation and networks, and to increase market transparency,

7. is pleased that the development of regional markets has been included in the legislative package, believing that this is a crucial step towards a single market in electricity and gas within the EU,

8. is pleased that the European Commission has identified competitiveness, security of supply and sustainability as the objectives of European energy policy and is pursuing them; however, it emphasises that these three objectives are not necessarily compatible, thus necessitating a careful balance between them,

9. recognises that the primary aim of the third legislative package is to improve the functioning of the European electricity and gas markets, but would also hope that the package will work towards other Community policy objectives, such as improving energy efficiency and reducing the impact of climate change. Therefore renewable sources of energy should be made the recommended option,

10. draws attention to a previous opinion in which the CoR advocated internalising environmental costs in the consumer price (CdR 216/2005). Such an initiative would require the implementation of targeted legislation at EU level, whereas the legislative package has no such intention; therefore urges the Commission to propose such a system. When creating this system, however, care must be taken to ensure that it does not lead to a disproportionate rise in energy prices, taking into account the repercussions on the EU's competitiveness and the achievement of the Lisbon Strategy,

11. believes that regardless of the Commission's largely positive impact analysis of the third legislative package on energy, it is imperative to remain attentive to the social, economic and environmental repercussions of the proposed measures, in particular at regional and local level.

Internal market in electricity and gas

Regarding competition

12. points out that the liberalisation of the electricity and gas markets was supposed to put an end to the monopolies of energy companies in Member States and to promote competition. Competition is in fact only possible if, on the supply side, several producers and several suppliers are genuinely competing against each other,

13. notes that at the current time, national energy generation markets are dominated by a de facto monopoly or an oligopoly. As regards natural gas, the number of potential generators is not only limited, but moreover, generators from outside the European Union are not subject to EU rules, despite providing the bulk of the supply,

14. calls on the Commission to take appropriate measures to prevent market concentration and to encourage the diversity of private and public operators. Local and regional energy companies have a key role to play in this respect, and therefore Member States who so wish must be able to decide not to apply the rules on legal unbundling of supply system operators to integrated electricity companies serving less than 100 000 connected customers or serving small isolated networks,

15. insists that new market participants be able to invest in new electricity generation and gas import capacity so as to develop a level playing field conducive to a competitive market,

16. draws attention to the fact that a competitive market also enables local and regional generators of electricity derived from renewable sources to have equal access to consumers.

Regarding unbundling requirements

17. notes that legal and functional transmission unbundling, effective since 1 January 2004, is insufficient to ensure that the market functions properly, since it does not suppress the conflict of interest that stems from vertical integration,

18. agrees that a vertically integrated company tends to consider networks as strategic assets serving the commercial interest of the integrated entity, rather than the overall interest of network customers, and in particular to underinvest in new networks, fearing that these investments might help its competitors to prosper on its national market,

19. is therefore in favour of additional measures in the area of transmission unbundling,

20. notes that the ownership unbundling advocated by the Commission is not unanimously welcomed by Member States despite the fact that this is a way of guaranteeing equal access to the networks for all suppliers and of neutrality in transmission network investment policy,

21. judges therefore that Member States who so wish must have the choice of opting for the approach based on an 'independent system operator' (ISO), while noting that this option can have undesirable consequences for shareholders (loss of control, privatisation, etc.). Member States should therefore also be offered a further option, namely 'effective and efficient unbundling', based, on the one hand, on real independence for transmission system operators and, on the other hand, on clear provisions governing network investments,

22. calls for legal and functional supply unbundling, which has only been mandatory since 1 July 2007, to be applied in both the letter and the spirit of the law. In order to discourage market concentration as far as possible, there must also be a strategy to support small and medium-sized energy companies; the Committee is therefore pleased that the current waiver for small supply system operators (serving less than 100 000 customers) is being maintained,

23. believes that local and regional authorities should be encouraged to become active shareholders in transmission and supply system operators, real hubs in the energy market.

Regarding energy regulators

24. emphasises the need for independent, but competent and efficient regulatory bodies, in a market with monopoly and/or dominant operators,

25. is pleased to see the role of national regulators harmonised and reinforced. Regulators must not focus exclusively on regulated activities, but must also ensure the proper general functioning of the market through ex-ante discretionary powers,

26. notes that regulators often take an overly short-term view, determined to cut the tariffs for the electricity and gas networks at any cost and losing sight of long-term objectives: optimal development of the network and improvement of (or at least maintaining) network and service quality. Regulators must therefore be persuaded to adopt an integrated approach to their task, which should not consist solely in regulating prices,

27. stresses the need for regulators to try and create incentives for the necessary investment in the networks to be carried out, including those necessary for renewable energy,

28. calls for methodologies for benchmarking of tariffs and of transmission and supply network-access costs, established by the regulators, to incorporate not only quantitative aspects (costs) but also qualitative aspects (e.g. network quality reliability criteria) so as to maintain the current level of network quality.

Regarding investment to guarantee security of energy supply

29. notes that not only is the security of energy supply at risk owing to inadequate investment in new electric power plants, but also that it is of fundamental importance for security of supply that new transport and distribution networks are developed, existing networks are expanded and improved, and that the networks are linked up with each other; besides large-scale investment, this means major design and procedural difficulties will have to be overcome,

30. emphasises the importance of a stable and attractive environment for investors,

31. highlights that diversification of energy sources will be important in future to guarantee the security of energy supply,

32. calls for encouragement of local and regional energy generation derived from renewable energy sources, which are suited to local environmental conditions while cutting energy transmission costs and emissions throughout the EU. Region-specific energy plans must therefore be encouraged; they should be properly coordinated and integrated at both national and Community level,

33. calls on the Commission to take all necessary measures to encourage generators and network operators to invest in the construction of power generation plants and network infrastructure to allow access, on a fair basis, to local renewable generation,

34. nevertheless draws the Commission's attention to the fact that, generally speaking, the networks are not currently designed to accommodate a large share of renewable energy, which means that investment and additional funds will be needed to adapt the networks to the development of renewable energy. The question of energy storage will also have to be addressed, which will require further not inconsiderable costs,

35. stresses that policies for the rational use of energy and for energy efficiency are the best way to ease the current tension between energy supply and demand.

Regarding consumer protection

36. points out that public service obligations must run alongside competition and must remain at the heart of the market-opening process,

37. recommends that the freedom of choice of energy consumers should be accompanied by firm guarantees regarding the rights of energy consumers. In this respect, the provisions of the

future European Charter on the Rights of Energy Consumers should have legal force,

38. welcomes the setting-up of a 'retail market' forum, along the lines of the Florence and Madrid fora,

39. calls on the Commission to step up its surveillance of retail markets so as to assess the effects of liberalisation on households, with a view to increasing consumer confidence in the energy market and limiting the risks of market manipulation,

40. stresses the importance of increased transparency in electricity and gas billing with a view to encouraging consumers to modify their behaviour by energy saving and greater energy efficiency,

41. insists on the implementation of neutral IT systems which are independent of suppliers and enable the 'switch' to be managed automatically,

42. calls on the Commission to make the roll-out of smart meters subject to two conditions: it must be financially reasonable and proportionate to the potential energy savings for the various types of customers,

43. recommends that in future protection of vulnerable consumers be stepped up so as to combat the phenomenon of energy poverty.

Agency for the Cooperation of Energy Regulators

44. acknowledges that as regards cross-border issues there is a 'regulatory gap' and inter-connections in some market segments need to be improved,

45. nevertheless, supports the notion of reinforcing the ERGEG rather than replacing it with a new agency. Indeed, rather than establishing a new structure, with the resulting expenses and bureaucratic burden, it would be possible to continue on the current basis with a stronger ERGEG which would have the power to deal with cross-border problems and which would also be made responsible for the other tasks which would be entrusted to the proposed agency. If this does not sufficiently increase competition, the establishment of a separate agency would then be justified.

Cross-border exchanges

46. is pleased that the third legislative package reinforces cooperation between the TSOs by establishing a European TSO network. This serves to encourage cross-border exchanges of electricity and gas, one of the prerequisites for a fully functional internal market. High TSO capacity is a basic technical requirement for both security of supply and effective competition in a common energy market. At present, this is particularly true of the eastern Member States, who are endeavouring as a matter of principle to end their energy dependency on their eastern neighbours,

47. believes that a gradual move towards regional transmission system operators is imperative,

48. points out that the European Commission's proposals regarding the European electricity and gas TSO network confer a quasi-regulatory status on the TSOs, whereas the agency appears to be limited to the role of consultative body. Some rules, such as those on transparency or exchanges, fall rather more within the remit of the regulatory authorities,

49. welcomes the obligation imposed on the European electricity TSO network to publish, every two years, a ten-year plan for investment in the networks for the whole of the EU,

50. is keen for new market entrants, in particular local and regional electricity companies, to have the same level of market information as longstanding stakeholders.

Gas transmission networks

51. believes that the limited availability of gas storage capacity, often controlled by longstanding operators, has a serious impact on competition in the gas sector and, indirectly, the electricity sector as regards generation. It therefore welcomes the proposals intended to improve access to storage facilities and to LNG facilities,

52. supports the implementation of an 'entry/exit' regime where capacity is allocated to an area or region rather than to a specific gas pipeline, thus promoting competition.

Brussels, 10 April 2008.

The President
of the Committee of the Regions
Luc VAN DEN BRANDE
