

Internal market in natural gas. Third energy package

2007/0196(COD) - 09/07/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 579 votes to 80 with 52 abstentions, a legislative resolution amending the 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. The report had been tabled for consideration in plenary by Romano Maria LA RUSSA (UEN/IT), on behalf of the Committee on Industry, Research and Energy.

The main amendments adopted under 1st reading of the codecision procedure were as follows:

Ownership unbundling: the key part of the resolution concerns the separation of ownership, which expressly prevents vertically integrated companies from holding an interest in both the supply and transmission of gas. It is recalled that the Commission's proposal would have given Member States two options: ownership unbundling, or the preservation of integrated supply and transmission companies, provided that the operation of the transmission network was handed over to an independent system operator (ISO). Eight Member States had proposed a third option which kept the transmission network with the suppliers but with a structure to ensure it operates independently in practice.

Parliament confirmed its endorsement of a proposal based on the recent Commission compromise text, involving the creation of independent transmission system operators (ITOs). This proposal, like the "third option", would allow a company to retain the ownership of pipelines, if management of them is in the hands of a transmission system operator with "effective decision-making rights", but with some further safeguards of these rights. Parliament rejected the ISO option, but endorsed the ITO model.

Accordingly, it deleted Article 9 on independent system operators.

ITO model: Members inserted a new Chapter IVa on Independent Transmission System Operators, which allows for vertical integration and preserves effective unbundling. The ITO model leaves ownership of pipelines with the gas supply companies, but hands the management over to an ITO whose operational independence would be guaranteed by an independent Trustee; a supervisory body composed of gas company representatives, third party shareholders, transmission system operator representatives, as well as the Trustee responsible for decisions which may have a significant impact on the value of the assets of the shareholders; a compliance programme and a compliance officer responsible for monitoring the implementation of the compliance programme.

Trustee: an independent Trustee shall be appointed by the regulatory authority on the proposal and at the expense of the vertically integrated undertaking. The Trustee shall act exclusively in the legitimate interest of the vertically integrated undertaking in the preservation of the asset value of the transmission system operator, while safeguarding the independence of the transmission system operator from the vertically integrated undertaking. In the exercise of its functions, the Trustee shall have no regard to the interest of the production and supply business of the vertically integrated undertaking.

Revision clause: the Agency shall after 5 years, submit a detailed report outlining the extent to which the unbundling requirements under the Directive have been successful in ensuring full and effective independence of transmission system operators. It must take into account the following criteria: fair and non-discriminatory network access, effective regulation, the development of the network, investments and undistorted incentives to invest, the development of interconnection infrastructure, and the security of supply situation in the Community. In the event that the detailed report determines that the conditions referred to above have not been guaranteed in practice, the Commission shall submit proposals to ensure full and effective independence of transmission system operators.

No later than five years after the directive's entry into force, the Commission must submit a detailed report outlining the feasibility of creating a single European transmission system operator and analyse the costs and benefits with respect to, notably, property rights, market integration as well as the effective and secure operation of the transmission network.

Access to LNG facilities and storage: a new clause states that, for the organisation of access to LNG facilities either the regulated access procedure, or the negotiated access procedure shall apply. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria. National regulatory authorities shall observe compliance with these criteria. The same applies for access to storage.

Comitology: the use of comitology to adopt guidelines was generally deleted. The Commission's text is strengthened on elements such as powers of national regulators and fight against market concentration.

Consumer rights: consumers should be at the centre of the Directive. Parliament stipulated that Member States must protect final customers and ensure that there are adequate safeguards to protect vulnerable customers, including prohibiting the disconnection of pensioners and disabled people in winter. In this context, Member States shall recognise energy poverty and shall provide definitions of vulnerable customers. Rights and obligations linked to vulnerable customers must be applied and, final customers in remote areas protected. Member States must ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Eligible customers must be able easily to switch to a new supplier.

In addition, Member States shall implement measures to achieve the objectives of social and economic cohesion, with a view to lowering the cost of gas provided to low-income household customers and guaranteeing the same conditions for the customers living in remote areas, and the objectives of environmental protection. Those measures include energy efficiency/demand-side management measures and means to combat climate change, and security of supply. Additional measures for consumers include:

- the right to withdraw from contracts with their gas providers without charge;
- the right to compensation if service quality levels are not met (as with, for example, inaccurate and delayed billing);
- access to information on their rights through bills and gas company web sites;
- access to information on procedures to be followed in case of disputes;

- the right to be informed, at least quarterly, of actual gas consumption and costs;
- access to smart meters within 10 years of the directive's entry into force.
- independent complaints services and alternative redress schemes such as an independent energy ombudsman or a consumer body.

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

Independence of national regulators: Parliament approved and extended the Commission's proposals seeking to harmonise and strengthen the role of the national regulators. The national regulatory authorities should be able to monitor the occurrence of restrictive contractual practices. They should be able to fix or approve network access tariffs and publishing the methodology used to set the tariffs, and ensure that wholesale fluctuations in prices are transparent. The power of NRAs to impose sanctions is strengthened.

Infrastructure: the Commission's exemption decision will lose its effect if the infrastructure has not become operational five years after all national and regional decisions and authorisations have been issued, unless the delay is due to circumstances beyond control of the person to whom the exemption has been granted. Parliament also added a clause to ensure that new investments are not discriminated against. Conditions of exemption approvals should not be changed retrospectively without the agreement of all parties concerned.

Regional cooperation: Parliament deleted comitology provisions on regional solidarity cooperation. The Agency shall cooperate with national regulatory authorities and transmission system operators to ensure the convergence of regulatory frameworks between the regions with the aim of creating a competitive internal market. Where the Agency considers that binding rules on such cooperation are required, it shall make appropriate recommendations.

Lastly, Parliament added clauses on policy obligations for the promotion of biogas and rules on price regulation.