

## Internal market in natural gas. Third energy package

2007/0196(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.

Concerning the Gas Directive, the Ownership Unbundling option and the Independent System Operator (ISO) option were adopted. The Commission continues to regard ownership unbundling as the best solution. In its common position, the Council has included a third option, the Independent Transmission Operator (ITO). The Commission can accept the ITO option as part of a general compromise provided that this option is not weaker than in the common position and contains the strongest possible features a political compromise will allow.

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 however taken into account in the common position. These are amendments on: the definition of electricity undertakings; the definition of virtual power plants; the application of unbundling to public entities; monitoring of the implementation of safeguards measures; guidelines for public service obligations and power of regulatory authorities. The amendments partially covered by the common position are on: greater regional cooperation; the independence of national regulators and the duties of these national regulators; the methodology for approving tariffs.

The Commission considers that a number of the amendments that are not covered should be taken into account in the second reading. These amendments are on the following points:

**Role of regulators:** the Commission generally supports amendments that strengthen the role and independence of the national regulators. Long-term contracts are acceptable provided they comply with competition rules, but they will not be encouraged as they have a potential foreclosing effect on the market. The principles behind amendments relating to the promotion of energy efficiency can generally be supported. However, the specific amendment calling for a pure obligation to introduce pricing formulas which increase in the case of greater levels of consumption cannot be accepted.

**Consumer rights:** the Commission generally supports amendments that increase consumer rights, in particular: the obligation on suppliers to set adequate prepayment bills; the cross-recognition of supply licences between Member States; the appointment of a single point of contact at national level to provide consumers with all the necessary information concerning their rights; and the appointment of an Ombudsman at national level. The proposal to roll out smart meters within a 10-year period can also in principle be supported although its precise scope and drafting would need to be carefully reviewed.

However, the Commission cannot support amendments that aim to incorporate an Energy Consumers Charter into the Directive. The Commission supports the aim of amendments regarding the role of distribution system operators. However, the proposals need to be considered in further detail to ensure that they are practical and achievable.

**Fight against energy poverty:** the Commission could support an obligation on Member States to define energy poverty within the confines of a definition of vulnerable consumers at national level, but does not support a definition of energy poverty at EC level.

Furthermore, the Commission believes that an obligation at EC level to ensure that the number of people suffering from energy poverty decreases would be inappropriate. Nevertheless, it could: (i) support a general objective to reduce the number of people suffering from energy poverty; (ii) support an obligation on Member States to ensure specific protection of pensioners and disabled people in winter and to report to the Commission on the measures adopted in this regard.

**Access to Storage and LNG:** amendments that underpin the access regime to storage can be supported, but not the deletion of legal and functional unbundling. Parliament's proposal to allow negotiated Third Party Access (TPA) for LNG cannot be accepted in its current form.

**Other issues:** the Commission can accept amendments which underline the obligations of TSOs on congestion management, investment in new capacity and transparency. It can also support the requirement of greater cooperation between Transmission System Operators (TSOs) in the operation of their systems.

Parliament wants to allow Member States to grant derogations to third-party access rules for industrial sites. The Commission supports in principle the derogation for industrial sites, which would also cover airports and railways. However, it considers that the amendment goes too far and outlines a solution consisting of a derogation limited to the most burdensome administrative obligations, i.e. ex ante tariff approval by regulators.