

Internal market in natural gas. Third energy package

2007/0196(COD) - 22/04/2009 - Text adopted by Parliament, 2nd reading

The European Parliament adopted with amendments, under the second reading of the codecision procedure, the Council's common position for adopting a directive of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

The amendments are the result of a compromise negotiated with the Council on the package of energy market legislation.

The compromise gives Member States the possibility to choose between three options for separating supply and production activities from network operations - both for gas and electricity markets:

- full ownership unbundling;
- the independent system operator (ISO);
- the independent transmission operator (ITO).

MEPs obtained in the compromise a strengthening of energy consumers' rights. The main amendments are as follows:

Public service obligations and customer protection: Member States shall ensure that all customers connected to the gas network are entitled to have their gas provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements. In this regard, Member States shall take all measures to ensure that administrative procedures do not constitute a barrier for supply undertakings already registered in another Member State.

Member States shall also ensure that: (i) where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; (ii) customers are entitled to receive all relevant consumption data. Member States shall ensure that these rights are granted to all customers in a non-discriminatory way as regards cost, effort or time.

The contracts concluded with their gas provider shall provide information on consumer rights, including on the complaint handling and all of the above, clearly communicated through billing or natural gas undertakings' web sites.

Checklist: the Commission should establish, after consulting relevant stakeholders including Member States, national regulatory authorities, consumer organisations and electricity undertakings, an accessible, user-friendly Energy Consumer Checklist providing consumers with practical information about their rights. That Energy Consumer Checklist should be provided to all consumers and be made publicly available.

Single points of contact: Member States shall ensure: (i) the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute; (ii) that an independent mechanism such as an energy ombudsman or a consumer body is in place for an efficient treatment of complaints and out-of-court dispute settlements.

Vulnerable customers: each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of such customers in critical times. Member States shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take appropriate measures to protect final customers in remote areas who are connected to the gas system. They may appoint a supplier of last resort for customers connected to the gas network.

Addressing energy poverty: Member States shall take appropriate measures, such as National Energy Action Plans or benefits in social security systems for ensuring the necessary energy supply to vulnerable customers or support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty. Such measures shall not impede the effective opening of the market and market functioning.

Promoting energy efficiency: Member States or the regulatory authority shall strongly recommend that electricity undertakings optimise the use of electricity, for example by providing energy management services, developing innovative pricing formulas, or introducing intelligent metering systems or smart grids where appropriate.

Intelligent metering systems: Member States shall ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the gas supply market. The implementation of those metering systems may be subject to an economic assessment of all the long-term costs and benefits to the market and the individual consumer or which form of intelligent metering is economically reasonable and cost-effective and which timeframe is feasible for their distribution. Such assessment shall take place within three years of the entry into force of this Directive.

Subject to this assessment, Member States or any competent authority they designate, shall prepare a timetable for the implementation of intelligent metering systems.

Promotion of regional cooperation: Member States as well as the regulatory authorities shall cooperate among themselves for the purpose of integrating their national markets at one and more regional levels, as a first step towards a fully liberalised internal market. Member States shall also facilitate integration of the isolated systems forming gas islands that persist in the European Union.

Tasks of transmission, storage and/or LNG system operators: each transmission, storage and/or LNG system operator shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations.

Each transmission system operator shall build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply.

Tasks of distribution system operators: each distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas, and for operating, maintaining and developing under economic conditions a secure, reliable and efficient system in its area, with due regard for the environment and energy efficiency.

Closed distribution systems: the text provides that where a closed distribution system is used or a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the users of the system. Industrial, commercial or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities or chemical industry sites can include closed distribution systems because of the specialised nature of their operations.

General objectives of the regulatory authority: the regulatory authority shall take all reasonable measures in pursuit of the objectives and ensure appropriate conditions for the effective and reliable operation of gas networks, taking into account long-term objectives.

Duties and powers of the regulatory authority: the regulatory authority shall have the following duties: (i) fixing or approving, in accordance with transparent criteria, regulated transmission or distribution tariffs or their methodologies; (ii) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses; (iii) respecting contractual freedom with regard to interruptible supply contracts as well as with regard to long term contracts provided that they are compatible with Community law and consistent with EU policies; (iv) helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced; (v) contributing to the compatibility of data exchange processes for the most important market processes at regional level.

Congestion management: the regulatory authorities shall monitor congestion management of national electricity systems including interconnectors, and the implementation of congestion management rules. To that effect, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to these rules.

Regulatory authorities shall cooperate at least at a regional level to coordinate the development of all network codes for the relevant transmission system operators and other market actors and coordinate the development of the rules governing the management of congestion. National regulatory authorities shall also have the right to enter into co-operative arrangements with each other to foster regulatory cooperation.

Report: the Commission shall, no later than 1 January 2006, forward to the European Parliament and Council, a detailed report outlining progress in creating the internal market in natural gas. In that report, the Commission, in consultation with the ENTSO for Gas, may also consider the feasibility of the creation, by transmission system operators, of a single European transmission system operator.

In the recitals, the following points are highlighted:

- any system for unbundling should be effective in removing any conflict of interests between producers, suppliers and transmission system operators, in order to create incentives for the necessary investments and guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for national regulatory authorities;
- in order to develop competition in the internal market for gas, large non-household customers should be able to choose their suppliers as well as enter into contracts to secure their gas requirements with several suppliers;
- Member States should take concrete measures to assist the wider use of biogas and gas from biomass, the producers of which must be granted non-discriminatory access to the gas system, provided that such access is compatible with the relevant technical rules and safety standards on an ongoing basis;
- any harmonisation of the powers of national regulatory authorities should include the powers to provide for incentives that may be offered and the powers to issue effective, proportionate and dissuasive penalties that may be imposed on natural gas undertakings or to propose to a court to impose such penalties. Moreover, regulatory authorities should have the power to request relevant information from natural gas undertakings, make appropriate and sufficient investigations and settle disputes;
- the public service requirements should be defined at national level, taking into account national circumstances. Community law should, however, be respected by the Member States. The citizens of the European Union and, where Member States deem it appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply and reasonable tariffs.
- to secure common rules for a truly European internal market and a broad supply of gas should also be one of the main goals of this Directive. To this end, undistorted market prices would provide an incentive for cross-border interconnections while leading, in the long term, to price convergence.