



COMMISSION OF THE EUROPEAN COMMUNITIES

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**OPINION OF THE COMMISSION**

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,  
on the European Parliament's amendments  
to the Council's common position regarding the  
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL**

**on the promotion of cogeneration based on a useful heat demand in the internal  
energy market and amending Directive 92/42/EC**

**AMENDING THE PROPOSAL OF THE COMMISSION  
pursuant to Article 250 (2) of the EC Treaty**

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**1. INTRODUCTION**

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the 20 amendments proposed by Parliament.

**2. BACKGROUND**

- On 22 July 2002, the Commission transmitted to the European Parliament and to the Council its proposal for a Directive (COM(2002)415 final<sup>1</sup> - 2002/0185(COD)).
- The European Economic and Social Committee delivered a favourable opinion on 26 February 2003<sup>2</sup>
- The Committee of Regions delivered a favourable opinion on 9 April 2003<sup>3</sup>
- On 13 May 2003, the European Parliament, at its first reading, delivered its opinion, containing a number of amendments to the Commission proposal.
- On 23 July 2003 (COM(2003)416 final), the Commission adopted, in accordance with Article 250(2) of the Treaty, an amended proposal incorporating, wholly or in part, a large number of amendments adopted by the Parliament.
- The Council adopted its Common Position on 8 September 2003.<sup>4</sup>
- On 19 September 2003, the Commission adopted its Communication to the European Parliament on the Council's Common Position, pursuant to the 2<sup>nd</sup> subparagraph of Article 251(2) of the Treaty.

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<sup>1</sup> OJ C 291 E, 26.11.2002, p. 182

<sup>2</sup> OJ C 95, 23.4.2003, p. 12

<sup>3</sup> OJ C 244, 10.10.2003, p. 1

<sup>4</sup> OJ C 258 E, 28.10.2003, p. 1

- On 18 December 2003, the European Parliament adopted, at the second reading, a resolution containing 20 amendments to the Common Position.

### **3. PURPOSE OF THE PROPOSAL**

The Commission's initiative is in response to the wishes set forth by the European Parliament and the Council for action in favour of promoting cogeneration, with a view to realise the large energy savings potential. Realising this potential was foreseen to make a major contribution to improving security of supply in the EU and to meeting the EU Kyoto commitment.

The Commission accordingly presented a proposal with the basic objective of promoting the cogeneration technique within the EU, ensuring in so far as possible that only cost-effective, technically feasible and environmentally-friendly measures are undertaken. The practical application of the elements of this proposal should remain the responsibility of the Member States.

The main elements of the proposal are the following:

- common definitions of cogeneration and common criteria for high efficiency cogeneration via calculation of primary energy savings.
- obligations on Member States to carry out analysis of the national potential for high efficiency cogeneration.
- provisions for a system of "Guarantee of origin" enabling producers of electricity from cogeneration to demonstrate that the electricity really is produced from cogeneration.
- provisions for evaluating the experiences gained with the application and coexistence of different support mechanisms for cogeneration used by Member States
- provisions laying down the principles for the interaction between cogeneration producers and the electricity grid;
- provisions requiring Member States to evaluate current administrative procedures with a view to reducing the administrative barriers to the development of cogeneration.

### **4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT**

Parliament adopted 20 amendments to the Common Position of the Council at the second reading, one of which was for a new recital.

The Commission accepts all 20 amendments proposed by the European Parliament, which are in line with the objectives of the Commission's original proposal or constitute an acceptable compromise.

**4.1 Amendment C1** concerns recital 2, which deals with the relations to the Directive 2003/54/EC on the internal electricity market. This amendment emphasises that development of cogeneration contributes to enhancing competition on the internal electricity market.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.2 Amendment C2** is a change of recital 3 in the common position. This amendment makes it clearer that import dependency and raising import ratios heighten the risk of interruption or difficulties in supply.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.3 Amendment C3** is an amendment for a new recital (5a) in the Common Position. This amendment presents a reference to the European Parliament's resolution of 25 September 2002 on the Commission communication on the implementation of the first phase of the European Climate Change Programme.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.4 Amendment C4** is an amendment to recital 14 in the Common Position. The amendment deals with the objective to ensure a harmonisation of calculation methods for calculation of electricity from cogeneration. The amendment also makes a reference to the necessity of being able to adapt the calculation methods to technical progress. Finally the amendment outlines that for micro cogeneration units the calculations can be based on values provided by a certification process.

The Commission is able to accept this amendment as it presented in the context of adaptation to technical progress of the methodology of calculation and based on the principle of proportionality, which is in line with the objectives of the Commission's original proposal.

**4.5 Amendment C5** is an amendment to recital 18 of the Common Position and provides a more clear understanding of the term "cogeneration unit".

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.6 Amendment C6** is an amendment to recital 26 of the Common Position. This amendment emphasises that especially for micro cogeneration units access to the electricity grid may be facilitated.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.7 Amendment C7** is an amendment to recital 27 of the Common Position. This amendment is a necessary editorial change to make the proposal consistent in order to reflect the compromises regarding micro cogeneration units.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.8 Amendment C8** concerns Article 3 point (i) of the Common Position and clarifies that high efficiency cogeneration shall mean cogeneration meeting the criteria of the whole Annex III.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.9 Amendment C9** deals with Article 3, point (k) of the Common Position. This amendment changes the definition of the "power to heat ratio". The amendment is in line with amendment C18 where the Commission is obliged to establish guidelines for the implementation of Annex II (calculation of electricity from cogeneration) via committee procedure. The amendment leaves the necessary flexibility to develop the guidelines.

The Commission is able to accept this amendment because it makes it possible to develop the technical guidelines in the established Committee and as it is in line with the objectives of the Commission's original proposal.

**4.10 Amendment C10** is a new point in Article 3 of the Common Position. This amendment defines micro cogeneration units as units with a maximum capacity below 50kWe.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.11 Amendment C11** deals with Article 4, paragraph 1 of the Common Position. This amendment is an editorial change providing a clearer wording.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.12 Amendment C12** concerns Article 6, paragraph 1, of the Common Position. This amendment emphasises that the analysis of the national potential for the application of high efficiency cogeneration should include high efficiency micro cogeneration.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.13 Amendment C13** is an amendment to Article 8, paragraph 3, of the Common Position. This amendment emphasises that Member States also may particularly facilitate grid access for micro cogeneration units. In the Common Position this possibility was only applied to small scale cogeneration.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.14 Amendment C14** concerns Article 11 and introduces two new paragraphs (2 and 3). This amendment emphasises in the new paragraph 2, that the Commission - in the report to be submitted to the European Parliament and Council four years after entry into force of the Directive - shall consider to what extent the national potentials have been or are foreseen to be realised. If appropriate the Commission shall submit further proposals aiming at the establishment of an action plan for the development of high efficiency cogeneration.

Similarly it is outlined in the new paragraph 3, that the Commission shall consider the impact of the coexistence of the alternative calculation methods and if appropriate the Commission shall submit further proposals aiming at further harmonisation of the calculation methods.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.15 Amendment C15** includes a new paragraph 2 in Article 13 of the Common Position. This amendment empowers the Committee established in accordance with Article 14 of the Common Position also to review the guidelines for determining the power to heat ratio and adapt these guidelines to technical progress.

The Commission is able to accept this amendment as it allows for keeping the guidelines up to date and is in line with the objectives of the Commission's original proposal.

**4.16 Amendment C16** concerns Annex II, subparagraph 1 of the Common Position. This amendment introduces the possibility for micro cogeneration units to carry out the calculations using values from a certification process. This will allow calculation of electricity from micro cogeneration units without imposing costly measurement on each individual installation.

The Commission is able to accept this amendment because it is in line with the principle of proportionality and as it is in line with the objectives of the Commission's original proposal.

**4.17 Amendment C17** concerns Annex II, paragraph 2 of the Common Position. This amendment is clarifying that the default values of the power to heat ratio should only be used for statistical purposes.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.18 Amendment C18** introduces a new paragraph in Annex II of the Common Position. This amendment obliges the Commission to establish guidelines for the implementation of Annex II (calculation of electricity from cogeneration) via committee procedure.

The Commission is able to accept this amendment because it makes it possible to develop the technical guidelines in the established Committee and as it is in line with the objectives of the Commission's original proposal.

**4.19 Amendment C19** deals with Annex III a, second indent, of the Common Position. This amendment defines that micro cogeneration units providing primary energy savings may qualify as high-efficiency cogeneration.

The Commission is able to accept this amendment as it is in line with the objectives of the Commission's original proposal.

**4.20 Amendment C20** introduces a new paragraph in Annex III of the Common Position. This amendment introduces the possibility for micro cogeneration units to carry out the calculations using values from a certification process. This will allow micro cogeneration units to qualify as high efficiency cogeneration without imposing costly measurement on each individual installation.

The Commission is able to accept this amendment because it is in line with the principle of proportionality and as it is in line with the objectives of the Commission's original proposal.

## **5. CONCLUSION**

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.