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on Prospects for the internal gas and electricity market
(2007/2089(INI))

Committee on Industry, Research and Energy

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on Prospects for the internal gas and electricity market (2007/2089(INI))

The European Parliament,

- having regard to the Commission Communication of 10 January 2007 - An Energy Policy for Europe (COM(2007)0001),
- having regard to the Commission Communication - Prospects for the internal gas and electricity market (COM(2006)0841),
- having regard to the Commission Communication - Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (COM(2006)0851),
- having regard to the Commission Communication - Priority interconnection Plan (COM(2006)0846),
- having regard to the Commission staff working document - Implementation Report on electricity and gas EU regulatory framework: country reviews - SEC(2006)1709), Accompanying document to the Commission Communication (COM(2006)0841),
- having regard to the Commission staff working document on EU energy Policy Data (SEC(2007)0012),
- having regard to its resolution of 14 December 2006 on a European strategy for sustainable, competitive and secure energy - Green paper¹,
- having regard to its resolution of 23 March 2006 on security of energy supply in the European Union²,
- having regard to its position adopted at second reading on 4 April 2006 with a view to the adoption of a decision of the European Parliament and of the Council laying down guidelines for trans-European energy networks and repealing Decision 96/391/EC and Decision No 1229/2003/EC³,
- having regard to its position adopted at first reading on 26 October 2005 on the proposal for a regulation of the European Parliament and of the Council determining the general rules for the granting of Community financial aid in the field of the trans-European transport networks and energy and amending Council Regulation (EC) No 2236/95⁴,
- having regard to its position adopted at first reading on 5 July 2005 on the proposal for a directive of the European Parliament and of the Council concerning measures to safeguard security of electricity supply and infrastructure investment⁵,
- having regard to its position adopted at second reading on 8 March 2005 with a view to the adoption of a European Parliament and Council Regulation on conditions for access to

¹ Texts Adopted, P6_TA(2006)0603.

² *Texts Adopted*, P6_TA(2006)0110.

³ *Texts Adopted*, P6_TA(2006)0118.

⁴ OJ C 272 E, 9.11.2006, p. 404.

⁵ OJ C157 E, 6.7.2006, p. 61.

the natural gas transmission networks¹,

- having regard to its position adopted at first reading on 23 September 2003 on the proposal for a directive of the European Parliament and the Council concerning measures to safeguard security of natural gas supply²,
- having regard to its position adopted at second reading on 4 June 2003 with a view to the adoption of a European Parliament and Council directive on common rules for the internal market in electricity and repealing Directive 96/92/EC³,
- having regard to its position adopted at second reading on 4 June 2003 with a view to the adoption of a European Parliament and Council directive on common rules for the internal market in gas and repealing Directive 98/30/EC⁴,
- having regard to its position adopted at second reading on 4 June 2003 with a view of adopting a European Parliament and Council regulation on conditions for access to the network for cross-border exchanges in electricity⁵,
- having regard to the Annual Report of the European Energy Regulators for the period 1 January 2006 to 31 December 2006 to all Members of the CEER and of ERGEG, the European Parliament, the Council of Ministers and the European Commission, made under Article 3 (8) of the Commission Decision of 11 November 2003 (2003/796/EC)⁶,
- having regard to the Presidency Conclusions of the European Council of 8-9 March 2007, concerning the European Council's endorsement of a "European Council Action Plan (2007-2009) - Energy Policy for Europe" (7224/07),
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Regional Development (A6-0000/2007),

- A. Whereas the completion of the internal energy market is a guarantee of security of supply,
- B. Whereas decisions about the energy mix in a Member State has consequences for the entire European Union,
- C. Whereas 20 out of 27 Member States are yet to transpose the directives on the Internal Energy Market,
- D. Whereas the different levels of unbundling in Member States vary considerably having serious implications in the development of a single market of electricity,
- E. Whereas most gas undertakings' profits are primarily generated by their transport activities rather than gas extraction while most electric utilities' revenues derive from their generation capacities,

⁶ OJ C 320 E, 15.12.2005, p. 36.

⁷ OJ C77 E, 26.3.2004, p. 62.

⁸ OJ C68 E, 18.03.2004, p. 211.

⁹ OJ C68 E, 18.03.2004, p. 235.

¹⁰ OJ C68 E, 18.03.2004, p. 262.

¹¹ OJ L 296, 14.11.2003, p. 34.

- F. Whereas massive investments are needed in the upgrading of the electric grid which would contribute significantly to the reduction of inefficiencies in the transport of electricity,
- G. Whereas interconnections between Member States are still insufficient and, in some cases, political impediments are the root cause for the delays in their construction,
- H. Whereas before proposing any legislation on the creation of gas stock the Commission should put forward a cost benefit study,

The European Parliament:

Unbundling

1. Considers ownership unbundling an effective tool to ensure investments in infrastructures, fair access to the grid for newcomers and transparency in the market; underlines that this model does not address all the issues at stake such as interconnections, as shown by the fact that 4 out of the 5 Member States with lower interconnections are ownership unbundled;
2. Realises that national circumstances could hamper a direct transition to ownership unbundling but points out that the current situation in some Member States causes serious obstacles to the development of the internal energy market and is unfair to those who have already enforced Community legislation; to this effect considers that the option put forward by the Commission of an Independent System Operator (ISO), properly regulated, should be the minimum level of unbundling enforced in Member States;
3. While recognising some positive aspects of a regional ISO+ approach, warns against the problems such model could impose on peripheral Member States by creating bigger "energy islands";
4. Understands that the ISO+ model can hardly be applied to gas undertakings as many of them generate most of their revenue through the transport of imported gas; in this respect, urges the Commission and Member States to send a political message to third countries, insisting that European gas undertakings should have fair access to upstream production and to their markets in accordance with the reciprocity principle;

Regulators

5. Welcomes the Commission's proposal to enhance cooperation between national regulators at EU level as it considers that increased convergence and synchronisation between them is essential to overcome technical and regulatory differences that impose serious barriers to cross border trade and interconnections; underlines that the Commission should play a key role and that the decisions taken by the regulators should be taken after consultation with the TSOs and be legally binding;
6. Points out that national regulators should remain the only responsible authority of decisions within their borders;
7. Believes that the powers of the regulators should be independent, strong and well defined

in order to ensure the law is fully implemented by market players and that the necessary investments and transparency levels are in place;

8. Criticises the excess interventionism of some Governments in the decisions taken by national regulators as this undermines their role as independent authorities;

Regulated tariffs

9. Urges Member States to gradually remove the application of generalised regulated tariffs – with the exception of last resort tariffs, as defined in Directive 2003/54/CE - as they distort the market and are often used in some Member States to push new entrants out of business;

Interconnections

10. Welcomes Council's commitment to fulfil the Barcelona Summit objective of achieving 10% interconnection levels in all Member States;
11. Calls on Member States to increase their efforts in removing technical and political barriers to the completion of existing projects, in particular the 4 projects identified by the Commission as projects of European interest;

Long term contracts

12. Recognises that upstream long term contracts are necessary to provide a positive investment climate and contribute significantly to security of supply;
13. Believes downstream bilateral long term contracts, as long as they do not take up a significant percentage of the market, provide an opportunity to energy intensive industries to negotiate lower energy prices and should therefore be allowed albeit being properly regulated;
14. Asks the Commission to provide clear guidance on such downstream long term contracts in order to reduce uncertainty in the market;

Electric Grid & Gas Networks

15. Reiterates its concern over the investment deficits in the upgrading of the electric grids and gas networks;
16. Regrets that many obstacles still remain in Member States that cause disproportionate delays in the connection of new generation to the main electric grid; therefore calls on national, regional and local authorities to take all the necessary steps to ensure that these delays are reduced to the strict minimum;
17. Urges Member States to increase grid capacity in order to allow the incorporation of new massive onshore & offshore renewable energy generation;
18. Calls on the Commission to assess the feasibility of creating a European smart-grid taking full advantage of the latest Information and Communication Technologies (ICT)

available; such a grid would accommodate a wide variety of generation options, empower the consumer and should be able to rapidly detect and analyze perturbations and to respond and restore from their effects;

Strategic Stocks

19. Agrees with the Commission's assessment that, in relation to gas, considering the present technology, it is better to diversify supply routes and technologies, such as degasification plants and Liquefied Natural Gas (LNG) terminals, than to create massive gas stocks as this option is too expensive, could be used to influence market prices and its use is less flexible than oil stocks;

Implementation of EU legislation

20. Is concerned at the number of Member States who are still to transpose Directives 2003/54 and 2003/55 and those who have failed to implement them; calls on Member States to transpose and fully implement these Directives without delay;
21. In this respect, welcomes the Commission's initiative to open infringement procedures against the above mentioned Member States;
22. Warns against excessive market concentration as the opening of energy markets should increase consumer choice of supplier in an open competitive environment;
23. Calls on national governments to stop the promotion of the so-called national champions and refrain from passing protectionist legislation preventing the development of a truly integrated European energy market.
24. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

1. Background

In response to the European Council call and priorities defined in its March 2006 Conclusions, the Commission adopted a so-called Energy Package on 10 January 2007, so as to contribute to the three objectives of the Energy Policy for Europe: security of supply, competitiveness and environmental sustainability.

Following a long-term process of liberalisation of the energy markets - through the adoption of two series of directives creating an internal market, in 1996-1998 and in 2003 for achieving complete liberalisation by 1st July 2007 - these communications constitute a major step since the Commission advocates a new direction for the internal energy market and announces precise proposals and mechanisms for its operation.

This Report will assess how the different measures identified by the Commission can ensure the completion of the Internal Market for electricity and gas and remedy the obstacles to creating a single European energy market. The Rapporteur will take due account of the implementation of the current rules, which to his mind, partly gave a sufficient legal basis to ensure non discriminatory access of the third parties to the networks, to create powerful national regulators and to set up a framework enhancing investments. Taking into account the last conclusions of the Spring Council on 8-9 March, the intention of the Rapporteur is to consolidate the objectives pursued by the Commission and to analyse the practical measures proposed.

2. Specific issues

Implementation of existing legislation

The Rapporteur is concerned about the number of Member States who are still to transpose the European Directives 54/2003 and 55/2003 as well as by those who have not done it appropriately. A correct transposition at EU level is essential if we are to fully assess the validity and effectiveness of the measures adopted by the European Parliament and by the Council.

Furthermore, non compliance by some Member States puts those who have properly and fully transposed EU legislation on the internal energy market into national law in a difficult position thus causing in some cases unfair price competition, takeovers of private companies by publicly owned undertakings, barriers to entry in other Member States as well as disproportionate delays in the development of interconnections. Moreover, Governments who are suffering these consequences have to face a disapproving public opinion of the measures taken and of the EU institutions as a whole.

For all these reasons, the Rapporteur welcomes the Commission's initiative to start infringement procedures against those Member States who are not complying with the legislation in force.

However, while welcoming the Commission's third liberalization package expected in September of this year and realising that some Member States' resistance will only be tackled with concrete actions, the Rapporteur cannot help but wonder if the solution to this problem is indeed further, and more stringent, legislation seeing as the second package is obviously still in its early stages.

Recent takeover initiatives and mergers within the European Union's markets have given rise to some concerns about such issues as public participation in undertakings, reduced choice for consumers due to market concentration as well as excessive interventionism by some Governments in what are supposed to be purely market operations. The Rapporteur believes that such operations should be further controlled by the Commission, especially when public participation in some companies taking over others is considerable.

Unbundling

Unbundling has been a key issue in the energy debate in the European Parliament in past reports and is likely to be this way for this report. The Rapporteur believes that the current level of unbundling in some Member States is insufficient and therefore welcomes the Commission's initiative to increase obligations in this field.

The two main options proposed in the Commission's Communication – Independent System Operator properly regulated and ownership unbundling – should be properly assessed.

Ownership unbundling would increase transparency, ensure proper investment conditions in the infrastructures and remove barriers to entry to new market players.

The Independent System Operator model, even though it would need further regulation, would also achieve these goals and would probably be a more feasible option for those Member States heavily lagging behind.

The Rapporteur wishes to debate this issue further and expects the Commission to come forward with a clear but flexible position on unbundling that could serve as a basis for discussion in Council and Parliament, avoiding the frontal rejection of some Member States.

However, the problems related to interconnections will not be solved by either system and will require additional solutions. Furthermore, questions of transparency and investments could also be answered by increased powers to national regulators or through national legislation aimed at imposing specific requirements in this respect. Finally, the gas and electricity sectors are of a very different nature which makes the unbundling options more complicated for gas. This issue will be explored further in this document.

Investments

The Rapporteur would like to stress the importance of new investments at a massive scale in the development of new and upgrading of current infrastructure. While he is concerned about the gap between current investments and those estimated to be required, he does not agree with the Commission in their statement that investments have stopped. Indeed,

overall investments in maintaining and development of gas networks have had a consistent, albeit slow, increasing trend in the past years.

This concern also applies to the lack of investments in interconnections derived of the disparity between standards, lack of an independent regulatory authority to oversee cross-border transmission and reduced availability of mechanisms to recover trans-border costs.

There is, however, much room for improvement and measures have to be taken such as further unbundling – whether ownership or ISO+ -, more efficient regulation and better cross-border cooperation.

New Massive Generation from renewable energy sources

Europe enjoys vast quantities of renewable energy sources including hydro, wind, solar, biomass, tidal and geothermal. Renewable energy sources by their very nature are concentrated in specific locations, e.g. hydro resources in mountainous regions, or wind resources in offshore, coastal and highland regions. With a few exceptions these resources are not transportable in their primary form and so need to be converted to electricity in the location where the primary resource exists. If, therefore, these vast primary energy sources are to contribute to the European Union's electricity requirements, they need the sufficient grid infrastructure to allow for the bulk transport of electricity from these regions to centres of demand.

For example there is a large commercially exploitable resource of wind energy above the seas of north Western Europe. Large sub sea grids are therefore required to bring this power to shore and onshore grids to take the electricity further to centres of demand.

It is important therefore that these grids are maintained where they already exist and established where they do not. Transmission companies must be incentivised to develop and build such grids and must not have competing interests which may hinder their development.

Regulators

Currently, the European Union's internal energy market has to adjust to 27 different national regulations that can differ greatly from one to another. The procedure for the definition of actions to be taken on cross border transmissions consists in a consultation between national regulators based on technical proposals by the Transmission System Operators and where the decisions are taken generally on the basis of consensus. If no agreement can be reached, the Commission launches a committee procedure in which not only acceptable outcomes are very slow to come, but where those deciding are Member States who refer back to their national regulators for advice. This brings the situation back to square one.

If the EU is to have a fully integrated internal market some actions will have to be taken to provide a more formal approach to the process explained above. The Rapporteur suggests making the Regulators' forum a formal body in which decisions would have to be taken – by vote if necessary – and where, in case of a deadlock, the Commission could decide. The decisions should derive from proposals by the TSOs who, in turn, should also have a

formal framework for their decision-making processes.

It is important to point out that Regulators would be dealing exclusively with cross-border technical and trade issues such as harmonisation of technical standards and promote coordination of the development of interconnections and cross-border transmission.

National Regulators' decision should remain sovereign over their respective Member State and their responsibilities and powers should be independent, strong and well defined.

Regulators could play a decisive role in ensuring the necessary investments, equal playing field for all market players and transparency. Regarding investments, regulators could be given, for example, the power to open investment to third parties should incumbent undertakings pose barriers for the development of the grid.

Interconnections

The Rapporteur welcomes the Commission and Council's latest position regarding the achievement of 10% interconnections in all Member States. Nevertheless, he would like to point out that this objective was set years ago in the Barcelona Summit and hopes that, given that the completion of the energy internal market has acquired renewed importance in the European Union, Member States will take decisive steps in the removal of all barriers to their development.

The new cooperation between regulators at EU level should provide the necessary regulatory framework to overcome some of these barriers but public authorities should strive to remove political obstacles as well.

This point is of particular importance for peripheral Member States who, at present times, remain energy islands.

Regulated tariffs

The Rapporteur strongly believes that generalised regulated tariffs for commercial customers should disappear as they cause serious distortions in the market and can sometimes be used by vertically integrated companies to force newcomers out of the market.

3. Additional comments

Gas market

Unlike the electricity market, most gas undertakings make their profits from distribution activities rather than generation capacity. For this reason, the different proposals put forward by the Commission on unbundling would be difficult to apply to this sector, or at least to those companies that import their product into the European Union.

Some measures, such as those proposed in this document, could help tackle the problems of investments, transparency and access to the grid.

The Rapporteur is concerned mainly by the lack of harmonised standards regarding natural gas. This situation causes uncertainty in the market as companies do not know if the gas they buy in one field would be allowed access into the different national networks. The Commission should strongly look into this problem and find a solution in a timely manner.

These companies also face the problem of dealing commercially with third countries in which the reciprocity principle cannot be applied. Indeed, they do not have access to upstream production capacities, nor do they have access on similar terms to their markets. The gas sector has voiced its wish to the Rapporteur of having a stronger political backing by the European Union institutions as well as by Members States when negotiating with third country producers.

ETS

The Rapporteur is concerned about some claims made by some market players regarding Emission Trading rights. They believe that consumers are being charged the additional price of ETS in their energy bill when the majority of these rights have been obtained for free, under the current ETS directive that states that **at least** 95% of emission rights should be awarded for free in this first phase.