



COMMISSION OF THE EUROPEAN COMMUNITIES

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SEC(96) 1409 final - COD 384

COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 189 b (2) of the EC-Treaty

Common position taken by the Council of the European Union on the proposal for a Directive of the European Parliament and of the Council concerning common rules for the internal market in electricity.

I. STATE OF THE PROCEDURE

The proposal for a Council Directive concerning common rules for the internal market in electricity was presented by the Commission on 21 February 1992 (COM(91)548 final - SYN 384).

The European Parliament gave its opinion in first reading on 17 November 1993. It proposed a number of amendments.

The Economic and Social Committee gave its opinion on 27 January 1993.

The Commission presented an amended proposal for a European Parliament and Council Directive on 7 December 1993 (COM(93)643 final - COD384).

The Commission presented two working papers, the first on the Organisation of the Internal Electricity Market of 22 March 1995 (SEC(95)464 final) and the second on Small and very small electricity systems in the Internal Electricity Market of 10 May 1995 (SEC(95)685 final).

The European Parliament commented on the second working paper of 10 May 1995 in its report of 7 February 1996 (PE 215.270/def.).

The Council of the European Union has adopted a common position on 25 July 1996 (Doc. 8811/96 ENER 105).

II. LEGAL BASIS

The present proposal for a Directive is based on Article 57(2), Article 66 and Article 100a of the EC Treaty. Article 100a requires the procedure of Article 189b of the EC Treaty.

III. FIELD OF APPLICATION

The present proposal for a Directive applies to the production, transmission and distribution of electricity. It aims at ensuring the introduction of competition to the electricity sector, creating more efficiency, strengthening security of supply and providing equal access for all producers and eligible customers to this sector. The proposal is part of the second phase of the effort of the Commission to establish the internal energy market and as such represents an intermediate phase towards the full liberalization of the electricity sector. It will be followed by further measures promoting market opening.

IV. COMMENTS ON THE COMMON POSITION

1. **Brief general comments**

The common position is generally in line with the amended proposal of the Commission. It will gradually open the electricity market to more competition, while ensuring the fulfilment of essential services to the general public. The Commission considers that the modifications in the text of the recitals and articles do not change the essence of the content of the amended proposal for a Directive, although it does regret that distributors will not in all cases be fully eligible to participate in the new market arrangements.

2. **Amendments by the European Parliament in its first reading**

a) Accepted by the Commission and integrated in the common position

- Amendments: 3, 7, 11(part), 13, 14, 15, 16, 22(part), 24(part), 25(part), 28, 33, 34(part), 40, 41, 48, 51(part), 236(part), 60, 62, 237, 63(part), 64, 66, 76, 77(part), 79, 238(part), 83, 85, 88, 89, 91, 92, 97(part)

b) Accepted by the Commission and not integrated in the common position:

- Amendments: 19, 35, 43, 58, 61, 69, 71, 75, 78, 87, 90, 107(part), 108.

c) Not accepted by the Commission, but integrated in the common position.

- Amendments: 9, 10, 17, 20(part), 26, 45, 46, 231(part), 55, 65, 68, 80, 81(part), 86, 96, 101, 222.

d) Not accepted by the Commission, not integrated in the common position:

- Amendments: 221, 2, 4, 6, 8, 12, 18, 21, 23, 27, 29, 30, 31, 32, 36, 37, 38, 39, 42, 44, 47, 50, 52, 53, 216, 56, 57, 67, 70, 72, 73, 74, 84, 93, 94, 95, 98, 99, 100, 102, 103, 104, 105, 106, 109, 110.

3. **Principal modifications by the Council**

a) The Council decided to adapt the recitals to reflect the changes made in the articles of the proposal. The recitals refer to many issues such as the internal market, competitiveness, public service obligations, the gradual completion of the internal energy market, regulation, the transposition of the Directive, system access, Treaty rules on competition, infrastructures, system management, transparency, customer rights, environmental protection, dispute settlement, transition regimes, and further liberalization.

The Commission accepts these modifications as clarifications of the text of the proposal and underlines the importance of recital 3 stating that the provisions of the Directive shall not affect the full application of the EC

Treaty, in particular the provisions concerning the internal market and competition.

- b) The Council decided to modify some of the definitions of Article 2 (for example 2.4 "independent producer" or 2.12 "direct line"), add new ones (for example 2.8 "wholesale customer", 2.21 "long term planning" or 2.22 "single buyer"), and delete certain old ones (for example old 2.12 "European specification" or old 2.14 "common technical specification"). The modifications clarify the various concepts used in the text of the proposal.

The Commission accepts these modifications as clarifications of the text of the proposal.

- c) The Council decided to modify old Chapter II on general rules for the organization of the sector. The modifications clarify the objective of introducing competition, the balance between competition and public service obligations and the scope of public service (Article 3). They also provide procedures for the definition of public service obligations at the Member State level. The modifications result in a greater emphasis on public service obligations as compared to the Commission's amended proposal, which is in line with the opinion expressed by the European Parliament in first reading.

The Commission can accept these modifications striking the balance between competition rules and public service considerations. The result is a text which is a good reflection of the rules of the EC Treaty. The greater emphasis on public service obligations should be placed within the context of Community law, and in particular of Article 90(2)/TEC. The Commission will monitor the proper and full respect of these rules.

- d) The Council decided to adapt and streamline old Chapter III on production and transmission. This has become Chapter III on generation and Chapter IV on transmission system operation. The modifications made are the removal of the construction of new transmission capacities from the scope of application of this Directive. Also they clarify the objective, transparent and non-discriminatory procedures for the construction of new generation capacity (Article 4). Two procedures will now be available to Member States. They can choose the authorization procedure (Article 5) or the tendering procedure (Article 6). The tendering procedure contains a greater degree of central management and planning in which the system operator may be involved. This is in line with the opinion of the European Parliament which has asked for the inclusion of a tendering procedure in the framework of the Directive. However, under both procedures independent power producers, autoproducers and producers using renewables, waste or combined heat and power, will always be able to apply for an authorization. In addition, the provisions as regards transmission system operation, which were streamlined, have been separated and put in Chapter IV dealing with the

transmission system operator and dispatching rules (Articles 7 to 9). The general rule for dispatching will be economic precedence. However, preference can be given by Member States to electricity based on renewables, and to electricity generated on the basis of indigenous primary energy fuel sources up to a maximum of 15% of the overall primary energy used.

The Commission can accept the changes made by the Council. However, the Commission regrets that the Council has removed the construction of new transmission network capacities from the scope of application of this Directive. It trusts that Member States will set up the appropriate mechanisms at a national level for allowing an expansion of the transmission network where this is required.

- e) The Council decided to modify old Chapter IV on distribution system operation and this has now become Chapter V (Articles 10 to 12). The modifications have shortened the chapter and brought it more in line with the structure of the new Chapter IV on transmission system operation. The obligation to supply customers can be imposed by Member States, while they can also regulate tariffs for consumer groups. When dispatching installations the distribution system operator can also give preference to renewables or CHP.

The Commission accepts these modifications.

- f) The Council decided to modify old Chapter V on unbundling and transparency of accounts. This has become Chapter VI (Articles 13 to 15). The modifications create greater clarity as regards the unbundling of accounts, while the deletion of management unbundling has been maintained which is in line with the opinion of the European Parliament in first reading. The provisions foreseen oblige integrated electricity undertakings to keep in their internal accounting separate accounts for generation, transmission and distribution and they assure a high degree of transparency (Article 14). These integrated electricity undertakings are also required to make public in the notes to their accounts a separate balance sheet and a profit and loss account of each of the electricity activities they are engaged in. Additional measures have been introduced in the new chapter as regards the full independence of the system management in single buyer systems (Article 15), while in a negotiated Third Party Access system the system operator shall be independent at least in management terms (Article 7.6).

The Commission accepts these modifications. The Commission will make all efforts to ensure that these unbundled accounts will be established on a comparable basis.

- g) The Council decided to change old Chapter VI on access to the system. This has now become Chapter VII on organization of access to the system (Articles 16 to 22). The modifications have introduced in the

negotiated Third Party Access model the requirement to publish an indicative range of electricity transport prices (Article 17.3), they also recognize Member States' right to opt for a regulated system of access on the basis of published tariffs (Article 17.4), and provide as an alternative to the Third Party Access approach the Single Buyer procedure, which has two variations (Article 18). In the first variation the Single Buyer is subjected to a purchase obligation and has to integrate into the system all supplies sold to him by eligible customers, while in the second variation the Single Buyer does not have a purchase obligation and will act like a system operator in a Third Party Access model. The Single Buyer approach will provide for greater possibilities of central management and planning in the system, though also allowing for competition and liberalization at the same time. This is in line with various elements of the opinion of the European Parliament in first reading.

The modifications also introduce rules and mechanisms for the gradual and progressive opening of the electricity market over a period of six years in which market opening will begin at approximately 22%, calculated on the basis of a common European average (40 GWh) which is obligatory for all Member States and which continues up to 33% (9 GWh) after six years (Article 19.1 and 19.2). Within the common percentage Member States themselves will be allowed to define the customers eligible to participate in the opening of the market. However, Member States will have to automatically include in their definitions large industrial consumers (100 GWh), and in addition to this, where they do not include distributors, these will nevertheless be eligible for the volume of electricity consumed by other eligible customers within their distribution system.

For cases where Member States decide to create an even greater market opening on a national basis, a safeguard/adjustment clause is available to avoid any imbalances between the different markets (Article 19.5). This clause will be reviewed by the Commission after four and a half years. In addition, this chapter also provides rules for dispute settlement procedures (Article 20) and rules for applications for authorizations to construct direct lines (Article 21). Finally, it also obliges Member States to create mechanisms for regulation, control and transparency (Article 22).

The Commission can agree to these modifications. It considers that these modifications do not change the basic principles of the Directive relating to a gradual opening of the electricity market and a degree of subsidiarity as regards the choice of systems so as to allow Member States to choose the system best suited to their particular circumstances. The Single Buyer model represents an example of this measure of subsidiarity where it introduces a stronger central management element in the liberalized market. The Single Buyer option as contained in the present Directive follows to a very large degree the

conditions for the parallel coexistence of negotiated Third Party Access with the Single Buyer system, as contained in the Working Paper of the Commission on the organisation of the Internal Electricity Market (SEC(95)464 final of 22.03.1995). The Commission considers that whatever choice is made by Member States as regards the approach to system access referred to under this chapter, it must lead to equivalent economic results and hence to a directly comparable level of opening up of markets and to a directly comparable degree of access to electricity markets. During the implementation of the Directive the Commission will undertake all efforts to ensure that the transposition of the Directive's provisions into national legislation leads to exactly this.

The market opening approach based on a common percentage also provides for an amount of flexibility for Member States in defining consumers, though within the context of one and the same degree of opening for all. Because distributors will always be included in this approach, either fully or partially, and based on the unbundling of accounts between distribution and transmission activities as required in Article 14.3, the risk of possible cross-subsidizations at the expense of residential consumers has been greatly reduced. Following the procedures set out in this chapter the Commission will also closely monitor the proper identification of eligible customers by Member States. In all cases the approach chosen reflects the transitional character of the Directive which introduces common rules at the European level, as a progressive step towards greater liberalization in the future.

The transitional character is of particular importance with regard to the safeguard/adjustment clause of Article 19.5, which will cease to exist after the time period up to the date of review as provided for under Article 26. The Commission would not have been in a position to accept this clause if it had been a permanent instrument. The Commission will review the application of this clause halfway that time period, and will exert its positive powers as foreseen in the clause to support market opening. This transitional approach is also in line with the opinion expressed by the European Parliament in first reading.

- h) The Council decided to modify old Chapter VII on final provisions. This has become Chapter VIII (Articles 23 to 29). The modifications made introduce rules for transitional regimes and stranded investments (Article 24.1 and 24.2), and for small isolated systems (Article 24.3). In addition, regular consultation procedures as referred to in the old Article 24 have been deleted by the Council, but the review procedures have been clarified, indicating that such a review should result in the consideration by Council and Parliament of possible measures for further market opening which would be effective nine years after the entry into force of the Directive (Article 26). Moreover, procedures have been set out to investigate the requirements for harmonization and the possibility of taking action in this area (Article 25). Exceptions have been made on technical grounds for Belgium, Greece and Ireland in allowing them a

delay in the transposition of the Directive, though not in the implementation of its provisions (Article 27). Many of these modifications, such as transitional regimes or harmonization requirements are in line with the opinion of the European Parliament.

The Commission can accept these modifications, though it regrets the deletion by the Council of the procedures for regular consultations with, among others, domestic consumers, independent producers, social partners and environmental protection organizations. It trusts that Member States will take appropriate measures to allow for such consultations to take place on an ad hoc basis. The Commission emphasizes its commitment to report in due time on the requirements for harmonization.

The Commission considers that the review of the application of the Directive and subsequent proposals for further opening of the electricity market will be made in good time, so as to allow the European Parliament and the Council sufficient time to consider these, and so as to allow for them to become effective nine years after the entry into force of the Directive.

V. CONCLUSION

The Commission supports the common position of the Council, which has been adopted by unanimity, because it follows the line and direction of its own proposals. Modifications by the Council have made this line more balanced, but have not changed the basic principles underlying the amended proposal for a Directive.