

# The Brussels liberalisation march continues

After 18 months of wrangling between different European institutions, the EU on the last day of March finally adopted the Third Energy Package. The Council of European Ministers and the European Parliament approved the legislation, which gives regulators more powers and consumers more protection, but allows utilities to avoid splitting off their grid assets. The Brussels march to liberalisation continues, even if the troops do not always stay in line.

| By *Hughes Belin*

So much effort went into the energy and climate package, which was adopted in the second half of 2008, that the Czech Republic, when it took over the presidency of the EU at the beginning of 2009, had only a few months to wrap up the energy liberalisation dossier before the European elections. This has been a contentious dossier since it was known publicly from the start that neither

of two new directives (gas and electricity) and three regulations (gas, electricity and the Regulatory Agency) which are to replace the existing four directives and regulations.

The key issue in the new gas and electricity directives was the question of “unbundling”. Should the vertical integration of gas and electricity

who don’t. The question is vital for the integrated groups at a time when their financial base determines whether or not they are able to invest in highly capital-intensive projects, such as in nuclear energy. The grids provide them with an important financial foundation.

The opponents of unbundling succeeded to the extent that they do not have to split off their network assets. The operation of the networks will, however, be subject to stringent conditions to prevent conflicts of interest.

The new legislation gives member states the choice of opting for ownership unbundling – as is the case in Spain, the United Kingdom and the Netherlands – or one of two structures which allow for grid assets to remain within integrated companies, subject to specific additional rules.

First, the integrated company may create a subsidiary known as an ‘independent system operator’ (ISO) which will be responsible for managing the system (third-party access, investment planning, maintenance). Experts

## Soaring energy prices have led some states to re-introduce regulated tariffs

Germany nor France wanted legislation that would require them to dismantle their national energy giants and reduce the state’s role in managing the energy sector. Both countries got their way to an extent but had to make certain concessions. Despite all the wrangling, the so-called “third liberalisation package” was adopted on time. It consists

transport subsidiaries into energy groups continue to be allowed? Those who support greater competition believe that network assets should be controlled by other shareholders. They argue that vertical integration slows down the liberalisation process as it creates conflicts of interest between market players who own grids and those



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believe few, if any countries will choose this option, since it is expected to lead to a lot of red tape. It will complicate network management by creating an additional layer of decision-making.

The second option for integrated groups is to make their network subsidiaries more independent than they are today by turning them into what will be known as 'independent transmission operators' (ITOs). This possibility was put forward by France, Germany and other opponents of ownership unbundling, and is very likely to be adopted in those countries. Setting up an ITO involves isolating the network subsidiary from its parent company in certain ways. The network company must keep separate accounts and have fully independent management. Personnel active in the production and supply company must go through a four year 'cooling-off' period before they can be recruited by the network subsidiary and vice versa. Auditors, computer service providers and premises must also be completely separate. Any decisions with

regard to investment must be taken by the ITO itself and must not be dictated by the parent company.

The structure of the ITO is meant to guarantee that it will not favour the interests of its parent company. Although the ITO's board will include independent members, the legislator has also created the post of 'compliance officer'. Working from within the network company, the compliance officer will be responsible for reporting to the regulator any failure to comply with the new legislation or with business ethics, for example giving preferential treatment to the parent company.

Every TSO or transmission system operator (be it an ITO or an ISO) has to be approved by the European Commission and certified by its national regulator. It must provide its national regulator with a 10-year investment plan and a summary of the means which it intends to employ to guarantee the adequacy of the system and the security of supply. The regulator has the power to compel

the TSO to implement the necessary investments.

Any companies based outside the EU that want to buy a network within the EU must abide by the same rules as domestic companies and go through the certification process. In particular, the member state in which the network is situated must show that 'granting certification will not put at risk the security of energy supply of the Member State or the EU'. Member states will also have the right to 'exercise national legal controls to protect legitimate public security interests'. This so-called "Gazprom clause" is intended to give Member States some instruments to prevent hostile takeover bids of EU power and gas networks from third countries (read: Russia).

Thanks to the efforts of the European Parliament, national regulators have been guaranteed independence and given extensive control over the way



EU energy Commissioner Andris Piebalgs and Neelie Kroes, EU Commissioner for competition.  
Photo by: John Thys/Stringer/AFP/Getty images

in which TSOs operate and which investments they must make in order to develop the network. The package also sets up an Agency for the Co-operation of Energy Regulators to improve cooperation on cross-border issues. Among the Agency's tasks will also be to monitor regional cooperation between power and gas TSOs and to supervise the European Network of Transmission System Operators for Electricity (ENTSO-E), and the European Network of Transmission System Operators for Gas (ENTSO-G) which are to be created by 2010. These two European TSO associations will act as representatives to the Agency particularly with regard to the implementation of grid codes. In July 2009, ENTSO-E will amalgamate all the regional associations of power TSOs that currently exist in Europe (UCTE, ETSO, Nordel, etc.). For gas, the situation is simpler. Gas TSOs are currently represented by Gas Transmission Europe (GTE), which can simply be lifted from its parent association Gas Infrastructure Europe (GIE), and renamed 'ENTSO-G'. Right now, however, both future associations have their work set out for them as they both need to draw up a 10-year plan at the European level.

### Consumer rights |

The third major area covered by the new legislation includes the improvement of consumer rights. Henceforth consumers will be able to change provider free of charge within three weeks and receive the final bill at the latest six weeks after switching suppliers. They will have the right to more transparency with regard to their consumption details.

## *Consumers will be able to change provider free of charge within three weeks*

The new legislation provides a detailed list of items of information that must be included in energy supply contracts. Member states are also required to implement independent mechanisms to deal efficiently with complaints and out-of-court dispute settlements, such as an energy ombudsman or a consumer body. Consumers will also be entitled to compensation if service quality levels are not met.

Subject to an economic assessment by the European Commission, 80% of consumers

should have access to intelligent metering systems by 2020. This will 'assist the active participation of consumers in the electricity supply market.' Households and, if member states deem it appropriate, small businesses, will also be able to enjoy public service guarantees, in particular with regard to security of supply and reasonable tariffs, as a way of encouraging fairness and competitiveness. Customers must also have access to choice, fairness, representation and dispute settlement mechanisms. The new legislation includes special protection measures for vulnerable consumers. EU countries should take 'appropriate measures' to address energy poverty such as National Energy Action Plans or benefits in social security systems to guarantee necessary energy supply to vulnerable customers or energy efficiency improvements. Finally, the Commission will prepare a 'clear and concise' Energy Consumer Checklist of practical information relating to energy consumer rights. This document will have to be made available to all consumers. It no longer bears the name of Charter on energy consumers' rights, but has the same goal.

Will this be the last EU legislation on energy market liberalisation? It seems unlikely, given that the discussions have shown that there is still a lot to

do to guarantee effective competition and protect consumers. Many studies show that the market may become even more concentrated and develop into an oligopoly. In addition, certain key countries have failed to implement relevant legislation. Soaring energy prices have even led some states (notably France and Spain) to re-introduce regulated tariffs for small enterprises and consumers to avoid social unrest, in clear breach of EU liberalisation rules. But for the time being, Brussels will not question the dogma of liberalisation. ■