



TEPSA Brief:

Agency for the Cooperation of Energy Regulators

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Legislative procedure: Codecision

Procedure reference: COD/2007/0197; Initial document reference: COM(2007)0530

Rapporteur: Giles Chichester (EPP-ED, UK) until June 2008. It has not been decided who will replace Giles Chichester after his resignation as MEP.

EP Committee responsible: Industry, Energy and Research of the European Parliament (ITRE)

Council formation responsible: Transport, Telecommunications, Energy (TTE)

The European Commission put forward on 19 September 2007 a proposal to establish an Agency for the Cooperation of Energy Regulators (COM(2007) 530 final). The proposal was amended by the European Parliament on 18 June 2008 and will now be subject to the deliberations of the Transport, Telecommunications and Energy Council (TTE) at its meeting on 9 and 10 October 2008.

Context

Underlying the European Commission's legislative package on the internal market for electricity and gas is the motivation to proceed in creating a single European energy market and so to contribute to enhanced competition and reduced prices. At the core of the proposal are two options::

- Ownership unbundling (preferred option): This implies that not the same person or group of persons can be in charge of controlling a supply undertaking and at the same time hold interest or right in a transmission system or transmission system operator (TSO).
- Independent System Operator (alternative option): This means that vertically integrated companies may own their network assets, but a regularly monitored operator must manage the network independently.

Four more items are included in the legislative package besides the creation of the Agency for the Cooperation of Energy Regulators (ACER): (1) Increasing the power of national regulatory agencies, (2) stronger TSP cooperation and enhanced transparency for wholesale markets, (3) strategic gas stocks, and (4) control of third country investment ("Gazprom clause"). The proposal applies to both the gas and electricity market, and to EU and non-EU companies.

Tasks and Structure of the Agency

The tasks of the Agency would be:

- To provide a framework for national regulators to cooperate, especially with regard to regional cooperation, cross-border issues and the convergence and later on harmonisation of grid-codes (grid codes are technical rules electricity companies must operate under which at the moment provide a non-tariff barrier to market entry)
- Regulatory oversight of the cooperation between transmission system operators, i.e. defining the priorities of the European Networks of Transmission System Operators for Electricity and Gas, review and preparation of technical and market codes
- Individual decision powers for exemption requests concerning infrastructure assets of European interest and the regulatory regime applicable to infrastructure in transnational issues, technical issues if granted to the Agency
- General advisory role: advisory role towards the European Commission, especially with regard to review of existing legislation and identification of best practice and to exemption requests

The creation of an Agency thereby provides a solution on the middle ground, as "the option of setting up a Single European operator is premature at this stage and is likely to encounter strong resistance from a number of Member States and stakeholders." (COM SEC (2007) 1179, p.4)

Structure:

- Director, responsible for the representation of the Agency and day-to-day management
- Administrative Board, responsible for administrative and budgetary matters, appointment of Director after consultation of the Board of Regulators
- Board of Regulators, responsible for regulatory matters and provisions
- Board of appeals to handle appeals brought forward against the Agency

- Staff of 40-50 people
Estimated costs: 6.434.000 € per year
The Agency should, according to the Commission proposal, start working from 2009 onwards.

Reactions:

- The European Parliament wishes to give the Agency a stronger say: the European Network of Transmission System Operators should on the basis of Agency guidelines propose the rules, plans and codes, and the Agency be the institution adopting them. There should also be monitoring tasks with regard to market distortions and an advisory role vis-à-vis the other European institutions and the national regulators, not making the Agency an exclusive think-tank of the European Commission.
- In the Council, the main dividing line is linked to the question of ownership unbundling with Britain, Spain, the Netherlands, and the Scandinavians in favour and France as well as Germany strongly opposed. For ACER, questions are mostly linked to its competences.
- The Council of European Energy Regulators is in favour of ACER, but criticises its structure as too weak, too limited involvement of stakeholders and too much left-overs for European Networks of Transmission System Operators. CEER suggests that Strategic Guidelines are agreed at the very early stage of the Comitology Procedure for each code or rule.

Other proposals

- The “third way”, called “effective and efficient unbundling” (option “EEU”), proposed by eight member states and led by France and Germany, would allow suppliers to retain their distribution network within a structure where transport would, in practice, be separate and independent.
- Dutch, Belgian and French operators are at the moment working together to create a regional electricity market with the focus on wholesale trading arrangements.

Initiatives already in place:

Florence Forum: The Electricity Regulatory Forum of Florence consists of national regulatory authorities, Member States, the European Commission transmission system operators, electricity traders, consumers, network users, and power exchanges. It meets since 1998 in order to establish an internal energy market.

Madrid Forum: The European Gas Regulatory Forum of Madrid applies the same structure as the Florence Forum and focuses on the creation of a true internal gas market.

The European Regulators Group for Electricity and Gas (EREG) was created by decision of the European Commission in November 2003 and acts as a coordinating body of the national regulators and advisory group to the European Commission.

In Spring 2006 EREG launched the Electricity Regional Initiative, which is composed of seven regions: Baltic (Estonia, Latvia, Lithuania), Central-East (Austria, Czech Republic, Germany, Hungary, Poland, Slovakia, Slovenia), Central-South (Austria, France, Germany, Greece, Italy, Slovenia), Central-West (Belgium, France, Germany, Luxembourg, Netherlands), Northern (Denmark, Finland, Germany, Norway, Poland, Sweden) and South-West (France, Portugal, Spain), led by the Spanish Energy Regulator CNE. Furthermore four Gas Regional Initiatives have been established.

Further information:

Commission of the European Communities, Proposal for a Regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators, COM (2007) 530 final, Brussels, 19 September 2007, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0530:FIN:EN:PDF>.

European Parliament, Report on the proposal for a regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators, A6-0226/2008, 4 June 2008, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2008-0226+0+DOC+PDF+V0//EN&language=EN>.

Council of the European Union, Background Note, TTE Council, Brussels, 22 February 2008, available at http://www.eu2008.si/si/News_and_Documents/Background_Information/February/0228_TTE.pdf.

European Economic Area, Standing Committee of the EFTA States, EEA EFTA Comments to the Commission's Proposal for the third energy market package, Brussels 24.01.2008, available at <http://www.efta.int/content/eea/Comments/comments-05-08/comment-third-energy-market>.