



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 November 2005

**13463/2/05
REV 2**

**ENER 155
ENV 477
TRANS 205**

NOTE

From : Presidency
To : Delegations

Subject : Better Regulation: implementation and outcomes of energy liberalisation package
- *possible elements for the policy debate at the TTE Council (1 December 2005)*

At the TTE Council on 1 December the Commission will report – on the progress made in creating a fully operational internal energy market (and what more might need to be done) and on the emerging findings of the sector inquiry into the Europe electricity and gas markets. This will provide the basis for a policy debate on the practical impact of the energy liberalisation package.

In the light of the discussions at the High Level meeting held in London on 3-4 November and comments received the Presidency has amended the questions that could be the focus of the policy debate as well as the introductory texts setting out the key areas which in its view need to be addressed. As usual these questions are without prejudice to other topics Member States would consider important.

Given the time available for the debate delegations are invited to send written contributions in advance of the Council and concentrate on key messages at the Council.

Better Regulation: implementation and outcomes of the energy liberalisation package**Questions for the policy debate***INTRODUCTION*

Secure supplies of electricity and gas at competitive prices are crucial to Europe's drive to improve its competitiveness and increase the welfare of its citizens. In order to achieve this objective the decision was taken in the early 1990s to introduce competition into EU electricity and gas markets. We have come a long way since then. The second electricity and gas directives have been adopted and should by now be in force in Member States. By July 2007 all consumers in the EU should be free to buy their electricity and gas from competing suppliers. Now is the time to take stock of how effective the steps Member States have taken so far have been in reaching our objective of a single European energy market and to consider whether there are areas where further action needs to be taken. The Commission will report at the TTE Council on 1 December – on the progress made in creating a fully operational internal energy market (and what more might need to be done) and on the emerging findings of the sector inquiry into the European electricity and gas markets. This will provide the basis for a policy debate on the practical impact of the energy liberalisation package, a debate that has become more urgent following the discussions on a European energy policy at the informal meeting of EU Heads of State or Government on 27 October last.

*KEY ISSUES TO BE ADDRESSED***1. IMPLEMENTATION AND ENFORCEMENT**

In accordance with the principles of better regulation, it is important that existing legislation is fully implemented in all Member States not only in letter but also in spirit, and its actual impact on the ground monitored and evaluated, before the need for further legislation is considered.

Transposition of the liberalisation directives was late in most member States and some have not yet implemented them. This situation must be rectified as a matter of urgency.

Will full implementation of the existing legislation in all Member States lead to the establishment of liberalised EU energy markets, or will obstacles still remain? If the latter, what are these obstacles? What non-legislative action could be taken to increase the effectiveness of the existing legislation, e.g. exchange of best practice, monitoring and reporting?

Adequate powers and independence of regulatory authorities

The detailed rules governing the operation of markets need close regulatory oversight. The national regulatory authorities, including competition authorities, will therefore play an increasingly important role in delivering liberalised energy markets across the EU. The liberalisation package entrusts a wide range of tasks to regulators and it is important that they have the duties and powers to carry out these tasks effectively, independently of both the industry and national governments. Moreover, if national markets are to be further integrated regulators' remits may need to be adjusted to enable them to regulate cross-border network access and trading and possibly take decisions with effect beyond their national jurisdiction.

Are national regulatory authorities adequately equipped to fulfil the tasks assigned to them in the legislation? Is there a need for greater consistency in their duties and powers? Do regulators, including competition authorities, need greater powers of monitoring and enforcement? Does their co-operation need to be enhanced?

2. TRANSPARENCY

Markets cannot function efficiently unless all market players have equal access to accurate, timely and comprehensive information. This is also relevant for customers when they are considering whether to switch supplier. Asymmetry of information, i.e. information held by incumbents and not shared with new entrants, is a major obstacle to efficiently functioning markets. Equally, information held by incumbents where it cannot be shared with market players needs to be properly ring fenced.

What further measures to increase transparency could be taken now by regulatory authorities or Member States under the existing legislation?

3. FURTHER MARKET INTEGRATION

The low levels of price convergence across the EU and cross-border trade indicate that further market integration is required, even taking into account national circumstances, increased prices for primary energy sources and the impact of the EU Emissions Trading Scheme. There needs to be an increased push to the establishment of regional markets in a way conducive to the final goal of a single energy market and as a further contribution to security of supply and competitive energy prices. Action could include closer cooperation and coordination between TSOs and regulators; clearer incentives for investment in networks and cross-border infrastructure; rapid adoption of guidelines under the Electricity Regulation (congestion management, tariffication, inter-TSO compensation); new guidelines under the Gas Regulation (e.g. balancing, secondary trading); better functioning wholesale markets with more liquidity and transparent price formation.

Are the above actions the right ones to accelerate the coordinated development of regional markets ? If so, which should be given priority? Are there other steps which could be taken to remove the obstacles to cross-border trade and thereby improve market integration in the EU? Can this all be achieved within the existing legislative framework?

4. IMPROVED THIRD PARTY ACCESS TO NETWORKS

Fair and non-discriminatory access to the network for all system users, efficient and non-discriminatory management of congestion and the release of unused capacity are essential if competition is to develop. These cannot be achieved without effective unbundling of network businesses from production and supply. In the absence of ownership unbundling (which is not required under existing legislation), legal and functional unbundling must be strictly enforced by regulatory authorities.

Would proper implementation of the existing legislation increase the level of competition in EU energy markets and facilitate new market entry? Or do the high level of concentration in European markets and prevalence of long term capacity reservation significantly restrict the development of competition?