

**INTERNATIONAL FEDERATION
OF INDUSTRIAL ENERGY CONSUMERS****EUROPE**

Head Office: 119 Chaussée de Charleroi B- 1060 Brussels

Tel: 32 2 542 06 87 Fax: 32 2 542 06 92

IFIEC Europe

Documents- Oil & Natural Gas

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MEMORANDUM

The industrial consumers' point of view with respect to the Common Position adopted by the Council 3 February 2003 with a view to the adoption of a Directive of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC

Ref: Interinstitutional File 2001/0077a (COD) - 15531/02 REV 2 - ENER 317 CODEC 1642

Introduction

IFIEC Europe supports the initiative led by the European Commission to accelerate the completion of the internal gas market and would welcome a concurrent opening-up of competitive natural gas and electricity markets in 2004.

It is most important that the new Directive will be sufficiently strong to achieve its objective of enhanced rules designed to enforce effective competition. The proposal represents an important step forward towards this goal, and adoption of the new Directive should not be unnecessarily held up further.

The Common Position adopted by the Council on February 3 overall represents progress and reflects good compromise. IFIEC will therefore limit its further comments to a minimum of the most important issues. The major concerns remaining are:

Proper Unbundling remains the most important issue

While we understand that ownership unbundling, the only effective way to avoid conflicts of interest, cannot be enforced at this time, we feel all the more that legal unbundling must be subject to clearly defined principles and rules in order to prevent abuse. Our concerns are reinforced by the fact that the latest version of the proposed Directive represents again a step back in this respect, since the provision giving transmission and distribution system operators a minimum of independent decision making rights has again been weakened by adding text which is going in the opposite direction to what is required to protect the independence of grid operators.

IFIEC believes that it is most important that legal unbundling is achieved with the strongest possible separation between the TSO and its parent company, as well as between the TSO and its sister companies, if any of these are integrated gas undertakings. Proper unbundling is

critical for the new Directive to succeed. Therefore, it is imperative that transmission system operators and distribution system operators be companies independent from natural gas undertakings and have their own independent board of directors.

Consequently, the following articles are challenged:

. In articles 9.2.(c), 13.2.(c) and 15.(c) the last sentence should be deleted.

Ultimate supervision rights of parent companies in respect of return on assets in a subsidiary are already protected by existing laws. In this Directive, the independence of transmission system operators and distribution system operators and their capability to use sufficient financial resources for investments and reinvestments in a cost-effective way must primarily be protected.

Another important issue are the new infrastructure exemptions

Article 22 raises a lot of concern and opens the door to abuse. It could prevent TPA altogether and thereby seriously hamper the continued development of the single market. Also, there needs to be more clarity as to how regulatory power is shared between Member States (eg: in the case of interconnectors). We understand the need for exemptions, but there must be strong enough legal provisions to avoid any misuse. Minimum requirements for such exemptions should explicitly include:

- . Appropriate regulatory control in all cases, also to be shared and coordinated between Member States where more than one Member State is involved.
- . A limited period of time in each case. This should be relatively short, say not exceed 5 years.
- . A reasonable portion of such new capacity should be allocated to and made available for TPA from the beginning in accordance with Article 18. This is of most importance to encourage the development of a competitive market.