



**COUNCIL OF
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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject : Common position adopted by the Council on ... with a view to the adoption of a Regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators
- Draft statement of the Council's reasons

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I. INTRODUCTION

1. On 19 September 2007, the Commission presented a proposal for a Regulation establishing an Agency for the Cooperation of Energy Regulators, based on Article 95 of the Treaty, together in a package with four other proposals concerning the internal energy market.
2. The Committee of the Regions and the European Economic and Social Committee delivered their opinions on the complete package on 10¹ and 22 April 2008² respectively.
3. The European Parliament adopted its Opinion³ at first reading on 18 June 2008, approving 73 amendments. The Commission did not present a modified proposal.
4. On , the Council adopted its Common Position in accordance with Article 251 of the Treaty.

II. OBJECTIVE OF THE PROPOSAL

5. The proposal is part of the third internal energy market package, together with the Directive concerning common rules for the internal market in natural gas, the Regulation on conditions for access to the natural gas transmission networks, the Directive concerning common rules for the internal market in electricity and the Regulation on conditions for access to the network for cross-border exchanges in electricity. It contributes to putting in place the regulatory framework needed to make market opening fully effective and create a single gas and electricity market by establishing an Agency for the purpose of assisting regulatory authorities in exercising at Community level the regulatory tasks performed at national level, and where necessary to coordinate their action.

¹ OJ C 172, 5.7.2008, p. 55.

² OJ C 211, 19.8.2008, p. 23.

³ OJ C....

III. ANALYSIS OF THE COMMON POSITION

6. General Remarks

6.1. The Commission has accepted all the changes introduced by the Council to its proposal.

6.2. Concerning the *73 amendments adopted by the European Parliament*, the Council has followed the Commission in

- accepting the following 25 amendments:
fully (sometimes with redrafting): 9, 12, 45, 47, 48, 49, 53, 54, 58, 59 and 66
partly/in principle/in spirit: 3, 4, 11 (first part), 13, 15, 16, 40, 44, 51, 57, 61, 64, 68 and 76; and
- rejecting the following 25 amendments: 8, 17, 18, 20, 21, 22, 25, 29, 30, 34, 36, 37, 38, 46, 50, 52, 55, 56, 60, 62, 63, 67, 69, 71 and 73, on grounds of substance, form or consistency.

6.3. The Council has deviated from the Commission position in

- accepting in substance amendment 65 and
- rejecting the following 23 amendments: 5, 6, 7, 10, 11 (second part), 14, 19, 24, 26, 27, 28, 31, 32, 33, 35, 39, 41, 42, 43, 70, 72, 74 and 75 .

7. Specific Remarks:

7.1. Regarding the *EP amendments* where the Council has deviated from the *Commission position*:

- a) The Council has accepted amdt 65 (in line with the Director having to act strictly in accordance with the Board of Regulators' instructions) .
- b) The Council has rejected the 23 amendments listed above (point 6.3.) on the following grounds:
 - i) amdt 5: duplicates tasks already carried out by the Commission and is not in line with the tasks foreseen in the Commission proposal
 - ii) amdt 6: no added value and incorrect as cooperation of national regulators will continue to take place outside the framework provided by the Agency
 - iii) amdt 7: renders the Agency's scope unclear and contradicts the non-binding nature of some of its acts.

- iv) amdt 10: mixes up the independence of national regulators, provided for by the Electricity and Gas Directives, with that of the Agency's bodies.
- v) amdt 11 (second part): no added value and not consistent with the Director's tasks
- vi) amdt 14: not in line with the operative provisions of the Regulation
- vii) amdt 19: mixes up the acts of the Agency with its tasks as described in articles 5 to 10
- viii) amdt. 24: Art. 30 (participation of third countries) suffices to ensure adequate involvement of third countries in the Agency's work
- ix) amdt. 26: the Council notes that the Commission could only accept this amdt for individual decisions in specific cases under precisely defined conditions. Moreover the Council sees no basis to delegate the Commission's powers in these matters and further notes that the amendment would restrict the powers of the Agency to technical codes only while market codes should be covered as well by the Agency's opinions
- x) amdt. 27 and 28: largely covered by Art. 6(6), 7(3) and 8(1) third sub-paragraph.
- xi) amdt 31: the Agency cannot ensure cooperation between regulators
- xii) amdt. 32: and 33: these tasks normally fall under the Commission's remit:
- xiii) amdt 39: duplicates tasks foreseen under Directive 2004/67 on the security of natural gas supply and Directive 2005/89 on the security of electricity supply and infrastructure investment.
- xiv) amdt 42: art. 7 of the proposal is directed at national regulators not at TSOs
- xv) amdt. 35, 41 and 43: amdt 35 and 41 duplicate each other and, as well as amdt. 43, duplicate tasks already carried out by the Commission pursuant to the Electricity and Gas Directives.
- xvi) amdt 70: contrary (c) to the voluntary nature of national contributions and (ca) unworkable in practice
- xvii) amdt 72: it could be left to the rules of procedures of the Regulatory Board how it should formulate its opinion
- xviii) amdt 74: it should be left to the Commission to decide whether and how widely to consult when carrying out its evaluation
- xix) amdt 75: the time period envisaged in this amendment is too short to allow for a meaningful evaluation.

7.2 Concerning the *Commission proposal*, the Council has introduced certain other modifications (of substance and/or of form) so as to provide for a regulatory Agency, independent from the Member States and the Commission, with well circumscribed tasks that strictly reflects the tasks entrusted to the Agency by the Electricity and Gas Directives and Regulations. The Agency focuses on issues involving more than one Member State as far as binding decision-making is concerned; its involvement in technical matters (establishment of network codes) has been strengthened, but is still of an advisory nature. It generally allows for the national levels to play their parts (e.g. two-step approach for defining terms and conditions for access and operational security for cross-border infrastructure (Art.8)). In all these tasks, market participants and authorities at national levels are duly consulted (Art. 8(1), 10) and due account is taken of the outcomes of regional cooperation between TSOs and between regulators (Art. 6(6) and 7(3)).

The common position provides (Art. 13) for a strong Regulatory Board, composed of senior representatives of national regulators, and a Director of the Agency acting in accordance with the Regulatory Board. It also foresees a lean and efficient Administrative Board (Art.11), consisting of 6 members (as suggested by the EP, amdt 44), five of them being appointed by the Council and one by the Commission, with partial rotation ensuring adequate participation of Member States over time. With a view to improving democratic accountability, transparency provisions have been significantly strengthened, e.g. on the interests of Board members (e.g. Art.11(7)).

With a view to adapting the Agency in the light of experience the common position introduces a review mechanism (Art. 33(2)) with a strong input from the Regulatory Board.