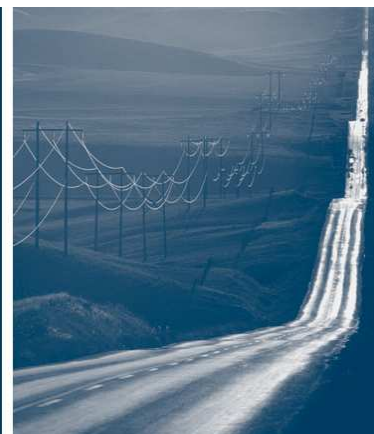


# Brussels Energy Brief

An overview of the regulatory and legal developments impacting companies operating in the energy sector



February 2007

## Key Developments

### Liberalisation of Energy Derivatives Trading in Italy

Carsten Steinhauer

On 17 February 2007 Law no. 13/2007 was published in the Official Gazette. While the law contains a long list of provisions aimed at implementing European laws into national Italian law, a seemingly minor clause also eliminates the licence requirement for the trading in energy derivatives on own account.

Italian law generally reserves operations on Italian regulated markets to authorised banks or investment firms. This restriction, imposed by art. 25, paragraph 1, of legislative decree no. 58/2008 (the Italian Consolidated Finance Act), so far also applied to trading in energy derivative contracts.

Art. 10 of law no. 13/2007 now introduces a specific exemption for energy derivatives by adding a new paragraph 1-bis to art. 25 of the Consolidated Finance Act, which provides that trading on own account on the regulated markets is also permitted to unauthorised operators if related to commodities or indices of the energy sector. The exemption is rather broad as it does not further define the “energy sector”, so that any derivative contracts based on electricity, gas, oil, carbon or any other energy commodity should now be freely tradeable in regulated markets.

As a consequence, energy companies will be able to conclude energy derivative contracts without the interposition of banks or financial intermediaries. And professional traders will have the possibility to sell both to producers and end consumers risk management instruments such as swaps, futures, financially settled forward contracts or options on regulated markets.

The new provisions will enter into force on 5 March 2007.

### EU Council’s Conclusions on Energy Policy for Europe

Elena Kostadinova

The EU Council has confirmed the objectives of the EU Energy Policy set in the European Commission’s Energy Package of 10 January 2007. The Council urged Member States to achieve

the EU’s energy consumption saving potential of 20 per cent compared to projections for 2020. It has welcomed a new international agreement on energy efficiency and called for an early review of the Community guidelines on State aid for environmental protection. The Council confirmed a target of 20 per cent of renewable energies in overall EU energy consumption and a ten per cent binding minimum target for the share of biofuels in overall EU transport and diesel consumption by 2020. On the internal market for gas and electricity, the Council invited the Commission to make proposals for inter alia (i) the effective separation (unbundling) of supply and production activities from network operations and (ii) further harmonisation of powers and strengthening of the independence of national energy regulators. The Council’s conclusions underline the EU’s determination to prioritise its Energy Policy, but also prove that it will be very difficult to find implementation measures that will suit a majority of EU Member States.

### EU Calls for New Global Agreement to Succeed Kyoto

Benoît Keane

The European Environment Commissioner, Stavros Dimas, supported by the EU Council, has called for the international community to begin urgent negotiations on a comprehensive climate change treaty that could succeed Kyoto in 2012. The EU has called on developed countries to reduce their emissions to below 30 per cent of 1990 carbon levels as part of a new international agreement. In a meeting in Brussels, the EU environment ministers agreed that the EU should reduce its emissions by 20 per cent of pre-1990 levels by 2020 even if such an agreement on carbon emissions could not be found. The EU commitment to combat climate change follows last week’s decision to place maximum carbon emission requirements upon new motor vehicles by 2012.

### EU Strategy to Reduce CO<sub>2</sub> Emissions From Motor Vehicles

Benoît Keane

The European Commission has proposed a comprehensive strategy to reduce carbon dioxide (CO<sub>2</sub>) emissions from new cars and vans sold in the European Union. Average emissions from new cars sold in the EU-27 must be reduced to 120g

CO<sub>2</sub>/km by 2012 – a reduction of 25 per cent from current levels. Improvements in vehicle technology would have to reduce average emissions to no more than 130g/km, while complementary measures would contribute a further emissions cut of up to 10g/km, thus reducing overall emissions to 120g/km. For vans, the fleet average emission targets would be 175g by 2012 and 160g by 2015, compared with 201g in 2002. Commission President Barroso welcomed the new measures and called upon the car industry to preserve their long term competitiveness by taking an innovative lead in the interest of consumers. The legislative framework to implement the strategy will be proposed by the Commission by the end of 2007.

### **Stricter Fuel Standards to Reduce Air Pollution**

Elena Kostadinova

The European Commission has proposed new standards for transport fuels as part of its policy to combat climate change and reduce air pollution. The new standards will be achieved by amending the 1998 Fuel Quality Directive, which sets out common EU specifications for petrol, diesel and gas oil for road and inland waterway transport. The revised Directive will introduce an obligation for fuel suppliers to reduce greenhouse gas emissions from fuel by one per cent per unit of energy per year starting in 2010. A separate petrol blend will be developed with a higher permitted content of oxygen-containing additives, which will enable the use of more biofuels in petrol. From 1 January 2009 all diesel fuel marketed will have to have an ultra-low sulphur content (no more than ten parts per million). Compliance with these and other new requirements will oblige industry to make significant investments in their products.

### **EU and Norway Cooperate on Carbon Capture and Storage**

Elena Kostadinova

The EU Energy Commissioner, Andris Piebalgs, has met with the Norwegian Minister of Petroleum and Energy, Odd Roger Enoksen, to discuss ways of enhancing the development of carbon capture and storage technologies. Norway already has extensive experience in this area, and is working with industry on a project to capture and store CO<sub>2</sub> emitted from the combined heat and power plant currently being built at the Mongstad refinery. This full scale facility will become operational in 2014. The EU intends to exchange experience with Norway, and concrete proposals will be presented during the next EU – Norway Energy Dialogue to be held in June 2007.

### **Consultation on Carbon Storage Risks**

Elena Kostadinova

The European Commission launched public consultations on potential risks from the new carbon capture and storage technology (CCST) developed to counter global warming. The technology separates carbon dioxide from gases produced by power plants, compresses the CO<sub>2</sub> and transports it for storage in geological formations such as oil and gas fields. CCST could remove 80 to 90 per cent of power plants' CO<sub>2</sub> emissions and reduce costs of stabilising CO<sub>2</sub> concentrations in the atmosphere by 30 per cent. The consultations aim to examine environmental risks associated with the capture, transportation and storage of CO<sub>2</sub> emissions. Interested parties are invited to comment by 16 April 2007.

### **Commission Dawn Raids Power Transformer Companies**

Philip Torbøl

The European Commission has confirmed that it has carried out unannounced inspections at the premises of several power transformer producers in France, Germany and Austria. Power transformers are key components in electricity transmission and distribution networks. The Commission states that it has reason to believe that the companies concerned may have engaged in unlawful cartel activities in violation of Article 81 EC. Although the Commission did not disclose the names of the targeted firms, Siemens AG and the ABB Group have revealed that they are among the companies involved in the probe. The Commission will now examine the documents collected during the dawn raids. It may take months or even years before the Commission decides whether or not to open formal proceedings in the case.

### **France, Ireland and Italy to Partially Recover Energy Product Tax Breaks**

Andrea Hamilton

The European Commission has ordered France, Ireland and Italy to partially recover tax exemptions on energy products that constitute illegal State aid. Beginning in the 1990s, these three Member States provided tax breaks on mineral oil use in the production of alumina, which, in practice benefit only one company per Member State. In 2005, the Commission ordered a partial repayment of tax exemptions granted up until 2003, but extended its investigation into tax breaks granted from 2004, given the entry into force in that year of the Energy Tax Directive, 2003/EC/96. The Commission ultimately found that the post-2004 tax exemptions (i) fall outside the Directive's scope, and (ii) constitute incompatible State aid. France, Ireland and Italy must now recover 20 per cent of the value of the exemptions granted since 1 January 2004.

## Low Spanish Regulated Electricity Tariffs Investigated

Elena Kostadinova

A formal State aid investigation has been opened by the European Commission into artificially low regulated tariffs for electricity supplied to energy-intensive industries in Spain. These tariffs, which are lower than the liberalised market prices, appear to constitute significant operating aid for these industries. The Commission is concerned about the potential distortion of competition in the product markets affected.

## Spain Referred to ECJ Regarding Electricity and Gas Regulator's Powers to Review E.ON Bid

Juan Gutiérrez

In February 2006, the German energy company E.ON launched a bid to acquire the Spanish energy company Endesa. E.ON's offer was competing with a previous bid made by the Spanish energy company Gas Natural. A few days later the Spanish Government adopted a Royal Decree-Law empowering the Spanish electricity and gas regulator to review the E.ON bid. This Decree-Law includes provisions that require prior approval for the acquisition of a stake of more than ten per cent (or any other stake that entails significant influence) in a company engaging in regulated activities, such as oil and gas. On 3 May 2006, the Commission opened infringement proceedings against Spain considering that the Decree-Law unduly restricts the free movement of capital and right of establishment. The Commission was not satisfied with Spain's arguments in defence and has now referred Spain to the European Court of Justice.

## Slovenia's National Allocation Plan for 2008 – 2012 Emissions Trading Period Approved

Elena Kostadinova

Slovenia's National Allocation Plan (NAP) is the thirteenth NAP to be assessed by the European Commission for the 2008 – 2012 emissions trading period. The Commission has accepted the proposed total number of emission allowances equivalent to 8.3 million tonnes of CO<sub>2</sub> because this figure is lower than Slovenia's verified emissions for 2005. Slovenia has nevertheless been requested to amend its NAP in order to address two issues. First, the NAP must include more information on the way new entrants will be treated. Second, Slovenia must reduce the use of credits under the Kyoto Protocol's "flexible" mechanisms to 15.7 per cent of its total allocation. These credits are used for investment in clean technologies in third countries. Slovenia's NAP will be approved automatically once these changes have been made.

## More Spanish Energy

Morten Nissen

The European Commission has cleared the acquisition of Scottish Power, a UK energy company, by Iberdrola, a Spanish energy company, under the EU Merger Regulation. The Commission's examination of the transaction found that the horizontal overlaps between the activities of Iberdrola and Scottish Power are limited to the trading at European level of so-called "financial" electricity and CO<sub>2</sub> emissions rights. Thus the companies' combined position in both markets is very limited and therefore raises no contentious issues. In line with earlier decisions the Commission disregarded the implications of possible State aid on the assessment of the financial strength of the notifying party.

## Merger Notifications

### End January – February 2007

- M.4532 - LUKOIL / CONOCOPHILLIPS (17 January 2007)

## Meetings

### March 2007

- Ministerial Dinner on the fuel strategy (21 March 2007)
- Transport, Telecommunications and Energy Council (22 – 23 March 2007)

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