

EUROPEAN ECONOMIC AREA
STANDING COMMITTEE
OF THE EFTA STATES

Brussels, 21 October 2004
Ref. No.: 1048201

SUBCOMMITTEE I ON THE FREE MOVEMENT OF GOODS

**EEA EFTA COMMENTS ON THE PROPOSED DIRECTIVE CONCERNING
MEASURES TO SAFEGUARD SECURITY OF ELECTRICITY SUPPLY AND
INFRASTRUCTURE**

I EXECUTIVE SUMMARY

The EEA EFTA States welcome the EU discussions on the proposed directive to safeguard security of electricity supply of 10 December 2003 (COM (2003) 740 final). Some of the provisions are partially covered by directives that have already been adopted. There is an obvious need to clarify both the appropriate format of measures to promote security of electricity supply and the substantive "added value" of the new proposal.

The EEA EFTA States highlight the need for some prudence as to the introduction of new legislation shortly after the adoption of the "Energy Market Package".

Due account should also be taken of the practical importance of regional electricity cooperation, as demonstrated by the Nordic electricity market.

The importance of clarifying the roles and responsibilities in a framework of security of supply is underlined. The EEA EFTA States are of the opinion that the Member States should individually determine these roles according to national circumstances.

The proposal by the Dutch Presidency (10509/04) of 23 July 2004 contains some improvements to the original proposal. The market and market-based instruments are, to a larger extent, placed at the forefront of the Dutch proposal, and the EEA EFTA States endorse some of the amendments of the substance.

The EEA EFTA States, however, emphasize that these are preliminary remarks and may be adjusted according to developments in the Council and the European Parliament. The final assessment of EEA relevance and possible adaptations, therefore, should not be anticipated from this position paper.

II GENERAL REMARKS

1. The EEA EFTA States have reviewed the proposed directive on measures to safeguard security of electricity supply of 10 December 2003 (COM (2003)740 final). In spring 2004, the EFTA Working Group on Energy Matters held its first round of discussions on the proposal with the Commission. The EFTA side is aware that the EU institutions are still conducting the first reading of the proposal and that final positions still have to be defined by the Member States. The EEA EFTA States have also considered the revised text of 23 July 2004 proposed by the Dutch Presidency (10509/04).

2. It is observed that the proposal is identified as text with EEA relevance and that the legal basis of the directive is Article 95 EC. Consequently, the EEA EFTA States find it appropriate to present the following remarks. The former's positions could, however, change in the event of any new versions and/or amendments that could result from the negotiations that are in progress in the Council and the Parliament.

3. The EEA EFTA States are basically positive about the fact that the EU has started policy discussions on *how* security of supply in electricity could be ensured in a more open market framework. In this regard, reference is made to the discussions on the Green Paper on Energy Security. Some of the issues discussed are in line with the challenges and solutions discussed in the EEA EFTA State, particularly in Norway. The Norwegian government submitted a White Paper on Security of Electricity Supply, no. 18 (2003-2004), to the Storting in December 2003.

4. There is an obvious need for the relevant EU institutions to discuss the format and the means (legislation, policies, procedures, etc.) that would be the most appropriate for the promotion of security of electricity supply at EU level.

5. In its initial proposal (COM (2003)740 final), the Commission had communicated parallel messages that were not always clear and consistent, when assessed in a wider context. The Energy Market Package and the amended Electricity Market directive have marked important steps forward. It is of utmost importance to assess the added potential of this newly proposed Security of Electricity Supply directive, not least in light of the new Energy Market Package of last year. Furthermore, the regulation on cross-border exchanges in electricity (2003/1228/EC) also needs to be taken into account. Some of the elements of the two directives seem to overlap.

6. It is observed that the Dutch proposal (10509/04) clarifies, to a certain extent, some of the inconsistencies in the initial proposal. However, the new text still does not provide a clear answer to the issue of "added value" of the legal measure in itself. The EEA EFTA side recommends that an assessment, which also covers the substantive "added value" of the new provisions of the security of supply directive compared with the relevant provisions in the electricity market directive (2003/54/EC) and its Articles 4 and 7, be carried out.

7. The EEA EFTA States would also like to underline the need to clarify the directive in relation to a series of adopted and proposed legislation such as the directive on the Promotion of Electricity Produced from Renewable Energy Sources (the RES directive - 2001/77/EC), the directive on Combined Heat and Power (the CHP directive - 2004/8/EC), the proposed revision of TEN guidelines, the proposed directive to promote end-use energy efficiency and energy services. *Implementation of directives could become more complicated than necessary if*

parallel or similar requirements emerge in different proposed and adopted directives. The EEA EFTA States are supportive of the general direction in the new text by the Dutch Presidency, which is more consistent in its reference to other directives directly concerning the electricity sector.

8. The need for a new legal instrument has to be balanced against the need for regulatory stability following adoption of the Energy Market Package. The new proposal was submitted shortly after adoption by the Council and the European Parliament of the Electricity directive (2003/54/EC) and the Regulation on Cross-Border Exchanges in Electricity (2003/1228/EC). The EEA EFTA States do not anticipate any conclusions to the analysis of the proposal and its relevance for the EEA. However, the EEA EFTA States recommend that the newly adopted Energy Market Package should call for prudence as to the introduction of new and overlapping regulations at this stage, when the new Internal Market framework is still being implemented.

9. Another general remark from the EEA EFTA States is the need to clarify the situations and problems that the directive is intended to address. At this stage of the process, it is not clear if the proposal addresses in particular short-term constraints, shortages or "blackouts", or the more long-term challenges related to the electricity balances (energy/effect), adequate production and transmission capacity, requirement for diversification, etc. The directive has apparently a wide scope and range of objectives and the main message to the Member States of the EEA appears to be to invite national governments to formulate policy frameworks based on the principle of subsidiarity.

10. It is noted that a policy of security of electricity supply has to involve both national and international levels as the internal energy market is being opened and extended. However, the Commission proposal (COM (2003) 740 final) appears to convey some uncertainty as to the roles of the European and national levels. In this context, the EEA EFTA States would like to emphasize the practical importance of regional cooperation, as demonstrated by the Nordic electricity market.

11. Clarification of the different roles and responsibilities in a framework of security of supply compatible with an open market is of utmost importance. The EEA EFTA States believe that these important clarifications should be determined by the Member States. The roles of transmission system operators, regulators and ministries have to be defined clearly and included in the list of actors.

III SPECIFIC REMARKS

12. Subject Matter and Scope: Article 1

The Directive establishes an "adequate level of interconnections". The EEA EFTA States would like to underline that "adequate level" is not a clear definition and may be interpreted differently in each country. Adequate levels of interconnectors will depend on the electricity production and consumption in each area/country.

13. **Definitions: Article 2**

Distribution networks should also be included in the definition “operational network security” as defined in the text by the Dutch Presidency (10509/04). Therefore, the following wording is proposed to define "operational network security": "*the continued operation of the transmission and distribution network in all reasonably foreseeable circumstances.*"

14. **General Provisions: Article 3**

With regard to proposal (COM (2003) 740 final), it is important to clarify the roles of the different actors since the transmission system operators (TSOs), regulators and governments will be involved in securing electricity supply. In the EEA EFTA States' understanding, the Dutch proposal (10509/04) places the responsibility to define roles firmly with the Member States. It is vital for the market and society that the responsibilities are clarified in situations with strained electricity markets.

Some elements on the list in Art. 3(2) of the Commission's proposal (COM (2003) 740 final) should be fine-tuned and made compatible with a market approach. An explanation of the status and the reasons for these proposed provisions is required. These are relevant to the development of the electricity market and, therefore, for the security of energy supply. However, they are all regulated through different directives. There are some concerns among EEA EFTA States as to the focus on back-up capacity in 2 g.

15. **Operational Network Security: Article 4**

The EEA EFTA States support the need for consultations with neighbouring states through increased international coordination and see a need for strengthened cooperation and consultation in these matters. It can be assumed from Article 4.1 that each Member State can decide on how to undertake these consultations, in what format and by which actors (governments, TSOs, DSOs, regulators, etc.) (these policies are to be defined). (There might be learning effects following more transparency in the way individual states address these issues).

According to Art. 4(2) of the proposal by the Commission (COM (2003) 740 final), the Member States shall set performance standards. The EEA EFTA States support the amendment in the text by the Dutch Presidency (10509/04), which clarifies that this may be undertaken by the competent national authorities. What matters most is that such standards exist and that they are set or approved by the authorities.

The provision set out in Art. 4. (3) a is unclear. It should be adjusted in accordance with the regulation on cross-border exchanges in electricity ((EC) 1228/2003).

16. **Maintaining Balance between Demand and Supply: Article 5**

The EEA EFTA States endorse the recommendation for an analysis of the implications of the scope of this article and its relation to Articles 4 and 7 of the Electricity directive. If such an analysis were undertaken, the EEA EFTA States would wish to be informed of it.

The EEA EFTA States follow the developments in this provision, as contained in (COM (2003) 740 final), very closely since the definition of a legal text on the maintenance of balance between demand and supply suitable for every Member State in the EEA has to be considered as a challenge. The electricity systems are different in the various countries. The EEA EFTA States have noted the proposed requirement to maintain appropriate levels of reserve capacity and would support development that puts the establishment of markets and market-based measures at the forefront. However, if this is done, the question is what would then be the added value to the provisions of the electricity directive (2003/54/EC). The EEA EFTA States endorse the changes proposed in the text by the Dutch Presidency (10509/04) to Art. 5(1), which upgrade the importance of a wholesale market as a means to ensure balance between supply and demand.

The meaning of “demand side management” in this proposed directive (COM (2003) 740 final) has to be considered in light of the outcome of the energy services directive (COM (2003) 739). Compatibility with market reforms is an important concern in the evaluation of the rationality of the so-called demand side management techniques. The results of the negotiations on the energy efficiency and energy services directive should not be prevented. However, the EEA EFTA States underline the need for consistency with a market approach and between the different proposals. Consequently there are questions as to the need for additional legal text in this proposal. The EEA EFTA States support the proposal by the Dutch Presidency (10509/04) to reduce the reference to demand side management in this article to a reference to interruptible contracts.

The question is whether issues in Art. 5(2) regarding operational network security should be removed and placed in Art. 4. Then the understanding of technical reserve capacity would become more precise. This modification would clarify that Article 4 covers network security and Article 5 covers the balance between demand and supply in the market. The EEA EFTA States suggest the following wording in Article 5: *“Member States may require transmission system operators to maintain an appropriate level of reserves or equivalent measures relating to the balancing of production and consumption, especially in strained situations. Measures should be market-based, transparent and non-discriminatory.”* The provision should refer to Article 7 in the Electricity directive.

Art. 5 (3) focuses on incentives for a new generation (of electricity) in general. The EEA EFTA States believe that this provision should focus exclusively on special measures, not on ordinary production capacity. It is therefore suggested that the provision be adjusted accordingly.

17. Network Investment: Article 6

Demand side management is also mentioned in Article 6, as well as promotion of renewables, in the original Commission proposal (COM (2003) 740 final). This is also covered by provisions in existing legislation such as the RES directive (2001/77/EC) and the proposed Energy Services directive. The need for consistency between this directive, the RES directive and the Electricity directive has to be emphasized. These measures are already mentioned in Article 3.2. The EEA EFTA States would endorse a redraft of Articles 6.1 and 6.2. Major objections have been addressed by the Dutch Presidency's revised text (10509/04). The EEA EFTA States endorse, in particular, the importance attached to a regulatory framework that provides investment signals to network operators.

18. Interconnector Construction: Article 7

New transmission capacity through interconnectors within and between states and regions could, in general, improve security of supply. Article 7 outlines new procedures between TSOs, regulators and the Commission for reporting and consultation procedures of plans of investments. The EEA EFTA States would like to endorse deletion of Articles 7.4 to 7.6 in the initial proposal (COM (2003) 740 final). Therefore, the modifications of this article contained in the text by the Dutch Presidency (10509/04), including deletion of the obligation of regulators to consult with the Commission on the TSOs' investment plan, and deletion of Articles 7(4) through 7(6), are welcome.

The role of the TSOs at European level in this directive has to be defined in accordance with the role the TSO would have in an open electricity market.

IV CONCLUDING REMARKS

19. The EEA EFTA States reiterate that these are initial remarks that may be adjusted according to internal EU developments and amendments by the Council and the European Parliament. The EFTA side will put forward more specific remarks on the basis of new texts and of the outcome of the first reading in the Council and the European Parliament. The views presented here do not pre-empt a final assessment of the directive and possible EEA adaptations by the EEA Joint Committee.