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Brussels weighs legal action on internal energy market

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EU Energy Commissioner Günther Oettinger yesterday (28 February) gave governments more breathing space to pass energy liberalisation directives into national law as a 3 March deadline approaches. A month ago, not a single country had yet done so.

Background

The EU's first electricity and gas directives were adopted in the late 1990s, with the objective of opening up the electricity and gas markets by gradually introducing competition. The European Commission argued that liberalisation increases the efficiency of the energy sector and the competitiveness of the European economy as a whole. But many stakeholders and member states disagree.

To complete the internal energy market, a third package of gas and electricity directives were adopted in 2009, including 'unbundling' guidelines requiring energy transmission networks to run independently from the production and supply side.

But of three possible models of unbundling, completely separating production from distribution is considered the toughest option. Suppliers would thus have to sell their gas to transport businesses. Russian Prime Minister Vladimir Putin has energetically opposed this choice.

A second possibility is that companies would not be split up, but that an independent operator would be appointed for the transport infrastructure, the activities of which would be limited to one country. The third choice would mean that companies were not split up, but that a special board would take responsibility for their 'independent' decision-making

Speaking after a meeting of EU energy ministers in Brussels, Oettinger said that the European Commission was scanning legislation put forward by member states to incorporate the third energy package of legislation into national law.

"Once that process has been completed, we will start thinking about treaty infringement proceedings," he said.

But he added that the formal cut-off date of 3 March was "not an absolute deadline".

If the Commission were to enforce the deadline, it might in fact require extensive infringement proceedings. According to an internal report from the EU executive, "on 1 February 2011, not a single member state had yet notified its transposition measures to the Commission".

The 'non-paper', called 'The internal energy market - Time to switch into higher gear', forecast "clear risks" of delays to passing the legislation.

"Only in a few member states had draft legislation been submitted to parliament for adoption, or had the government been empowered by the parliament to adopt the necessary transposition measures," it said.

However, at yesterday's Energy Council meeting, Oettinger adopted a more conciliatory tone. The third package, he said, is "very much on the right track in most countries or has already entered into force". Other member states were lagging a bit behind, formally at least, the commissioner added.

Infringement procedure

In reality, the Commission only uses legal action as a last resort.

An EU diplomat told EurActiv that infringement proceedings were powerful instruments requiring detailed preparation, and as such were not used lightly. "Oettinger wanted to tell us 'we have our sword and sooner or later we can take it out of our bag but right now we're just watching you, so please hurry up!'," the diplomat said.

The Commission's careful balancing act between carrot and stick seems to reflect the importance attached to these complex measures of the internal market package.

The directives concerned propose several measures on which consensus was reached among the EU's member countries in 2009 after two years of heated debate.

They establish common rules for the generation, transmission and distribution of electricity and set rules for market access and sectoral tenders.

They also proffer guidelines for energy security, regularity, quality and price, including environmental protection, and energy efficiency.

For households and businesses, they ensure rights of access to electricity supply and the protection of vulnerable customers from disconnection too.

Much finalising of nitty-gritty details is now expected in European capitals over the weeks ahead to resolve issues such as the potential 'unbundling' or separation of ownership between gas production and distribution facilities.

Positions

Mark Johnston of the **WWF** said in response to the transposition debate that member states should play by the rules. "The law is the law," he stressed.

"Prior commitments in the legislative process are not negotiable. Each law indicates its own transposition timetable, typically two years after adoption. The Commission's role is not to persuade member states to adopt laws but rather chase them to the court when they don't. So the Union method still ought to be king."

But "the drift in Oettinger's draft energy efficiency plan next month is away from the Union method and towards the open method of coordination, which doesn't have the legal force of law behind it," Johnston continued.

"Without the force of law, plans struck this year will end up adrift and unaccountable," he added.

Regarding binding climate legislation Johnston said he felt "disappointed that so far talk has not been turned into action and legislative text is being argued over between the institutions in the usual way".