



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES  
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE  
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES  
UNIONE EUROPEA DELL'ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

## Europe's Crafts and SMEs suffer from inefficient competition in the energy sector and need a well-functioning energy market

UEAPME comments on “Energising Europe: A real market with secure supply” the third legislative package on energy markets

### 1. Introduction

The European Commission adopted on 19 September 2007 its [third legislative package](#)<sup>1</sup> on the energy market, called “**Energising Europe: A real market with secure supply**”. These legislative proposals are based on the European Commission roadmap for “[An Energy Policy for Europe](#)<sup>2</sup>” from January 2007 and on the conclusions the German Presidency of the EU drew at the [European Spring Summit](#)<sup>3</sup> in March 2007.

UEAPME has put forward its [comments on the Energy policy roadmap](#)<sup>4</sup>, in which the European Craft and SME Association supported the European Commission in its approach towards a better functioning internal market for energy proposing **efficient separation of energy generation, network and transmission services and supply services** as well as the strengthening of the **independency of energy market regulators** and the creation of **stronger European competences for the regulators**.

Furthermore, UEAPME clearly stated in its comments that **a well-functioning and efficient energy market is a pre-condition** for the other elements of the energy policy roadmap. SMEs will only bear the economic burdens coming from an increase in the **use of renewable energy**, an improvement in **energy efficiency** and a **reduction of greenhouse gas emission**, if well-functioning markets ensure that the envisaged targets can be achieved through the most cost-efficient measures.

In many countries crafts and SMEs are still confronted with **monopolistic structures** in the energy sector with **no real choice** on contractors for electricity and gas supply. The **price** small companies have to pay is **too high and often increasing**. The **market liberalisation** and the creation of an internal market for energy designed by the EU during the last years **were not**

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<sup>1</sup> [http://ec.europa.eu/energy/electricity/package\\_2007/index\\_en.htm](http://ec.europa.eu/energy/electricity/package_2007/index_en.htm)

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0001:EN:NOT>

<sup>3</sup> [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/93135.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/93135.pdf)

<sup>4</sup> [http://www.ueapme.com/docs/pos\\_papers/2007/070424\\_Energy\\_Strategy\\_final\\_ECOFIS.pdf](http://www.ueapme.com/docs/pos_papers/2007/070424_Energy_Strategy_final_ECOFIS.pdf)

**successful** and the available legal and regulatory instruments are not strong enough to enforce the completion of a European Internal Market in the energy sector. Moreover, higher prices for smaller customers create competitive disadvantages, especially for energy intensive SMEs in comparison to larger companies.

Therefore, **UEAPME** sees a justification and **supports regulations such as calculation guidelines or price caps** for certain groups of clients, as long as domestic markets for energy do not function and especially as long as smaller customers have to pay the price for such regulatory failures.

The third legislative package includes some **proposals of high relevance for the competitiveness of small enterprises** in Europe. This is especially true for the proposals made as regards:

- an effective separation of energy generation and supply from transmission networks and services;
- the strengthening of energy market regulators.

With its comments **UEAPME supports** the European Commission in its **efforts to create a well-functioning and efficient energy market**, and asks Member States and the European Parliament to follow the aims of the European Commission by adopting its proposals without watering them down to shelter national champions from competition.

However, there are some elements in the Commission proposals that **do not go far enough to achieve the intended objectives**. Therefore, **UEAPME** asks all European institutions to review the current proposals in order to bring them in line with their original aim, the creation of an efficient internal energy market.

## **2. Vertically integrated energy companies: the main hindrance for well-functioning energy markets**

The sector inquiry on energy market carried out by the European Commission in 2006 demonstrates clearly the shortcomings and barriers to an efficient internal energy market:

- Due to their economic nature, energy networks and energy transmission are so-called natural monopolies, which allow profit maximisation by rent-seeking at the expense of customers and can lead to underinvestment and bottlenecks within the European network as well as to barriers towards new market entrants and potential competitors.
- Even worse, vertical integration between energy generation and supply on the one side and energy networks and transmission on the other, creates a lack of transparency and allows to extend the monopolistic character to the whole integrated company. Such intransparency allows cost-shifting from production and supply to the network and transmission services and creates additional market barriers of new entrances and potential competitors.
- The existing rules, which should ensure transparency by legal and functional unbundling, must be improved in order to achieve an efficient internal energy market.

Therefore, **UEAPME fully supports the aim of the European Commission to enforce an effective and at least functional separation** of distribution networks and transmission services from production and supply. Due to the economic nature of the market and its participants, this aim could be achieved by **ownership unbundling** between these activities.

But due to the specific market-structures and political considerations within some Member-States the management of the transmission systems by "Independent System Operators (ISO)" at least seems to be an alternative approach, which will have to be backed by well functioning and efficient regulation. If in the future ISO proves not to be sufficient to create a real internal market, a European-wide full ownership unbundling has to be taken into consideration. In the meantime, further important experiences with full ownership unbundling can be gained in Member States, which opt for this option from the beginning.

### **3. An efficient European energy market requires an efficient regulatory system with a European dimension**

All markets with network industries like the energy market have some characteristics of a natural monopoly, which creates market failures and demands for appropriate and efficient regulations. Therefore, regulators, mainly on national level, exist for all network industries and the European legislation for such network industries demand a certain degree of independence for these regulators.

Experiences with such regulators, also proved by the energy sector inquiry, shows some shortcomings of the existing regulatory system:

- There are doubts about the real independency of energy market regulators in some Member States, which may bias their decisions in favour of national champions or incumbents.
- National regulators are sometimes not strong enough to control cross-national or multinational suppliers.
- National regulators have difficulties to enforce sufficient investments in cross-border capacities and to protect effectively the interests of foreign European competitors, which want access to national networks and transmission services.

In order to overcome these shortages in the energy sector, UEAPME sees the need for:

- strengthening the independence of national regulators, especially from publicly owned energy companies,
- empowering the regulators to ensure the correct implementation of European and national legislation, i.e. transparency requirements for energy suppliers,
- improving the cooperation and coordination between national regulators within Europe, and
- creating a European dimension within the regulatory system, which is able to correct decisions of national regulators, if they offend existing regulation and can enforce investments in cross-border transmission capacity and market entrance for competitors from other Member States.

In its 3<sup>rd</sup> legislative package the European Commission proposes to further strengthen the independence of national regulators and the creation of a European Agency for the cooperation of energy market regulators.

**UEAPME fully supports the proposals to strengthen the independence of and to improve the cooperation and coordination between the national regulators. Hence, UEAPME has some concerns as regards the proposed European Agency as a platform for such cross-border cooperation between strong and independent national regulators. Such a new platform**

**shall have to proof its efficiency**, mainly concerning a sufficient degree of **investments in cross-border transmission capacities** and **effective market entrance for competitors** from other Member States, but also its ability to **correct decisions** existing against European legislation.

In addition to the strengthening of the regulatory system within Europe, UEAPME asks the European Commission (DG COMP, DG MARKT and DG TREN), the national competition authorities and the Court of Justice to use fully their competences to **fight the abuse of a dominant market position, delays in implementing correctly the existing legislation and cases of unjustified state aid.**