Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation concerning the notification to the Commission of investment projects in energy infrastructure within the European Community and repealing Regulation (EC) No 736/96'

COM(2009) 361 final — 2009/0106 (CNS)

(2010/C 255/22)

Rapporteur working alone: **Mr SALVATORE**

On 4 September 2009 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Council Regulation concerning the notification to the Commission of investment projects in energy infrastructure within the European Community and repealing Regulation (EC) No 736/96

COM(2009) 361 final – 2009/0106 (CNS).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 November 2009. The rapporteur was Mr Salvatore.

At its 458th plenary session, held on 16 and 17 December 2009 (meeting of 16 December), the European Economic and Social Committee adopted the following opinion by 177 votes, nem con with one abstention.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee supports the European Commission's aim to introduce new rules on investment projects in energy infrastructure and endorses this proposed regulation since it takes account of recent developments in EU energy policy. The proposal addresses the real needs of the sector, facilitating the collection of appropriate, satisfactory and transparent information and entailing an administrative burden proportionate to its usefulness.

1.2 The Committee endorses the principle underlying the Commission's proposed regulation, i.e. that the need to ensure regular and consistent information for carrying out regular, cross-sector analyses of the energy system ought to be reconciled with the objective of cutting administrative costs and promoting transparency. The Commission's proposal, underpinned by this objective, constitutes a clear improvement on the existing system. This proposal, which has its legal basis in Article 284 of the EC Treaty and Article 187 of the EURATOM Treaty, seems therefore to comply fully with the fundamental principles of subsidiarity and proportionality.

1.3 The Committee points out that the details of the minimum thresholds set out in the Annex to the proposed regulation, above which the notification obligation is triggered, are not properly justified by the Commission. More in-depth discussions are needed between European and national decision-making bodies, market operators and civil society organisations to set the most appropriate minimum thresholds that guarantee safety, environmental protection, transparency and cost-effectiveness.

1.4 The Committee would suggest that beyond anticipating energy supply and demand imbalances and identifying gaps in infrastructure, the Commission's regular analysis should also be an instrument for monitoring the state of play in the notified projects, to ensure that they are completed within a reasonable timeframe.

1.5 The Committee considers it of crucial importance to ensure the security of both existing infrastructure and new projects. Investment by economic operators should focus primarily on the modernisation and maintenance of energy networks, as well as their technological upgrading for security purposes, with a view to preventing problems and ensuring energy efficiency and environmental sustainability – exceptions cannot and must not under any circumstances be made here.

1.6 The Committee points out that the collection of information on infrastructure of Community interest will enable the principle of energy solidarity among Member States to be strengthened. Moreover, conducting regular analyses will promote the diversification of energy sources, thus reducing energy dependence on individual countries that export conventional sources, and fostering a secure supply.

1.7 As regards electricity generated from renewable energy sources, the Committee considers it important to avoid imposing administrative costs on SMEs, particularly those specialising in the emerging green technologies, which are already disadvantaged by higher production costs than those from conventional energy sources.

1.8 The Committee suggests that in order to increase transparency – a stated aim of the Commission – Member States should give due consideration to the views of local residents, as represented by civil society associations.

1.9 The Committee recommends that the Commission ensure that the costs of investment are not passed on to consumers.

2. Introduction

2.1 The liberalisation of the internal energy market is opening up new opportunities for investment in this sector; the new legislative context requires specific objectives to be achieved in the field of renewable energy and biofuels.

In view of the anticipated and desired increase in infrastructural investment in Europe, a harmonised framework is needed for the collection of data on energy plant (commissioning or decommissioning) projects.

2.2 The Commission is proposing to repeal Regulation (EC) No 736/96 and replace it with a new regulation aimed at monitoring infrastructure investment projects in respect of the production, transport and storage of energy and carbon dioxide.

2.3 The collection of relevant, appropriate data on progress in energy infrastructure in the Member States is crucial for carrying out regular cross-sector analyses aimed at anticipating possible structural gaps and imbalances in energy supply and demand. There is also a need to ensure transparency for market participants and cut administrative costs.

2.4 Regulation No 736/96 is not only obsolete – as its scope excludes a large swathe of renewable energy plants – but also fails to provide for a suitable system for collecting data and monitoring Member States' energy projects. The existing system could therefore be hindering investment certainty insofar as it fails to ensure transparency; in the long term, it could slow down the transition to a low carbon economy. Moreover, the current legislation does not seem to provide security guarantees as regards energy and carbon networks, production sites and storage facilities.

3. The Commission's proposal

3.1 The content of the proposed regulation hinges on the requirement for Member States to supply the Commission with information on infrastructure investment projects – concerning oil, natural gas, electricity and bio fuels, and the capture, storage and transport of carbon dioxide – on which work has started or is scheduled to start within five years, or which aim at taking infrastructure out of commission within three years.

3.2 The required information concerns: the capacity of the plant; the location, name, type and main characteristics of the infrastructure; the probable date of commissioning; the type of energy sources used; the infrastructure security technologies; and the installation of carbon capture systems. In the case of plant decommissioning, information is required on the character and capacity of the infrastructure concerned; and the probable date of decommissioning.

3.3 The Commission is proposing that Member States supply the requisite information every two years, as of 31 July 2010. Market operators are to provide the information to the Member States in whose territory they were planning to carry out investment projects before 31 May of each reporting year. The information notified would reflect the situation of investment projects as of 31 March of the year in question.

3.4 The Commission favours a model based on complementarity, to avoid the duplication of information. Member States are thus exempted from notifying information where they have already supplied equivalent information under other specific legislation or as part of a multi-annual investment plan.

3.5 The Commission proposes to use the information received to carry out, at least every two years, a cross-sector analysis of the structural development of the EU energy system, the results of which are to be discussed with the Member States and stakeholders. The results may be made public, except where they undermine personal data protection or are commercially sensitive.

3.6 The Commission is to adopt the measures necessary for the implementation of this regulation, regarding, in particular, the calculation methodologies to be used, the technical definitions, and the content of the requisite data. Provision is made for a review of the proposed regulation within five years of its entry into force.

4. General comments

4.1 The Committee welcomes the Commission's proposal, given the importance of the new regulation for meeting the objectives of the EU's energy policy. The chosen solution tries to reconcile the need to monitor and collect relevant information on investment projects with the need to limit administrative costs and foster transparency.

4.2 The aim of the regulation is to monitor the EU energy system by examining information on energy infrastructure investment projects, collected by the Commission, and specifically its Market Observatory for Energy.

4.2.1 The very existence of an internal market and need for such a monitoring system at supranational level attest to the greater suitability of legislation at EU rather than national level. The regulation proposed by the Commission is thus fully in line with the general subsidiarity principle.

4.2.2 It is clear from both the choice of a regulation as the legislative instrument, to replace a previous regulation governing this area, and its content – centred on the notification requirement on Member States, and mitigated by factoring in the need to avoid imposing an excessive administrative burden – that this proposal is also fully in line with the proportionality principle.

4.3 The Commission proposal favours a complementary notification model, as opposed to an integrated exhaustive system. The Committee would point out that this is a cost-effective option, conducive to lower administrative costs for companies and the Member States. It would have a positive impact on the final price of energy, while preventing the duplication and enhancing the quality of the data concerned.

4.4 The Committee believes that regular, complete and quality information not only enables the Commission to monitor and identify gaps in Europe's energy infrastructure, but also helps increase understanding of problems in this area among all national and European policymakers, as well as market operators and investors.

5. **Specific comments**

5.1 The Committee appreciates the clarity of the definitions in Article 2 of the proposed regulation. These definitions, which were not provided in the existing regulation (Regulation (EC) No 736/96), aid understanding of the legislation and clarify its scope.

5.2 The Committee thinks that undertaking a cross-sector analysis every two years should allow effective monitoring of the progress made in Europe's energy infrastructure projects.

5.3 The Committee has always maintained that the issue of infrastructure security cannot be isolated from that of security of supply. In a recent opinion on a similar topic [1], the Committee stressed the need to ensure the security of plants and networks for transporting energy and carbon dioxide. It is therefore important that in its regular analyses the Commission take account of aspects relating to the modernisation and maintenance of existing plants and networks.

5.4 In the Committee's view, information on projects of Community interest is of key importance. Hinging on the quality of this information is the Commission's ability to guide the Member States in applying the energy solidarity principle and diversifying supply sources, so as to reduce energy dependence on a small number of exporters of conventional energy. In the Committee's view, transnational energy infrastructure falls inherently within the remit of the Community. The Committee has even maintained in previous opinions that 'Community SGIs are necessary for the continued process of European integration', and that 'the progressive unification of energy networks (gas, electricity, oil) (…) could significantly reduce operating and investment costs and provide greater incentives to invest in new network projects [in the framework of public (Union and Member States) – private partnerships, thereby increasing security of supply]'. [2]

5.5 The Committee notes that the system proposed by the Commission is underpinned by a centralised approach to energy production. This is despite the fact that many signs point to a future in which the European energy system may depend on decentralised plants for the generation of electricity for domestic use (solar panels, micro-cogeneration, etc.). Access to electricity transmission networks must be ensured for these plants, without entailing excessive administrative costs for SMEs.

5.6 The Committee points out that the details of the minimum thresholds set out in the Annex to the proposed regulation, above which the notification obligation is triggered, are not properly justified by the Commission.

5.7 The Committee calls for a more in-depth debate on the value and viability of CCS (Carbon Capture and Storage), having already expressed reservations as regards how worthwhile and safe carbon capture and transport projects actually are. The Committee notes, however, that the Commission's proposed regulation provides for the inclusion of information on carbon transport and storage projects. This should only be interpreted as subjecting such infrastructure to the regular European energy system analyses.

5.8 The Committee considers it vital that energy infrastructure construction does not go against the wishes of local residents and their representatives. It favours a transparent approach whereby local people are properly informed about the scale of planned projects by means of suitable economic, social and environmental impact analyses.

Brussels, 16 December 2009.

The President
of the European Economic and Social Committee
Mario SEPI

---

[1] OJ C 306, 16.12.2009, p. 51.

[2] OJ C 128, 18.5.2010, p. 65.