

DAILY NEWS to Members: 07/02/2008 by Gaël Glorieux

THIRD ENERGY PACKAGE: EUROPEAN PARLIAMENT HEARING SHOWS CLEAR INTENTION TO STRENGTHEN EUROPEAN REGULATORS' AGENCY

"Fifty years down the line from the Meroni decision, we need to make a case so as to allow efficient markets to develop and establish the appropriate bodies for this", Italian conservative MEP Renato Brunetta declared as he summed up at a hearing on 15 January held by the European Parliament on the proposed creation of an *Agency for Cooperation of Energy Regulators* (ACER). In line with views expressed by most experts and MEPs at the hearing, including EURELECTRIC Secretary-General Hans ten Berge, Mr Brunetta called for a stronger and more independent Agency than currently envisaged by the European Commission and set out in a proposed Regulation included in the "third energy package"*.

The European Parliament has held three hearings on aspects of the 3rd package - on ACER and on the draft Directives and Regulations for electricity and gas°. These hearings, although attended by few MEPs, were intended to provide input to reports being drawn up by the official Parliament *rapporteurs* on the proposals, Mr Brunetta being ACER *rapporteur*.

The ACER hearing first looked into the legal difficulty raised by a 1958 decision of the European Court of Justice, the Meroni ruling, which determined that the Commission can only delegate powers to another entity if this body has the same obligations in terms of accountability and if the delegated powers do not include a wide margin of discretion. Georgio Napolitano, from the University of Roma, argued that solutions could be found to meet the intention of the ruling, i.e. to preserve the executive function from unwarranted political influence by Member States, provided that clear accountability rules are set out in the statutes.

Sir John Mogg, chair of Regulators' body ERGEG, and Philippe de Ladoucette of the French Regulator argued that ACER should be given the power to adopt legally binding texts rather than the voluntary codes and guidelines envisaged in the Commission's proposals. They proposed a 2-step process - adoption of legally-binding guidelines via the EU committee procedure known as *comitology*, followed by adoption of legally-binding codes by ACER.

Round two of the hearing saw market stakeholders take the floor. Hans ten Berge pleaded for a balanced regulatory process and also called for the creation of a specific group of market stakeholders within ACER to ensure appropriate involvement of market actors in the drafting of rules for market development. Holger Krawinkel of EU consumer body BEUC added his voice to this in demanding that consumer representatives be part of this process.

Most MEPs present at the hearing strongly supported the view that ACER should be made stronger and more independent from the Commission than proposed in the current draft. In line with this thinking, Mr Brunetta suggested that the ACER budget should be partly financed by market stakeholders, not entirely by the European Commission.

*See DN 27/09/07; °DN will report on the Electricity hearing soon