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"I" ITEM NOTE

from : General Secretariat of the Council
to : Coreper

prev. doc. 15096/03 ENER 319 ENV 630 CODEC 1642
No. Cion prop.: 11381/02 ENER 167 ENV 433 CODEC 975 (COM (2002) 415 final)

Subject : Proposal for a Directive of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market
- Second reading agreement

Further to informal contacts between the Presidency, the rapporteur (M Glante) and other members of the EP¹ and Commission representatives (the most recent on 10 December 2003), the Presidency takes the view that the compromise amendments, as drafted by the EP (Annex) in view of adoption at the extraordinary meeting of the ITRE Committee on 15 December - and scheduled for adoption in plenary on 18 December - reflect the agreement reached at Energy Working Party level on 11 December.

As usual in most co-decision dossiers, the rapporteur requested the Presidency to forward a letter on behalf of the Council to the chairman of ITRE, M Berenguer, offering the agreed document as a compromise. The purpose would be to help the rapporteur to assure his colleagues that if they agree to his revised amendments the Council will eventually be able to accept the EP amendments, this securing agreement at second reading.

¹ notably MM Rübzig, Turmes, Vidal Quadras

Promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC

Council common position

Amendments by Parliament

Compromise amendment

RECITAL 2

(2) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003¹ establishes common rules for the generation, transmission, distribution and supply of electricity within the internal market in electricity.

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¹ OJ L 176, 15.7.2003, p. 37.

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Compromise amendment

RECITAL 3

(3) The Green Paper entitled "Towards a European strategy for the security of energy supply" points out that the European Union is extremely dependent on its external energy supplies currently accounting for 50% of requirements and projected to rise to 70% by 2030 if current trends persists. Import dependency and rising import ratios ***may*** heighten the risk of interruption to or difficulties in supply. However, security of supply should not be conceived as merely a question of reducing import dependency and boosting domestic production. Security of supply calls for a wide range of policy initiatives aimed at, inter alia, diversification of sources and technologies and improved international relations. The Green Paper emphasised furthermore that security of energy supply is essential for a future sustainable development. The Green Paper concludes that the adoption of new measures to reduce energy demand is essential both in terms of reducing the import dependence and in order to limit greenhouse gas

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Compromise amendment

RECITAL 5 a (new)

(5 a) In its resolution of 25 September 2002¹ on the Commission communication on the implementation of the first phase of the European Climate Change Programme², Parliament welcomes the idea of submitting a proposal to strengthen Community measures to promote the use of combined heat and power (CHP) and calls for prompt adoption of a Directive on the promotion of CHP.

¹ OJ C 273 E, 14.11.2003, p. 172

² COM(2001) 580

Compromise amendment

RECITAL 14

(14) *In the long term, the* general objective of this Directive should be to establish a harmonised calculation of electricity from cogeneration, taking into account methodologies such as currently under development by European Standardisation Organisations.

(14) *The* general objective of this Directive should be to establish a harmonised **method for** calculation of electricity from cogeneration **and necessary guidelines for its implementation**, taking into account methodologies such as currently under development by European Standardisation Organisations. **This method should be adjustable to take account of technical progress.**

Application of the calculations in Annex II and III to micro cogeneration units could in accordance with the principle of proportionality be based on values resulting from a type testing process certified by a competent, independent body.

Compromise amendment

RECITAL 18

(18) For the purpose of this Directive, the definition of "cogeneration units" may also include equipment *where it is possible to generate* only electrical energy or only thermal energy, such as auxiliary firing and after burning units. The output from such equipment should not be considered as cogeneration for issuing a guarantee of origin and for statistical purposes.

(18) For the purpose of this Directive, the definition of "cogeneration units" may also include equipment *in which* only electrical energy or only thermal energy *can be generated*, such as auxiliary firing and after burning units. The output from such equipment should not be considered as cogeneration for issuing a guarantee of origin and for statistical purposes.

Compromise amendment

RECITAL 26

(26) For the transmission and distribution of electricity from high efficiency cogeneration, the provisions of Article 7(1), (2) and (5) of Directive 2001/77/EC as well as relevant provisions of Directive 2003/54/EC should apply. Until the cogeneration producer is an eligible customer under national legislation within the meaning of Article 21(1) of Directive 2003/54/EC, tariffs related to the purchase of additional electricity sometimes needed by cogeneration producers should be set according to objective, transparent and non-discriminatory criteria. Especially for small scale cogeneration units access to the grid system of electricity produced from high efficiency cogeneration may be facilitated subject to notification to the Commission.

(26) For the transmission and distribution of electricity from high efficiency cogeneration, the provisions of Article 7(1), (2) and (5) of Directive 2001/77/EC as well as relevant provisions of Directive 2003/54/EC should apply. Until the cogeneration producer is an eligible customer under national legislation within the meaning of Article 21(1) of Directive 2003/54/EC, tariffs related to the purchase of additional electricity sometimes needed by cogeneration producers should be set according to objective, transparent and non-discriminatory criteria. Especially for small scale *and micro* cogeneration units access to the grid system of electricity produced from high efficiency cogeneration may be facilitated subject to notification to the Commission.

Compromise amendment

RECITAL 27

(27) In general, *micro*-cogeneration units up to 400kW falling within the definitions of Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels ¹ are unlikely to meet the minimum efficiency requirements therein and should therefore be excluded from that Directive.

(27) In general, cogeneration units up to 400kW falling within the definitions of Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels ¹ are unlikely to meet the minimum efficiency requirements therein and should therefore be excluded from that Directive.

¹ OJ L 167, 22.6.1992, p. 17. Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

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Compromise amendment

ARTICLE 3 POINT I

(i) "high efficiency cogeneration" shall mean cogeneration meeting the criteria of *Annex III(a)*;

(i) "high efficiency cogeneration" shall mean cogeneration meeting the criteria of *Annex III*;

Compromise amendment

ARTICLE 3 POINT K

(k) "power to heat ratio" shall mean the ratio between electricity from cogeneration and useful heat when operating *at full capacity in* cogeneration mode using operational data of the specific unit;

(k) "power to heat ratio" shall mean the ratio between electricity from cogeneration and useful heat when operating *in* full cogeneration mode using operational data of the specific unit;

Compromise amendment

ARTICLE 3 L A (new)

(la) "micro cogeneration unit" shall mean a cogeneration unit with a maximum capacity below 50kWe;

Compromise amendment

ARTICLE 4 PARAGRAPH 1

1. For the purpose of determining the efficiency of cogeneration in accordance with Annex III, the Commission shall, in accordance with the procedure referred to in Article 14(2), not later than^{*}, establish harmonised efficiency reference values for separate production of electricity and heat. These harmonised efficiency reference values shall consist of a matrix of values differentiated by relevant factors, including year of construction, fuel *mix and climate conditions*, and must be based on a well-documented analysis taking inter alia into account data from operational use under realistic conditions, cross-border exchange of electricity, as well as applied cogeneration technologies in accordance with the principles in Annex III.

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* two years after entry into force of this Directive.

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Compromise amendment

ARTICLE 6 PARAGRAPH 1

1. Member States shall establish an analysis of the national potential for the application of high-efficiency cogeneration.

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Compromise amendment

ARTICLE 8 PARAGRAPH 3

3. Subject to notification to the Commission, Member States may particularly facilitate access to the grid system of electricity produced from high efficiency cogeneration from small scale cogeneration units.

3. Subject to notification to the Commission, Member States may particularly facilitate access to the grid system of electricity produced from high efficiency cogeneration from small scale ***and micro*** cogeneration units.

Compromise amendment

ARTICLE 11

Commission reporting

On the basis of the reports submitted pursuant to Article 10, the Commission shall review the application of this Directive and submit to the European Parliament and to the Council not later than * and thereafter every four years, a progress report on the implementation of this Directive.

- (a) consider progress towards realising national potentials for high-efficiency cogeneration referred to in Article 6;
- (b) assess the extent to which rules and procedures defining the framework conditions for cogeneration in the internal energy market are set on the basis of objective, transparent and non-discriminatory criteria taking due account of the benefits of cogeneration;
- (c) examine the experiences gained with

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- (c) examine the experiences gained with

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the application and coexistence of different support mechanisms for cogeneration;

(d) review efficiency reference values for separate production on the basis of the current technologies.

If appropriate, the Commission shall submit with the report further proposals to the European Parliament and the Council.

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(d) review efficiency reference values for separate production on the basis of the current technologies.

If appropriate, the Commission shall submit with the report further proposals to the European Parliament and the Council.

2. When evaluating the progress referred to in paragraph 1(a), the Commission shall consider to what extent the national potentials for high efficiency cogeneration, referred to in Article 6, have been or are foreseen to be realised taken into account Member State measures, conditions, including climate conditions, and impacts of the internal energy market and implications of other Community initiatives such as Directive 2003/87/EC (Emissions Trading).

If appropriate, the Commission shall submit further proposals to the European Parliament and Council, notably aiming at the establishment of an action plan for the development of high efficiency cogeneration in the Community.

3. When evaluating the scope for further harmonisation of calculation methods, referred to in Article 4(1), the Commission shall consider the impact of the coexistence of calculations as referred to in Article 12, Annex II and Annex III, on the internal energy market also taking into account the experiences gained from national support mechanisms.

If appropriate, the Commission shall submit further proposals to the European Parliament and Council aiming at further harmonisation of the calculation methods.

Compromise amendment

ARTICLE 13 PARAGRAPH 2 A (new)

3. The guidelines for determining the power to heat ratio referred to in Annex II(d) shall be adapted to technical progress in accordance with the procedure referred

to in Article 14(2).

Compromise amendment

ANNEX II, SUBPARAGRAPH 1

Values used for calculation of electricity from cogeneration shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use.

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For micro cogeneration units the calculation may be based on certified values.

Compromise amendment

ANNEX II B, PARAGRAPH 2

The calculation of electricity from cogeneration must be based on the actual power to heat ratio. If the actual power to heat ratio of a cogeneration unit is not known, the following default values may be used for units of type (a), (b), (c), (d), and (e) referred to in Annex I provided that the calculated cogeneration electricity is less or equal to total electricity production of the unit:

The calculation of electricity from cogeneration must be based on the actual power to heat ratio. If the actual power to heat ratio of a cogeneration unit is not known, the following default values may be used, ***notably for statistical purposes***, for units of type (a), (b), (c), (d), and (e) referred to in Annex I provided that the calculated cogeneration electricity is less or equal to total electricity production of the unit:

Compromise amendment

ANNEX II D A (new)

d a) The Commission shall, in accordance with the procedure referred to in Article 14, establish detailed guidelines for the implementation and application of Annex II, including the determination of the power to heat ratio.

Compromise amendment

ANNEX III A, SECOND INDENT

– production from small scale cogeneration units providing primary energy savings may qualify as high-efficiency cogeneration.

– production from small scale ***and micro*** cogeneration units providing primary energy savings may qualify as high-efficiency cogeneration.

Compromise amendment

ANNEX III D A (NEW)

(d a) For micro cogeneration units the calculation of primary energy savings may be based on certified data.