



House of Commons

European Scrutiny Committee

Second Report of Session 2009–10

Documents considered by the Committee on 25 November 2009, including the following recommendations for debate:

Security of gas supply

Mutual legal assistance in criminal matters between the EU and Japan



House of Commons
European Scrutiny Committee

**Second Report of
Session 2009–10**

Documents considered by the Committee on 25 November 2009, including the following recommendations for debate:

Security of gas supply

Mutual legal assistance in criminal matters between the EU and Japan

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 25 November 2009*

HC 5-ii

Published on 4 December 2009
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

Contents

Report			<i>Page</i>
Documents for debate			
1	DECC	(30809) Security of gas supply	3
2	HO	(31123) Mutual legal assistance in criminal matters between the EU and Japan	7
Documents not cleared			
3	BIS	(31082) Reaping the benefits of the digital dividend in Europe	14
4	DH	(31048) Reducing health inequalities	19
5	DWP	(31086) Prevention from sharp injuries in the hospital and healthcare sector	22
6	MOJ	(31015) Succession and Wills	25
Documents cleared			
7	BIS	(30523) European Electronic Communications Markets	29
8	DEFRA	(31037) Effectiveness of management measures in the dairy sector	34
9	DFID	(31126) Sri Lanka and the GSP+ scheme	38
10	FCO	(31133) EU restrictive measures against the Republic of Guinea	42
11	HMT	(30169) Taxation	46
12	HMT	(30424) Taxation	49
13	HMT	(30802) Financial services	52
		Annex: A comparison of the CRD and FSB text on remuneration	57
14	HMT	(30967) Value added taxation	59
15	HMT	(31066) European Globalisation Adjustment Fund	63
16	HMT	(31170) Terrorist finances	66
Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House			
17	List of documents		70
Formal minutes			72

Standing order and membership

1 Security of gas supply

(30809) 11892/09 + ADDs 1–4 COM(09) 363	Draft Regulation concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC
--	---

<i>Legal base</i>	Article 95EC; co-decision; QMV
<i>Department</i>	Energy and Climate Change
<i>Basis of consideration</i>	Minister's letter of 23 November 2009
<i>Previous Committee Report</i>	HC 19–xxvii (2008–09), chapter 1 (14 October 2009)
<i>To be discussed in Council</i>	7 December 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee A (decision reported on 14 October 2009)

Background

1.1 Directive 2004/67/EC establishes a common framework within which Member States may take steps to safeguard their security of gas supply, and it requires them to define the roles of the various market players, and to establish the minimum supply standards. In particular, they must ensure supplies for households in the event of a partial disruption of supplies or extremely cold temperatures: and they may extend this provision to small and medium sized enterprises and others who cannot switch their sources of supply. They are also required to draw up national emergency plans, and to indicate to a newly formed Gas Coordination Group if a situation arises which cannot be dealt with by national measures. That Group may also be invited by the Commission to consider situations where a major supply disruption is likely to occur for a significant period, and the measures taken by industry or nationally are not sufficient; and the Commission may then provide guidance to Member States (or, if this proves to be insufficient, propose further measures to the Council).

1.2 The Commission put forward in November 2008 a Communication¹ on the implementation of this Directive, which highlighted the different positions of the various Member States, and the way in which the Directive had left them scope to adapt its provisions. It also noted that Member States had implemented it in an uneven way, with potentially negative impacts on other Member States, and it concluded that a revision was necessary.

1.3 In the light of the responses to that Communication, the Commission put forward in July 2009 this proposal that Directive 2004/67/EC should be replaced by a Regulation, which would define more clearly the roles of the gas industry, Member States and Community Institutions; ensure that each Member State has the necessary infrastructure in place to cope with the failure of its largest gas infrastructure or supply source in period of

¹ (30188) 15905/09: see HC 19–iii (2008–09), chapter 10 (14 January 2009).

exceptionally high demand; ensure that national emergency and preventive action plans are in place, and co-ordinated with those of other Member States; ensure that gas supply to protected customers can be maintained in the case of extremely cold temperatures or a period of prolonged high demand during the coldest weather; require a Member State to carry out a risk assessment every two years of its security of supply; define three main crisis levels which a Member State may declare, and the action to be taken; and ensure that the market is permitted to function for as long as possible in the event of supply disruptions, with a requirement that non-market measures should be introduced if it is no longer able to do so adequately.

1.4 In particular, as we noted in our Report of 14 October 2009, the proposal would give potentially wide-ranging powers to the Commission, which would be able to declare a Community Emergency at the request of a competent authority or when more than 10% of gas supply from third countries is disrupted; to co-ordinate the actions of competent authorities during such an Emergency; to require the amendment of national emergency or preventive action plans; and to request a Member State to lift an emergency declaration, or to amend the actions it has taken.

1.5 We also noted that, although the Government had welcomed aspects of this initiative, and did not expect it to give rise to significant additional costs in the UK (particularly when set against the possible costs arising from supply disruptions), it was concerned about the potentially wide powers which would be given to the Commission, and on how far these would impact on the UK's own arrangements, especially as some of these have a safety rather than a supply focus. In particular, it was concerned that the Commission would be given new powers which would have implications for subsidiarity, and it said that it would wish to evaluate these carefully. A further concern was that the Commission had proposed Article 95EC as the Treaty base, which it had said is more appropriate than Article 100(1)EC (used for Directive 2004//67/EC) on the grounds the main emphasis of the new Regulation was on the functioning of the internal market in achieving enhanced security of supply, rather than on the measures appropriate to the economic situation, in the event of supply difficulties for certain products.

1.6 Whilst noting these points, we said that we were concerned both at the extent to which what was now proposed would greatly extend the powers of the Commission in this area (and the implications this would have for subsidiarity), and at the use of Article 95EC as the legal base. Since we thought it right that the House should have opportunity to consider these issues further, we recommended the document for debate in European Committee: and we asked the Government to update us before then on whether this proposal complied with the principle of subsidiarity and had the correct legal base.

Minister's letter of 23 November 2009

1.7 The debate in question is due to take place on 8 December, and we have now received a letter of 23 November from the Parliamentary Under-Secretary of State at the Department for Energy and Climate Change (David Kidney).

1.8 As regards the Commission's powers, and whether these are consistent with the principle of subsidiarity and proportionality, he says:

- This is an area of shared competence. Internal market legislation in natural gas has been an area of shared competence since Directive 98/30/EC, the first internal market package, which also dealt with aspects of security of supply. Subsequently, Directive 2004/67/EC confirmed that security of supply was a shared competence with an emphasis towards greater Community action in order to work further towards an internal market and a co-operative approach between Member States on security of supply.
- The proposals in the main, but subject to the views set out below, are consistent with the principle of subsidiarity. It is clear that the Commission is best placed to oversee Community-wide application of the Regulation, the appropriate interaction of emergency plans of Member States, and the co-ordination of action in a Community Emergency e.g. in declaring a Community Emergency or requiring a change of action where an action by a Member State or Competent Authority impacts negatively on the interests of other Member States and/or distorts the internal market. One or two Member States have indicated that they consider that the Commission should not have powers to require changes in Member States' preventative and emergency plans in respect of actions to mitigate purely national risks. However, even with the current level of integration between Member States (and in particular that between the UK and continental Europe and Ireland) and the expected increase in interconnection when current internal legislation is fully implemented, we consider that it is now difficult to envisage how a national market can remain isolated — and thus the UK accepts that some strengthening of the Commission's powers in this area is consistent with the principle of subsidiarity.
- The arguments on proportionality turn on the degree to which some level of central action (be it direction or co-ordination) is necessary to ensure energy security when market measures prove inadequate to deal with a crisis in the supply of natural gas. The effects of the Russia-Ukraine gas dispute show that greater co-ordination of Member States' preparation, and the existence of some overall co-ordinating powers during a crisis, could help the EU should a similar crisis arise in the future.

1.9 Nevertheless, he adds that the Government does have some concerns over the apparent open-ended scope of the proposed Commission powers in a number of areas, as for example, those enabling it to require Member States to change their emergency and preventative plans without clear criteria as to how this judgement might be made. It also recognises that the proposed Commission powers to require changes to a Member State's course of action during a national or an EU emergency needs clarification. The Minister says that the UK has sought greater clarity from the Presidency, and will (with other Member States) press for these powers to be more narrowly defined, with the hope that the issues will become clearer once the Presidency has produced a revised text (expected in early December) reflecting discussion so far. Finally, he says that there are also a number of ambiguities in the text relating to flows of gas and access to storage which need to be clarified, and that, in addition to his officials' continuing to make these points in the meantime, he will himself do so at the Energy Council on 7 December.

1.10 On the issue of the legal base, the Minister says that the view is emerging that the Energy Article 194 in the new Treaty on the Functioning of the European Union (TFEU) is now considered to be the most appropriate base for this Regulation. That Article provides that:

“In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to (a) ensure the functioning of the energy market; (b) ensure security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks”.

1.11 He says that the UK would not dissent from the view that Article 194 captures the elements of the draft Regulation in so far as it deals with the functioning of the internal energy market (including promoting greater interconnection to fill gaps in infrastructure), as well as security of energy supply, since there is a strong emphasis throughout the proposal that a well functioning market is the best means of enhancing security of supply, and that the market should be allowed to function for as long as possible, including into early stages of an emergency. He adds that, if Article 194 TFEU is confirmed as the appropriate legal base, the ordinary legislative procedure — defined in Article 289(1) TFEU as joint adoption by the European Parliament and the Council on a proposal from the Commission — would apply, and is in essence the same as the co-decision procedure as set out previously in Article 251 of the EC Treaty.

Conclusion

1.12 We are grateful to the Minister for this further information, which we are drawing to the attention of the House in advance of the debate in European Committee A on 8 December.

