

Brussels, 22 July 2005

**European Commission
DG for Energy and Transport
Directorate C- Conventional Energies
Mr Helmut SCHMITT von SYDOW
B- 1049 Bruxelles**

RE: ECSLA response to the open invitation to submit a position paper on the functioning of the electricity directive

Situation in Germany and in Ireland

Dear Mr Schmitt von Sydow,

Further to an open invitation published on May 13 to submit a position paper on the electricity directive, German and Irish members of the European Cold Storage and Logistics Association raised their concerns on this matter.

The European Cold Storage and Logistics Association (ECSLA) represents 10 national associations (855 companies) and private companies located in countries which not have any national association, such as Portugal, Finland, Slovenia, Czech Republic, Slovak Republic, Malta and Lithuania.

ECSLA represents close to 45 million m³ of storing facilities throughout the EU. The public cold storage industry plays a central role in the promotion of the frozen food chain. More than 60% of foodstuffs require temperature controlled conditions.

A. Situation in Germany

The German Cold Storage and Logistics Association (VDKL) represents the interests of 300 companies working with temperature controlled storage, cooling logistics and food production with many production and storage sites in Germany. Electricity costs are very important to the German cold storage industry.

According to cold stores in Germany, energy costs are such that they represent around 25 % of their global running costs.

Facing the recent increases of electricity prices in Germany, ECSLA has to acknowledge an abuse of the dominant market position of the four big German energy companies, which can be demonstrated as follows.

1. Overview:

Roughly 70% (ca. 350 million tons/year) of CO₂-Certificates in Germany have been issued for free by the German government to the energy companies at the end of 2004, most of

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them to E.ON, RWE, Vattenfall Europe and EnBW (hereafter also referred to as "the energy companies") in accordance with the "Makroplan". This can be considered as a subsidy. The CO₂-Certificates issued as of today cover a period until the end of 2007 and a yearly volume of about 500 Mill. tons. The energy companies have therefore sufficient certificates for their emissions in the years 2005-2007. Besides, the energy companies hold a dominant position in the trading of emissions as well as in the production of electricity. The allocation of CO₂ certificates for each 3-year-period aims to reduce the CO₂-Emissions by 3 Mill. tons beginning in 2007 (i.e. less than 1%). There is no doubt that there are enough certificates for this period and none have to be bought.

The allocated certificates have been estimated at the end of 2004 by the German government at a price of 7 €/t CO₂ and had a value of 3.5 Bill. €/year, 2.45 Bill. € are therefore allocated to the energy sector.

The four energy companies,

- a) state that the value of their certificates has increased since their allocation by 7.7 Bill. € (350 Mill.*22 €/t) based on the market price determined by the trading of Certificates
- b) calculate the value of the certificates they were given for free as a full cost factor of 7.7 Bill. € to their electricity prices. For evidence we have attached the development of the wholesale electricity price and the cost increases for the German economy.

2. Evaluation:

a. Value of CO₂-Certificates / Increase of electricity prices:

There is neither a comprehensible reason for the increased price of CO₂-certificates, nor can the inclusion of the value of CO₂-certificates as a cost factor to the electricity price and the subsequent burden to the consumer be justified. The energy companies' behaviour, their statements with regards to the inclusion of CO₂ certificates' prices as a determinant of the price for electricity are indicating an acute abuse of state subsidies. The increase in the price for electricity can only be interpreted as an abuse of a dominant position in a monopolistic market, and is thus to be considered as illegal.

Reasons:

- I): The trading of CO₂-certificates on various trading platforms is very insignificant (total of offered volume is less than 1% of all Certificates). The fixed market price can therefore be influenced easily and is not suitable as a scale for the value of the rest of the certificates of the energy companies, which are not on the market.
- II): The energy companies include the (national) value of an asset that was received by them at no extra cost (the subsidized CO₂ certificates) in the price for their product. Other economic reasons for valuing and pricing CO₂ certificates, such as expected price risks, also do not provide sufficient argumentation for the pricing method described above. Such a pricing is only possible when the market is structured monopolistically and consumers have no access to alternative supply of the product, which in this case is also a necessity (electricity). The price for CO₂-Certificates cannot be calculated as opportunity costs, because the rules of the Makroplan allow a sale of Certificates only in case of CO₂-reduction due to technical measurements. A sale due to capacity reduction is not allowed.

b. Subsidies by the German government by issuing sufficient Certificates for free:

Facing the described facts, the government shall be criticized for not having acted to avoid an additional burden to the private and commercial consumers – which means for the taxpayers. The abuse by the energy companies has to be ended immediately.

A governmental tolerance of the energy companies' behaviour would mean:

I) that the government has underestimated the value of the certificates at the end of 2004 ; their value has increased within a few months from 2,45 Bill. €/year up to 7.7 Bill. €/year;

II) that the government agrees that the consumer/tax payer, for a period of 3 years, bears the cost of 7.7 bill. € per year to maximize the profits of the energy companies.

III) that the government has to change the allocation plan for the second trading period and to correct the value of the issued certificates drastically.

c. Financial balance of energy companies

It is important to note how the behaviour of the energy companies can influence their financial balance and company value assessment. This situation needs to be corrected.

Our above statements underline the urgency for an action to be taken to bring the monopolistic abuse to an end and avoid further damage and unfairness being done to companies and consumers. The European Commission has a role to play and must intervene in this matter immediately.

B. Situation in Ireland

The Cold Storage Industry in Ireland is represented by the Irish Cold Storage Federation (ICSF), and is affiliated to the Irish Business Employers Confederation (IBEC). The main business activity of the Irish industry is Cold Storage with 17 public Cold Store operators offering storage and refrigeration solutions throughout the Republic through 21 separate sites. Ownership is predominately private and independent of the food and drink industry.

Energy costs relating to the supply of electricity represent the second largest cost for Irish Cold Store operators. The liberalising of the electricity market in Ireland in 2002 promised savings, reductions and greater efficiencies for all qualifying companies.

However this has not been the case; increased charges, increased administration and difficulties in transferring supplier have been experienced by all ICSF members. This inoperability of the liberalised electricity market must be addressed immediately by the Commission, so as to ensure that the objectives of market liberalisation are realised by industry.

A survey of ICSF members in early 2005 showed that energy prices rose by 36% since market liberalisation in 2002. Further increases of 14% are being flagged this year.

The significant impact that energy prices have on the sector results in increased charges to the Food sector, the principal client of the Irish Cold Storage industry. Given the impact of CAP reform, increased market access and a downward trend in European Commodity prices, this industry is highly sensitive to service price inflation which acts to reduce its competitiveness on international markets.

While the impact of rising oil prices and currency fluctuations are significant factors in the final costing of energy prices, the energy sector has always operated in such an environment, and these factors cannot be entirely held as reasons for such difficulties in the market. The liberalised airline industry is a good example of how a sector can manage to control costs in an environment of rising fuel costs by offering increased value to clients during recent fuel price gains.

It is the view of the Irish Cold Storage Industry that Commission intervention is essential to address issues such as increased administrative costs and difficulties in switching suppliers. This merits urgent action; as such factors prevent the development of a competitive, deregulated energy sector. Given the scale of ICSF members, cold store operators cannot afford to employ energy or electricity specialists to examine and assess the various electricity offerings currently available. Accordingly, given the current situation in Ireland, deregulation of the energy market has had little if not an adverse affect on SME's. This is not in-keeping with the initial principles of the electricity directive.

ICSF is of the opinion that these matters can be readily resolved and is available to illustrate clear examples of the matters raised in this document if required by the Commission.

Energy deregulation is a necessity for European business. The Commission has a role to play and must intervene in this matter immediately.

We thank you for your time taken to read about our concern on the subject matter, we are at your disposal for any further information, and we remain in the meantime,

Yours truly,

Carole PRIER
Secretary General