

The role of local authorities in the implementation and functioning of the internal market of gas and electricity

I. Certain legal obstacles, harmful to the action of local authorities in the energy sector in France, limit the number of suppliers on the market and the development of the production of decentralised electricity from renewable energy sources

SUMMARY OF FNCCR OBSERVATIONS AND SUGGESTIONS

Regarding the present French situation, it seems necessary:

- 1) To make the obligation to purchase “green” electricity accessible to all electricity suppliers, allowing them to purchase the electricity produced by local authorities, and to benefit, in this regard, of the compensation of additional costs introduced in the framework of the contribution to electricity public service charges (CEPS);
- 2) More generally, to lift all legal obstacles which hinder city councils and other local authorities from commercialising the electricity they produce freely and without delay

Both these objectives seem to be in adequacy with a certain number of priority objectives pursued at the EU level:

- 1) the purchase obligation seems to disregard the dispositions taken in article 3 of Directive 2003/54/EC of 26 June 2003, which indicates that public service obligations imposed on companies in the electricity sector by Member States must be established in a non discriminatory manner ;
- 2) the removal of the restrictions imposed upon local authorities for the sale of the electricity they produce would enable to improve the functioning of the market, and to develop decentralised production from renewable energy sources, in perfect consistency with objectives of environment protection and diversification of supply sources.

I.1 –Restrictions set upon local authorities for the sale of the electricity produced by their plants.

In order to develop decentralised production and to increase the proportion of renewable energy sources, as intended in Directive 2001/77/EC, French law authorizes local authorities to build and operate plants for the production of electricity from renewable energy sources, and to benefit in this framework of the obligation to purchase disposition.

In the perspective of the opening of the market to all consumers in 2007, new dispositions set upon local authorities particularly restrictive conditions for the sale of the electricity they produce. Indeed, they can only sell this electricity on the market:

- on condition that they have previously concluded a purchase contract at the conditions outlined by law ;
- at the end of this contract, the duration of which is set by legislation (for example 15 years for wind energy production).

For local authorities, this obligation is highly restrictive since:

- 1) It makes them sell their entire “green” electricity production in the framework of the obligation to purchase disposition;
- 2) These local authorities are thus unable to sell their electricity to other local authorities, nor to final users, nor even to suppliers other than EDF, for them to sell it, in turn, on the retail market

This obligation has the effect of delaying the entry of local authorities on the supply market, in contradiction with the EU objective of having a sufficient number of suppliers in order to avoid the constitution of oligopolies. There does not seem to be enough suppliers in France if one refers to the latest Commission report on the functioning of the internal market.

I.2 – The obligation to purchase disposition does not seem to comply with EU legislation

In the actual state of French law, EDF and local distributors are the only operators liable to the purchase obligation of electricity produced with renewable energy sources. The costs linked to this obligation are entirely compensated, in the framework of CEPS sustained by all consumers. Two opinions can be formulated against this disposition:

- 1) First, to forbid other suppliers to participate in this operation seems to contradict the principles of EU law, which claims that public service obligations imposed by Member States must be established and applied in a non-discriminatory manner ;
- 2) Secondly, in order to supply their clients with offers including a proportion of “green” electricity, these suppliers have no other choice than to develop production capacities using renewable energy sources, and/or to purchase “green” electricity from producers who have not subscribed to a purchase contract for all or part of their plants. So as to encourage producers to sell their electricity, the prices of these transactions must thus be higher than those fixed in the reglementary framework of obligation to purchase, which has a strong inflationist effect on the “green” electricity market.

In conclusion, these restrictive dispositions disregard EU objectives which, on the contrary, seek to:

- ✓ ***Prevent public service obligations, imposed on companies of the electric sector by Member States, from resulting in the distortion of competition on the market ;***
- ✓ ***Develop decentralised electricity production using renewable energy sources and thus enable a diversification of supply sources ;***
- ✓ ***Ensure the existence of a sufficient number of suppliers so that the market can function in satisfactory competition conditions.***

II. The success of the opening of the market also depends on the exercise of a local regulation, whose necessity must be asserted on the European level

SUMMARY OF FNCCR OBSERVATIONS AND SUGGESTIONS

The settlement, on the local level and in an amicable way, of certain disputes between small consumers and electricity and gas suppliers should be encouraged at the European level, in order to spare consumers as much as possible long and costly legal procedures.

In a larger perspective, in accordance with the subsidiarity principle, the FNCCR believes that propositions by the Commission could insist on the importance of finding relays at a regional and local level. This would enable the the implementation of certain EU objectives, in particular in matters of information and of consumer protection,

Studies made in France have revealed that electricity and gas consumers, in particular the smaller, consider that they lack the time and money to exert the new rights that are entitled to. They also would like new solutions to be found for them to exercise fully their purchasing role. Concerning electricity supply, so that the market can function correctly, consumers need:

- 1) Clear, detailed, easy to understand information, in order to make possible the comparison of suppliers offers. Very useful dispositions have been taken in this perspective in EU directives 2003/54/EC and 2003/55/EC of 26 June 2003 on electricity and gas.
- 2) A general trusting climate which, in addition to rights and guarantees granted by law, must be implemented in order to encourage users to switch suppliers.

FNCCR considers that this trust is essential and can be obtained thanks to local regulation. Local authorities are the most reliable to exercise this regulation in France, since they traditionally have an active role to play in the energy sector and share a special bond with citizens-consumers.

This local regulation must, of course, be coherent and complementary, on the national level, with the work of the Energy Regulation Commission. These two types of regulation must however remain distinct.

Local authorities competent in the area of energy are located all over the country, and they have actually already taken some measures. In particular, many have strived to develop easily identifiable and local entities which consumers can turn to in order to obtain information and advice on the functioning of the market and on the rights they are entitled to. The new programming law on energy also gives the opportunity to local authorities to exercise missions of conciliation in order to settle disputes opposing final consumers to the last supplier of the energy they use.

FNCCR however believes it necessary to go further in this approach. The European Commission could give its support on this particular issue, if it thought it useful, by formally indicating that the regional and local levels seem to be the most appropriate for the amicable settlement of certain disputes opposing small electricity and gas consumers to their suppliers, or to the managers of distribution networks, in order to spare – as much as possible –these consumers long and costly legal procedures.

III. The decrease in investments on electricity distribution networks risks to damage in the long run the quality and the safety of the supply to final consumers, and thus the functioning of the internal market.

SUMMARY OF FNCCR OBSERVATIONS AND SUGGESTIONS

As far as the improvement of supply safety is concerned, the objectives of the European Commission essentially aim at developing extra production capacity and new transport connections, in order to satisfy growing demand and to intensify cross border trade.

However, the preservation of high quality and safety standards is also essential, given the issues at stake, not only for the spatial planning and for the economic development of the territory, but also for the good functioning of the internal market.

In this perspective, it would be advisable to develop, at the EU level, an even further expertise on the prices concerning the use of electricity distribution networks. In this respect, it is important to take extra care that all operation and development charges are taken into account in the calculation of these rates, in order to be able:

1) to guarantee the non discriminatory application of the equal access to networks, which implies in particular the absence of crossed subsidies and competition distortions, which are harmful to certain suppliers. Costs should also not be externalised in an abusive way so as to limit the repercussions on new consumers.

2) to proceed to comparative evaluations based on homogeneous, stable, and comparable elements, by highlighting, if it proves necessary, the objective factors which can explain and justify that the rates for using the networks, although reflecting accurately the corresponding charges, are slightly different from one Member State to the other.

For FNCCR, the objectives set by the European Commission, concerning the improvement of electricity supply safety, can only be achieved if the operation and the development of distribution networks are ensured in satisfactory conditions. New investments in production and transport are indeed essential, but they can not be sufficient to guarantee final consumers with high quality standards and continuity of supply.

III.1 – For the functioning of the market to be really efficient, investments must be shared out in a balanced and coherent manner on all the stages of the electricity chain.

The amount of investments made on distribution networks have strongly decreased in recent years in France, but also, so it seems, in other Member States. As a reaction, FNCCR believes that, in the context of its upcoming reports and proposals, the Commission could recall the importance of a high level of investments on these facilities in order to:

- 1) Ensure their satisfactory maintenance and their renewal, in normal operating conditions and in respect of high standards of quality and continuity of supply. Technically, transport infrastructure are characterised by the density of their network which enables, in the vast majority of cases, to maintain the power supply of consumers even if a line is faulty. This is achieved by

making the power transit through another emergency line used in a temporary way. However, distribution networks are characterised by their tree structure, and they are the origin of the major part of the power cuts sustained by consumers, who must wait until reparations have been made in order to be supplied: this reveals the importance of investments in the sector;

- 2) Reinforce operating safety. As an example, just as the European Commission itself underlined it in the conclusions of a study made in 2003 (« undergrounding the electricity lines in Europe »), FNCCR believes that undergrounding electricity lines should be encouraged by EU texts, in order to decrease the supply cuts undergone by consumers connected to distribution networks : undergrounding actually secures these networks from most climatic risks.;
- 3) Maintain, in the framework of electricity universal service, a high, constant and relatively homogeneous quality level on the whole territory, including periphery or isolated zones, given the existing issues at stake: spatial planning, development and preservation of territory cohesion.

III.2 – To guarantee the principle of equal access to electricity distribution networks, rates for the use of the network must cover the entire charges of functioning and investment linked to the administration of this infrastructure

The latest report by the European Commission on the functioning of the internal market of gas and electricity, after comparing the average access costs to electricity networks in Member States, underlines that costs for using these networks must reflect the corresponding costs and remain relatively similar, so as to avoid competition distortions.

Many specialists consider that regulators could, in the next few years, propose to dramatically restrict the costs for access to these networks in certain Member States, in particular those where costs are higher than the European average. For FNCCR, it is perfectly normal and even desirable, in the interest of consumers, to strive to decrease the costs of using the networks, at the condition that the decrease reflects and is preceded by an evolution of rates. They should thus not be imposed in an arbitrary way, which would be the case if they were only motivated by the will or the necessity:

- 1) Of aligning rates on the less important ones observed in other Member States on the basis of a simple comparison, which would not be preceded by a thorough analysis. Indeed, many Member State artificially decrease rates in order to preserve the competitiveness of companies.
- 2) Of trying to compensate part of the price increase in electricity supply on the market, in order to limit the global increase of consumers' bills.

FNCCR is thus in favour of productivity gains realised by the operators of electricity networks be passed upon final consumers by way of rate reduction, on condition that:

- 1) These gains are not in reality the result of a reduction in investments, which would have the effect of affecting progressively but surely the quality of the electricity and the safety of the electricity distribution networks, in contradiction with the objectives the EU has claimed in this matter ;
- 2) To be vigilant that certain price reductions will not be compensated by the abusive externalisation of a certain number of costs which new users would

have to sustain directly, for example taking the form of contributions, imposed by network operators in exchange for the connection works they make, which are likely to undermine the principle of equal access to these networks and to distort the comparison of rates.

In conclusion, it is thus essential to maintain a balance at the European level, between, on the one hand, the necessity to be careful that rates for using the networks reflect the corresponding costs and do not represent too much of a burden for electricity consumers,. It is also essential to preserve a sufficient level of investment on distribution networks, which also represents a guarantee for consumers, as well as an essential condition to the good functioning of the internal market.