Proposal for a Directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas

(2001/C 240 E/11)

(Text with EEA relevance)

COM(2001) 125 final — 2001/0077(COD)

(Submitted by the Commission on 13 March 2001)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity [1] and Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas [2] have made very important contributions towards the creation of internal markets for electricity and gas.

(2) Experience in implementing those Directives demonstrates the important benefits that have begun to result from the internal markets in electricity and gas, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness. However, important shortcomings and possibilities for improving the functioning of the markets remain.

(3) At its meeting in Lisbon on 23 and 24 March 2000, the European Council called for rapid work to be undertaken to complete the internal market in both electricity and gas sectors and to speed up liberalisation in these sectors with a view to achieving a fully operational internal market. The European Parliament, in its Resolution of 6 July 2000 on the Commission's second report on the state of liberalisation of energy markets, requested the Commission to adopt a detailed timetable for the achievement of accurately defined objectives with a view to gradually but completely liberalising the energy market.

(4) The main obstacles in arriving at a fully operational internal market are related to issues of access to the network and different degrees of market opening between Member States.

(5) In order to achieve non-discriminatory access to the network, the independence of the transmission system operator is of paramount importance. The provisions on unbundling should therefore be strengthened. In order to ensure non-discriminatory access to the distribution network, unbundling requirements for the distribution system operator should be introduced for both electricity and gas distribution system operators.

(6) To avoid imposing a disproportionate financial and administrative burden on small distribution companies, Member States should be able, where necessary, to exempt such companies from the unbundling requirements.

(7) Further measures should be taken in order to ensure transparent, predictable and non-discriminatory tariffs for access to essential transportation and related infrastructure, including storage and other ancillary facilities. Those tariffs should be applicable to all system users on a non-discriminatory basis.

(8) In the light of the experience gained with the operation of Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids [3] and Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids [4], measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including across borders between Member States.

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[1] OJ L 27, 30.1.1997, p. 20.

[2] OJ L 204, 21.7.1998, p. 1.

[3] OJ L 313, 13.11.1990, p. 30; Directive as last amended by Commission Directive 98/75/EC (OJ L 276, 13.10.1998, p. 9).

[4] OJ L 147, 12.6.1991, p. 37; Directive as last amended by Commission Directive 95/49/EC (OJ L 233, 30.9.1995, p. 86).

(9) The presence of independent national regulatory authorities, is an important feature in guaranteeing non-discriminatory access to the network. Those authorities should at least have the competence to fix or approve transmission and distribution tariffs and tariffs for access to liquefied natural gas (LNG) facilities, prior to their entry into force.

(10) National regulatory authorities should be able to approve tariffs on the basis of a proposal by the transmission system operator or distribution system operator(s) or LNG system operator, or on the basis of a proposal agreed between these operator(s) and the users of the network.

(11) The benefits resulting from the internal market should be available to all Community industry and commerce, including small and medium-sized enterprises and to all Community citizens as quickly as possible for reasons of competitiveness and employment.

(12) Gas and electricity customers should be able to choose their supplier freely. Nonetheless a phased approach to completing the internal market for electricity and gas should be taken to enable industry to adjust and ensure that adequate measures and systems are in place to protect the interests of customers and ensure they have a real and effective right to choose supplier.

(13) Progressive market opening towards full competition will gradually remove differences between Member States. Transparency and certainty in the implementation of this Directive should be ensured.

(14) Directive 98/30/EC provides for access to storage as part of the gas system. In the light of the experience gained in implementing the internal market, additional measures should be taken to clarify the provisions for access to storage and other ancillary services and to reinforce the separation of the operation of transmission and distribution systems, and gas storage and LNG facilities.

(15) Nearly all Member States have chosen to ensure competition in the electricity generation market through a transparent authorisation procedure. However, Member States should have the possibility to ensure security of supply through the launching of a tendering procedure in the event that sufficient electricity generation capacity is not built on the basis of the authorisation procedure.

(16) In the interest of security of supply, the supply/demand balance in individual Member States should be monitored and appropriate action taken if security of supply is compromised.

(17) Member States should ensure that all customers enjoy the right to be supplied with electricity of a specified quality at affordable and reasonable prices. In order to ensure the maintenance of the highest possible standards of public service in the Community, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards.

(18) The requirement to notify the Commission of any refusal to grant authorisation to construct new generation capacity has proven to be an unnecessary administrative burden and should therefore be dispensed with.

(19) Directives 96/92/EC and 98/30/EC should therefore be amended accordingly.

(20) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the creation of fully operational internal electricity and gas markets, in which fair competition prevails, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(21) To ensure homogeneity in the treatment of access to the electricity and gas networks, also in the case of transit, Directives 90/547/EEC and 91/296/EEC should be repealed,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 96/92/EC

Directive 96/92/EC is amended as follows:

1. Article 2 is amended as follows:

(a) point (9) is replaced by the following:

'9. "final customer" shall mean a consumer buying electricity for his own use.'

(b) point (22) is replaced by the following:

'22. "non-domestic customer" shall mean a consumer purchasing electricity which is not for his own household use and shall include producers, transmission and distribution undertakings and wholesale customers.'

2. Article 3 is replaced by the following:

'*Article 3*

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive market in electricity. Member States shall not discriminate between these undertakings as regards either rights or obligations.

2. Having regard to the relevant provisions of the Treaty, in particular Article 86, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and to environmental protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. As a means of carrying out public service obligations in relation to security of supply, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

3. Member States shall ensure that all customers enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at affordable and reasonable prices. They shall take appropriate measures to protect final customers and to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. These measures shall include, in particular, those set out in the Annex.

4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection and security of supply, notably through the maintenance and construction of necessary network infrastructure including interconnection capacity.

5. Member States may decide not to apply the provisions of Articles 5, 6, 16 and 21 in so far as their application would obstruct the performance, in law or in fact, of the obligations imposed on electricity undertakings in the general economic interest and in so far as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, *inter alia*, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.'

3. The following Article 3a is inserted:

'*Article 3a*

1. Member States shall, every two years, notify the Commission of all measures adopted to fulfill universal service and public service obligations, whether or not such measures require a derogation from the provisions of this Directive. This notification shall relate, *inter alia*, to the requirements of Article 3(4) and the maintenance of service standards.

2. The Commission shall publish, every two years, a report analysing the different measures taken in the Member States to meet high public service standards, together with an examination of the effectiveness of those measures.

Where appropriate, the Commission shall make recommendations as to measures to be taken at national level to achieve high public service standards.'

4. Article 4 is deleted.

5. Article 5 is replaced by the following:

'*Article 5*

1. For the construction of new generating capacity, Member States shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.

2. Member States shall lay down the criteria for the grant of authorisations for the construction of generating capacity in their territory. These criteria may relate to:

(a) the safety and security of the electricity system, installations and associated equipment;

(b) protection of public health and safety;

(c) protection of the environment;

(d) land use and siting;

(e) use of public ground;

(f) energy efficiency;

(g) the nature of the primary sources;

(h) characteristics particular to the applicant, such as technical, economic and financial capabilities;

(i) compliance with measures adopted pursuant to Article 3.

3. The authorisation procedures and criteria shall be made public.

4. Applicants shall be informed of the reasons for any refusal to grant an authorisation. The reasons must be objective, non-discriminatory, well founded and duly substantiated. Appeal procedures shall be made available to the applicant.'

6. Article 6 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. Member States shall ensure the possibility, in the interests of security of supply, to tender for new capacity on the basis of published criteria. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the capacity being built is not sufficient to ensure security of supply.'

(b) Paragraph 2 is deleted.

(c) Paragraph 6 is deleted.

7. The following Article 6a is inserted:

'*Article 6a*

1. Member States shall designate a body, which may be the independent regulatory authority referred to in Article 22, to monitor security of supply issues. This body shall monitor, in particular, the supply/demand balance on the national market, the level of expected future demand and envisaged additional capacity planned or under construction, and the level of competition on the market. The body shall publish, by 31 July each year at the latest a report outlining its findings on these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.

2. On the basis of the report referred to in paragraph 1 the Commission shall, on an annual basis, forward a Communication to the European Parliament and the Council examining issues relating to security of supply of electricity in the Community, and in particular the existing and projected balance between demand and supply. Where appropriate, the Commission shall issue recommendations.'

8. In Article 7, paragraph 6 is replaced by the following:

'6. Unless the system operator is already fully independent from other activities not relating to the transmission system in terms of ownership, the system operator shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to transmission.

In order to ensure the independence of the system operator, the following criteria shall apply:

(a) those persons responsible for the management of the transmission system may not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;

(b) appropriate measures must be taken to ensure that the personal interests of the persons responsible for the management of the transmission system are taken into account in a manner that ensures that they are capable of acting independently;

(c) the system operator must exercise full control over all assets necessary to maintain and develop the network;

(d) the system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer appointed by and reporting to the President/Chief Executive of the integrated electricity undertaking to which the system operator belongs. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority and published.'

9. The following Article 7a is inserted:

'*Article 7a*

Transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market based procedures.'

10. In Article 8, the following paragraphs 5 and 6 are added:

'5. Member States may require transmission system operators to meet minimum levels of investment for the maintenance and development of the transmission system, including interconnection capacity.

6. Rules adopted by transmission and distribution system operators for balancing, in real time, generation and consumption of electricity, shall be transparent and non-discriminatory. Tariffs and terms and conditions for the provision of such services by system operators shall be established in a non-discriminatory way reflecting prevailing market prices and shall be fixed or approved by the national regulatory authority prior to their entry into force.'

11. In Article 10, the following paragraph 4 is added:

'4. Unless the system operator is already fully independent from other activities not relating to the distribution system in terms of ownership, the system operator shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to distribution.

In order to ensure the independence of the system operator, the following criteria shall apply:

(a) those persons responsible for the management of the distribution system may not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, transmission and supply of electricity;

(b) appropriate measures must be taken to ensure that the personal interests of the persons responsible for the management of the distribution system are taken into account in a manner that ensures that they are capable of acting independently;

(c) the system operator must exercise full control over all assets necessary to maintain and develop the network;

(d) the system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer appointed by and reporting to the President/Chief Executive of the integrated electricity undertaking to which the system operator belongs. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority and published.

The provisions of the first and second subparagraphs shall apply from 1 January 2003. Member States may decide not to apply those provisions to integrated electricity undertakings serving less than 100 000 customers at that date.'

12. The following Article 12a is inserted:

'*Article 12a*

The rules in Articles 7(6) and 10(4) do not prevent the operation of a combined transmission and distribution system operator, which is fully independent in terms of its legal form, organisation and decision-making from other activities not relating to transmission or distribution system operation and which meets the requirements of Article 7(6).'

13. In Article 14, paragraph 3 is replaced by the following:

'3. Integrated electricity undertakings shall, in their internal accounting, keep separate accounts for their generation, distribution and supply activities, and, where appropriate, consolidated accounts for other, non-electricity activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. The internal accounts shall include a balance sheet and a profit and loss account for each activity.'

14. Article 15 is deleted.

15. Article 16 is replaced by the following:

'*Article 16*

1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. These tariffs shall be approved prior to their entry into force by a national regulatory authority established in conformity with Article 22.

2. The operator of a transmission or distribution system may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3.'

16. Articles 17 and 18 are deleted.

17. Article 19 is replaced by the following:

'*Article 19*

1. Member States shall ensure that all non-domestic customers are free to purchase electricity from the supplier of their choice from 1 January 2003 at the latest. They shall ensure that all customers are free to choose their supplier from 1 January 2005 at the latest.

2. To avoid imbalance in the opening of electricity markets:

(a) contracts for the supply of electricity with an eligible customer in the system of another Member State shall not be prohibited if the customer is considered as eligible in both systems involved;

(b) in cases where transactions as described in subparagraph (a) are refused because of the customer being eligible only in one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested electricity supply at the request of the Member State where the eligible customer is located.'

18. In Article 20, paragraph 4 is replaced by the following:

'4. In the event of cross-border disputes, the dispute settlement authority shall be the dispute settlement authority covering the system operator which refuses use of, or access to, the system.'

19. Article 22 is replaced by the following:

'*Article 22*

1. Member States shall establish national regulatory authorities. These authorities shall be wholly independent of interests of the electricity industry. They shall at least have the sole responsibility:

(a) to fix or approve terms and conditions for connection and access to national networks, including transmission and distribution tariffs;

(b) to fix or approve tariffs, or changes in tariffs at national level, to reflect costs or revenues related to cross border transmission of electricity;

(c) to define the rules on the management and allocation of interconnection capacity, in conjunction with the national regulatory authority or authorities of those Member States with which interconnection exists;

(d) to fix or approve any mechanisms to deal with congested capacity within the national electricity system;

(e) to ensure the respect of the requirements set out in Article 3(3) and (4).

2. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

3. Member States shall ensure that the appropriate measures be taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.'

20. The following Article 23a is inserted:

'*Article 23a*

Member States shall inform the Commission by 31 March of each year at the latest of imports of electricity that have taken place during the previous calendar year from third countries.'

21. Article 26 is replaced by the following:

'*Article 26*

The Commission shall review the application of this Directive and submit a report to the European Parliament and the Council, by [indicate a date] at the latest and by [indicate a date] at the latest, on the experience gained and progress made in creating a complete and fully operational internal market in electricity in order to allow the European Parliament and the Council to consider, in due time, the possibility of provisions for further improving the internal market in electricity. In particular, the report shall examine the extent to which the unbundling and tarification requirements of this Directive have been successful in ensuring fair and non-discriminatory access to the Community's electricity system. The report shall also examine possible necessary harmonisation requirements that are not linked to the provisions of this Directive.'

22. The Annex, the text of which is set out in Annex I to this Directive, is added.

Article 2

Amendments to Directive 98/30/EC

Directive 98/30/EC is amended as follows:

1. Article 2 is amended as follows:

(a) the following point 12a is inserted:

'12a "ancillary services" shall mean all services necessary for the operation of transmission and/or distribution networks and/or LNG facilities, including storage facilities and equivalent flexibility instruments, load balancing and blending;'

(b) the following point 20a is inserted:

'20a "non-domestic customer" shall mean a consumer purchasing natural gas which is not for his own household use and shall include power generators, natural gas undertakings and wholesale customers;'

2. Article 3 is replaced by the following:

'*Article 3*

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive market in natural gas. Member States shall not discriminate between such undertakings as regards either rights or obligations.

2. Having regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on natural gas undertakings, in the general economic interest, public-service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and to environmental protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. As a means of carrying out public-service obligations in relation to security of supply, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

3. Member States shall take appropriate measures to protect final customers and to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. These measures shall include, in particular, those set out in the Annex.

4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection and security of supply, notably through the maintenance and construction of necessary network infrastructure including interconnection capacity.

5. Member States may decide not to apply the provisions of Article 4 with respect to distribution in so far as their application would obstruct, in law or in fact, the performance of the obligations imposed on natural gas undertakings in the general economic interest and in so far as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, *inter alia*, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.'

3. The following Article 3a is inserted:

'*Article 3a*

1. Member States shall, every two years, notify the Commission of all measures adopted to fulfil public service obligations, whether or not such measures require a derogation from the provisions of this Directive. This notification shall relate, *inter alia*, to measures regarding environmental protection, security of supply, protection of customers, including final customers, social and regional cohesion, and the maintenance of service standards.

2. The Commission shall publish, every two years, a report analysing the different measures taken in the Member States to meet high public service standards, together with an examination of the effectiveness of those measures. Where appropriate, the Commission shall make recommendations as to measures to be taken at national level to achieve high public service standards.'

4. The following Article 4a is inserted:

'*Article 4a*

1. Member States shall designate a body, which may be the independent regulatory authority referred to in Article 22, to monitor security of supply issues. This body shall monitor, in particular, the supply/demand balance on the national market, the level of expected future demand and available supplies, and the level of competition on the market. The body shall publish, by 31 July each year at the latest, a report outlining its findings on these issues, as well as any measures taken or envisaged to address them, and shall forward this report to the Commission forthwith.

2. On the basis of the report referred to in paragraph 1, the Commission shall forward a Communication to the European Parliament and the Council each year examining issues relating to security of supply of natural gas in the Community, and in particular the existing and projected balance between demand and supply. Where appropriate, the Commission shall issue recommendations.'

5. Article 7 is replaced by the following:

'*Article 7*

1. Member States shall designate or shall require undertakings which own transmission, storage or LNG facilities to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more system operators to be responsible for operating, ensuring the maintenance of, and developing the transmission, storage and LNG facilities in a given area and their interconnections with other systems, in order to guarantee security of supply.

2. Each transmission, storage and/or LNG system operator:

(a) shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment;

(b) shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings;

(c) shall provide any other transmission undertaking, any other storage undertaking, any other LNG undertaking and/or any distribution undertaking, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.

3. Rules for balancing the gas system adopted by transmission and distribution system operators shall be transparent and non-discriminatory. Tariffs and terms and conditions for the provision of such services by system operators shall be established in a non-discriminatory way reflecting prevailing market prices and shall be fixed or approved by the national regulatory authority prior to their entry into force.'

6. The following Articles 7a and 7b are inserted:

'*Article 7a*

1. Member States may require transmission system operators to meet minimum levels of investment for the maintenance and development of the transmission system, including interconnection capacity.

2. Unless the transmission system operator is already fully independent from other activities not relating to the transmission system in terms of ownership, the transmission system operator shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission.

In order to ensure the independence of the transmission system operator, the following criteria shall apply:

(a) those persons responsible for the management of the transmission system may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of gas;

(b) appropriate measures must be taken to ensure that the personal interests of persons responsible for the management of the transmission system are taken into account in a manner that ensures that they are capable of acting independently;

(c) the transmission system operator must exercise full control over all assets necessary to maintain and develop the network;

(d) the transmission system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer appointed by and reporting to the President/Chief Executive of the integrated natural gas undertaking to which the transmission system operator belongs. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority and published.

Article 7b

Transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market-based procedures.'

7. In Article 10, the following paragraph 4 is added:

'4. Unless the distribution system operator is already fully independent from other activities not relating to the distribution system in terms of ownership, the distribution system operator shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to distribution.

In order to ensure the independence of the distribution system operator, the following criteria shall apply:

(a) those persons responsible for the management of the distribution system may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, transmission and supply of gas;

(b) appropriate measures must be taken to ensure that the personal interests of persons responsible for the management of the distribution system are taken into account in a manner that ensures that they are capable of acting independently;

(c) the distribution system operator must exercise full control over all assets necessary to maintain and develop the network;

(d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer appointed by and reporting to the President/Chief Executive of the integrated natural gas undertaking to which the distribution system operator belongs. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority and published.

The provisions of the first and second subparagraphs shall apply from 1 January 2004. Member States may decide not to apply those provisions to integrated natural gas undertakings serving less than 100 000 customers at that date.'

8. The following Article 11a is inserted:

'*Article 11a*

The rules in Article 7a(2) and Article 10(4) do not prevent the operation of a combined transmission and distribution system operator, which is fully independent in terms of its legal form, organisation and decision-making from other activities not relating to transmission or distribution system operation and which meets the requirements of Article 7a(2).'

9. In Article 13, paragraph 3 is replaced by the following:

'3. Integrated natural gas undertakings shall, in their internal accounting, keep separate accounts for their natural gas transmission, distribution, supply, LNG and storage activities, and, where appropriate, consolidated accounts for non-gas activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. The internal accounts shall include a balance sheet and a profit and loss account for each activity.'

10. Articles 14 and 15 are replaced by the following:

'*Article 14*

1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution system and LNG facilities based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. These tariffs shall be approved prior to their entry into force by a national regulatory authority established in conformity with Article 22.

2. Transmission system operators shall, if necessary and for the purpose of carrying out their functions including in relation to cross-border transmission, have access to the network of other transmission system operators based on the same conditions and principles as set out in paragraph 1.

Article 15

1. For the organisation of access to storage and equivalent flexibility instruments when technically and/or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to other ancillary services, Member States may choose either or both procedures referred to in paragraphs 2 and 3. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

2. In the case of negotiated access, Member States shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to the system so as to conclude supply contracts with each other on the basis of voluntary commercial agreements. The parties shall be obliged to negotiate access to the system in good faith.

Contracts for access to the system shall be negotiated with the relevant system operator or natural gas undertakings. Member States shall require natural gas undertakings to publish their main commercial conditions for the use of the system by [indicate date] at the latest and every year thereafter.

3. Member States opting for a procedure of regulated access shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right of access to the system, on the basis of published tariffs and/or other terms and obligations for use of that system. This right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking.'

11. Article 16 is deleted.

12. Articles 18 and 19 are replaced by the following:

'*Article 18*

1. Member States shall ensure that all non-domestic customers are free to purchase gas from the supplier of their choice and shall have the rights of eligible customers for third party access in order to execute such supplies in accordance with Articles 14 and 15 from 1 January 2004 at the latest.

2. Member States shall ensure that all customers are free to purchase gas from the supplier of their choice and have the rights of eligible customers for third party access in order to execute such supplies in accordance with Articles 14 and 15 from 1 January 2005 at the latest.

Article 19

To avoid imbalance in the opening of gas markets:

(a) contracts for the supply of gas with an eligible customer in the system of another Member State shall not be prohibited if the customer is considered as eligible in both systems involved;

(b) in cases where transactions as described in subparagraph (a) are refused because the customer is eligible in only one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested gas supply, at the request of the Member State where the eligible customer is located.'

13. Article 22 is replaced by the following:

'*Article 22*

1. Member States shall establish national regulatory authorities. These authorities shall be wholly independent of the interests of the gas industry. They shall at least have the sole responsibility:

(a) to fix or approve terms and conditions for connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities;

(b) to define the rules on the management and allocation of interconnection capacity, in conjunction with the national regulatory authority or authorities of those Member States with which interconnection exists;

(c) to fix or approve any mechanisms to deal with congested capacity within the national gas system;

(d) to ensure the respect of the requirements set out in Article 3(3) and (4).

2. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

3. Member States shall ensure that the appropriate measures be taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.'

14. Article 28 is replaced by the following:

'*Article 28*

The Commission shall review the application of this Directive and submit a report to the European Parliament and the Council, by [indicate date] at the latest and by [indicate date] at the latest, on the experience gained and progress made in creating a complete and fully operational internal market in natural gas in order to allow the European Parliament and the Council to consider, in due time, the possibility of provisions for further improving the internal market in natural gas. In particular, the report shall examine the extent to which the unbundling and tarification requirements of this Directive have been successful in ensuring fair and non-discriminatory access to the Community's gas system The report shall also examine possible necessary harmonisation requirements which are not linked to the provisions of this Directive.'

15. The Annex, the text of which is set out in Annex II to this Directive, is added.

Article 3

Directives 90/547/EEC and 91/296/EEC are repealed with effect from 1 January 2003.

Article 4

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 5

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 6

This Directive is addressed to the Member States.

ANNEX I

'*ANNEX*

(Article 3)

Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council [1] and Council Directive 93/13/EC [2]:

(a) Member States shall ensure that final customers have a right to a contract with their electricity service provider that specifies:

— the identity and address of the supplier;

— services provided, the service quality levels offered, as well as the time for the initial connection;

— the types of maintenance service offered;

— the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

— the duration of the contract, the conditions for renewal and termination of services and of the contract;

— any compensation and the refund arrangements which apply if contracted service quality levels are not met; and

— the method of initiating procedures for settlement of disputes in accordance with point (f).

(b) Member States shall ensure that final customers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions.

(c) Member States shall ensure that transparent information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of electricity services is available to the public, and particularly to final customers.

(d) Member States shall ensure that electricity suppliers specify in the bills sent to each final consumer, the composition of the fuel mix used to generate the electricity that is consumed by the final consumers they supply. The relative costs of the different fuels used to generate a unit of electricity supplied to the final consumers shall be specified and the relative importance of each energy source with respect to the production of greenhouse gases.

(e) Member States shall also implement appropriate measures to protect vulnerable customers.

(f) Member States shall ensure that transparent, simple and inexpensive procedures are available for dealing with final customer complaints. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC [3].

[1] OJ L 144, 4.6.1997, p. 19.
[2] OJ L 95, 21.4.1993, p. 29.
[3] OJ L 115, 17.4.1998, p. 31.'

ANNEX II

'ANNEX

Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council [1] and Council Directive 93/13/EC [2]:

(a) Member States shall ensure that final customers have a right to a contract with their gas service provider that specifies:

— the identity and address of the supplier;

— services provided, the service quality levels offered, as well as the time for the initial connection;

— the types of maintenance service offered;

— the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

— the duration of the contract, the conditions for renewal and termination of services and of the contract;

— any compensation and the refund arrangements which apply if contracted service quality levels are not met; and

— the method of initiating procedures for settlement of disputes in accordance with point (e).

(b) Member States shall ensure that final customers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions.

(c) Member States shall ensure that transparent information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of gas services is available to the public, and particularly to final customers.

(d) Member States shall also implement appropriate measures to protect vulnerable customers.

(e) Member States shall ensure that transparent, simple and inexpensive procedures are available for dealing with final customer complaints. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC [3].

[1] OJ L 144, 4.6.1997, p. 19.
[2] OJ L 95, 21.4.1993, p. 29.
[3] OJ L 115, 17.4.1998, p. 31.'