

# Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision <a href="#">2001/0077A(COD)</a> ) procedure Directive	Procedure completed		
Energy: rules for the internal market in natural gas. 'Gas Directive'			
Repealing Directive 98/30/EC <a href="#">1991/0385(COD)</a> Repealed by <a href="#">2007/0196(COD)</a>			
Subject 3.60.03 Gas, electricity, natural gas, biogas			
Key players			
European Parliament	Committee responsible  <a href="#">ITRE</a> Industry, External Trade, Research, Energy	Rapporteur  PSE <a href="#">RAPKAY Bernhard</a>	Appointed  29/05/2001
Former committee responsible			
<a href="#">ITRE</a> Industry, External Trade, Research, Energy			29/05/2001
PSE <a href="#">RAPKAY Bernhard</a>			29/05/2001
			V/ALE <a href="#">TURMES Claude</a>
Former committee for opinion			
<a href="#">ECON</a> Economic and Monetary Affairs			19/06/2001
			PPE-DE <a href="#">MARINOS Ioannis</a>
<a href="#">JURI</a> Legal Affairs and Internal Market			07/01/2002
			UEN <a href="#">CROWLEY Brian</a>
<a href="#">ENV</a> Environment, Public Health, Consumer Policy			21/05/2001
			NI <a href="#">KRONBERGER Hans</a>
<a href="#">RETT</a> Regional Policy, Transport and Tourism			The committee decided not to give an opinion.
Council of the European Union	Council configuration		
	<a href="#">General Affairs</a>		
	<a href="#">Transport, Telecommunications and Energy</a>		
	<a href="#">Industry</a>		
	<a href="#">Energy</a>		
European Commission	Commission DG  Energy and Transport	Commissioner	

## Key events

13/03/2001	Legislative proposal published	COM(2001)0125	Summary
14/05/2001	Debate in Council	<a href="#">2347</a>	
14/05/2001	Committee referral announced in Parliament, 1st reading		
26/02/2002	Vote in committee, 1st reading		Summary
26/02/2002	Committee report tabled for plenary, 1st reading	<a href="#">A5-0077/2002</a>	
12/03/2002	Debate in Parliament		
13/03/2002	Decision by Parliament, 1st reading	<a href="#">T5-0106/2002</a>	Summary
06/06/2002	Debate in Council	<a href="#">2433</a>	
07/06/2002	Modified legislative proposal published	<a href="#">COM(2002)0304</a>	Summary
03/02/2003	Council position published	<a href="#">15531/2/2002</a>	Summary
13/02/2003	Committee referral announced in Parliament, 2nd reading		
24/04/2003	Vote in committee, 2nd reading		Summary
24/04/2003	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0135/2003</a>	
02/06/2003	Debate in Parliament		
04/06/2003	Decision by Parliament, 2nd reading	<a href="#">T5-0243/2003</a>	Summary
16/06/2003	Act approved by Council, 2nd reading		
26/06/2003	Final act signed		
26/06/2003	End of procedure in Parliament		
15/07/2003	Final act published in Official Journal		

## Technical information

Procedure reference	2001/0077A(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Repealing Directive 98/30/EC <a href="#">1991/0385(COD)</a> Repealed by <a href="#">2007/0196(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 095; EC Treaty (after Amsterdam) EC 055; EC Treaty (after Amsterdam) EC 047-p2
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/5/19179

## Documentation gateway

Legislative proposal	COM(2001)0125	13/03/2001	EC	Summary
----------------------	---------------	------------	----	---------

Document attached to the procedure	SEC(2001)0438	13/03/2001	EC	
Economic and Social Committee: opinion, report	<a href="#">CES1311/2001</a> <a href="#">OJ C 036 08.02.2002, p. 0010</a>	17/10/2001	ESC	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0077/2002</a>	26/02/2002	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T5-0106/2002</a> OJ C 047 27.02.2003, p. 0088-0350 E	13/03/2002	EP	Summary
Modified legislative proposal	<a href="#">COM(2002)0304</a>	07/06/2002	EC	Summary
Document attached to the procedure	SEC(2002)1038	01/10/2002	EC	
Council statement on its position	<a href="#">05597/2003</a>	24/01/2003	CSL	
Council position	<a href="#">15531/2/2002</a> OJ C 050 04.03.2003, p. 0036-0058 E	03/02/2003	CSL	Summary
Commission communication on Council's position	<a href="#">SEC(2003)0161</a>	07/02/2003	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0135/2003</a>	24/04/2003	EP	
Text adopted by Parliament, 2nd reading	<a href="#">T5-0243/2003</a> OJ C 068 18.03.2004, p. 0148-0235 E	04/06/2003	EP	Summary
Commission opinion on Parliament's position at 2nd reading	<a href="#">COM(2003)0428</a>	23/07/2003	EC	Summary
Follow-up document	<a href="#">COM(2004)0863</a>	05/01/2005	EC	Summary
Follow-up document	<a href="#">COM(2005)0568</a>	15/11/2005	EC	Summary
Non-legislative basic document	<a href="#">COM(2006)0841</a>	10/01/2007	EC	Summary
Follow-up document	<a href="#">COM(2009)0115</a>	11/03/2009	EC	Summary
Follow-up document	<a href="#">SEC(2009)0287</a>	11/03/2009	EC	
Follow-up document	<a href="#">SEC(2009)0642</a>	06/05/2009	EC	Summary
Follow-up document	<a href="#">COM(2010)0084</a>	11/03/2010	EC	Summary
Follow-up document	<a href="#">SEC(2010)0251</a>	11/03/2010	EC	

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Directive 2003/55](#)  
[OJ L 176 15.07.2003, p. 0057-0078](#) Summary

## Energy: rules for the internal market in natural gas. 'Gas Directive'

PURPOSE : to revise amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas with a view to completing the internal energy market. CONTENT : in response to the Lisbon European Council's call for the energy markets to be opened up more rapidly, the European Commission has proposed a set of measures aiming to open up gas and electricity markets fully by 2005 for the benefit of European consumers. These measures include bringing forward the schedule, reinforcing the

conditions which encourage real and fair competition, and introducing a genuine single market (refer also to COD/2001/0078). By amending the Directives governing the internal market in gas and electricity, the Commission is now proposing the following schedule: - 2003: freedom for all non-domestic customers to choose their electricity supplier - 2004: freedom for all non-domestic customers to choose their gas supplier - 2005: all consumers, without exception, should be able to choose their gas and electricity suppliers. For competition to be genuine, consumers and competing producers need to enjoy non-discriminatory access to the gas and electricity transmission and distribution grids. The Commission is therefore proposing that: - management of these grids be legally separate from production and sales activities, and that they operate entirely independently. This requirement will not apply to small-scale distribution companies; - network access tariffs be set, published and approved by national regulators before entering into force; - each Member State have such a regulator. Regulators will need to be independent of Member State administrations. They will be given the requisite basic competence. They will inter alia set the tariffs and conditions for access to the gas and electricity transmission grids. They will thus play an important role in preventing distortions of competition. They will bring continuity and transparency to the market. To provide the people and businesses with a gas and electricity market which is not only open, but also gives them the best protection, the Commission is proposing specific additional measures regarding security of supply and public service. The Commission also proposes measures to add to the safety nets already provided by the existing Directives. These measures are designed inter alia to oblige the Member States and the Commission: - to carefully monitor the balance between supply and demand; - if and when necessary, to launch public tenders for the creation of new electricity and gas production capacity. To make quite sure that the opening-up of the gas and electricity market serves the interests of all the people of Europe, the Commission has decided to add to the Directives' existing provisions on the quality of public service. The aim is to provide the highest level of consumer protection, in all the Member States of the Union. The new proposals require Member States inter alia: - to guarantee a secure supply for all consumers; - to take steps to protect vulnerable persons, such as the elderly or disabled; - to take steps to protect the rights of energy consumers: energy supply contracts governed by strict rules; transparent information on prices; simple, low-cost and transparent procedures for dealing with consumer complaints. ?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The committee adopted the report by Claude TURMES (Greens/EFA, L) and Bernhard RAPKAY (PES, D) tabling a large number of mainly technical amendments to the Commission proposal under the codecision procedure (1st reading). It sought to amplify many of the definitions and clarify the text of the proposal. Some of the amendments were also aimed at ensuring that environmental protection, through the promotion of renewable energy and energy efficiency measures, was taken sufficiently into account in the proposal. One amendment stipulated that the costs of connecting new producers of electricity from renewable energy sources should be "objective, transparent and non-discriminatory". Moreover, to enable consumers to make informed choices, Member States should ensure that electricity companies specified certain minimum information in their bills, such as the percentage mix of the different energy sources used to generate the electricity sold and the volume of greenhouse gases, nuclear waste and other pollutants produced during electricity production. The Commission was also asked to come up with proposals to regulate third-country access to the internal electricity and gas markets to avoid energy 'dumping'. Those proposals should specify that any importation of energy into the internal market should be subject to production and transmission standards similar to those in the EU, particularly as far as environmental and safety criteria were concerned. The report also stressed the importance of public service obligations and introduced a number of new provisions aimed at providing increased protection for consumers. It sought to ensure, for example, that price caps were not removed until the market was working effectively and that adequate safeguards were put in place to protect vulnerable consumers from disconnection. On the controversial issue of regulatory authorities, the committee wanted Member States to designate one or more competent bodies as regulatory authorities that would have the highest possible degree of independence from governments. Their responsibilities should include continuous monitoring of the market with a view to establishing a level playing field, supervising the unbundling of accounts, reporting on market concentrations and advising the appropriate national authorities. The committee also said that electricity companies should have the right to appeal to an independent tribunal against decisions by national regulatory authorities. Lastly, MEPs wanted to allow a longer period than that proposed by the Commission for the Member States to transpose the directive into national law.?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The European Parliament has adopted with 351 votes in favour, 79 against, and 114 abstentions the Commission's proposal on the completion of the internal market in electricity and natural gas. The two rapporteurs, Claude TURMES (Greens/EFA, L) for electricity and Bernhard RAPKAY (PES, D) for gas, both agreed on the importance of creating a true functioning internal market for electricity and gas. With the vote, an important step towards an open, liberalised market in electricity and natural gas, was taken. After a lengthy and complicated vote with 160 amendments, the House agreed largely with the opinion of the Energy Committee and adopted most of the amendments submitted by that committee. Parliament agreed that: - The Commission's proposal should be separated into one proposal for Electricity and one for gas, - Member States should ensure that electricity and gas entities supplying final consumers specify certain minimum information, including the origin of the electricity and gas in the bills; - Member States should designate one or more competent bodies as regulatory authorities with the highest possible degree of independence from the Governments, and must be wholly independent of interests of the electricity and gas industry; - Member States should ensure legal unbundling and a fair and non-discriminatory network system; - Funds for decommissioning in the nuclear sector should not be allowed to be used for anything else; - Consideration should be given to initiatives and measures to encourage reciprocal arrangements for access to third country gas networks; - The Commission should come forward with proposals to regulate third-country access to the internal electricity and gas market to avoid price dumping; - Cross subsidisation of any kind shall be inadmissible; - Member States shall bring into force the laws etc necessary to comply with the Directive by 31 December 2002.?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The Commission's amended proposal accepts in principle or in part a large number of amendments adopted by the Parliament at first reading. The amendments of the European Parliament have been incorporated as follows: 1) Recitals : the Commission has accepted the amendments which: - specify in which areas obstacles to a functioning market remain; - underline the need to ensure a level playing field in generation and protecting small and vulnerable customers' rights and of disclosure on fuel sources; - underline the importance of non-discriminatory access to the network and the existence of favourable investment conditions; - state that construction and maintenance of network infrastructure will

contribute to a stable supply; - emphasise the existence of effective regulation and the necessity to establish at least legally binding methodologies underlying transmission and distribution tariffs, instead of stressing the existence of national regulatory authorities with the competence to set or approve tariffs; - require national regulatory authorities to set up market based mechanisms for balancing power as soon as the electricity market is sufficiently liquid; - state that national regulatory authorities are given the task to ensure that, in approving/fixing transmission and distribution tariffs, they take account of the benefits of distributed generation and demand-side management measures; - specify the provisions on the examination of the security of supply situation in the Community, taking into account the interconnection capacity between Member States. It is specified that this monitoring should be carried out early enough to allow any necessary actions to be taken in due time; - call for consideration to be given to the increased external dependence of the Union on natural gas and to consider measures to encourage reciprocal arrangements for access to networks of third countries; - call for admission to the gas network for biogas and gas for biomass for environmental reasons provided this is compatible with the secure and efficient operation of the network on environmental grounds; - state that long-term 'take-or-pay' contracts will remain an important and necessary part of the gas supply of Member States and should be maintained as an option; - include in Article 1 of the amended Gas Directive the reference that the Directive shall also apply to apply biogas and gas from biomass. The Commission can accept this addition, but adds a clause to the effect that this applies to these gases insofar as they can be technically and safely injected into the natural gas system. 2) Universal and Public Service Obligations: the amendments accepted aim to : - add sustainable development to the scope of the Directive; - introduce climate change, energy efficiency and research and development among the subjects to which public service obligations may relate; - mention the fact that public service obligations shall not unduly restrict competition; - reinforce the provisions on the protection of vulnerable customers and oblige Member States to guarantee that effective procedures are in place to enable individual customers to switch supplier; - introduce the obligation to specify fuel sources into the body of the Directive; - oblige Member States to set minimum criteria for delays within which system operators must effectuate connections and repairs; - specify that Member States shall notify all their measures to fulfil public and universal service obligations upon implementation and subsequently every two years any modifications to those measures; - specify that customers shall be informed about their rights regarding universal service; 3) Authorisation procedures (electricity) : the Commission accepted the principle of the amendment which calls for simplified authorisation procedures for small or embedded generation under 15 MW. 4) Tendering (electricity) : the Commission accepts the amendment which adds to the tendering option a possibility to tender explicitly for energy efficiency/demand side management measures in the interest of security of supply and environmental protection. 5) Monitoring of Security of Supply (gas, electricity) : the Commission accepted the amendments which : - suggest the creation of a European Regulatory Group for the European electricity and gas markets by the Commission. The Commission has the intention to create such a consultative body shortly, through a Commission decision; - include the environment and public service requirements in addition to security of supply as a reason to monitor the demand/supply balance; - adds in the report by the Commission on security of supply in natural gas, an examination of issues relating to system capacity levels. 6) Unbundling of Transmission and Distribution System Operators: the Commission accepts the amendments which : - proposes that the system operator shall have efficient decision making rights as to the assets necessary to maintain and develop the network; - specifies that at least the methodologies for the establishment of tariffs and terms for balancing the gas system shall be approved or fixed by the national regulatory authority. The tariffs and terms shall be published; - calls for admission to the gas network for biogas and gas for biomass for environmental reasons on condition that this is compatible with the secure and efficient operation of the network on environmental grounds. 7) Maintenance and Development of the network by the TSOs : the costs of connecting producers of electricity from renewables and combined heat and power shall be objective and non-discriminatory. The Commission is of the opinion that the costs of connection of all producers should be non-discriminatory, but that, in addition, the specific characteristics and the costs and benefits of connecting producers from renewables and combined heat and power. 8) Unbundling of Accounts : the national regulatory authority shall have access to the accounts of generation, transmission, distribution and supply undertakings. 9) Access to the Network: the amendments accepted aim to : - introduce the notion that tariffs should 'reflect long-term, marginal avoided network costs from decentralised electricity production and demand side management measures; - oblige system operators to quote terms for reinforcing the network; - add access to flexibility instruments to access to storage, which is one of the most important flexibility instruments in most Member States. 10) Regulation: the amendments concerning the national regulatory authority can be supported in part. With respect to the independence of the national regulatory authority, the Commission proposes that it is important that the regulatory authority is independent from the interests of industry. Other amendments : - add to the tasks of the national regulatory authority the reporting on market dominance, market concentration and predatory and anti competitive behaviour; state that transmission and distribution system operators shall be placed 'under a positive obligation' to release information on capacity allocation. The amendment on the prohibition of cross-subsidisation is accepted in principle. 11) EU imports : the reporting obligation on imports of electricity is changed from once a year to once every three months. The Commission is, in principle, willing to except a shorter periodicity for the reporting obligation. 12) Reports : the amendments accepted specify the provisions on the examination of the security of supply situation in the Community, taking into account the interconnection capacity between Member States. It is specified that this monitoring should be carried out early enough to allow any necessary actions to be taken in due time. The Commission supports these specifications. 13) Annex : the amendments contain some provisions of the annex on consumer protection. Most of these can be accepted. It should be noted that the amendments relating to, or implying, the splitting of the proposal of the Commission into two separate proposals, one amending the Electricity Directive 96/92/EC and one amending the Gas Directive 98/30/EC are not accepted.?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

The common position takes on board the parliamentary amendments splitting the Commission proposal in two separate texts, one amending the Electricity Directive 96/62/EC (please refer to COD/2001/0077) and one amending the Gas Directive 98/30/EC. Although the European Parliament adopted some of these amendment in relation to the Gas proposal the Council was of the opinion that they were also relevant to the Electricity one. The main elements of the common position are the following: 1) Public service obligations : the Council retained as a general principle, the protection of final customers and ensuring a high level of consumer protection. Examples of measures contributing to high standards of consumer protection and information are presented in an Annex (Annex A) which is mandatory for household customers. Moreover, household customers and, where Member States deem it appropriate, small enterprises, shall enjoy "universal service", i.e. the right to be supplied with electricity of a specified quality of reasonable prices. While this concept of universal service, and more generally, public service requirements, can be interpreted on a national basis, they have to be implemented in a transparent and non-discriminatory way. PSOs and universal service shall also be the subject of a detailed Commission report. 2) Unbundling of transmission system operators and unbundling of distribution system operators. These should be independent, in terms of their legal form as well as their organisation and decision making, from activities not relating to transmission, respectively, distribution. Moreover, they should have to fulfil four criteria on functional independence (compliance, managerial independence, etc.) However, functional independence regarding the decision-making rights of the unbundled operator should not prevent some form of co-ordination between the parent company and its subsidiaries. Distribution system operators serving 100 000 customers or less may be exempted from these provisions; the Commission will review this threshold in the framework of its reporting exercise. Besides Member States may postpone on the implementation of legal unbundling for DSOs until the full

market opening. Furthermore in the context of the review procedure provided for in the Directive, a Member State may, under certain conditions related to the manner in which it has carried out network access, request to the Commission to be exempted from requirements such as the legal unbundling of DSOs. This request may lead to the Commission submitting proposals to the Parliament and Council to amend the relevant provisions of the Directive or provide for other appropriate means. 3) Access to storage : access to storage, linepack and ancillary services may be organised on the basis of either negotiated access or regulated access (with published tariffs) while noting that, where the market is sufficiently competitive, access to storage/linepack/ancillary services could rely on market-based instruments. Regarding LNG facilities, the text now ensures that a modicum of access, at published tariffs, is ensured to ancillary services and temporary storage exclusively in relation to LNG activities. At the same time, the text clarifies in which circumstances access to storage may be limited and recalls the important role of storage facilities to implement security of supply. The Commission will review third party access to gas storage in its detailed report to be submitted no later than 1 January 2006. 4) Market opening : the Council followed the two-step opening proposed by the Commission, with 2004 for all non-household customers and 2007 for all customers. Member States should take into account the situation of certain groups of non-household customers during the first step by applying for an 18-month derogation. By 1 January 2006 the Commission is due to produce a detailed reporting addressing i.a. public service and universal service issues as well as various issues related to the implementation and consequences of the market opening. The Directive shall be implemented no later than 1 July 2004. 5) Regulatory authorities : the common position, whilst confirming it is left to the Member States to define the institutional arrangements appropriate to carry out the regulatory tasks, states that the independent regulatory authorities are at least responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market, by least monitoring various rules and conditions listed in the Commission proposal. These authorities are also responsible for approving ex-ante at least the methodologies underlying the terms and conditions for connection and access to networks and for balancing services, and have the authority to require ex-post modifications of these terms and conditions. The text also clarifies the provisions and concerning the prompt handling of complaints by administrative bodies. 6) New infrastructure : the Council included detailed provisions whereby new major gas infrastructures or significant modifications to existing ones would be totally or partially, exempt from Article 18 on third party access, Article 19 on access to storage and Article 25 on prior approval of terms and conditions for access. This exemption would take place under restrictive conditions and be subject to the Commission control. 7) Unbundling of accounts : gas undertakings have to keep separate accounts for their transmission, distribution, LNG and storage activities and for further gas activities. Supply activities to eligible and to non-eligible customers shall be separated in the accounts of these undertakings until full market opening. 8) Exemptions : further to exemptions already granted under Directive 98/30/EC (e.g. for Emergent and Isolated markets" and "Take-or-pay commitments") the common position introduces the possibility of time-limited exemptions for distribution infrastructure in specific geographical areas.?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The main elements of the Commission proposal are retained in the common position. The Council has taken on board nearly all Parliament amendments which the Commission had accepted in its amended proposal, either in the same form or in a way that does not substantially alter the intention of the amendments. Most of the changes introduced by the Council strengthen or clarify the Commission's proposal, without changing its substance. The most important difference with the Commission proposal are the delay in the date for full market opening until July 2007 - as opposed to 2005 proposed by the Commission and supported by Parliament - and the delay in the legal unbundling for distribution system operators until July 2007 - as opposed to 1 January 2004 as proposed by the Commission and supported by Parliament. The Commission is able to support the common position on these points in the spirit of a general compromise. It has to be pointed out that the date of 2007 for full market opening is unconditional and will not be rediscussed. The Commission has made two declarations which have been attached to the minutes of the Council meeting. These declarations aim to give an indication of the interpretation that the Commission will make of certain provisions. The first concerns new infrastructures (Article 22 of the Gas Directive) as well as on future long-term contracts (Article 32 of the Gas Directive). ?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The committee adopted the report by Bernhard RAPKAY (PES, D) amending the Council's common position under the 2nd reading of the codecision procedure. The committee reinstated, sometimes in modified form, a number of amendments adopted by Parliament at 1st reading which sought to: - ensure secure and environmentally sustainable supplies and sales of natural gas. - ensure optimal usage of transmission and storage resources for gas; - require Member States to ensure that the regulatory authorities have the power to require the release of gas or gas transportation capacity from long-term contracts where the regulatory authority deems that this is necessary for the development of sustainable competition. MEPs also called for close cooperation between the Commission and national supervisory bodies to ensure a level playing field as regards security of supply and said that the Commission should launch a comprehensive survey of demand satisfaction across the whole of the internal market. Other amendments provided for an annual external audit to ensure that no cross-subsidies were being paid and also sought to ensure that the supervisory authorities were made responsible for monitoring the level of transparency and competition. One amendment stressed the need to guarantee equality of access for EU gas companies to national consumers, with the aim of ensuring that public service undertakings did not impose conditions which could only be met by national companies, amounting in practice to unfair competition. Lastly, the committee modified Article 29 relating to a Member State's application for exemption from the provisions of the directive so as to make it clear that the exemption applies only to legal unbundling of distribution operators.?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The European Parliament passed a resolution adopting some of the amendments in a report by Bernhard RAPKAY (PES, Germany)). The Council modified its common position enabling compromise amendments to be agreed. These include the following: - equality of access for EU gas companies to national consumers; - the parent companies of the transmission system operator and the distribution system operator will be able to approve the annual financial plans and set global limits on the levels of indebtedness of its subsidiary. The parent company will not be able to give instructions regarding day-to-day operations. This provision also applies to combined system operators; - the audit must verify the obligation to avoid discrimination and cross-subsidies is respected; - national regulatory authorities shall contribute to the development of the

internal market and of a level playing field by cooperating with each other and with the Commission in a transparent manner; - Commission proposals to ensure the independence of distribution system operators should also concern measures to address issues of market dominance, market concentration and predatory or anti-competitive behaviour.?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

PURPOSE : to establish common rules for the transmission, distribution, supply and storage of natural gas. COMMUNITY MEASURE : Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC. CONTENT : This Directive aims to arrive at a level playing field for all market actors on the gas markets in the EC. Whilst Directive 98/30/EC has produced benefits for large consumers in terms of lower prices and better service standards, it has left open to Member States certain choices in terms of market opening, organisation of access to the network and regulation of the market. Experience has demonstrated that this situation leads to distortion of competition, as some Member States' markets are more open to competition than others. This Directive seeks to achieve full progressive opening of the gas market, and high standards of public service. It abolishes the choice of negotiated access to the gas networks and obliges Member States legally to separate the transmission and distribution network operators from other parts of the business. In addition, all Member States must establish a regulatory authority with a minimum set of competencies. The directive provides for the liberalisation of Community gas markets for non-household users by 1 July 2004, and a complete opening for all users by 1 July 2007. It establishes provisions on the unbundling of transmission and distribution operators, public service obligations, regulatory tasks, and third party access to gas storage. The main points are as follows: - distribution and transmission systems must be operated through legally separate entities where vertically integrated undertakings exist; - small companies may be exempt from the legal distribution unbundling requirements; - tariffs must be applicable to all system users on a non-discriminatory basis; - regulatory authorities must have the competence to fix or approve tariffs, which must be published prior to their entry into force; - with regard to storage, the Directive states that the rules must not lead to distortion of competition or discrimination in the access to storage; where a storage facility, linepack or ancillary service operates in a sufficiently competitive market, access will be allowed on the basis of non-discriminatory market-based mechanisms; - biogas and gas from biomass must be granted non-discriminatory access to the gas system. Rules must ensure that these gases can technically be injected into and transported through the natural gas system; - common minimum standards regarding public service requirements are specified in the Directive. These take into account the objectives of common protection, security of supply, environmental protection and equivalent levels of competition in all Member States; - the Commission must publish a report on an annual basis analysing measures taken at national level to achieve public service objectives and comparing their effectiveness. DATE OF TRANSPOSITION : 01/07/04. ENTRY INTO FORCE : 04/08/03.?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The Commission states that the conciliation procedure will not be invoked, since Parliament's amendments are acceptable to the Council. The Council approved on 16 June 2003 the amendments voted by Parliament. The Commission accepts all the amendments in full, since they clarify or strengthen the text.?

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The European Commission has published its Annual Report on the Implementation of the Gas and Electricity Internal Market.

The new electricity and gas Directives were due to be transposed by Member States by July 2004 and the Regulation on cross border electricity exchanges also came into effect. The new rules are aimed at achieving a competitive electricity and gas sector across the whole European Union as envisaged by the Lisbon Council objectives.

However, many aspects of implementation remain disappointing. In October 2004, eighteen Member States had to be sent a letter warning that they had still not fully notified to the Commission the legal measures taken to transpose the latest Directives. This delay is unsatisfactory since it is now clear that the provisions of the previous Directives have not been adequate to achieve the objective of competition, even for larger users. Such customers would normally be expected to negotiate with suppliers on a regular basis. However after five years of competition for electricity and over three years for gas, fewer than 50% have switched supplier in most Member States. In addition, many are unsatisfied with the range of services being offered. In many cases, customers have only been able to change to another domestic supplier with the result that penetration of national markets by foreign

companies is also disappointing in many cases, reflecting a lack of integration of markets and missing infrastructure links. In most cases, foreign suppliers represent less than 20% of market share.

Although electricity prices are lower than 1995 in real terms, they have increased in the last 18 months, partly due to increased prices for primary energy sources. At the same time, gas prices are higher than in 1995 due to the ongoing linkage with oil. Although such price fluctuations are normal, increases are unpalatable to customers where the prospects for changing supplier appear to be limited by regulatory barriers and where the negotiating power of customers is weak due to an unfavourable market structure. Particular concerns exist among the largest users that suppliers are failing to offer an adequate range of contract structures, especially longer term arrangements.

A key issue relates to the failure to fully integrate national energy supply into a wider European market. In this context it is vital for rules on cross border electricity exchanges to continue to be improved to ensure that existing infrastructure is utilised to its maximum possible extent. Likewise for gas, the adoption and implementation of the proposed Regulation is similarly important. New investment in infrastructure is also needed and progress in this regard remains slow, as was also noted in the Commission Communication on Energy Infrastructure and Security of Supply.

Secondly, Member States are still failing to deal with the issue of market structure. As has been highlighted in previous reports, the gas and electricity markets in too many Member States are dominated by one or two companies, and there is often inadequate capacity for cross border competition. It is imperative that solutions are found to such problems.

Thirdly, although much progress has already been made in terms of unbundling of network operators and the introduction of regulated third party access, there are still certain aspects which remain unsatisfactory. A fully independent transmission system operator is crucial for a well functioning market. Likewise distribution system operators need to be adequately separated from supply companies to ensure cost reflective tariffs and the removal of any cross subsidies. The independence of regulators is crucial in this respect in order to ensure fair network access in terms of tariff levels and structure. In this respect the gas sector is measurably behind that for electricity.

A final group of issues which may tend to be an obstacle to the internal market is the continued existence of a regulated end user prices for electricity and gas alongside the competitive market and associated long term power purchase arrangements (PPAs). Although such controls are a valuable transitional measure during the initial phase of market opening, there are risks that such an approach will stifle competition, constrain investment and confuse and contradict unbundling measures.

The report states that Member States need to maintain their commitment to this objective in the decisions they make regarding the implementation of the Directives and restructuring of the industry. It is only by doing this that the objective of a competitive and secure market will be achieved. With this in mind, the issue of investment in infrastructure and the sound operation of networks, in support of the competitive market, remains a critical issue. Although some of these issues have been addressed the concerns which were expressed in previous Communications and the proposed Directive on Infrastructure and Security of Supply remain pertinent and progress, in some form or another, is required on this issue. The role of independent regulators remains a crucial component of the introduction of competition and their decisions relating to network tariffs and other important market rules will continue to shape the development of the market. In this context it remains important to ensure that authorities have sufficient resources and competences. Whether the improvements made under the Directives are adequate to achieve the objectives of the internal market remains to be seen, especially if Member States take a minimalist approach to the transposition of the current legislation. One thing that is certain is that in the new global environment of higher primary energy prices it is more important than ever for the Community to live up to its commitment to a competitive market.

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The Commission presented its 2005 progress report on creating the internal gas and electricity market. The main conclusion of this report is that, whilst the initial opening period of energy markets has largely been a success to date, with, for example, electricity prices now being lower in real terms than in 1997 notwithstanding recent price rises for oil, gas and coal, more needs to be done to ensure that industry and citizens receive the full benefits flowing from market opening. This assessment is shared by energy regulators and most interested parties consulted during preparation of this report.

The most important persisting shortcoming is the lack of integration between national markets. Key indicators in this respect are the absence of price convergence across the EU and the low level of cross-border trade. This is generally due to the existence of barriers to entry, inadequate use of existing infrastructure and - in the case of electricity ? insufficient interconnection between many Member States, leading to congestion. Moreover, many national markets display a high degree of concentration of the industry, impeding the development of effective competition. The gas market continues to suffer from a lack of liquidity of both gas and transport capacity. In this context, the effects of long-term gas contracts will have to be taken into account, both in terms of competition and the fact that such contracts may be necessary to underpin the financing of major new gas infrastructure. Another indicator of the lack of real competition is that switching by customers remains limited in most Member States and that choosing a new supplier from another Member State remains the exception.

The most important cause of this is the failure of Member States to implement the second electricity Directives on time or with sufficient determination. A large number of Member States were up to a year late in implementing the Directives, others still have not done so, and many have taken a rather ?minimalist? approach in implementing the Directives. This approach needs to be re-considered. The Commission opened infringement procedures against Member States for failure to implement the Directives and, in June 2005, took six Member States to the European Court of Justice : Spain (electricity and gas); Luxembourg (electricity and gas); Greece (electricity); Estonia (gas); Portugal (electricity) and Ireland (gas).

This Report shows that in economic terms, with very few exceptions, electricity and gas markets in the EU remain national in economic scope. Sufficient cross-border competition has not yet developed to provide a fully effective constraining influence on the economic power of companies in each national market. This issue needs to be addressed with determination, by the Commission, Member States, Regulators and Industry. The main immediate action that is necessary is the full and complete and effective implementation of the second Gas and Electricity Directives. It is therefore too early to decide whether additional legislative measures at Community level are necessary, such as those suggested by some respondents to the Commission?s enquiries when preparing this report; for example additional unbundling or further powers to Regulators. It is first necessary to see the results of the implementation of the Second Directives in practice. The Commission will therefore, in addition to following-up closely the formal legal compliance with the Directives, carry-out detailed country-by-country reviews of the effectiveness in practice of legislative and regulatory measures, including specific additional national measures. This will lead to a further Report by the end of 2006 and, if necessary, proposals to redress any remaining requirements in 2007.

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The Commission presents its report on progress in creating the internal gas and electricity market. The liberalisation of the EU's electricity and gas markets, which began several years ago, has contributed to the rejuvenation of the energy sector. It has helped to develop entrepreneurial potential in this sector, with beneficial effects on a variety of energy-related activities ranging from the production of diverse forms of renewable energy to the creation of financial markets for energy derivatives. Market participants are now better prepared to adapt to the rapid economic and environmental changes ? particularly in dealing with the specific challenges that climate change poses to the energy sector.

The present report bears witness to the fact that, over the past five years, significant improvements have taken place in the EU electricity and gas market.

While these developments are encouraging, the full potential of liberalisation has not yet been realised.

The Commission is taking action to ensure the correct implementation of EU legislation at national level through the application of infringement procedures and complementing the internal market legislation with the third internal energy market package (see [COD/2007/0196](#) and [COD/2007/0199](#)). In June and July 2008, the package passed its first reading in the European Parliament; in October 2008, a political

agreement was reached in the Council. The second reading started in January 2009, and is on course to be adopted by mid-2009. Thereafter, the third internal market package will need to be implemented in national law.

One of the purposes of the present report, therefore, is to identify the shortcomings of the current situation and to indicate the areas in which further action is needed.

More than four years after the deadline (1 July 2004), implementation of the second [Electricity](#) and Gas Directives is still not entirely complete. Several Member States, including Denmark, Luxembourg and the Netherlands, have now correctly implemented both Directives through appropriate national legislation. There has also been progress in other Member States: the Czech Republic, Finland, Germany, Greece, Latvia, Lithuania, Slovenia and the United Kingdom brought their national laws into line with EU legislation after a reasoned opinion was issued by the European Commission. In the case of some other Member States, the Commission has had to take legal steps to ensure the full and correct implementation of certain provisions.

In 2007 and 2008 a great deal of effort was put into enhancing competition on the wholesale market; significant progress was made through the regional initiatives. There also seems to be a new trend towards building new energy infrastructure. This is crucial to overcoming the longstanding fragmentation of EU energy markets. The trend is set to continue but it may take some time because the planning and building of such infrastructure requires long time horizons.

This report presents a mixed picture of the progress of completing the internal energy market. There are still a number of areas and Member States where significant obstacles to the efficient functioning of the electricity and gas market persist. A major concern is the incomplete implementation of European electricity and gas legislation. The recent experience of rising energy prices underlines the need to make market integration and the enhancement of cross-border trade the top priorities. It is therefore essential that the Electricity and Gas Regulations are properly implemented by all Member States. The Commission urges Member States, regulators and industry to take the appropriate steps as quickly as possible. The European Commission will consider initiating infringement proceedings for non-compliance with provisions in the gas and electricity Directives and Regulations.

With respect to market concentration, progress has generally been slow. A number of wholesale markets, in particular, still suffer from limited competition and the lack of liquidity.

On the electricity wholesale market, the three biggest generators still control more than 70% of generation capacity in 15 Member States. In the gas wholesale market, the concentration is even greater. The three largest wholesalers have a market share of 90% or more in 12 Member States.

There are signs that the situation on the retail market is about to improve. Member States should put even more effort into providing comprehensive data for supplier switching. Switching levels vary considerably across Member States, with some mature markets ? such as the UK - experiencing relatively high rates and a number of others showing little or no activity. At the level of small industry and households, the reported figures suggest that electricity consumers tend to be more active than gas consumers

A major issue in the reporting period was the increase in energy prices, in part due to the rising price of oil on the international market. This triggered major increases in energy end-prices. Industrial consumers in some Member States were faced with more severe price increases than in others. Prices for primary energy sources have fallen significantly since the summer of 2008. Competition and market opening should ensure that these lower prices are passed on to the end consumers.

While short-term solutions, such as regulated prices, might appear to be advantageous in the light of rapidly increasing energy prices, the present report has stressed the likely consequences of such measures: investor confidence is undermined, market entry is deterred and the full benefits of the internal energy market are placed at risk.

Lastly, if the EU is to continue to have a secure energy supply, major investments are needed over the next two decades. This is confirmed in the Commission's [Second Strategic Energy Review](#) and by the International Energy Agency (IEA).

Over the coming two decades, the EU - like other parts of the world - has to address the need for major investments in infrastructure. In the long term only a properly functioning internal electricity and gas market can send the right price signals to encourage investment.

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The Commission presents a Staff Working Document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity.

Directive No 2003/55/EC and Regulation (EC) No 1228/2003 are based on the general principle of a regulated access regime to gas and electricity infrastructure. Both legal acts, however, allow for exemptions from provisions enshrining this overall rule, as well as from provisions establishing ex ante and ex post tariff regulation.

This document provides information on the Commission's assessment of exemption decisions taken by national authorities according to Article 22 of the Gas Directive and Article 7 of the Electricity Regulation. It explains the general framework and analyses the assessment criteria, the information to be provided by the relevant authorities and conditions that may be imposed.

The experience with granting exemptions for new major infrastructure has shown that the conditions of Article 22 of the Gas Directive and of Article 7 of the Electricity Regulation are not always sufficiently clear to the national authorities and market participants, in particular the interpretation of the assessment criteria, the information that needs to be submitted and the conditions that may be imposed to meet the criteria. The Commission services have therefore decided to revise the interpretative note issued in 2004, and replace it by the current one.

The present document does not modify the general exemption policy regarding Article 7 of the Electricity Regulation and Article 22 of the Gas Directive but gives better guidance in the light of the practical experience gained since the publication of the previous note. The objective is to provide transparency and guidance to national authorities and market participants and to facilitate the procedures for assessing exemptions.

This document is not intended to restrict or change the criteria for awarding exemptions. Nor is it intended to give an exhaustive interpretation of the various assessment criteria that are applied in the light of the facts and circumstances of each individual case. It applies to all types of infrastructure eligible for an exemption according to Article 22 of the Gas Directive and Article 7 of the Electricity Regulation.

## Energy: rules for the internal market in natural gas. 'Gas Directive'

---

The Commission presents its report on progress in creating the internal gas and electricity market. It states that the financial crisis of 2008 and 2009 had a direct impact on the demand for energy, causing unpredicted falls in the price of oil on the international markets. This, in turn, impacted on gas and electricity prices. A dispute between two companies outside the EU (Gazprom of Russia and Naftogaz of Ukraine) led to an unprecedented crisis in the EU's gas supply, affecting several Member States. 2009 was also an important year because the third internal energy market package was adopted on 13 July 2009.

This report discusses how these developments have affected the EU electricity and gas markets over the past year and how they are likely to affect market developments in the future.

**Implementation of legislation:** in June 2009, the Commission initiated infringement procedures against 25 Member States for electricity and against 21 Member States for gas. The key violations identified lack of transparency, insufficient coordination efforts by transmission system operators to make maximum interconnection capacity available, absence of regional cooperation, lack of enforcement action by the competent authorities in Member States and the lack of adequate dispute settlement procedures<sup>4</sup>. In October 2009, the Commission launched further infringement proceedings against two Member States; these proceedings related to gas transit and storage.

**Impact of the crisis:** the financial crisis had a significant impact on the internal energy market during the reporting period. Year on year, the EU-27 electricity consumption remained relatively stable, but fell by 12% and 7% in April and May, respectively. The decline in gas consumption was even more significant. Between January and March 2009, gas consumption (in EU-27) dropped by around one fourth. This drop is partly due to the interruption of gas supplies from Russia via Ukraine, but even after the crisis in March 2009 EU-27 gas consumption was still more than 16% down on the March 2008 level.

The financial crisis has had a serious impact on the internal market for energy during the reporting period:

- on the one hand, it puts pressure on planned investments ? due to possible financing difficulties and uncertainties affecting the supply side ? and has resulted in a fall in demand, which is more pronounced for gas than for electricity;
- on the other hand, it has created new opportunities for competition, since more gas is available at lower prices on liquid hubs;
- furthermore, the situation with excess supply in gas markets may pave the way for final consumers to see gas prices that are based on the supply and demand for gas rather than on the price of oil.

**Price trends:** although reduced gas and electricity consumption has had an impact on end-user prices, the fall witnessed in wholesale energy costs has not been entirely reflected in end user prices. Overall, prices in the first half of 2009 were still higher than in the first half of 2008. The trend in retail prices was quite diverse, suggesting perhaps an insufficient level of market integration at retail level.

**Customer dimension:** the information available for the number of consumers having switched supplier makes it difficult to gain an overall picture of the changes that have occurred across Member States. There are significant differences between the member states with more mature markets, such as the UK, which have relatively high switching rates, and a number of others showing little or no activity. At the level of small industry and households, the reported figures suggest that electricity consumers tend to be more active than gas consumers.

**National regulatory authorities:** the work of national regulatory authorities tends to shift the focus towards the consumer, including the roll-out of smart meters as the key to smart grids in the internal energy market. This is a welcome trend for the deployment of active participation by customers in the internal energy market and increased energy efficiency and large-scale integration of renewables, as well as additional energy services, increased market transparency and easier supplier switching.

Additionally, cooperation between European power exchanges, as well as the ongoing trend of increasing trade, is a promising sign of functioning markets. However, even if there are positive signs on the retail and wholesale level, the degree of market concentration has not changed very much. On gas wholesale markets, the concentration remains high. In 10 Member States, the three largest wholesalers have a market share of 90% or more. In the electricity retail market, the market share of the three largest companies in the retail market as a whole was above 80% in 14 Member States.

**Security of supply:** a major challenge in the context of the economic crisis is to maintain the investments in energy infrastructure. The financial crisis risk resulting in postponed or annulled energy infrastructure investments and as a result the EU faces an increased risk of lack of or delay in construction of infrastructure to meet future supply needs. This is a particular concern in a situation where the energy sector needs to be reshaped to address the challenges of climate change and energy security. In order to help to address this risk and to help economic recovery, the EU is facilitating the financing of energy infrastructure projects via the Economic Recovery Plan. In particular, the Plan includes 2 365 billion to support a number of key electricity and gas interconnection projects. The Commission's commitment to encourage infrastructure investments will continue with the adoption, at the end of 2010, of an infrastructure package.

**Internal market:** the third package adopted in 2009 also provides for clearer sector specific rules and thus for incentives to invest. The Commission is preparing for the application of the third package in developing, together with ERGEG and ENTSO-E and ENTSO-G, pilot framework guidelines and codes. The Commission will assist Member States in implementing the third package and will continue to pursue the full and correct implementation of the second package, including through formal infringement procedures.

Not only investments but also the implementation of more active transmission and distribution systems in the form of smart meters and smart grids are central to the development of the internal market for energy. If needed, the Commission will not limit its action to energy regulation and will not hesitate to use its powers under competition law.