

THE ENERGY COMMUNITY

LEGAL FRAMEWORK

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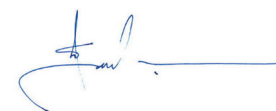
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PREFACE

The availability of sufficient and affordable energy determines the wealth and well-being of our societies. The people in South East Europe experienced the lack of energy first-hand. The twofold objective of improving the situation in that region and of contributing to securing the energy supply for the rest of Europe in the long term lies at the heart of the Treaty establishing the Energy Community. Signed by the European Community and the then nine Contracting Parties in South East Europe in 2005, the Treaty entered into force on 1 July 2006. In creating an internal market for network energy based on binding legal commitments and governed by a unique set of institutions, the Energy Community carries forward the success story of European integration. By connecting the regional market provided for by the Treaty to the EC internal market, the world's largest market for network energy emerges. Homogeneity between the EC on the one side and the Treaty's Contracting Parties on the other is ensured by extension and synchronized application of the *acquis communautaire*. In this respect, the two Directives laying down common rules for the internal markets in electricity and natural gas respectively take centre stage. They are complemented by additional *acquis* on cross-border trade and security of supply, as well as horizontal EC rules in the areas of environment, competition and renewables. Further to the rules borrowed from the EC, the Ministerial Council of the Energy Community has recently started adopting autonomous measures concerning, for instance, dispute settlement or the creation of the so-called "8th Region" to facilitate cross-border electricity trade.

Under the Energy Community Treaty, the Secretariat as an independent institution plays a key role in monitoring and enforcing the obligations assumed by the Parties to the Treaty. Beyond that, the Secretariat's mission is to provide assistance to all stakeholders involved in the process of consolidating and developing the Energy Community. In that respect, we believe that this first edition of a compilation of the applicable legal framework will provide a useful working tool.

The present publication is compiled by the Secretariat for reference purposes only and is not authentic. For information regarding the authentic texts, for most recent developments and for more detailed information on the state of implementation and events, the user may refer to the Energy Community's website at www.energy-community.org.



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PART I

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TREATY ESTABLISHING THE ENERGY COMMUNITY

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The Parties, being:

The European Community on the one hand,

And

The following Contracting Parties on the other hand:

- The Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia (hereafter referred to as the Adhering Parties),
- and
- The United Nations Interim Administration Mission in Kosovo pursuant to the United Nations Security Council Resolution 1244,

Consolidating on the Athens Process and the 2002 and 2003 Athens Memoranda of Understanding,

Noting that the Republic of Bulgaria, Romania and the Republic of Croatia are Candidate Countries for accession to the European Union, and that the former Yugoslav Republic of Macedonia has also applied for membership,

Noting that the European Council in Copenhagen in December 2002 confirmed the European perspective of the Republic of Albania, Bosnia and Herzegovina, and Serbia and Montenegro, as potential candidates for accession of the European Union, and underlined the determination to support their efforts to move closer to the European Union,

Recalling that the European Council in Thessaloniki in June 2003 endorsed “The Thessaloniki Agenda for the Western Balkans: moving towards European integration”, which aims to further strengthen the privileged relations between the European Union and the Western Balkans and in which the European Union encouraged the countries of the region to adopt a legally binding South-East Europe energy market agreement,

Recalling the Euro-Mediterranean Partnership Process and the European Neighbourhood Policy,

Recalling the contribution of the Stability Pact for South East Europe that has as its core the need to strengthen co-operation amongst the states and nations of South East Europe and to foster the conditions for peace, stability and economic growth,

Resolved to establish among the Parties an integrated market in natural gas and electricity, based on common interest and solidarity,

Considering that this integrated market may involve at a later stage other energy products and carriers, such as liquefied natural gas, petrol, hydrogen, or other essential network infrastructures.

Determined to create a stable regulatory and market framework capable of attracting investment in gas networks, power generation and transmission networks, so that all Parties have access to the stable and continuous gas and electricity supply that is essential for economic development and social stability,

Determined to create a single regulatory space for trade in gas and electricity that is necessary to match the geographic extent of the concerned product markets,

Recognising that the territories of the Republic of Austria, of the Hellenic Republic, of the Republic of Hungary, of the Italian Republic, and of the Republic of Slovenia are naturally integrated or directly affected by the functioning of the gas and electricity markets of the Contracting Parties,

Determined to promote high levels of gas and electricity provision to all citizens based on public service obligations, and to achieve economic and social progress and a high level of employment as well as a balanced and sustainable development through the creation of an area without internal frontiers for gas and electricity,

Desiring to enhance the security of supply of the single regulatory space by providing the stable regulatory framework necessary for the region in which connections to Caspian, North African and Middle East gas reserves can be developed and indigenous reserves of natural gas, coal and hydropower can be exploited,

Committed to improving the environmental situation in relation to gas and electricity, related energy efficiency and renewable energy sources,

Determined to develop gas and electricity market competition on a broader scale and exploit economies of scale,

Considering that, to achieve these aims, a broad ranging and integrated market regulatory structure needs to be put in place supported by strong institutions and effective supervision, and with the adequate involvement of the private sector,

Considering that in order to reduce stress on the state level gas and electricity systems and contribute to resolving local gas and electricity shortages, specific rules should be put in place to facilitate gas and electricity trade; and that such rules are needed to create a single regulatory space for the geographic extent of the concerned product markets,

Have decided to create an Energy Community.

TITLE I – PRINCIPLES

Article 1

1. By this Treaty, the Parties establish among themselves an Energy Community.
2. Member States of the European Community may become Participants in the Energy Community pursuant to Article 95 of this Treaty.

Article 2

1. The task of the Energy Community shall be to organise the relations between the Parties and create a legal and economic framework in relation to Network Energy, as defined in paragraph 2, in order to:

(a) create a stable regulatory and market framework capable of attracting investment in gas networks, power generation, and transmission and distribution networks, so that all Parties have access to the stable and continuous energy supply that is essential for economic development and social stability,

(b) create a single regulatory space for trade in Network Energy that is necessary to match the geographic extent of the concerned product markets,

(c) enhance the security of supply of the single regulatory space by providing a stable investment climate in which connections to Caspian, North African and Middle East gas reserves can be developed, and indigenous sources of energy such as natural gas, coal and hydropower can be exploited,

(d) improve the environmental situation in relation to Network Energy and related energy efficiency, foster the use of renewable energy, and set out the conditions for energy trade in the single regulatory space,

(e) develop Network Energy market competition on a broader geographic scale and exploit economies of scale.

2. “Network Energy” shall include the electricity and gas sectors falling within the scope of the European Community Directives 2003/54/EC and 2003/55/EC¹.

Article 3

For the purposes of Article 2, the activities of the Energy Community shall include:

(a) the implementation by the Contracting Parties of the *acquis communautaire* on energy, environment, competition and renewables, as described in Title II below, adapted to both the institutional

¹ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, Official Journal of the European Union No L 176 of 15 July 2003, p. 37 – 56; and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, Official Journal of the European Union No L 176 of 15 July 2003, p. 57 – 78.

framework of the Energy Community and the specific situation of each of the Contracting Parties (hereinafter referred to as “the extension of the *acquis communautaire*”), as further described in Title II;

(b) the setting up of a specific regulatory framework permitting the efficient operation of Network Energy markets across the territories of the Contracting Parties and part of the territory of the European Community, and including the creation of a single mechanism for the cross-border transmission and/or transportation of Network Energy, and the supervision of unilateral safeguard measures (hereinafter referred to as “the mechanism for operation of Network Energy markets”), as further described in Title III;

(c) the creation for the Parties of a market in Network Energy without internal frontiers, including the coordination of mutual assistance in case of serious disturbance to the energy networks or external disruptions, and which may include the achievement of a common external energy trade policy (hereinafter referred to as “the creation of a single energy market”), as further described in Title IV.

Article 4

The Commission of the European Communities (hereinafter referred to as “the European Commission”) shall act as co-ordinator of the three activities described in Article 3.

Article 5

The Energy Community shall follow the *acquis communautaire* described in Title II, adapted to both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties, with a view to ensuring high levels of investment security and optimal investments.

Article 6

The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

Article 7

Any discrimination within the scope of this Treaty shall be prohibited.

Article 8

Nothing in this Treaty shall affect the rights of a Party to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.

TITLE II – THE EXTENSION OF THE ACQUIS COMMUNAUTAIRE

CHAPTER I – GEOGRAPHIC SCOPE

Article 9

The provisions of and the Measures taken under this Title shall apply to the territories of the Adhering Parties, and to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo.

CHAPTER II – THE ACQUIS ON ENERGY

Article 10

Each Contracting Party shall implement the *acquis communautaire* on energy in compliance with the timetable for the implementation of those measures set out in Annex I.

Article 11

The “*acquis communautaire* on energy”, for the purpose of this Treaty, shall mean (i) the Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, (ii) the Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, and (iii) the Regulation 1228/2003/EC of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity².

CHAPTER III – THE ACQUIS ON ENVIRONMENT

Article 12

Each Contracting Party shall implement the *acquis communautaire* on Environment in compliance with the timetable for the implementation of those measures set out in Annex II.

Article 13

The Parties recognise the importance of the Kyoto Protocol. Each Contracting Party shall endeavour to accede to it.

² Official Journal of the European Union No L 176 of 15 July 2003, p. 1 – 10

Article 14

The Parties recognise the importance of the rules set out in Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. Each Contracting Party shall endeavour to implement that Directive.

Article 15

After the entry into force of this Treaty, the construction and operation of new generating plants shall comply with the *acquis communautaire* on environment.

Article 16

The “*acquis communautaire* on environment”, for the purpose of this Treaty, shall mean (i) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, (ii) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, (iii) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants, and (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds.

Article 17

The provisions of and the Measures taken under this Chapter shall only apply to Network Energy.

CHAPTER IV – THE ACQUIS ON COMPETITION

Article 18

1. The following shall be incompatible with the proper functioning of the Treaty, insofar as the may affect trade of Network Energy between the Contracting Parties:
 - (a) all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition,
 - (b) abuse by one or more undertakings of a dominant position in the market between the Contracting Parties as a whole or in a substantial part thereof,
 - (c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 81, 82 and 87 of the Treaty establishing the European Community (attached in Annex III).

Article 19

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, each Contracting Party shall ensure that as from 6 months following the date of entry force of this Treaty, the principles of the Treaty establishing the European Community, in particular Article 86 (1) and (2) thereof (attached in Annex III), are upheld.

CHAPTER V – THE ACQUIS FOR RENEWABLES

Article 20

Each Contracting Party shall provide to the European Commission within one year of the date of entry into force of this Treaty a plan to implement Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market and Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport. The European Commission shall present the plan of each Contracting Party to the Ministerial Council for adoption.

CHAPTER VI – COMPLIANCE WITH GENERALLY APPLICABLE STANDARDS OF THE EUROPEAN COMMUNITY

Article 21

Within one year of the date of entry into force of this Treaty, the Secretariat shall draw up a list of the Generally Applicable Standards of the European Community, to be submitted to the Ministerial Council for adoption.

Article 22

The Contracting Parties shall, within one year of the adoption of the list, adopt development plans to bring their Network Energy sectors into line with these Generally Applicable Standards of the European Community.

Article 23

“Generally Applicable Standards of the European Community” shall refer to any technical system standard that is applied within the European Community, and is necessary for operating network systems safely and efficiently, including aspects of transmission, cross-border connections, modulation and general technical system security standards issued where applicable via the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and similar normation bodies or as issued by the Union for the Co-ordination of Transmission of Electricity (UCTE) and the European Association for the Streamlining of Energy Exchanges (Easeegas) for common rule setting and business practices.

CHAPTER VII – THE ADAPTATION AND EVOLUTION OF THE ACQUIS

Article 24

For the implementation of this Title, the Energy Community shall adopt Measures adapting the *acquis communautaire* described in this Title, taking into account both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties.

Article 25

The Energy Community may take Measures to implement amendments to the *acquis communautaire* described in this Title, in line with the evolution of European Community law.

TITLE III – MECHANISM FOR OPERATION OF NETWORK ENERGY MARKETS

CHAPTER I – GEOGRAPHIC SCOPE

Article 26

The provisions of and the Measures taken under this Title shall apply to the territories of the Adhering Parties, to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and to the territories of the European Community referred to in Article 27.

Article 27

As regard the European Community, the provisions of and the Measures taken under this Title shall apply to the territories of the Republic of Austria, of the Hellenic Republic, of the Republic of

Hungary, of the Italian Republic, and of the Republic of Slovenia. Upon accession to the European Union of an Adhering Party, the provisions of and the Measures taken under this Title shall, without any further formalities, also apply to the territory of that new Member State.

CHAPTER II – MECHANISM FOR LONG-DISTANCE TRANSPORTATION OF NETWORK ENERGY

Article 28

The Energy Community shall take additional Measures establishing a single mechanism for the cross-border transmission and/or transportation of Network Energy.

CHAPTER III – SECURITY OF SUPPLY

Article 29

The Parties shall, within one year of the date of entry into force of this Treaty, adopt security of supply statements describing in particular diversity of supply, technological security, and geographic origin of imported fuels. The statements shall be communicated to the Secretariat, and shall be available to any Party to this Treaty. They shall be updated every two years. The Secretariat shall give guidance and assistance with respect to such statements.

Article 30

Article 29 does not imply a necessity to change energy policies or purchasing practices.

CHAPTER IV – PROVISION OF ENERGY TO CITIZENS

Article 31

The Energy Community shall promote high levels of provision of Network Energy to all its citizens within the limits of the public service obligations contained in the relevant *acquis communautaire* on energy.

Article 32

For this purpose, the Energy Community may take Measures to:

- (a) allow for the universal provision of electricity;
- (b) foster effective demand management policies;
- (c) ensure fair competition.

Article 33

The Energy Community may also make Recommendations to support effective reform of the Network Energy sectors of the Parties, including *inter alia* to increase the level of payment for energy by all customers, and to foster the affordability of Network Energy prices to consumers.

CHAPTER V – HARMONISATION

Article 34

The Energy Community may take Measures concerning compatibility of market designs for the operation of Network Energy markets, as well as mutual recognition of licenses and Measures fostering free establishment of Network Energy companies.

CHAPTER VI – RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY

Article 35

The Energy Community may adopt Measures to foster development in the areas of renewable energy sources and energy efficiency, taking account of their advantages for security of supply, environment protection, social cohesion and regional development.

CHAPTER VII – SAFEGUARD MEASURES

Article 36

In the event of a sudden crisis on the Network Energy market in the territory of an Adhering Party, the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, or a territory of the European Community referred to in Article 27, where the physical safety or security of persons, or Network Energy apparatus or installations or system integrity is threatened in this territory, the concerned Party may temporarily take necessary safeguard measures.

Article 37

Such safeguard measures shall cause the least possible disturbance in the functioning of the Network Energy market of the Parties, and not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen. They shall not distort competition or adversely affect trade in a manner which is at variance with the common interest.

Article 38

The Party concerned shall without delay notify these safeguard measures to the Secretariat, which shall immediately inform the other Parties.

Article 39

The Energy Community may decide that the safeguard measures taken by the Party concerned do not comply with the provisions of this Chapter, and request that Party to put an end to, or modify, those safeguard measures.

TITLE IV – THE CREATION OF A SINGLE ENERGY MARKET**CHAPTER I – GEOGRAPHIC SCOPE****Article 40**

The provisions of and the Measures taken under this Title shall apply to the territories to which the Treaty establishing the European Community applies under the conditions laid down in that Treaty, to the territories of the Adhering Parties and to the territory under the jurisdiction of the United Nations Interim Mission in Kosovo.

CHAPTER II – INTERNAL ENERGY MARKET**Article 41**

1. Customs duties and quantitative restrictions on the import and export of Network Energy and all measures having equivalent effect, shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.
2. Paragraph 1 shall not preclude quantitative restrictions or measures having equivalent effect, justified on grounds of public policy or public security; the protection of health and life of humans, animals or plants, or the protection of industrial and commercial property. Such restrictions or measures shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 42

1. The Energy Community may take Measures with the aim of creating a single market without internal frontiers for Network Energy.
2. Paragraph 1 shall not apply to fiscal measures, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

CHAPTER III – EXTERNAL ENERGY TRADE POLICY**Article 43**

The Energy Community may take Measures necessary for the regulation of imports and exports of Network Energy to and from third countries with a view to ensuring equivalent access to and from third country markets in respect of basic environmental standards or to ensure the safe operation of the internal energy market.

CHAPTER IV – MUTUAL ASSISTANCE IN THE EVENT OF DISRUPTION**Article 44**

In the event of disruption of Network Energy supply affecting a Party and involving another Party or a third country, the Parties shall seek an expeditious resolution in accordance with the provisions of this Chapter.

Article 45

Upon request of the Party directly affected by the disruption, the Ministerial Council shall meet. The Ministerial Council may take the necessary Measures in response to the disruption.

Article 46

Within one year of the date of entry into force of this Treaty, the Ministerial Council shall adopt a Procedural Act for the operation of the mutual assistance obligation under this Chapter, which may include the conferral of powers to take interim Measures to the Permanent High Level Group.

TITLE V – INSTITUTIONS OF THE ENERGY COMMUNITY

CHAPTER I - THE MINISTERIAL COUNCIL

Article 47

The Ministerial Council shall ensure that the objectives set out in this Treaty are attained. It shall:

- (a) provide general policy guidelines;
- (b) take Measures;
- (c) adopt Procedural Acts, which may include the conferral, under precise conditions, of specific tasks, powers and obligations to carry out the policy of the Energy Community on the Permanent High Level Group, the Regulatory Board or the Secretariat.

Article 48

The Ministerial Council shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

Article 49

The Ministerial Council shall adopt its internal rules of procedure by Procedural Act.

Article 50

The Presidency shall be held in turn by each Contracting Party for a term of six months in the order decided by a Procedural Act of the Ministerial Council. The Presidency shall convene the Ministerial Council in a place decided upon by the Presidency. The Ministerial Council shall meet at least once every six months. The meetings shall be prepared by the Secretariat.

Article 51

The Presidency shall chair the Ministerial Council and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

Article 52

The Ministerial Council shall submit an annual report on the activities of the Energy Community to the European Parliament and to the Parliaments of the Adhering Parties and of the Participants.

CHAPTER II - THE PERMANENT HIGH LEVEL GROUP

Article 53

The Permanent High Level Group shall:

- (a) prepare the work of the Ministerial Council;
- (b) give assent to technical assistance requests made by international donor organisations, international financial institutions and bilateral donors;
- (c) report to the Ministerial Council on progress made toward achievement of the objectives of this Treaty;
- (d) take Measures, if so empowered by the Ministerial Council;
- (e) adopt Procedural Acts, not involving the conferral of tasks, powers or obligations on other institutions of the Energy Community;
- (f) discuss the development of the *acquis communautaire* described in Title II on the basis of a report that the European Commission shall submit on a regular basis.

Article 54

The Permanent High Level Group shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

Article 55

The Permanent High Level Group shall adopt its internal rules of procedure as a Procedural Act.

Article 56

The Presidency shall convene the Permanent High Level Group at a place to be determined by the Presidency. The meetings shall be prepared by the Secretariat.

Article 57

The Presidency shall chair the Permanent High Level Group and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

CHAPTER III – THE REGULATORY BOARD**Article 58**

The Regulatory Board shall:

- (a) advise the Ministerial Council or the Permanent High Level Group on the details of statutory, technical and regulatory rules;
- (b) issue Recommendations on cross-border disputes involving two or more Regulators, upon request of any of them;
- (c) take Measures, if so empowered by the Ministerial Council;
- (d) adopt Procedural Acts.

Article 59

The Regulatory Board shall be composed of one representative of the energy regulator of each Contracting Party, pursuant to the relevant parts of the *acquis communautaire* on energy. The European Community shall be represented by the European Commission, assisted by one regulator of each Participant, and one representative of the European Regulators Group for Electricity and Gas (ER-GEG). If a Contracting Party or a Participant has one regulator for gas and one regulator for electricity, the Contracting Party or the Participant shall determine which regulator shall attend a meeting of the Regulatory Board, taking account of its agenda.

Article 60

The Regulatory Board shall adopt its internal rules of procedure by Procedural Act.

Article 61

The Regulatory Board shall elect a President for a term determined by the Regulatory Board. The European Commission shall act as Vice-President. The President and the Vice-President shall prepare the draft Agenda.

Article 62

The Regulatory Board shall meet in Athens.

CHAPTER IV - THE FORA**Article 63**

Two Fora, composed of representatives of all interested stakeholders, including industry, regulators, industry representative groups and consumers, shall advise the Energy Community.

Article 64

The Fora shall be chaired by a representative of the European Community.

Article 65

The conclusions of the Fora shall be adopted by consensus. They shall be forwarded to the Permanent High Level Group.

Article 66

The Electricity Forum shall meet in Athens. The Gas Forum shall meet at a place to be determined by a Procedural Act of the Ministerial Council.

CHAPTER V - THE SECRETARIAT**Article 67**

The Secretariat shall:

- (a) provide administrative support to the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora;
- (b) review the proper implementation by the Parties of their obligations under this Treaty, and submit yearly progress reports to the Ministerial Council;
- (c) review and assist in the coordination by the European Commission of the donors' activity in the territories of the Adhering Parties and the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and provide administrative support to the donors;
- (d) carry out other tasks conferred on it under this Treaty or by a Procedural Act of the Ministerial Council, excluding the power to take Measures; and
- (e) adopt Procedural Acts.

Article 68

The Secretariat shall comprise a Director and such staff as the Energy Community may require.

Article 69

The Director of the Secretariat shall be appointed by a Procedural Act of the Ministerial Council. The Ministerial Council shall lay down, by Procedural Act, rules for the recruitment, working conditions and geographic equilibrium of the Secretariat's staff. The Director shall select and appoint the staff.

Article 70

In the performance of their duties the Director and the staff shall not seek or receive instructions from any Party to this Treaty. They shall act impartially and promote the interests of the Energy Community.

Article 71

The Director of the Secretariat or a nominated alternate shall assist at the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.

Article 72

The seat of the Secretariat shall be in Vienna.

CHAPTER VI – BUDGET

Article 73

Each Party shall contribute to the budget of the Energy Community as set out in Annex IV. The level of contributions may be reviewed every five years, on request of any Party, by a Procedural Act of the Ministerial Council.

Article 74

The Ministerial Council shall adopt the budget of the Energy Community by Procedural Act every two years. The budget shall cover the operational expenses of the Energy Community necessary for the functioning of its institutions. The expenditure of each institution shall be set out in a different part of the budget. The Ministerial Council shall adopt a Procedural Act specifying the procedure for the implementation of the budget, and for presenting and auditing accounts and inspection.

Article 75

The Director of the Secretariat shall implement the budget in accordance with the Procedural Act adopted pursuant to Article 74, and shall report annually to the Ministerial Council on the execution of the budget. The Ministerial Council may decide by Procedural Act, if appropriate, to entrust independent auditors with verifying the proper execution of the budget.

TITLE VI – DECISION MAKING PROCESS

CHAPTER I – GENERAL PROVISIONS

Article 76

Measures may take the form of a Decision or a Recommendation.
A Decision is legally binding in its entirety upon those to whom it is addressed.
A Recommendation has no binding force. Parties shall use their best endeavours to carry out Recommendations.

Article 77

Save as provided in Article 80, each Party shall have one vote.

Article 78

The Ministerial Council, the Permanent High Level Group or the Regulatory Board may act only if two third of the Parties are represented. Abstentions in a vote from Parties present shall not count as votes cast.

CHAPTER II – MEASURES UNDER TITLE II

Article 79

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title II on a proposal from the European Commission. The European Commission may alter or withdraw its proposal at any time during the procedure leading to adoption of the Measures.

Article 80

Each Contracting Party shall have one vote.

Article 81

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a majority of the votes cast.

CHAPTER III – MEASURES UNDER TITLE III

Article 82

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title III on a proposal from a Party or the Secretariat.

Article 83

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a two third majority of the votes cast, including a positive vote of the European Community.

CHAPTER IV – MEASURES UNDER TITLE IV

Article 84

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title IV on a proposal from a Party.

Article 85

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures by unanimity.

CHAPTER V – PROCEDURAL ACTS

Article 86

A Procedural Act shall regulate organizational, budgetary and transparency issues of the Energy Community, including the delegation of power from the Ministerial Council to the Permanent High Level Group, the Regulatory Board or the Secretariat, and shall have binding force on the institutions of the Energy Community, and, if the Procedural Act so provides, on the Parties.

Article 87

Save as provided in Article 88, Procedural Acts shall be adopted in compliance with the Decision Making Process set out in Chapter III of this Title.

Article 88

The Procedural Act appointing the Director of the Secretariat provided for in Article 69 shall be adopted by simple majority on a proposal from the European Commission. The Procedural Acts on budgetary matters provided for in Articles 73 and 74 shall be adopted by unanimity on a proposal from the European Commission. The Procedural Acts conferring powers on the Regulatory Board provided for in Article 47(c) shall be taken by unanimity on a proposal from a Party or the Secretariat.

**TITLE VII - IMPLEMENTATION OF DECISIONS AND
DISPUTE SETTLEMENT**

Article 89

The Parties shall implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.

Article 90

1. Failure by a Party to comply with a Treaty obligation or to implement a Decision addressed to it within the required period may be brought to the attention of the Ministerial Council by a reasoned request of any Party, the Secretariat or the Regulatory Board. Private bodies may approach the Secretariat with complaints.
2. The Party concerned may make observations in response to the request or complaint.

Article 91

1. The Ministerial Council may determine the existence of a breach by a Party of its obligations. The Ministerial Council shall decide:
 - (a) by a simple majority, if the breach relates to Title II;
 - (b) by a two-third majority, if the breach relates to Title III;
 - (c) by unanimity, if the breach relates to Title IV.
2. The Ministerial Council may subsequently decide by simple majority to revoke any decisions adopted under this Article.

Article 92

- 1. At the request of a Party, the Secretariat or the Regulatory Board, the Ministerial Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Party of its obligations under this Treaty and may suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty.
- 2. The Ministerial Council may subsequently decide by simple majority to revoke any decisions taken under this Article.

Article 93

When adopting the decisions referred to in Articles 91 and 92, the Ministerial Council shall act without taking into account the vote of the representative of the Party concerned.

TITLE VIII - INTERPRETATION

Article 94

The institutions shall interpret any term or other concept used in this Treaty that is derived from European Community law in conformity with the case law of the Court of Justice or the Court of First Instance of the European Communities. Where no interpretation from those Courts is available, the Ministerial Council shall give guidance in interpreting this Treaty. It may delegate that task to the Permanent High Level Group. Such guidance shall not prejudice any interpretation of the *acquis communautaire* by the Court of Justice or the Court of First Instance at a later stage.

TITLE IX – PARTICIPANTS AND OBSERVERS

Article 95

Upon a request to the Ministerial Council, any Member State of the European Community may be represented in the Ministerial Council, the Permanent High Level Group and the Regulatory Board under the conditions laid down in Articles 48, 54 and 59 as a Participant, and shall be permitted to participate in the discussions of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.

Article 96

- 1. Upon a reasoned request of a neighbouring third country, the Ministerial Council may, by unanimity, accept that country as an Observer. Upon a request presented to the Ministerial Council within six months of the date of entry into force of this Treaty, Moldova shall be accepted as an Observer.
- 2. Observers may attend the meetings of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora, without participating in the discussions.

TITLE X - DURATION

Article 97

This Treaty is concluded for a period of 10 years from the date of entry into force. The Ministerial Council, acting by unanimity, may decide to extend its duration. If no such decision is taken, the Treaty may continue to apply between those Parties who voted in favour of extension, provided that their number amounted to at least two thirds of the Parties to the Energy Community.

Article 98

Any Party may withdraw from this Treaty by giving six months notice, addressed to the Secretariat.

Article 99

Upon accession to the European Community of an Adhering Party, that Party shall become a Participant as provided for in Article 95.

TITLE XI – REVISION AND ACCESSION

Article 100

- The Ministerial Council may, by unanimity of its Members:
- (i) amend the provisions of Title I to VII;
 - (ii) decide to implement other parts of the *acquis communautaire* related to Network Energy;
 - (iii) extend this Treaty to other energy products and carriers or other essential network infrastructures;
 - (iv) agree on the accession to the Energy Community of a new Party.

TITLE XII - FINAL AND TRANSITIONAL PROVISIONS

Article 101

Without prejudice to Articles 102 and 103, the rights and obligations arising from agreements concluded by a Contracting Party before the signature of this Treaty shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the Contracting Party concerned shall take all appropriate measures to eliminate the incompatibilities established, no later than one year after the date of entry into force of this Treaty.

Article 102

All obligations under this Treaty are without prejudice to existing legal obligations of the Parties under the Treaty establishing the World Trade Organisation.

Article 103

Any obligations under an agreement between the European Community and its Member States on the one hand, and a Contracting Party on the other hand shall not be affected by this Treaty. Any commitment taken in the context of negotiations for accession to the European Union shall not be affected by this Treaty.

Article 104

Until the adoption of the Procedural Act referred to in Article 50, the 2003 Athens Memorandum of Understanding³ shall define the order for holding the Presidency.

Article 105

This Treaty shall be approved by the Parties in accordance with their internal procedures.

This Treaty shall enter into force on the first day of the month following the date on which the European Community and six Contracting Parties have notified the completion of the procedures necessary for this purpose.

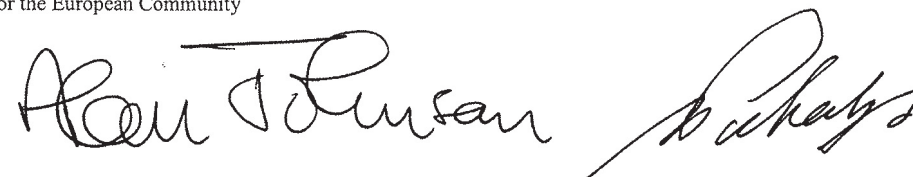
Notification shall be sent to the Secretary-General of the Council of the European Union who shall be the depositary for this Treaty.

In witness thereof the duly authorised representatives have signed this Treaty.

³ Memorandum of Understanding on the Regional Energy Market in South East Europe and its Integration into the European Community Internal Energy Market, signed in Athens on 8 December 2003.

Done at Athens, on the twenty-fifth day of October in the year two thousand and five.

For the European Community



For the Republic of Albania



For the Republic of Bulgaria



For Bosnia and Herzegovina



For the Republic of Croatia



For the former Yugoslav Republic of Macedonia

For the Republic of Montenegro



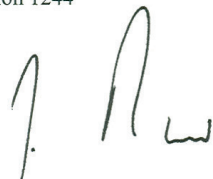
For Romania



For the Republic of Serbia



For the United Nations Interim Administration Mission in Kosovo pursuant to the United Nations Security Council Resolution 1244




Republic of Macedonia
– Office of the Deputy Prime Minister –
Minčo Jordanov

Athens, 25 October 2005

Your Excellency,

Hereby I declare that the text of the Treaty establishing the Energy Community is acceptable for the Government of the Republic of Macedonia.

With this letter, the Government of the Republic of Macedonia considers itself as signatory of the Treaty establishing the Energy Community.

However, I declare that the Republic of Macedonia does not accept the denomination used for my country in the above-mentioned documents having in view that the constitutional name of my country is the Republic of Macedonia.

Please accept, Your Excellency, the assurances of my highest consideration.

Minčo Jordanov



THE EUROPEAN COMMUNITY

Brussels

Ilindenska bb, 1000 Skopje, + 389 (0)2 3134211 (tel); + 389 (0)2 3221506 (fax); <http://www.vlada.mk>



COUNCIL OF
THE EUROPEAN UNION
The Presidency

Athens, 25 October 2005

Mr. Minco Jordanov,
Vice-President of the Government
of the former Yugoslav Republic of Macedonia.

Sir,

The European Community takes note of your letter of today's date and confirms that your letter and this reply shall together take the place of the signature of the Treaty establishing the Energy Community by the former Yugoslav Republic of Macedonia. However, this cannot be construed as acceptance or recognition by the European Community, in whatever form or content of a denomination other than "former Yugoslav Republic of Macedonia".

Please accept, Sir, the assurance of my highest consideration.

On behalf of
the European Community

175 Rue de la Loi,
1048 Brussels, Belgium

ANNEX I

TIMETABLE FOR THE IMPLEMENTATION OF THE EC DIRECTIVES No 2003/54 AND 2003/55, AND THE EC REGULATION No 1228/2003

1. Subject to paragraph 2 below and Article 24 of this Treaty, each Contracting Party shall implement within twelve months of the entry into force of this Treaty:

- (i) the European Community Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity;
- (ii) the European Community Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas;
- (iii) the European Community Regulation 1228/2003/EC of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

2. Each Contracting Party must ensure that the eligible customers within the meaning of the European Community Directives 2003/54/EC and 2003/55/EC are:

- (i) from 1 January 2008, all non-household customers; and
- (ii) from 1 January 2015, all customers.

ANNEX II

TIMETABLE FOR THE IMPLEMENTATION OF THE ACQUIS ON ENVIRONMENT

1. Each Contracting Party shall implement Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directives 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, on the entry into force of this Treaty.
2. Each Contracting Party shall implement Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC by 31 December 2011.
3. Each Contracting Party shall implement Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants by 31 December 2017.
4. Each Contracting Party shall implement Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds on the entry into force of this Treaty.

ANNEX III

EC COMPETITION RULES

Article 81 of the EC Treaty

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other Parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
 - any agreement or category of agreements between undertakings,
 - any decision or category of decisions by associations of undertakings,
 - any concerted practice or category of concerted practices,
 which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82 of the EC Treaty

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other Parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 86(1) and (2) of the EC Treaty

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

Article 87 of the EC Treaty

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

ANNEX IV
CONTRIBUTION TO THE BUDGET

Parties	Contribution in percentage
European Community	94,9 %
Republic of Albania	0,1 %
Republic of Bulgaria	1 %
Bosnia and Herzegovina	0,3 %
Republic of Croatia	0,5 %
former Yugoslav Republic of Macedonia	0,1 %
Republic of Montenegro	0,1 %
Romania	2,2 %
Republic of Serbia	0,7 %
United Nations Interim Administration Mission in Kosovo	0,1 %

The preceding text is a certified true copy of the original deposited in the archives of the General Secretariat of the Council of the European Union in Brussels.

Brussels, 22 -11- 2005

For the Secretary-General/High Representative
of the Council of the European Union


K. GRETSCHMANN
Director General

UNITED NATIONS
United Nations Interim
Administration Mission in
Kosovo



NATIONS UNIES
Mission d'Administration
Intérimaire des Nations Unies
au Kosovo

DECLARATION

I, Søren Jessen-Petersen, Special Representative of the Secretary General and Head of the United Nations Interim Administration Mission in Kosovo (UNMIK),

HEREBY DECLARE that the United Nations Interim Administration Mission in Kosovo (UNMIK) is signing the Treaty establishing the Energy Community on 25 October 2005, subject to the following terms:

- (i) The United Nations Interim Administration Mission in Kosovo (UNMIK) established by Security Council resolution 1244 (1999) of 10 June 1999 signs the Treaty on behalf of Kosovo;
- (ii) The Treaty is valid in respect of Kosovo for the duration of UNMIK administration under resolution 1244 (1999), and its continued validity beyond that would depend on the future administration of Kosovo; and
- (iii) The conclusion of the Treaty on the part of UNMIK is without prejudice to the future status of Kosovo.

Furthermore, the Treaty does not engage the responsibility of the United Nations, nor does it create for the Organization any legal, financial or other obligations.

I request that this Declaration be duly recorded and form part of the official records of the Treaty.

IN WITNESS WHEREOF, I have hereto set my hand and seal.



Done at Pristina on 21 October 2005.

Søren Jessen-Petersen
Special Representative of the Secretary General

STATEMENT

Of the Serbian Delegation at the Ceremony of the signing of the Treaty establishing the Energy Community

"The Government of the Republic of Serbia would like to state that the signing of the Treaty establishing the Energy Community on behalf of the Special Representative of the Secretary General United Nations Interim Administration Mission in Kosovo shall in no way prejudice the final status of Kosovo and Metohija. The Government of the Republic of Serbia recalls the UN Security Council Resolution 1244 reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Serbia and Montenegro."

Athens, October 25, 2005

PART II

ACQUIS COMMUNAUTAIRE

ELECTRICITY

Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC

(Official Journal L 176 , 15/07/2003 P. 0037 - 0056)

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 proposals from the Commission¹,

Having regard to the Opinion of the European Economic and Social Committee²,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

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 electricity⁴ has made significant contributions towards the creation of an internal market for electricity.

(2) Experience in implementing this Directive shows the benefits that may result from the internal market in electricity, 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 market remain, notably concrete provisions are needed to ensure a level playing field in generation and to reduce the risks of market dominance and predatory behaviour, ensuring non-discriminatory transmission and distribution tariffs, through access to the network on the basis of tariffs published prior to their entry into force, and ensuring that the rights of small and vulnerable customers are protected and that information on energy sources for electricity generation is disclosed, as well as reference to sources, where available, giving information on their environmental impact.

(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

¹ OJ C 240 E, 28.8.2001, p. 60, and OJ C 227 E, 24.9.2002, p. 393.

² OJ C 36, 8.2.2002, p. 10.

³ Opinion of the European Parliament of 13 March 2002 (OJ C 47 E, 27.2.2003, p. 350), Council Common Position of 3 February 2003 (OJ C 50 E, 4.3.2003, p. 15) and Decision of the European Parliament of 4 June 2003 (not yet published in the Official Journal).

⁴ OJ L 27, 30.1.1997, p. 20.

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 freedoms which the Treaty guarantees European citizens - free movement of goods, freedom to provide services and freedom of establishment - are only possible in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

(5) The main obstacles in arriving at a fully operational and competitive internal market relate amongst other things to issues of access to the network, tariffication issues and different degrees of market opening between Member States.

(6) For competition to function, network access must be non-discriminatory, transparent and fairly priced.

(7) In order to complete the internal electricity market, non-discriminatory access to the network of the transmission or the distribution system operator is of paramount importance. A transmission or distribution system operator may comprise one or more undertakings.

(8) In order to ensure efficient and non-discriminatory network access it is appropriate that the distribution and transmission systems are operated through legally separate entities where vertically integrated undertakings exist. The Commission should assess measures of equivalent effect, developed by Member States to achieve the aim of this requirement, and, where appropriate, submit proposals to amend this Directive. It is also appropriate that the transmission and distribution system operators have effective decision-making rights with respect to assets necessary to maintain, operate and develop networks when the assets in question are owned and operated by vertically integrated undertakings. It is necessary that the independence of the distribution system operators and the transmission system operators be guaranteed especially with regard to generation and supply interests. Independent management structures must therefore be put in place between the distribution system operators and the transmission system operators and any generation/supply companies. It is important however to distinguish between such legal separation and ownership unbundling. Legal separation does not imply a change of ownership of assets and nothing prevents similar or identical employment conditions applying throughout the whole of the vertically integrated undertakings. However, a non-discriminatory decision-making process should be ensured through organisational measures regarding the independence of the decision-makers responsible.

(9) In the case of small systems the provision of ancillary services may have to be ensured by transmission system operators (TSOs) interconnected with small systems.

(10) While this Directive is not addressing ownership issues it is recalled that in case of an undertaking performing transmission or distribution and which is separated in its legal form from those undertakings performing generation and/or supply activities, the designated system operators may be the same undertaking owning the infrastructure.

(11) 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 legal distribution unbundling requirements.

(12) Authorisation procedures should not lead to an administrative burden disproportionate to the size and potential impact of electricity producers.

(13) Further measures should be taken in order to ensure transparent and non discriminatory tariffs for access to networks. Those tariffs should be applicable to all system users on a non discriminatory basis.

(14) In order to facilitate the conclusion of contracts by an electricity undertaking established in a Member State for the supply of electricity to eligible customers in another Member State, Member States and, where appropriate, national regulatory authorities should work towards more homogeneous conditions and the same degree of eligibility for the whole of the internal market.

(15) The existence of effective regulation, carried out by one or more national regulatory authorities, is an important factor in guaranteeing non-discriminatory access to the network. Member States specify the functions, competences and administrative powers of the regulatory authorities. It is important that the regulatory authorities in all Member States share the same minimum set of competences. Those authorities should have the competence to fix or approve the tariffs, or at least, the methodologies underlying the calculation of transmission and distribution tariffs. In order to avoid uncertainty and costly and time consuming disputes, these tariffs should be published prior to their entry into force.

(16) The Commission has indicated its intention to set up a European Regulators Group for Electricity and Gas which would constitute a suitable advisory mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for electricity and gas, and to contribute to the consistent application, in all Member States, of the provisions set out in this Directive and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas⁵ and in Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity⁶.

(17) In order to ensure effective market access for all market players, including new entrants, non discriminatory and cost-reflective balancing mechanisms are necessary. As soon as the electricity market is sufficiently liquid, this should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of electricity needed in the framework of balancing requirements. In the absence of such a liquid market, national regulatory authorities should play an active role to ensure that balancing tariffs are non discriminatory and cost-reflective. At the same time, appropriate incentives should be provided to balance in-put and off-take of electricity and not to endanger the system.

(18) National regulatory authorities should be able to fix or approve tariffs, or the methodologies un-

⁵ See p. 114 of this publication, the Eds.

⁶ See p. 90 of this publication, the Eds.

derlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operator(s), or on the basis of a proposal agreed between these operator(s) and the users of the network. In carrying out these tasks, national regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from distributed generation and demand-side management measures.

(19) All Community industry and commerce, including small and medium-sized enterprises, and all Community citizens that enjoy the economic benefits of the internal market should also be able to enjoy high levels of consumer protection, and in particular households and, where Member States deem it appropriate, small enterprises should also be able to enjoy public service guarantees, in particular with regard to security of supply and reasonable tariffs, for reasons of fairness, competitiveness and indirectly to create employment.

(20) Electricity customers should be able to choose their supplier freely. Nonetheless a phased approach should be taken to completing the internal market for electricity 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 their supplier.

(21) Progressive market opening towards full competition should as soon as possible remove differences between Member States. Transparency and certainty in the implementation of this Directive should be ensured.

(22) Nearly all Member States have chosen to ensure competition in the electricity generation market through a transparent authorisation procedure. However, Member States should ensure the possibility to contribute to security of supply through the launching of a tendering procedure or an equivalent procedure in the event that sufficient electricity generation capacity is not built on the basis of the authorisation procedure. Member States should have the possibility, in the interests of environmental protection and the promotion of infant new technologies, of tendering for new capacity on the basis of published criteria. New capacity includes *inter alia* renewables and combined heat and power (CHP).

(23) In the interest of security of supply, the supply/demand balance in individual Member States should be monitored, and monitoring should be followed by a report on the situation at Community level, taking account of interconnection capacity between areas. Such monitoring should be carried out sufficiently early to enable appropriate measures to be taken if security of supply is compromised. The construction and maintenance of the necessary network infrastructure, including interconnection capacity, should contribute to ensuring a stable electricity supply. The maintenance and construction of the necessary network infrastructure, including interconnection capacity and decentralised electricity generation, are important elements in ensuring a stable electricity supply.

(24) Member States should ensure that household customers and, where Member States deem it appropriate, small enterprises, enjoy the right to be supplied with electricity of a specified quality at clearly comparable, transparent and reasonable prices. In order to ensure the maintenance of the high 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. Member States should take the necessary measures to protect vulnerable customers in the context of the internal electricity market. Such measures can differ according to the particular circumstances in the Member States in question and may include specific measures relating to the payment of electricity bills, or more general measures taken in the social security system. When universal service is also provided to small enterprises, measures to ensure that this universal service is provided may differ according to households and small enterprises.

(25) The Commission has indicated its intention to take initiatives especially as regards the scope of the labelling provision and notably on the manner in which the information on the environmental impact in terms of at least emissions of CO₂ and the radioactive waste resulting from electricity production from different energy sources, could be made available in a transparent, easily accessible and comparable manner throughout the European Union and on the manner in which the measures taken in the Member States to control the accuracy of the information provided by suppliers could be streamlined.

(26) The respect of the public service requirements is a fundamental requirement of this Directive, and it is important that common minimum standards, respected by all Member States, are specified in this Directive, which take into account the objectives of common protection, security of supply, environmental protection and equivalent levels of competition in all Member States. It is important that the public service requirements can be interpreted on a national basis, taking into account national circumstances and subject to the respect of Community law.

(27) Member States may appoint a supplier of last resort. This supplier may be the sales division of a vertically integrated undertaking, that also performs the functions of distribution, provided that it meets the unbundling requirements of this Directive.

(28) Measures implemented by Member States to achieve the objectives of social and economic cohesion may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools. These tools may include liability mechanisms to guarantee the necessary investment.

(29) To the extent to which measures taken by Member States to fulfil public service obligations constitute State aid under Article 87(1) of the Treaty, there is an obligation according to Article 88(3) of the Treaty to notify them to the Commission.

(30) 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.

(31) Since the objective of the proposed action, namely the creation of a fully operational internal electricity market, 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 at Com-

munity level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(32) 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 grids⁷, measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including cross-border flows of electricity between Member States. To ensure homogeneity in the treatment of access to the electricity networks, also in the case of transit, that Directive should be repealed.

(33) Given the scope of the amendments that are being made to Directive 96/92/EC, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast.

(34) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I SCOPE AND DEFINITIONS

Article 1 Scope

This Directive establishes common rules for the generation, transmission, distribution and supply of electricity. It lays down the rules relating to the organisation and functioning of the electricity sector, access to the market, the criteria and procedures applicable to calls for tenders and the granting of authorisations and the operation of systems.

Article 2 Definitions

For the purposes of this Directive:

1. „generation“ means the production of electricity;
2. „producer“ means a natural or legal person generating electricity;
3. „transmission“ means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but not including supply;
4. „transmission system operator“ means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and,

⁷ 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).

where applicable, its interconnections with other systems, and for ensuring the long term ability of the system to meet reasonable demands for the transmission of electricity;

5. „distribution“ means the transport of electricity on high-voltage, medium voltage and low voltage distribution systems with a view to its delivery to customers, but not including supply;

6. „distribution system operator“ means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems and for ensuring the long term ability of the system to meet reasonable demands for the distribution of electricity;

7. „customers“ means wholesale and final customers of electricity;

8. „wholesale customers“ means any natural or legal persons who purchase electricity for the purpose of resale inside or outside the system where they are established;

9. „final customers“ means customers purchasing electricity for their own use;

10. „household customers“ means customers purchasing electricity for their own household consumption, excluding commercial or professional activities;

11. „non-household customers“ means any natural or legal persons purchasing electricity which is not for their own household use and shall include producers and wholesale customers;

12. „eligible customers“ means customers who are free to purchase electricity from the supplier of their choice within the meaning of Article 21 of this Directive;

13. „interconnectors“ means equipment used to link electricity systems;

14. „interconnected system“ means a number of transmission and distribution systems linked together by means of one or more interconnectors;

15. „direct line“ means either an electricity line linking an isolated production site with an isolated customer or an electricity line linking an electricity producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and eligible customers;

16. „economic precedence“ means the ranking of sources of electricity supply in accordance with economic criteria;

17. „ancillary services“ means all services necessary for the operation of a transmission or distribution system;

18. „system users“ means any natural or legal persons supplying to, or being supplied by, a transmission or distribution system;

19. „supply“ means the sale, including resale, of electricity to customers;

20. „integrated electricity undertaking“ means a vertically or horizontally integrated undertaking;

21. „vertically integrated undertaking“ means an undertaking or a group of undertakings whose mutual relationships are defined in Article 3(3) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁸ and where the underta-

⁸ OJ L 395, 30.12.1989, p. 1. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).

king/group concerned is performing at least one of the functions of transmission or distribution and at least one of the functions of generation or supply of electricity;

22. „related undertaking“ means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 44(2)(g)⁹ of the Treaty on consolidated accounts¹⁰, and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;

23. „horizontally integrated undertaking“ means an undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply of electricity, and another non electricity activity;

24. „tendering procedure“ means the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;

25. „long-term planning“ means the planning of the need for investment in generation and transmission and distribution capacity on a long term basis, with a view to meeting the demand of the system for electricity and securing supplies to customers;

26. „small isolated system“ means any system with consumption of less than 3000 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems;

27. „micro isolated system“ means any system with consumption less than 500 GWh in the year 1996, where there is no connection with other systems;

28. „security“ means both security of supply and provision of electricity, and technical safety;

29. „energy efficiency/demand-side management“ means a global or integrated approach aimed at influencing the amount and timing of electricity consumption in order to reduce primary energy consumption and peak loads by giving precedence to investments in energy efficiency measures, or other measures, such as interruptible supply contracts, over investments to increase generation capacity, if the former are the most effective and economical option, taking into account the positive environmental impact of reduced energy consumption and the security of supply and distribution cost aspects related to it;

30. „renewable energy sources“ means renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases);

31. „distributed generation“ means generation plants connected to the distribution system.

⁹ The title of Directive 83/349/EEC has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g).

¹⁰ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3

Public service obligations and customer protection

1. Member States shall ensure, on the basis of their institutional organisation and with due regard to 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, secure and environmentally sustainable market in electricity, and shall not discriminate between these undertakings as regards either rights or obligations.

2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, 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 environmental protection, including energy efficiency and climate protection. Such obligations shall be clearly defined, transparent, non discriminatory, verifiable and shall guarantee equality of access for EU electricity companies to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals, as referred to in this paragraph, 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 household customers, and, where Member States deem it appropriate, small enterprises, (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort. Member States shall impose on distribution companies an obligation to connect customers to their grid under terms, conditions and tariffs set in accordance with the procedure laid down in Article 23(2). Nothing in this Directive shall prevent Member States from strengthening the market position of the domestic, small and medium-sized consumers by promoting the possibilities of voluntary aggregation of representation for this class of consumers. The first subparagraph shall be implemented in a transparent and non-discriminatory way and shall not impede the opening of the market provided for in Article 21.

4. When financial compensation, other forms of compensation and exclusive rights which a Member State grants for the fulfilment of the obligations set out in paragraphs 2 and 3 are provided, this shall be done in a non-discriminatory and transparent way.

5. Member States shall take appropriate measures to protect final customers, and shall in particular ensure that there are adequate safeguards to protect vulnerable customers, including measures to help them avoid disconnection. In this context, Member States may take measures to protect final

customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is in fact able to switch to a new supplier. As regards at least household customers, these measures shall include those set out in Annex A.

6. Member States shall ensure that electricity suppliers specify in or with the bills and in promotional materials made available to final customers:

(a) the contribution of each energy source to the overall fuel mix of the supplier over the preceding year;

(b) at least the reference to existing reference sources, such as web-pages, where information on the environmental impact, in terms of at least emissions of CO₂ and the radioactive waste resulting from the electricity produced by the overall fuel mix of the supplier over the preceding year is publicly available.

With respect to electricity obtained via an electricity exchange or imported from an undertaking situated outside the Community, aggregate figures provided by the exchange or the undertaking in question over the preceding year may be used.

Member States shall take the necessary steps to ensure that the information provided by suppliers to their customers pursuant to this Article is reliable.

7. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection, which may include energy efficiency/demand-side management measures and means to combat climate change, and security of supply. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for the maintenance and construction of the necessary network infrastructure, including interconnection capacity.

8. Member States may decide not to apply the provisions of Articles 6, 7, 20 and 22 insofar 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 insofar 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, amongst others, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.

9. Member States shall, upon implementation of this Directive, inform the Commission of all measures adopted to fulfil universal service and public service obligations, including consumer protection and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from this Directive. They shall inform the Commission subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.

Article 4

Monitoring of security of supply

Member States shall ensure the monitoring of security of supply issues. Where Member States consider it appropriate they may delegate this task to the regulatory authorities referred to in Article 23(1). This monitoring shall, in particular, cover the supply/demand balance on the national market, the level of expected future demand and envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the networks, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers. The competent authorities shall publish every two years, by 31 July at the latest, a report outlining the findings resulting from the monitoring of these issues, as well as any measures taken or envisaged to address them and shall forward this report to the Commission forthwith.

Article 5

Technical rules

Member States shall ensure that technical safety criteria are defined and that technical rules establishing the minimum technical design and operational requirements for the connection to the system of generating installations, distribution systems, directly connected consumers' equipment, interconnector circuits and direct lines are developed and made public. These technical rules shall ensure the interoperability of systems and shall be objective and non discriminatory. They shall be notified to the Commission in accordance with Article 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services¹¹.

CHAPTER III

GENERATION

Article 6

Authorisation procedure for new capacity

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;

¹¹ OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

- (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. Member States shall ensure that authorisation procedures for small and/or distributed generation take into account their limited size and potential impact.
4. The authorisation procedures and criteria shall be made public. 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.

Article 7 **Tendering for new capacity**

1. Member States shall ensure the possibility, in the interests of security of supply, of providing for new capacity or energy efficiency/demand-side management measures through a tendering procedure or any procedure equivalent in terms of transparency and non-discrimination, on the basis of published criteria. These procedures can, however, only be launched if on the basis of the authorisation procedure the generating capacity being built or the energy efficiency/demand-side management measures being taken are not sufficient to ensure security of supply.
2. Member States may ensure the possibility, in the interests of environmental protection and the promotion of infant new technologies, of tendering for new capacity on the basis of published criteria. This tender may relate to new capacity or energy efficiency/demand-side management measures. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the generating capacity being built or the measures being taken are not sufficient to achieve these objectives.
3. Details of the tendering procedure for means of generating capacity and energy efficiency/demand-side management measures shall be published in the *Official Journal of the European Union* at least six months prior to the closing date for tenders.
- The tender specifications shall be made available to any interested undertaking established in the territory of a Member State so that it has sufficient time in which to submit a tender.
- With a view to ensuring transparency and non-discrimination the tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract, including incentives, such as subsidies, which are covered by the tender. These specifications may also relate to the fields referred to in Article 6(2).

4. In invitations to tender for the requisite generating capacity, consideration must also be given to electricity supply offers with long term guarantees from existing generating units, provided that additional requirements can be met in this way.

5. Member States shall designate an authority or a public body or a private body independent from electricity generation, transmission, distribution and supply activities, which may be a regulatory authority referred to in Article 23(1), to be responsible for the organisation, monitoring and control of the tendering procedure referred to in paragraphs 1 to 4. Where a transmission system operator is fully independent from other activities not relating to the transmission system in ownership terms, the transmission system operator may be designated as the body responsible for organising, monitoring and controlling the tendering procedure. This authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.

CHAPTER IV **TRANSMISSION SYSTEM OPERATION**

Article 8 **Designation of Transmission System Operators**

Member States shall designate, or shall require undertakings which own transmission systems 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 transmission system operators. Member States shall ensure that transmission system operators act in accordance with Articles 9 to 12.

Article 9 **Tasks of Transmission System Operators**

Each transmission system operator shall be responsible for:

- (a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;
- (b) contributing to security of supply through adequate transmission capacity and system reliability;
- (c) managing energy flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services insofar as this availability is independent from any other transmission system with which its system is interconnected;
- (d) providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system;
- (e) ensuring non-discrimination as between system users or classes of system users, particularly in

favour of its related undertakings;

(f) providing system users with the information they need for efficient access to the system.

Article 10

Unbundling of Transmission System Operators

1. Where the transmission system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission. These rules shall not create an obligation to separate the ownership of assets of the transmission system from the vertically integrated undertaking.

2. In order to ensure the independence of the transmission system operator referred to in paragraph 1, the following minimum criteria shall apply:

(a) those persons responsible for the management of the transmission system operator 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 professional interests of the persons responsible for the management of the transmission system operator are taken into account in a manner that ensures that they are capable of acting independently;

(c) the transmission system operator shall have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 23(2), in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the transmission system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;

(d) the transmission system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 23(1) and shall be published.

Article 11

Dispatching and balancing

1. Without prejudice to the supply of electricity on the basis of contractual obligations, including those which derive from the tendering specifications, the transmission system operator shall, where it has this function, be responsible for dispatching the generating installations in its area and for determining the use of interconnectors with other systems.

2. The dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which may be approved by the Member State and which must be objective, published and applied in a non discriminatory manner which ensures the proper functioning of the internal market in electricity. They shall take into account the economic precedence of electricity from available generating installations or interconnector transfers and the technical constraints on the system.

3. A Member State may require the system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power.

4. A Member State may, for reasons of security of supply, direct that priority be given to the dispatch of generating installations using indigenous primary energy fuel sources, to an extent not exceeding in any calendar year 15 % of the overall primary energy necessary to produce the electricity consumed in the Member State concerned.

5. Member States may require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.

6. Transmission system operators shall procure the energy they use to cover energy losses and reserve capacity in their system according to transparent, non-discriminatory and market-based procedures, whenever they have this function.

7. Rules adopted by transmission system operators for balancing the electricity system shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 23(2) in a non-discriminatory and cost-reflective way and shall be published.

Article 12

Confidentiality for Transmission System Operators

Without prejudice to Article 18 or any other legal duty to disclose information, the transmission system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business. Information disclosed regarding its own activities, which may be commercially advantageous, shall be made available in a non-discriminatory manner.

CHAPTER V

DISTRIBUTION SYSTEM OPERATION

Article 13

Designation of Distribution System Operators

Member States shall designate or shall require undertakings that own or are responsible for distribution systems 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 distribution system operators. Member States shall ensure that distribution system operators act in accordance with Articles 14 to 16.

Article 14

Tasks of Distribution System Operators

1. The distribution system operator shall maintain a secure, reliable and efficient electricity distribution system in its area with due regard for the environment.
2. In any event, it must not discriminate between system users or classes of system users, particularly in favour of its related undertakings.
3. The distribution system operator shall provide system users with the information they need for efficient access to the system.
4. A Member State may require the distribution system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power.
5. Distribution system operators shall procure the energy they use to cover energy losses and reserve capacity in their system according to transparent, non-discriminatory and market based procedures, whenever they have this function. This requirement shall be without prejudice to using electricity acquired under contracts concluded before 1 January 2002.
6. Where distribution system operators are responsible for balancing the electricity distribution system, rules adopted by them for that purpose shall be objective, transparent and non discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by distribution system operators shall be established in accordance with Article 23(2) in a non discriminatory and cost-reflective way and shall be published.
7. When planning the development of the distribution network, energy efficiency/demand-side management measures and/or distributed generation that might supplant the need to upgrade or replace electricity capacity shall be considered by the distribution system operator.

Article 15

Unbundling of Distribution System Operators

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. These rules shall not create an obligation to separate the ownership of assets of the distribution system operator from the vertically integrated undertaking.
 2. In addition to the requirements of paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:
 - (a) those persons responsible for the management of the distribution system operator 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 or supply of electricity;
 - (b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;
 - (c) the distribution system operator shall have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 23(2), in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument.
 - (d) the distribution system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 23(1) and published.
- Member States may decide not to apply paragraphs 1 and 2 to integrated electricity undertakings serving less than 100000 connected customers, or serving small isolated systems.

Article 16**Confidentiality for Distribution System Operators**

Without prejudice to Article 18 or any other legal duty to disclose information, the distribution system operator must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.

Article 17**Combined operator**

The rules in Articles 10(1) and 15(1) do not prevent the operation of a combined transmission and distribution system operator, which is 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 set out in points (a) to (d). These rules shall not create an obligation to separate the ownership of assets of the combined system from the vertically integrated undertaking:

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

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

(c) the combined system operator shall have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain and develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 23(2), in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the combined system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission and distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;

(d) the combined system operator shall establish a compliance programme which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 23(1) and published.

CHAPTER VI**UNBUNDLING AND TRANSPARENCY OF ACCOUNTS****Article 18****Right of access to accounts**

1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article 23, shall, insofar as necessary to carry out their functions, have right of access to the accounts of electricity undertakings as set out in Article 19.

2. Member States and any designated competent authority, including the regulatory authorities referred to in Article 23, shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

Article 19**Unbundling of accounts**

1. Member States shall take the necessary steps to ensure that the accounts of electricity undertakings are kept in accordance with paragraphs 2 to 3.

2. Electricity undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to the Fourth Council Directive 78/660/EC of 25 July 1978 based on Article 44(2)(g)¹² of the Treaty on the annual accounts of certain types of companies¹³.

Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public in their head office.

3. Electricity undertakings shall, in their internal accounting, keep separate accounts for each of their transmission and distribution 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. They shall also keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution. Until 1 July 2007, they shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission/distribution system shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-electricity

¹² The title of Directive 78/660/EEC has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g).

¹³ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.

4. The audit referred to in paragraph 2 shall, in particular, verify that the obligation to avoid discrimination and cross-subsidies referred to in paragraph 3, is respected.

CHAPTER VII

ORGANISATION OF ACCESS TO THE SYSTEM

Article 20

Third party access

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. Member States shall ensure that these tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 23 and that these tariffs, and the methodologies - where only methodologies are approved - are published prior to their entry into force.

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. Member States shall ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.

Article 21

Market opening and reciprocity

1. Member States shall ensure that the eligible customers are:

(a) until 1 July 2004, the eligible customers as specified in Article 19(1) to (3) of Directive 96/92/EC. Member States shall publish by 31 January each year the criteria for the definition of these eligible customers;

(b) from 1 July 2004, at the latest, all non-household customers;

(c) from 1 July 2007, all customers.

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 point (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 supply at the

request of the Member State where the eligible customer is located.

Article 22

Direct lines

1. Member States shall take the measures necessary to enable:

(a) all electricity producers and electricity supply undertakings established within their territory to supply their own premises, subsidiaries and eligible customers through a direct line;

(b) any eligible customer within their territory to be supplied through a direct line by a producer and supply undertakings.

2. Member States shall lay down the criteria for the grant of authorisations for the construction of direct lines in their territory. These criteria must be objective and non discriminatory.

3. The possibility of supplying electricity through a direct line as referred to in paragraph 1 shall not affect the possibility of contracting electricity in accordance with Article 20.

4. Member States may make authorisation to construct a direct line subject either to the refusal of system access on the basis, as appropriate, of Article 20 or to the opening of a dispute settlement procedure under Article 23.

5. Member States may refuse to authorise a direct line if the granting of such an authorisation would obstruct the provisions of Article 3. Duly substantiated reasons must be given for such refusal.

Article 23

Regulatory authorities

1. Member States shall designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent from the interests of the electricity industry. They shall, through the application of this Article, at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market, monitoring in particular:

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

(b) any mechanisms to deal with congested capacity within the national electricity system;

(c) the time taken by transmission and distribution undertakings to make connections and repairs;

(d) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;

(e) the effective unbundling of accounts, as referred to in Article 19, to ensure that there are no cross subsidies between generation, transmission, distribution and supply activities;

(f) the terms, conditions and tariffs for connecting new producers of electricity to guarantee that these are objective, transparent and non-discriminatory, in particular taking full account of the costs

and benefits of the various renewable energy sources technologies, distributed generation and combined heat and power;

(g) the extent to which transmission and distribution system operators fulfil their tasks in accordance with Articles 9 and 14;

(h) the level of transparency and competition.

The authorities established pursuant to this Article shall publish an annual report on the outcome of their monitoring activities referred to in points (a) to (h).

2. The regulatory authorities shall be responsible for fixing or approving, prior to their entry into force, at least the methodologies used to calculate or establish the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs. These tariffs, or methodologies, shall allow the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks;

(b) the provision of balancing services.

3. Notwithstanding paragraph 2, Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State the tariffs or at least the methodologies referred to in that paragraph as well as the modifications in paragraph 4. The relevant body shall, in such a case, have the power to either approve or reject a draft decision submitted by the regulatory authority. These tariffs or the methodologies or modifications thereto shall be published together with the decision on formal adoption. Any formal rejection of a draft decision shall also be published, including its justification.

4. Regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, tariffs, rules, mechanisms and methodologies referred to in paragraphs 1, 2 and 3, to ensure that they are proportionate and applied in a non-discriminatory manner.

5. Any party having a complaint against a transmission or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 4 may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authority. This period may be further extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

Where a complaint concerns connection tariffs for major new generation facilities, the two-month period may be extended by the regulatory authority.

6. Any party who is affected and has a right to complain concerning a decision on methodologies taken pursuant to paragraphs 2, 3 or 4 or, where the regulatory authority has a duty to consult, concerning the proposed methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

7. Member States shall take measures to ensure that regulatory authorities are able to carry out their

duties referred to in paragraphs 1 to 5 in an efficient and expeditious manner.

8. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a 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.

Until 2010, the relevant authorities of the Member States shall provide, by 31 July of each year, in conformity with competition law, the Commission with a report on market dominance, predatory and anti competitive behaviour. This report shall, in addition, review the changing ownership patterns and any practical measures taken at national level to ensure a sufficient variety of market actors or practical measures taken to enhance interconnection and competition. From 2010 onwards, the relevant authorities shall provide such a report every two years.

9. Member States shall ensure that the appropriate measures are 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.

10. In the event of cross border disputes, the deciding regulatory authority shall be the regulatory authority which has jurisdiction in respect of the system operator which refuses use of, or access to, the system.

11. Complaints referred to in paragraphs 5 and 6 shall be without prejudice to the exercise of rights of appeal under Community and national law.

12. 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.

CHAPTER VIII FINAL PROVISIONS

Article 24 Safeguard measures

In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may temporarily take the necessary safeguard measures.

Such measures must cause the least possible disturbance in the functioning of the internal market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

The Member State concerned shall without delay notify these measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.

Article 25**Monitoring of imports of electricity**

Member States shall inform the Commission every three months of imports of electricity, in terms of physical flows, that have taken place during the previous three months from third countries.

Article 26**Derogations**

1. Member States which can demonstrate, after the Directive has been brought into force, that there are substantial problems for the operation of their small isolated systems, may apply for derogations from the relevant provisions of Chapters IV, V, VI, VII, as well as Chapter III, in the case of micro isolated systems, as far as refurbishing, upgrading and expansion of existing capacity are concerned, which may be granted to them by the Commission. The latter shall inform the Member States of those applications prior to taking a decision, taking into account respect for confidentiality. This decision shall be published in the Official Journal of the European Union. This Article shall also be applicable to Luxembourg.

2. A Member State which, after the Directive has been brought into force, for reasons of a technical nature has substantial problems in opening its market for certain limited groups of the non-household customers referred to in Article 21(1)(b) may apply for derogation from this provision, which may be granted to it by the Commission for a period not exceeding 18 months after the date referred to in Article 30(1). In any case, such derogation shall end on the date referred to in Article 21(1)(c).

Article 27**Review Procedure**

In the event that the report referred to in Article 28(3) reaches the conclusion whereby, given the effective manner in which network access has been carried out in a Member State - which gives rise to fully effective, non-discriminatory and unhindered network access - the Commission concludes that certain obligations imposed by this Directive on undertakings (including those with respect to legal unbundling for distribution system operators) are not proportionate to the objective pursued, the Member State in question may submit a request to the Commission for exemption from the requirement in question.

The request shall be notified, without delay, by the Member State to the Commission, together with all the relevant information necessary to demonstrate that the conclusion reached in the report on effective network access being ensured will be maintained.

Within three months of its receipt of a notification, the Commission shall adopt an opinion with respect to the request by the Member State concerned, and where appropriate, submit proposals to the European Parliament and to the Council to amend the relevant provisions of the Directive. The

Commission may propose, in the proposals to amend the Directive, to exempt the Member State concerned from specific requirements, subject to that Member State implementing equally effective measures as appropriate.

Article 28**Reporting**

1. The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and the Council before the end of the first year following the entry into force of this Directive, and thereafter on an annual basis. The report shall cover at least:

- (a) the experience gained and progress made in creating a complete and fully operational internal market in electricity and the obstacles that remain in this respect, including aspects of market dominance, concentration in the market, predatory or anti-competitive behaviour and the effect of this in terms of market distortion;
- (b) the extent to which the unbundling and tariffication requirements contained in this Directive have been successful in ensuring fair and non-discriminatory access to the Community's electricity system and equivalent levels of competition, as well as the economic, environmental and social consequences of the opening of the electricity market for customers;
- (c) an examination of issues relating to system capacity levels and security of supply of electricity in the Community, and in particular the existing and projected balance between demand and supply, taking into account the physical capacity for exchanges between areas;
- (d) special attention will be given to measures taken in Member States to cover peak demand and to deal with shortfalls of one or more suppliers;
- (e) the implementation of the derogation provided under Article 15(2) with a view to a possible revision of the threshold;
- (f) a general assessment of the progress achieved with regard to bilateral relations with third countries which produce and export or transport electricity, including progress in market integration, the social and environmental consequences of the trade in electricity and access to the networks of such third countries;
- (g) the need for possible harmonisation requirements that are not linked to the provisions of this Directive;
- (h) the manner in which Member States have implemented in practice the requirements regarding energy labelling contained in Article 3(6), and the manner in which any Commission Recommendations on this issue have been taken into account.

Where appropriate, this report may include recommendations especially as regards the scope and modalities of labelling provisions including e.g. the way in which reference is made to existing reference sources and the content of these sources, and notably on the manner in which the information on the environmental impact in terms of at least emissions of CO₂ and the radioactive waste

resulting from the electricity production from different energy sources could be made available in a transparent, easily accessible and comparable manner throughout the European Union and on the manner in which the measures taken by the Member States to control the accuracy of the information provided by suppliers could be streamlined, and measures to counteract negative effects of market dominance and market concentration.

2. Every two years, the report referred to in paragraph 1 shall also cover an analysis of the different measures taken in the Member States to meet public service obligations, together with an examination of the effectiveness of those measures and, in particular, their effects on competition in the electricity market. Where appropriate, this report may include recommendations as to the measures to be taken at national level to achieve high public service standards, or measures intended to prevent market foreclosure.

3. The Commission shall, no later than 1 January 2006, forward to the European Parliament and Council, a detailed report outlining progress in creating the internal electricity market. The report shall, in particular, consider:

- the existence of non-discriminatory network access;
- effective regulation;
- the development of interconnection infrastructure and the security of supply situation in the Community;
- the extent to which the full benefits of the opening of markets are accruing to small enterprises and households, notably with respect to public service and universal service standards;
- the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour;
- the extent to which customers are actually switching suppliers and renegotiating tariffs;
- price developments, including supply prices, in relation to the degree of the opening of markets;
- the experience gained in the application of the Directive as far as the effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.

Where appropriate, the Commission shall submit proposals to the European Parliament and the Council, in particular to guarantee high public service standards.

Where appropriate, the Commission shall submit proposals to the European Parliament and the Council, in particular to ensure full and effective independence of distribution system operators before 1 July 2007. When necessary, these proposals shall, in conformity with competition law, also concern measures to address issues of market dominance, market concentration and predatory or anti-competitive behaviour.

Article 29

Repeals

Directive 90/547/EEC shall be repealed with effect from 1 July 2004.

Directive 96/92/EC shall be repealed from 1 July 2004 without prejudice to the obligations of Member States concerning the deadlines for transposition and application of the said Directive. References made to the repealed Directive shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex B.

Article 30

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 2004. They shall forthwith inform the Commission thereof.

2. Member States may postpone the implementation of Article 15(1) until 1 July 2007. This shall be without prejudice to the requirements contained in Article 15(2).

3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 31

Entry into force

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

Article 32

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 26 June 2003.

For the European Parliament

The President

P. Cox

For the Council

The President

A. Tsochatzopoulos

ANNEX A

Measures on consumer protection

Without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC of the European Parliament and of the Council¹ and Council Directive 93/13/EC², the measures referred to in Article 3 are to ensure that customers:

- (a) have a right to a contract with their electricity service provider that specifies:
 - the identity and address of the supplier;
 - the services provided, the service quality levels offered, as well as the time for the initial connection;
 - if offered, 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, the existence of any right of withdrawal;
 - 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).Conditions shall be fair and well known in advance. In any case, this information should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract;
- (b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect. Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their electricity service provider;
- (c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services;
- (d) are offered a wide choice of payment methods. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. Customers shall be protected against unfair or misleading selling methods;
- (e) shall not be charged for changing supplier;

¹ OJ L 144, 4.6.1997, p. 19.
² OJ L 95, 21.4.1993, p. 29.

- (f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Such procedures shall 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/EC³;
- (g) when having access to universal service under the provisions adopted by Member States pursuant to Article 3(3), are informed about their rights regarding universal service.

ANNEX B

Correlation table

Directive 96/92/EC	This Directive
Article 1	Article 1 Scope
Article 2	Article 2 Definitions
Article 3 and 10(1)	Article 3 PSOs and Customer protection
—	Article 4 Monitoring of security of supply
Article 7(2)	Article 5 Technical rules
Article 4 and 5	Article 6 Authorisation procedure for new capacity
Article 4 and 6	Article 7 Tendering for new capacity
Article 7(1)	Article 8 Designation of TSOs
Article 7(3)-(5)	Article 9 Tasks of TSOs
Article 7(6)	Article 10 Unbundling of TSOs
Article 8	Article 11 Dispatching and balancing
Article 9	Article 12 Confidentiality for TSOs
Article 10(2) and (3)	Article 13 Designation of DSOs
Article 11	Article 14 Tasks of DSOs
—	Article 15 Unbundling of DSOs
Article 12	Article 16 Confidentiality for DSOs
—	Article 17 Combined operator
Article 13	Article 18 Right of access to accounts
Article 14	Article 19 Unbundling of accounts
Article 15-18	Article 20 Third Party Access
Article 19	Article 21 Market opening and reciprocity
Article 21	Article 22 Direct lines
Article 20(3)-(4) and 22	Article 23 Regulatory authorities
Article 23	Article 24 Safeguard measures
—	Article 25 Monitoring of imports of electricity
Article 24	Article 26 Derogations

³ OJ L 115, 17.4.1998, p. 31.

—	Article 27 Review procedure
Article 25 and 26	Article 28 Reporting
—	Article 29 Repeals
Article 27	Article 30 Implementation
Article 28	Article 31 Entry into force
Article 29	Article 32 Addressees
	Annex A Measures on consumer protection

Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment

(Official Journal L 033 , 04/02/2006 P. 0022 - 0027)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

Whereas:

(1) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity³, has made a very important contribution towards the creation of the internal market for electricity. The guarantee of a high level of security of electricity supply is a key objective for the successful operation of the internal market and that Directive gives the Member States the possibility of imposing public service obligations on electricity undertakings, *inter alia*, in relation to security of supply. Those public service obligations should be defined as precisely and strictly as possible, and should not result in the creation of generation capacity that goes beyond what is necessary to prevent undue interruption of distribution of electricity to final customers.

(2) Demand for electricity is usually forecast over a medium-term period on the basis of scenarios elaborated by transmission system operators or by other organisations capable of constructing them at the request of a Member State.

(3) A competitive single EU electricity market necessitates transparent and non-discriminatory policies on security of electricity supply compatible with the requirements of such a market. The absence of such policies in individual Member States, or significant differences between the policies of the Member States would lead to distortions of competition. The definition of clear roles and responsi-

¹ OJ C 120, 20.5.2005, p. 119.

² Opinion of the European Parliament of 5 July 2005 (not yet published in the Official Journal) and Council Decision of 1 December 2005.

³ OJ L 176, 15.7.2003, p. 37. Directive as amended by Council Directive 2004/85/EC (OJ L 236, 7.7.2004, p. 10).

bilities of the competent authorities, as well as of Member States themselves and all relevant market actors, is therefore crucial in safeguarding security of electricity supply and the proper functioning of the internal market while at the same time avoiding creating obstacles to market entrants, such as companies generating or supplying electricity in a Member State that have recently started their operations in that Member State, and avoiding creating distortions of the internal market for electricity or significant difficulties for market actors, including companies with small market shares, such as generators or suppliers with a very small share in the relevant Community market.

(4) Decision No 1229/2003/EC of the European Parliament and of the Council⁴, sets out a series of guidelines for Community policy on trans-European energy networks. Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity⁵ sets out, *inter alia*, the general principles and detailed rules relating to congestion management.

(5) When promoting electricity from renewable energy sources, it is necessary to ensure the availability of associated back-up capacity, where technically necessary, in order to maintain the reliability and security of the network.

(6) In order to meet the Community's environmental commitments and to reduce its dependence on imported energy, it is important to take account of the long-term effects of growth of electricity demand.

(7) Cooperation between national transmission system operators in issues relating to network security including definition of transfer capacity, information provision and network modelling is vital to the development of a well-functioning internal market and could be further improved. A lack of coordination regarding network security is detrimental to the development of equal conditions for competition.

(8) The main intention of the relevant technical rules and recommendations, such as those contained in the Union for the Coordination of Transmission of Electricity (UCTE) Operation handbook, similar rules and recommendations developed by Nordel, the Baltic Grid Code and those for the United Kingdom and Irish systems, is to provide support for the technical operation of the interconnected network, thus contributing to meeting the need for continued operation of the network in the event of system failure at an individual point or points in the network and minimising the costs related to mitigating such supply disruption.

(9) Transmission and distribution system operators should be required to deliver a high level of service to final customers in terms of the frequency and duration of interruptions.

(10) Measures which may be used to ensure that appropriate levels of generation reserve capacity are maintained should be market-based and non-discriminatory and could include measures such as contractual guarantees and arrangements, capacity options or capacity obligations. These measures could also be supplemented by other non-discriminatory instruments such as capacity payments.

⁴ OJ L 176, 15.7.2003, p. 11.

⁵ OJ L 176, 15.7.2003, p. 1. Regulation as amended by Council Regulation (EC) No 1223/2004 (OJ L 233, 2.7.2004, p. 3).

(11) In order to ensure that appropriate prior information is available, Member States should publish measures taken to maintain the balance between supply and demand among actual and potential investors in generation and among electricity consumers.

(12) Without prejudice to Articles 86, 87 and 88 of the Treaty, it is important for Member States to lay down an unambiguous, appropriate and stable framework which will facilitate security of electricity supply and is conducive to investments in generation capacity and demand management techniques. It is also important that appropriate measures are taken to ensure a regulatory framework that encourages investment in new transmission interconnection, especially between Member States.

(13) The European Council in Barcelona on 15 and 16 March 2002 agreed on a level of interconnection between Member States. Low levels of interconnection have the effect of fragmenting the market and are an obstacle to the development of competition. The existence of adequate physical transmission interconnection capacity, whether cross-border or not, is crucial but it is not a sufficient condition for competition to be fully effective. In the interest of final customers, the relation between the potential benefits of new interconnection projects and the costs for such projects should be reasonably balanced.

(14) While it is important to determine the maximum available transfer capacities without breaching the requirements of secure network operation, it is also important to ensure full transparency of the capacity calculation and allocation procedure in the transmission system. In this way, it could be possible to make better use of existing capacity, and no false shortage signals will be given to the market, which will support the achievement of a fully competitive internal market as envisaged in Directive 2003/54/EC.

(15) Transmission and distribution system operators need an appropriate and stable regulatory framework for investment, and for maintenance and renewal of the networks.

(16) Article 4 of Directive 2003/54/EC requires Member States to monitor and submit a report on security of electricity supply. This report should cover short, medium and long-term factors relevant for security of supply including transmission system operators' intention to invest in the network. In compiling such a report, Member States will be expected to refer to information and assessments already being undertaken by transmission system operators both on an individual and collective basis, including at European level.

(17) Member States should ensure the effective implementation of this Directive.

(18) Since the objectives of the proposed action, namely secure electricity supplies based on fair competition and the creation of a fully operational internal electricity market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1 **Scope**

1. This Directive establishes measures aimed at safeguarding security of electricity supply so as to ensure the proper functioning of the internal market for electricity and to ensure:

(a) an adequate level of generation capacity;

(b) an adequate balance between supply and demand;
and

(c) an appropriate level of interconnection between Member States for the development of the internal market.

2. It establishes a framework within which Member States are to define transparent, stable and non-discriminatory policies on security of electricity supply compatible with the requirements of a competitive internal market for electricity.

Article 2 **Definitions**

For the purposes of this Directive, the definitions contained in Article 2 of Directive 2003/54/EC shall apply. In addition, the following definitions shall apply:

(a) „regulatory authority“ means the regulatory authorities in Member States, as designated in accordance with Article 23 of Directive 2003/54/EC;

(b) „security of electricity supply“ means the ability of an electricity system to supply final customers with electricity, as provided for under this Directive;

(c) „operational network security“ means the continuous operation of the transmission and, where appropriate, the distribution network under foreseeable circumstances;

(d) „balance between supply and demand“ means the satisfaction of foreseeable demands of consumers to use electricity without the need to enforce measures to reduce consumption.

Article 3 **General provisions**

1. Member States shall ensure a high level of security of electricity supply by taking the necessary measures to facilitate a stable investment climate and by defining the roles and responsibilities of competent authorities, including regulatory authorities where relevant, and all relevant market actors and publishing information thereon. The relevant market actors include, *inter alia*, transmission and distribution system operators, electricity generators, suppliers and final customers.

2. In implementing the measures referred to in paragraph 1, Member States shall take account of:

- (a) the importance of ensuring continuity of electricity supplies;
- (b) the importance of a transparent and stable regulatory framework;
- (c) the internal market and the possibilities for cross-border cooperation in relation to security of electricity supply;
- (d) the need for regular maintenance and, where necessary, renewal of the transmission and distribution networks to maintain the performance of the network;
- (e) the importance of ensuring proper implementation of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market⁶ and Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market⁷, insofar as their provisions are related to security of electricity supply;
- (f) the need to ensure sufficient transmission and generation reserve capacity for stable operation; and
- (g) the importance of encouraging the establishment of liquid wholesale markets.

3. In implementing the measures referred to in paragraph 1, Member States may also take account of:

- (a) the degree of diversity in electricity generation at national or relevant regional level;
- (b) the importance of reducing the long-term effects of the growth of electricity demand;
- (c) the importance of encouraging energy efficiency and the adoption of new technologies, in particular demand management technologies, renewable energy technologies and distributed generation; and
- (d) the importance of removing administrative barriers to investments in infrastructure and generation capacity.

4. Member States shall ensure that any measures adopted in accordance with this Directive are non-discriminatory and do not place an unreasonable burden on the market actors, including market entrants and companies with small market shares. Member States shall also take into account, before their adoption, the impact of the measures on the cost of electricity to final customers.

5. In ensuring an appropriate level of interconnection between Member States, as referred to in Article 1(1)(c), special consideration shall be given:

- (a) each Member State's specific geographical situation;

⁶ OJ L 283, 27.10.2001, p. 33. Directive as amended by the 2003 Act of Accession.

⁷ OJ L 52, 21.2.2004, p. 50.

- (b) maintaining a reasonable balance between the costs of building new interconnectors and the benefit to final customers;
- and

- (c) ensuring that existing interconnectors are used as efficiently as possible.

Article 4

Operational network security

1. (a) Member States or the competent authorities shall ensure that transmission system operators set the minimum operational rules and obligations on network security.

Before setting such rules and obligations, they shall consult with the relevant actors in the countries with which interconnection exists;

(b) notwithstanding the first subparagraph of point (a), Member States may require transmission system operators to submit such rules and obligations to the competent authority for approval;

(c) Member States shall ensure that transmission and, where appropriate, distribution system operators comply with the minimum operational rules and obligations on network security;

(d) Member States shall require transmission system operators to maintain an appropriate level of operational network security.

To that effect, transmission system operators shall maintain an appropriate level of technical transmission reserve capacity for operational network security and cooperate with the transmission system operators concerned to which they are interconnected.

The level of foreseeable circumstances in which security shall be maintained is defined in the operational network security rules;

(e) Member States shall, in particular, ensure that interconnected transmission and, where appropriate, distribution system operators exchange information relating to the operation of networks in a timely and effective fashion in line with the minimum operational requirements. The same requirements shall, where appropriate, apply to transmission and distribution system operators that are interconnected with system operators outside the Community.

2. Member States or the competent authorities shall ensure that transmission and, where appropriate, distribution system operators set and meet quality of supply and network security performance objectives. These objectives shall be subject to approval by the Member States or competent authorities and their implementation shall be monitored by them. They shall be objective, transparent and non-discriminatory and shall be published.

3. In taking the measures referred to in Article 24 of Directive 2003/54/EC and in Article 6 of Regulation (EC) No 1228/2003, Member States shall not discriminate between cross-border contracts and national contracts.

4. Member States shall ensure that curtailment of supply in emergency situations shall be based on predefined criteria relating to the management of imbalances by transmission system operators.

Any safeguard measures shall be taken in close consultation with other relevant transmission system operators, respecting relevant bilateral agreements, including agreements on the exchange of information.

Article 5

Maintaining balance between supply and demand

1. Member States shall take appropriate measures to maintain a balance between the demand for electricity and the availability of generation capacity.

In particular, Member States shall:

- (a) without prejudice to the particular requirements of small isolated systems, encourage the establishment of a wholesale market framework that provides suitable price signals for generation and consumption;
 - (b) require transmission system operators to ensure that an appropriate level of generation reserve capacity is available for balancing purposes and/or to adopt equivalent market based measures.
2. Without prejudice to Articles 87 and 88 of the Treaty, Member States may also take additional measures, including but not limited to the following:
- (a) provisions facilitating new generation capacity and the entry of new generation companies to the market;
 - (b) removal of barriers that prevent the use of interruptible contracts;
 - (c) removal of barriers that prevent the conclusion of contracts of varying lengths for both producers and customers;
 - (d) encouragement of the adoption of real-time demand management technologies such as advanced metering systems;
 - (e) encouragement of energy conservation measures;
 - (f) tendering procedures or any procedure equivalent in terms of transparency and non-discrimination in accordance with Article 7(1) of Directive 2003/54/EC.

3. Member States shall publish the measures to be taken pursuant to this Article and shall ensure the widest possible dissemination thereof.

Article 6

Network investment

1. Member States shall establish a regulatory framework that:

- (a) provides investment signals for both the transmission and distribution system network operators to develop their networks in order to meet foreseeable demand from the market; and
- (b) facilitates maintenance and, where necessary, renewal of their networks.

2. Without prejudice to Regulation (EC) No 1228/2003, Member States may allow for merchant

investments in interconnection.

Member States shall ensure that decisions on investments in interconnection are taken in close cooperation between relevant transmission system operators.

Article 7

Reporting

1. Member States shall ensure that the report referred to in Article 4 of Directive 2003/54/EC covers the overall adequacy of the electricity system to supply current and projected demands for electricity, comprising:

- (a) operational network security;
- (b) the projected balance of supply and demand for the next five-year period;
- (c) the prospects for security of electricity supply for the period between five and 15 years from the date of the report; and
- (d) the investment intentions, for the next five or more calendar years, of transmission system operators and those of any other party of which they are aware, as regards the provision of cross-border interconnection capacity.

2. Member States or the competent authorities shall prepare the report in close cooperation with transmission system operators. Transmission system operators shall, if appropriate, consult with neighbouring transmission system operators.

3. The section of the report relating to interconnection investment intentions, referred to in paragraph 1(d), shall take account of:

- (a) the principles of congestion management, as set out in Regulation (EC) No 1228/2003;
 - (b) existing and planned transmission lines;
 - (c) expected patterns of generation, supply, cross-border exchanges and consumption, allowing for demand management measures, and
 - (d) regional, national and European sustainable development objectives, including those projects forming part of the Axes for priority projects set out in Annex I to Decision No 1229/2003/EC.
- Member States shall ensure that transmission system operators provide information on their investment intentions or those of any other party of which they are aware as regards the provision of cross-border interconnection capacity.

Member States may also require transmission system operators to provide information on investments related to the building of internal lines that materially affect the provision of cross-border interconnection.

4. Member States or the competent authorities shall ensure that the necessary means for access to the relevant data are facilitated to the transmission system operators and/or to the competent

authorities where relevant in the development of this task.

The non-disclosure of confidential information shall be ensured.

5. On the basis of the information referred to in paragraph 1(d), received from the competent authorities, the Commission shall report to the Member States, the competent authorities and the European Regulators Group on Electricity and Gas established by Commission Decision 2003/796/EC⁸ on the investments planned and their contribution to the objectives set out in Article 1(1).

This report may be combined with the reporting provided for in point (c) of Article 28(1) of Directive 2003/54/EC and shall be published.

Article 8 **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 February 2008. They shall forthwith inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. By 1 December 2007, Member States shall notify the Commission of the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 9 **Reporting**

The Commission shall monitor and review the application of this Directive and submit a progress report to the European Parliament and the Council by 24 February 2010.

Article 10 **Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 11 **Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 18 January 2006.

For the European Parliament

The President

J. Borrell Fontelles

For the Council

The President

H. Winkler

⁸ OJ L 296, 14.11.2003, p. 34.

Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity

(Official Journal L 176 , 15/07/2003 P. 0001 - 0010)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the European Economic and Social Committee²,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

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 electricity⁴ constituted an important step towards the completion of the internal market in electricity.

(2) 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 the electricity and gas sectors and to speed up liberalisation in these sectors with a view to achieving a fully operational internal market in these areas.

(3) The creation of a real internal electricity market should be promoted through an intensification of trade in electricity, which is currently underdeveloped compared with other sectors of the economy.

(4) Fair, cost-reflective, transparent and directly applicable rules, taking account of a comparison between efficient network operators from structurally comparable areas and supplementing the provisions of Directive 96/92/EC, should be introduced with regard to cross-border tariffication and the allocation of available interconnection capacities, in order to ensure effective access to transmission systems for the purpose of cross-border transactions.

¹ OJ C 240 E, 28.8.2001, p. 72, and OJ C 227 E, 24.9.2002, p. 440.

² OJ C 36, 8.2.2002, p. 10.

³ Opinion of the European Parliament of 13 March 2002 (OJ C 47 E, 27.2.2003, p. 379), Council Common position of 3 February 2003 (OJ C 50 E, 4.3.2003, p. 1) and Decision of the European Parliament of 4 June 2003 (not yet published in the Official Journal).

⁴ OJ L 27, 30.1.1997, p. 20.

(5) In its Conclusions, the Energy Council of 30 May 2000 invited the Commission, Member States and national regulatory authorities and administrations to ensure timely implementation of congestion management measures and, in liaison with the European Transmission System Operators (ETSO), rapid introduction of a robust tariffication system for the longer term which provides the appropriate cost allocation signals to market participants.

(6) The European Parliament, in its Resolution of 6 July 2000 on the Commission's second report on the state of liberalisation of energy markets, called for conditions for using networks in Member States that do not hamper cross-border trade in electricity and called on the Commission to submit specific proposals geared to overcoming all the existing barriers to intra-Community trade.

(7) It is important that third countries that form part of the European electricity system comply with the rules contained in this Regulation and the guidelines adopted under this Regulation in order to increase the effective functioning of the internal market.

(8) This Regulation should lay down basic principles with regard to tariffication and capacity allocation, whilst providing for the adoption of guidelines detailing further relevant principles and methodologies, in order to allow rapid adaptation to changed circumstances.

(9) In an open, competitive market, transmission system operators should be compensated for costs incurred as a result of hosting cross-border flows of electricity on their networks by the operators of the transmission systems from which cross-border flows originate and the systems where those flows end.

(10) Payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs.

(11) The actual amount payable for cross-border access to the system can vary considerably, depending on the transmission system operators involved and as a result of differences in the structure of the tariffication systems applied in Member States. A certain degree of harmonisation is therefore necessary in order to avoid distortions of trade.

(12) A proper system of long term locational signals would be necessary, based on the principle that the level of the network access charges should reflect the balance between generation and consumption of the region concerned, on the basis of a differentiation of the network access charges on producers and/or consumers.

(13) It would not be appropriate to apply distance-related tariffs, or, provided appropriate locational signals are in place, a specific tariff to be paid only by exporters or importers in addition to the general charge for access to the national network.

(14) The precondition for effective competition in the internal market is non-discriminatory and transparent charges for network use including interconnecting lines in the transmission system. The available capacities of these lines should be set at the maximum levels consistent with the safety standards of secure network operation.

(15) It is important to avoid distortion of competition resulting from different safety, operational and planning standards used by transmission system operators in Member States. Moreover, there

should be transparency for market participants concerning available transfer capacities and the security, planning and operational standards that affect the available transfer capacities.

(16) There should be rules on the use of revenues flowing from congestion-management procedures, unless the specific nature of the interconnector concerned justifies an exemption from these rules.

(17) It should be possible to deal with congestion problems in various ways as long as the methods used provide correct economic signals to transmission system operators and market participants and are based on market mechanisms.

(18) To ensure the smooth functioning of the internal market, provision should be made for procedures which allow the adoption of decisions and guidelines with regard to amongst other things tariffication and capacity allocation by the Commission whilst ensuring the involvement of Member States' regulatory authorities in this process where appropriate through their European association. Regulatory authorities, together with other relevant authorities in the Member States, have an important role to play in contributing to the proper functioning of the internal electricity market.

(19) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission. Where necessary, the Commission should have an opportunity to request relevant information directly from undertakings concerned, provided that the competent national authorities are informed.

(20) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted on the basis of this Regulation.

(21) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.

(22) Since the objective of the proposed action, namely the provision of a harmonised framework for cross-border exchanges of electricity, cannot be achieved by the Member States and can therefore, by reason of the scale and effect of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.

(23) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁵,

⁵ OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter and scope

This Regulation aims at setting fair rules for cross-border exchanges in electricity, thus enhancing competition within the internal electricity market, taking into account the specificities of national and regional markets. This will involve the establishment of a compensation mechanism for cross border flows of electricity and the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems.

Article 2

Definitions

1. For the purpose of this Regulation, the definitions contained in Article 2 of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC⁶ shall apply with the exception of the definition of „interconnector“ which shall be replaced by the following:

„interconnector“ means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States;

2. The following definitions shall also apply:

(a) „regulatory authorities“ means the regulatory authorities referred to in Article 23(1) of Directive 2003/54/EC;

(b) „cross-border flow“ means a physical flow of electricity on a transmission network of a Member State that results from the impact of the activity of producers and/or consumers outside of that Member State on its transmission network. If transmission networks of two or more Member States form part, entirely or partly, of a single control block, for the purpose of the inter-transmission system operator (TSO) compensation mechanism referred to in Article 3 only, the control block as a whole shall be considered as forming part of the transmission network of one of the Member States concerned, in order to avoid flows within control blocks being considered as cross-border flows and giving rise to compensation payments under Article 3. The regulatory authorities of the Member States concerned may decide which of the Member States concerned shall be the one of which the control block as a whole shall be considered to form part of;

(c) „congestion“ means a situation in which an interconnection linking national transmission networks, cannot accommodate all physical flows resulting from international trade requested by market participants, because of a lack of capacity of the interconnectors and/or the national transmission systems concerned;

⁶ See p. 49 of this publication, the Eds.

(d) „declared export“ of electricity means the dispatch of electricity in one Member State on the basis of an underlying contractual arrangement to the effect that the simultaneous corresponding take-up („declared import“) of electricity will take place in another Member State or a third country;

(e) „declared transit“ of electricity means a circumstance where a „declared export“ of electricity occurs and where the nominated path for the transaction involves a country in which neither the dispatch nor the simultaneous corresponding take-up of the electricity will take place;

(f) „declared import“ of electricity means the take-up of electricity in a Member State or a third country simultaneously with the dispatch of electricity („declared export“) in another Member State;

(g) „new interconnector“ means an interconnector not completed by the date of entry into force of this Regulation.

Article 3

Inter transmission system operator compensation mechanism

1. Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks.

2. The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which cross-border flows originate and the systems where those flows end.

3. Compensation payments shall be made on a regular basis with regard to a given period of time in the past. Ex-post adjustments of compensation paid shall be made where necessary to reflect costs actually incurred.

The first period of time for which compensation payments shall be made shall be determined in the guidelines referred to in Article 8.

4. Acting in accordance with the procedure referred to in Article 13(2), the Commission shall decide on the amounts of compensation payments payable.

5. The magnitude of cross-border flows hosted and the magnitude of cross-border flows designated as originating and/or ending in national transmission systems shall be determined on the basis of the physical flows of electricity actually measured in a given period of time.

6. The costs incurred as a result of hosting cross-border flows shall be established on the basis of the forward looking long-run average incremental costs, taking into account losses, investment in new infrastructure, and an appropriate proportion of the cost of existing infrastructure, as far as infrastructure is used for the transmission of cross-border flows, in particular taking into account the need to guarantee security of supply. When establishing the costs incurred, recognised standard-costing methodologies shall be used. Benefits that a network incurs as a result of hosting cross-border flows shall be taken into account to reduce the compensation received.

Article 4

Charges for access to networks

1. Charges applied by network-operators for access to networks shall be transparent, take into account the need for network security and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and applied in a non discriminatory manner. Those charges shall not be distance-related.

2. Producers and consumers („load“) may be charged for access to networks. The proportion of the total amount of the network charges borne by producers shall, subject to the need to provide appropriate and efficient locational signals, be lower than the proportion borne by consumers. Where appropriate, the level of the tariffs applied to producers and/or consumers shall provide locational signals at European level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure. This shall not prevent Member States from providing locational signals within their territory or from applying mechanisms to ensure that network access charges borne by consumers („load“) are uniform throughout their territory.

3. When setting the charges for network access the following shall be taken into account:

- payments and receipts resulting from the inter-transmission system operator compensation mechanism;
- actual payments made and received as well as payments expected for future periods of time, estimated on the basis of past periods.

4. Providing that appropriate and efficient locational signals are in place, in accordance with paragraph 2, charges for access to networks applied to producers and consumers shall be applied regardless of the countries of destination and, origin, respectively, of the electricity, as specified in the underlying commercial arrangement. This shall be without prejudice to charges on declared exports and declared imports resulting from congestion management referred to in Article 6.

5. There shall be no specific network charge on individual transactions for declared transits of electricity.

Article 5

Provision of information on interconnection capacities

1. Transmission system operators shall put in place coordination and information exchange mechanisms to ensure the security of the networks in the context of congestion management.

2. The safety, operational and planning standards used by transmission system operators shall be made public. The information published shall include a general scheme for the calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical features of the network. Such schemes shall be subject to the approval of the regulatory authorities.

3. Transmission system operators shall publish estimates of available transfer capacity for each day,

indicating any available transfer capacity already reserved. These publications shall be made at specified intervals before the day of transport and shall include, in any case, week-ahead and month-ahead estimates, as well as a quantitative indication of the expected reliability of the available capacity.

Article 6

General principles of congestion management

1. Network congestion problems shall be addressed with non-discriminatory market based solutions which give efficient economic signals to the market participants and transmission system operators involved. Network congestion problems shall preferentially be solved with non transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market participants.

2. Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and redispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner.

Except in cases of „force-majeure“, market participants who have been allocated capacity shall be compensated for any curtailment.

3. The maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows shall be made available to market participants, complying with safety standards of secure network operation.

4. Market participants shall inform the transmission system operators concerned a reasonable time ahead of the relevant operational period whether they intend to use allocated capacity. Any allocated capacity that will not be used shall be reattributed to the market, in an open, transparent and non-discriminatory manner.

5. Transmission system operators shall, as far as technically possible, net the capacity requirements of any power flows in opposite direction over the congested interconnection line in order to use this line to its maximum capacity. Having full regard to network security, transactions that relieve the congestion shall never be denied.

6. Any revenues resulting from the allocation of interconnection shall be used for one or more of the following purposes:

- (a) guaranteeing the actual availability of the allocated capacity;
- (b) network investments maintaining or increasing interconnection capacities;
- (c) as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

Article 7

New interconnectors

1. New direct current interconnectors may, upon request, be exempted from the provisions of Article 6(6) of this Regulation and Articles 20 and 23(2), (3) and(4) of Directive 2003/54/EC under the following conditions:

- (a) the investment must enhance competition in electricity supply;
- (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;
- (c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;
- (d) charges are levied on users of that interconnector;
- (e) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector;
- (f) the exemption is not to the detriment of competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is linked.

2. Paragraph 1 shall apply also, in exceptional cases, to alternating current interconnectors provided that the costs and risks of the investment in question are particularly high when compared with the costs and risks normally incurred when connecting two neighbouring national transmission systems by an alternating current interconnector.

3. Paragraph 1 shall apply also to significant increases of capacity in existing interconnectors.

4. (a) The regulatory authority may, on a case by case basis, decide on the exemption referred to in paragraphs 1 and 2. However, Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State its opinion on the request for an exemption. This opinion shall be published together with the decision.

(b) (i) The exemption may cover all or part of the capacity of the new interconnector, or of the existing interconnector with significantly increased capacity.

(ii) In deciding to grant an exemption, consideration shall be given, on a case by case basis, to the need to impose conditions regarding the duration of the exemption and non discriminatory access to the interconnector.

(iii) When deciding on the conditions in (i) and (ii) account shall, in particular, be taken of the additional capacity to be built, the expected time horizon of the project and national circumstances.

(c) When granting an exemption the relevant authority may approve or fix the rules and/or mechanisms on the management and allocation of capacity.

(d) The exemption decision, including any conditions referred to in (b), shall be duly reasoned and published.

(e) Any exemption decision shall be taken after consultation with other Member States or regulatory authorities concerned.

5. The exemption decision shall be notified, without delay, by the competent authority to the Commission, together with all the information relevant to the decision. This information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision.

In particular, the information shall contain:

- the detailed reasons on the basis of which the regulatory authority, or Member State, granted the exemption, including the financial information justifying the need for the exemption;
- the analysis undertaken of the effect on competition and the effective functioning of the internal electricity market resulting from the grant of the exemption;
- the reasons for the time period and the share of the total capacity of the interconnector in question for which the exemption is granted;
- the result of the consultation with the Member States or regulatory authorities concerned;

Within two months after receiving a notification, the Commission may request that the regulatory authority or the Member State concerned amend or withdraw the decision to grant an exemption. The two months period may be extended by one additional month where additional information is sought by the Commission.

If the regulatory authority or Member State concerned does not comply with the request within a period of four weeks, a final decision shall be taken in accordance with the procedure referred to in Article 13(3).

The Commission shall preserve the confidentiality of commercially sensitive information.

Article 8 **Guidelines**

1. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 13(2), adopt and amend guidelines on the issues listed under paragraph 2 and 3 and relating to the inter-transmission system operator compensation mechanism, in accordance with the principles set out in Articles 3 and 4. When adopting these guidelines for the first time the Commission shall ensure that they cover in a single draft measure at least the issues referred to in paragraph 2(a) and (d), and paragraph 3.

2. The guidelines shall specify:

(a) details of the procedure for determining which transmission system operators are liable to pay compensation for cross-border flows including as regards the split between the operators of national transmission systems from which cross-border flows originate and the systems where those flows end, in accordance with Article 3(2);

(b) details of the payment procedure to be followed, including the determination of the first period

of time for which compensation is to be paid, in accordance with the second subparagraph of Article 3(3);

(c) details of methodologies for determining the cross-border flows hosted for which compensation is to be paid under Article 3, in terms of both quantity and type of flows, and the designation of the magnitudes of such flows as originating and/or ending in transmission systems of individual Member States, in accordance with Article 3(5);

(d) details of the methodology for determining the costs and benefits incurred as a result of hosting cross-border flows, in accordance with Article 3(6);

(e) details of the treatment in the context of the inter-TSO compensation mechanism of electricity flows originating or ending in countries outside the European Economic Area;

(f) the participation of national systems which are interconnected through direct current lines, in accordance with Article 3.

3. The guidelines shall also determine appropriate rules leading to a progressive harmonisation of the underlying principles for the setting of charges applied to producers and consumers (load) under national tariff systems, including the reflection of the inter-TSO compensation mechanism in national network charges and the provision of appropriate and efficient locational signals, in accordance with the principles set out in Article 4.

The guidelines shall make provision for appropriate and efficient harmonised locational signals at European level.

Any harmonisation in this respect shall not prevent Member States from applying mechanisms to ensure that network access charges borne by consumers (load) are comparable throughout their territory.

4. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 13(2), amend the guidelines on the management and allocation of available transfer capacity of interconnections between national systems set out in the Annex, in accordance with the principles set out in Articles 5 and 6, in particular so as to include detailed guidelines on all capacity allocation methodologies applied in practice and to ensure that congestion management mechanisms evolve in a manner compatible with the objectives of the internal market. Where appropriate, in the course of such amendments common rules on minimum safety and operational standards for the use and operation of the network, as referred to in Article 5(2) shall be set.

When adopting or amending guidelines, the Commission shall ensure that they provide the minimum degree of harmonisation required to achieve the aims of this Regulation and do not go beyond what is necessary for that purpose.

When adopting or amending guidelines, the Commission shall indicate what actions it has taken with respect to the conformity of rules in third countries, which form part of the European electricity system, with the guidelines in question.

Article 9**Regulatory authorities**

The regulatory authorities, when carrying out their responsibilities, shall ensure compliance with this Regulation and the guidelines adopted pursuant to Article 8. Where appropriate to fulfil the aims of this Regulation they shall cooperate with each other and with the Commission.

Article 10**Provision of information and confidentiality**

1. Member States and the regulatory authorities shall, on request, provide to the Commission all information necessary for the purposes of Articles 3(4) and 8.

In particular, for the purposes of Article 3(4) and 36(6), regulatory authorities shall provide on a regular basis information on costs actually incurred by national transmission system operators, as well as data and all relevant information relating to the physical flows in transmission system operators' networks and the cost of the network.

The Commission shall fix a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

2. If the Member State or the regulatory authority concerned does not provide this information within the given time-limit pursuant to paragraph 1, the Commission may request all information necessary for the purpose of Article 3(4) and 8 directly from the undertakings concerned.

When sending a request for information to an undertaking, the Commission shall at the same time forward a copy of the request to the regulatory authorities of the Member State in whose territory the seat of the undertaking is situated.

3. In its request for information, the Commission shall state the legal basis of the request, the time limit within which the information is to be provided, the purpose of the request, and also the penalties provided for in Article 12(2) for supplying incorrect, incomplete or misleading information. The Commission shall fix a reasonable time limit taking into account the complexity of the information required and the urgency with which the information is needed.

4. The owners of the undertakings or their representatives and, in the case of legal persons, the persons authorised to represent them by law or by their instrument of incorporation, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients, in which case the client shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. Where an undertaking does not provide the information requested within the time-limit fixed by the Commission or supplies incomplete information, the Commission may by decision require the information to be provided. The decision shall specify what information is required and fix an appropriate time-limit within which it is to be supplied. It shall indicate the penalties provided for in

Article 12(2). It shall also indicate the right to have the decision reviewed by the Court of Justice of the European Communities.

The Commission shall at the same time send a copy of its decision to the regulatory authorities of the Member State within the territory of which the residence of the person or the seat of the undertaking is situated.

6. Information collected pursuant to this Regulation shall be used only for the purposes of Articles 3(4) and 8.

The Commission shall not disclose information acquired pursuant to this Regulation of the kind covered by the obligation of professional secrecy.

Article 11**Right of Member States to provide for more detailed measures**

This Regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out in this Regulation and the guidelines referred to in Article 8.

Article 12**Penalties**

1. Without prejudice to paragraph 2, the Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 1 July 2004 at the latest and shall notify it without delay of any subsequent amendment affecting them.

2. The Commission may by decision impose on undertakings fines not exceeding 1 % of the total turnover in the preceding business year where, intentionally or negligently, they supply incorrect, incomplete or misleading information in response to a request made pursuant to Article 10(3) or fail to supply information within the time-limit fixed by a decision adopted pursuant to the first subparagraph of Article 10(5).

In setting the amount of a fine, regard shall be had to the gravity of the failure to comply with the requirements of the first subparagraph.

3. Penalties provided for pursuant to paragraph 1 and decisions taken pursuant to paragraph 2 shall not be of a criminal law nature.

Article 13**Committee**

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply,

having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

4. The Committee shall adopt its own rules of procedures.

Article 14 **Commission Report**

The Commission shall monitor the implementation of this Regulation. It shall submit to the European Parliament and the Council no more than three years after the entry into force of this Regulation a report on the experience gained in its application. In particular the report shall examine to what extent the Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for cross border exchanges of electricity in order to contribute to customer choice in a well functioning internal market and to long-term security of supply, as well as to what extent effective locational signals are in place. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

Article 15 **Entry into force**

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

It shall apply from 1 July 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26 June 2003.

For the European Parliament

The President

P. Cox

For the Council

The President

A. Tsochatzopoulos

COMMISSION DECISION

of 9 November 2006 amending the Annex to Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity (2006/770/EC)

(Official Journal L 312, 11/11/2006, P. 59-65)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (1), and in particular Article 8(4) thereof,

Whereas:

(1) Regulation (EC) No 1228/2003 set up guidelines on the management and allocation of available transfer capacity of interconnections between national systems.

(2) Efficient methods of congestion management should be introduced in these guidelines for cross-border electricity interconnection capacities in order to ensure effective access to transmission systems for the purpose of cross-border transactions.

(3) The measures provided for in this Decision are in accordance with the opinion of the Committee referred to Article 13(2) of Regulation (EC) No 1228/2003,

HAS DECIDED AS FOLLOWS:

Article 1

The Annex to Regulation (EC) No 1228/2003 is replaced by the Annex to this Decision.

Article 2

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

Done at Brussels, 9 November 2006.

For the Commission

Andris PIEBALGS

Member of the Commission

ANNEX

Guidelines on the management and allocation of available transfer capacity of interconnections between national systems

1. General Provisions

- 1.1. TSOs shall endeavour to accept all commercial transactions, including those involving cross-border-trade.
- 1.2. When there is no congestion, there shall be no restriction of access to the interconnection. Where this is usually the case, there need be no permanent general allocation procedure for access to a cross-border transmission service.
- 1.3. Where scheduled commercial transactions are not compatible with secure network operation, the TSOs shall alleviate congestion in compliance with the requirements of grid operational security while endeavouring to ensure that any associated costs remain at an economically efficient level. Curative redispatching or countertrading shall be envisaged in case lower cost measures cannot be applied.
- 1.4. If structural congestion appears, appropriate congestion management rules and arrangements defined and agreed upon in advance shall be implemented immediately by the TSOs. The Congestion management methods shall ensure that the physical power flows associated with all allocated transmission capacity comply with network security standards.
- 1.5. The methods adopted for congestion management shall give efficient economic signals to market participants and TSOs, promote competition and be suitable for regional and communitywide application.
- 1.6. No transaction-based distinction may be applied in congestion management. A particular request for transmission service shall be denied only when the following conditions are jointly fulfilled:
 - (a) the incremental physical power flows resulting from the acceptance of this request imply that secure operation of the power system may no longer be guaranteed, and
 - (b) the value in monetary amount attached to this request in the congestion management procedure is lower than all other requests intended to be accepted for the same service and conditions.
- 1.7. When defining appropriate network areas in and between which congestion management is to apply, TSOs shall be guided by the principles of cost-effectiveness and minimisation of negative impacts on the Internal Electricity Market. Specifically, TSOs may not limit interconnection capacity in order to solve congestion inside their own control area, except for the above mentioned reasons and reasons of operational security¹. If such a situation occurs, this shall be described and transparently presented to all the users by the TSOs. Such a situation may be tolerated only until a long-term solution is found. The methodology and projects for achieving the long-term solution shall be described and transparently presented to all the users by the TSOs.

¹ Operational security means 'keeping the transmission system within agreed security limits'

1.8. When balancing the network inside the control area through operational measures in the network and through redispatching, the TSO shall take into account the effect of these measures on neighbouring control areas.

1.9. By not later than 1 January 2008, mechanisms for the intra-day congestion management of interconnector capacity shall be established in a coordinated way and under secure operational conditions, in order to maximise opportunities for trade and to provide for cross-border balancing.

1.10. The national Regulatory Authorities shall regularly evaluate the congestion management methods, paying particular attention to compliance with the principles and rules established in the present Regulation and Guidelines and with the terms and conditions set by the Regulatory Authorities themselves under these principles and rules. Such evaluation shall include consultation of all market players and dedicated studies.

2. Congestion management methods

- 2.1. Congestion management methods shall be market-based in order to facilitate efficient cross-border trade. For this purpose, capacity shall be allocated only by means of explicit (capacity) or implicit (capacity and energy) auctions. Both methods may coexist on the same interconnection. For intra-day trade continuous trading may be used.
- 2.2. Depending on competition conditions, the congestion management mechanisms may need to allow for both long and short-term transmission capacity allocation.
- 2.3. Each capacity allocation procedure shall allocate a prescribed fraction of the available interconnection capacity plus any remaining capacity not previously allocated and any capacity released by capacity holders from previous allocations.
- 2.4. TSOs shall optimise the degree to which capacity is firm, taking into account the obligations and rights of the TSOs involved and the obligations and rights of market participants, in order to facilitate effective and efficient competition. A reasonable fraction of capacity may be offered to the market at a reduced degree of firmness, but the exact conditions for transport over cross-border lines shall at all times be made known to market participants.
- 2.5. The access rights for long- and medium-term allocations shall be firm transmission capacity rights. They shall be subject to the use-it-or-lose-it or use-it-or-sell-it principles at the time of nomination.
- 2.6. TSOs shall define an appropriate structure for the allocation of capacity between different time-frames. This may include an option for reserving a minimum percentage of interconnection capacity for daily or intra-daily allocation. This allocation structure shall be subject to review by the respective Regulatory Authorities. In drawing up their proposals, the TSOs shall take into account:
 - (a) the characteristics of the markets,
 - (b) the operational conditions, such as the implications of netting firmly declared schedules,

(c) the level of harmonisation of the percentages and timeframes adopted for the different capacity allocation mechanisms in place.

2.7. Capacity allocation may not discriminate between market participants that wish to use their rights to make use of bilateral supply contracts or to bid into power exchanges. The highest value bids, whether implicit or explicit in a given timeframe, shall be successful.

2.8. In regions where forward financial electricity markets are well developed and have shown their efficiency, all interconnection capacity may be allocated through implicit auctioning.

2.9. Other than in the case of new interconnectors which benefit from an exemption under Article 7 of the Regulation, establishing reserve prices in capacity allocation methods shall not be allowed.

2.10. In principle, all potential market participants shall be permitted to participate in the allocation process without restriction. To avoid creating or aggravating problems related to the potential use of dominant position of any market player, the relevant Regulatory and/or Competition Authorities, where appropriate, may impose restrictions in general or on an individual company on account of market dominance.

2.11. Market participants shall firmly nominate their use of the capacity to the TSOs by a defined deadline for each timeframe. The deadline shall be set such that TSOs are able to reassign unused capacity for reallocation in the next relevant timeframe — including intra-day sessions.

2.12. Capacity shall be freely tradable on a secondary basis, provided that the TSO is informed sufficiently in advance. Where a TSO refuses any secondary trade (transaction), this must be clearly and transparently communicated and explained to all the market participants by that TSO and notified to the Regulatory Authority.

2.13. The financial consequences of failure to honour obligations associated with the allocation of capacity shall be attributed to those who are responsible for such a failure. Where market participants fail to use the capacity that they have committed to use, or, in the case of explicitly auctioned capacity, fail to trade on a secondary basis or give the capacity back in due time, they shall lose the rights to such capacity and pay a cost-reflective charge. Any cost-reflective charges for the non-use of capacity shall be justified and proportionate. Likewise, if a TSO does not fulfil its obligation, it shall be liable to compensate the market participant for the loss of capacity rights. No consequential losses shall be taken into account for this purpose. The key concepts and methods for the determination of liabilities that accrue upon failure to honour obligations shall be set out in advance in respect of the financial consequences, and shall be subject to review by the relevant national Regulatory Authority or Authorities.

3. Coordination

3.1. Capacity allocation at an interconnection shall be coordinated and implemented using common allocation procedures by the TSOs involved. In cases where commercial exchanges between two countries (TSOs) are expected to significantly affect physical flow conditions in any third country (TSO), congestion management methods shall be coordinated between all the TSOs so affected

through a common congestion management procedure. National Regulatory Authorities and TSOs shall ensure that no congestion management procedure with significant effects on physical electric power flows in other networks is devised unilaterally.

3.2. A common coordinated congestion management method and procedure for the allocation of capacity to the market at least yearly, monthly and day-ahead shall be applied by not later than 1 January 2007 between countries in the following regions:

(a) Northern Europe (i.e. Denmark, Sweden, Finland, Germany and Poland),

(b) North-West Europe (i.e. Benelux, Germany and France),

(c) Italy (i.e. Italy, France, Germany, Austria, Slovenia and Greece),

(d) Central Eastern Europe (i.e. Germany, Poland, Czech Republic, Slovakia, Hungary, Austria and Slovenia),

(e) South-West Europe (i.e. Spain, Portugal and France),

(f) UK, Ireland and France,

(g) Baltic states (i.e. Estonia, Latvia and Lithuania).

At an interconnection involving countries belonging to more than one region, the congestion management method applied may differ in order to ensure the compatibility with the methods applied in the other regions to which these countries belong. In this case the relevant TSOs shall propose the method which shall be subject to review by the relevant Regulatory Authorities.

3.3. The regions referred to in 2.8. may allocate all interconnection capacity through day-ahead allocation.

3.4. Compatible congestion management procedures shall be defined in all these seven regions with a view to forming a truly integrated Internal European Electricity Market. Market parties shall not be confronted with incompatible regional systems.

3.5. With a view to promoting fair and efficient competition and cross-border trade, coordination between TSOs within the regions set out in 3.2. above shall include all the steps from capacity calculation and optimisation of allocation to secure operation of the network, with clear assignments of responsibility. Such coordination shall include, in particular:

(a) Use of a common transmission model dealing efficiently with interdependent physical loop-flows and having

regard to discrepancies between physical and commercial flows,

(b) Allocation and nomination of capacity to deal efficiently with interdependent physical loop-flows,

(c) Identical obligations on capacity holders to provide information on their intended use of the capacity, i.e. nomination of capacity (for explicit auctions),

(d) Identical timeframes and closing times,

(e) Identical structure for the allocation of capacity among different timeframes (e.g. 1 day, 3 hours, 1 week, etc.) and in terms of blocks of capacity sold (amount of power in MW, MWh, etc.),

- (f) Consistent contractual framework with market participants,
- (g) Verification of flows to comply with the network security requirements for operational planning and for realtime operation,
- (h) Accounting and settlement of congestion management actions.

3.6. Coordination shall also include the exchange of information between TSOs. The nature, time and frequency of information exchange shall be compatible with the activities in 3.5 and the functioning of the electricity markets. This information exchange shall in particular enable the TSOs to make the best possible forecast of the global grid situation in order to assess the flows in their network and the available interconnection capacities. Any TSO collecting information on behalf of other TSOs shall give back to the participating TSO the results of the collection of data.

4. Timetable for market operations

4.1. The allocation of the available transmission capacity shall take place sufficiently in advance. Prior to each allocation, the involved TSOs shall jointly publish the capacity to be allocated, taking into account where appropriate the capacity released from any firm transmission rights and, where relevant, associated netted nominations, along with any time periods during which the capacity will be reduced or not available (for the purpose of maintenance, for example).

4.2. Having full regard to network security, the nomination of transmission rights shall take place sufficiently in advance, before the day-ahead sessions of all the relevant organised markets and before the publication of the {capacity to be allocated under the day-ahead or intra-day allocation mechanism. Nominations of transmission rights in the opposite direction shall be netted in order to make efficient use of the interconnection.

4.3. Successive intra-day allocations of available transmission capacity for day D shall take place on days D-1 and D, after the issuing of the indicated or actual day-ahead production schedules.

4.4. When preparing day-ahead grid operation, the TSOs shall exchange information with neighbouring TSOs, including their forecast grid topology, the availability and forecasted production of generation units, and load flows in order to optimise the use of the overall network through operational measures in compliance with the rules for secure grid operation.

5. Transparency

5.1. TSOs shall publish all relevant data related to network availability, network access and network use, including a report on where and why congestion exists, the methods applied for managing the congestion and the plans for its future management.

5.2. TSOs shall publish a general description of the congestion management method applied under different circumstances for maximising the capacity available to the market, and a general scheme for the calculation of the interconnection capacity for the different timeframes, based upon the

electrical and physical realities of the network. Such a scheme shall be subject to review by the Regulatory Authorities of the Member States concerned.

5.3. The congestion management and capacity allocation procedures in use, together with the times and procedures for applying for capacity, a description of the products offered and the obligations and rights of both the TSOs and the party obtaining the capacity, including the liabilities that accrue upon failure to honour obligations, shall be described in detail and made transparently available to all potential network users by TSOs.

5.4. The operational and planning security standards shall form an integral part of the information that TSOs publish in an open and public document. This document shall also be subject to review of national Regulatory Authorities.

5.5. TSOs shall publish all relevant data concerning cross-border trade on the basis of the best possible forecast. In order to fulfil this obligation the market participants concerned shall provide the TSOs with the relevant data. The way in which such information is published shall be subject to review by Regulatory Authorities. TSOs shall publish at least:

- (a) annually: information on the long-term evolution of the transmission infrastructure and its impact on crossborder transmission capacity;
- (b) monthly: month- and year-ahead forecasts of the transmission capacity available to the market, taking into account all relevant information available to the TSO at the time of the forecast calculation (e.g. impact of summer and winter seasons on the capacity of lines, maintenance on the grid, availability of production units, etc.);
- (c) weekly: week-ahead forecasts of the transmission capacity available to the market, taking into account all relevant information available to the TSOs at the time of calculation of the forecast, such as the weather forecast, planned maintenance works of the grid, availability of production units, etc.;
- (d) daily: day-ahead and intra-day transmission capacity available to the market for each market time unit, taking into account all netted day-ahead nominations, day-ahead production schedules, demand forecasts and planned maintenance works of the grid;
- (e) total capacity already allocated, by market time unit, and all relevant conditions under which this capacity may be used (e.g. auction clearing price, obligations on how to use the capacity, etc.), so as to identify any remaining capacity;
- (f) allocated capacity as soon as possible after each allocation, as well as an indication of prices paid;
- (g) total capacity used, by market time unit, immediately after nomination;
- (h) as closely as possible to real time: aggregated realised commercial and physical flows, by market time unit, including a description of the effects of any corrective actions taken by the TSOs (such as curtailment) for solving network or system problems;
- (i) ex-ante information on planned outages and ex-post information for the previous day on planned and unplanned outages of generation units larger than 100 MW.

5.6. All relevant information shall be available for the market in due time for the negotiation of all transactions (such as the time of negotiation of annual supply contracts for industrial customers or the time when bids have to be sent into organised markets).

5.7. The TSO shall publish the relevant information on forecast demand and on generation according to the timeframes referred to in 5.5 and 5.6. The TSO shall also publish the relevant information necessary for the cross-border balancing market.

5.8. When forecasts are published, the ex post realised values for the forecast information shall also be published in the time period following that to which the forecast applies or at the latest on the following day (D+1).

5.9. All information published by the TSOs shall be made freely available in an easily accessible form. All data shall also be accessible through adequate and standardised means of information exchange, to be defined in close cooperation with market parties. The data shall include information on past time periods with a minimum of two years, so that new market entrants may also have access to such data.

5.10. TSOs shall exchange regularly a set of sufficiently accurate network and load flow data in order to enable load flow calculations for each TSO in their relevant area. The same set of data shall be made available to the Regulatory Authorities and to the European Commission upon request. The Regulatory Authorities and the European Commission shall ensure the confidential treatment of this set of data, by themselves and by any consultant carrying out analytical work for them on the basis of these data.

6. Use of congestion income

6.1. Congestion management procedures associated with a pre-specified timeframe may generate revenue only in the event of congestion which arises for that timeframe, except in the case of new interconnectors which benefit from an exemption under Article 7 of the Regulation. The procedure for the distribution of these revenues shall be subject to review by the Regulatory Authorities and shall neither distort the allocation process in favour of any party requesting capacity or energy nor provide a disincentive to reduce congestion.

6.2. National Regulatory Authorities shall be transparent regarding the use of revenues resulting from the allocation of interconnection capacity.

6.3. The congestion income shall be shared among the TSOs involved according to criteria agreed between the TSOs involved and reviewed by the respective Regulatory Authorities.

6.4. TSOs shall clearly establish beforehand the use they will make of any congestion income they may obtain and report on the actual use of this income. Regulatory Authorities shall verify that this use complies with the present Regulation and Guidelines and that the total amount of congestion income resulting from the allocation of interconnection capacity is devoted to one or more of the three purposes described in Article 6(6) of Regulation.

6.5. On an annual basis, and by 31 July each year, the Regulatory Authorities shall publish a report setting out the amount of revenue collected for the 12-month period up to 30 June of the same year and the use made of the revenues in question, together with verification that this use complies with the present Regulation and Guidelines and that the total amount of congestion income is devoted to one or more of the three prescribed purposes.

6.6. The use of congestion income for investment to maintain or increase interconnection capacity shall preferably be assigned to specific predefined projects which contribute to relieving the existing associated congestion and which may also be implemented within a reasonable time, particularly as regards the authorisation process.

ACQUIS COMMUNAUTAIRE

GAS

Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC

(Official Journal L 176 , 15/07/2003 P. 0057 - 0078)

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 proposals from the Commission¹,

Having regard to the Opinion of the European Economic and Social Committee²,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

(1) 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 gas⁴ has made significant contributions towards the creation of an internal market for gas.

(2) Experience in implementing this Directive shows the benefits that may result from the internal market in gas, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness. However, significant shortcomings and possibilities for improving the functioning of the market remain, notably concrete provisions are needed to ensure a level playing field and to reduce the risks of market dominance and predatory behaviour, ensuring non-discriminatory transmission and distribution tariffs, through access to the network on the basis of tariffs published prior to their entry into force, and ensuring that the rights of small and vulnerable customers are protected.

(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

¹ OJ C 240 E, 28.8.2001, p. 60 and OJ C 227 E, 24.9.2002, p. 393.

² OJ C 36, 8.2.2002, p. 10.

³ Opinion of the European Parliament of 13 March 2002 (OJ C 47 E, 27.2.2003, p. 367), Council Common Position of 3 February 2003 (OJ C 50 E, 4.3.2003, p. 36) and Decision of the European Parliament of 4 June 2003 (not yet published in the Official Journal).

⁴ OJ L 204, 21.7.1998, p. 1.

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 freedoms which the Treaty guarantees European citizens - free movement of goods, freedom to provide services and freedom of establishment - are only possible in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

(5) In view of the anticipated increase in dependency as regards natural gas consumption, consideration should be given to initiatives and measures to encourage reciprocal arrangements for access to third-country networks and market integration.

(6) The main obstacles in arriving at a fully operational and competitive internal market relate to, amongst other things, issues of access to the network, access to storage, tariffication issues, interoperability between systems and different degrees of market opening between Member States.

(7) For competition to function, network access must be non-discriminatory, transparent and fairly priced.

(8) In order to complete the internal gas market, non-discriminatory access to the network of the transmission and distribution system operators is of paramount importance. A transmission or distribution system operator may consist of one or more undertakings.

(9) In case of a gas undertaking performing transmission, distribution, storage or liquefied natural gas (LNG) activities and which is separate in its legal form from those undertakings performing production and/or supply activities, the designated system operators may be the same undertaking owning the infrastructure.

(10) In order to ensure efficient and non-discriminatory network access it is appropriate that the transmission and distribution systems are operated through legally separate entities where vertically integrated undertakings exist. The Commission should assess measures of equivalent effect, developed by Member States to achieve the aim of this requirement, and, where appropriate, submit proposals to amend this Directive.

It is also appropriate that the transmission and distribution system operators have effective decision making rights with respect to assets necessary to maintain and operate and develop networks when the assets in question are owned and operated by vertically integrated undertakings.

It is important however to distinguish between such legal separation and ownership unbundling. Legal separation implies neither a change of ownership of assets and nothing prevents similar or identical employment conditions applying throughout the whole of the vertically integrated undertakings. However, a non-discriminatory decision-making process should be ensured through organisational measures regarding the independence of the decision-makers responsible.

(11) 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

legal distribution unbundling requirements.

(12) In order to facilitate the conclusion of contracts by a gas undertaking established in a Member State for the supply of gas to eligible customers in another Member State, Member States and, where appropriate, national regulatory authorities should work towards more homogenous conditions and the same degree of eligibility for the whole of the internal market.

(13) The existence of effective regulation, carried out by one or more national regulatory authorities, is an important factor in guaranteeing non-discriminatory access to the network. Member States specify the functions, competences and administrative powers of the regulatory authorities. It is important that the regulatory authorities in all Member States share the same minimum set of competences. Those authorities should have the competence to fix or approve the tariffs, or at least, the methodologies underlying the calculation of transmission and distribution tariffs and tariffs for access to liquefied natural gas (LNG) facilities. In order to avoid uncertainty and costly and time consuming disputes, these tariffs should be published prior to their entry into force.

(14) The Commission has indicated its intention to set up a European Regulators Group for Electricity and Gas which would constitute a suitable advisory mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for electricity and gas, and to contribute to the consistent application, in all Member States, of the provisions set out in this Directive and Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity⁵ and in Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity⁶.

(15) In order to ensure effective market access for all market players including new entrants, non discriminatory and cost-reflective balancing mechanisms are necessary. As soon as the gas market is sufficiently liquid, this should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of gas needed in the framework of balancing requirements. In the absence of such a liquid market, national regulatory authorities should play an active role to ensure that balancing tariffs are non-discriminatory and cost-reflective. At the same time, appropriate incentives should be provided to balance in-put and off-take of gas and not to endanger the system.

(16) National regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the 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. In carrying out these tasks, national regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from demand-side management measures.

⁵ See p. 49 of this publication, the Eds.

⁶ See p. 90 of this publication, the Eds.

(17) 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 fairness, competitiveness, and indirectly, to create employment as a result of the efficiency gains that will be enjoyed by enterprises.

(18) Gas customers should be able to choose their supplier freely. Nonetheless a phased approach should be taken to completing the internal market for gas, coupled with a specific deadline, 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 their supplier.

(19) Progressive opening of markets towards full competition should as soon as possible remove differences between Member States. Transparency and certainty in the implementation of this Directive should be ensured.

(20) Directive 98/30/EC contributes to 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 ancillary services.

(21) Storage facilities are essential means, amongst other things of implementing public service obligations such as security of supply. This should not lead to distortion of competition or discrimination in the access to storage.

(22) Further measures should be taken in order to ensure transparent and non discriminatory tariffs for access to transportation. Those tariffs should be applicable to all users on a non discriminatory basis. Where a storage facility, linepack or ancillary service operates in a sufficiently competitive market, access could be allowed on the basis of transparent and non-discriminatory market-based mechanisms.

(23) In the interest of security of supply, the supply/demand balance in individual Member States should be monitored, and monitoring should be followed by a report on the situation at Community level, taking account of interconnection capacity between areas. Such monitoring should be carried out sufficiently early to enable appropriate measures to be taken if security of supply is compromised. The construction and maintenance of the necessary network infrastructure, including interconnection capacity, should contribute to ensuring a stable gas supply.

(24) Member States should ensure that, taking into account the necessary quality requirements, biogas and gas from biomass or other types of gas are granted non-discriminatory access to the gas system, provided such access is permanently compatible with the relevant technical rules and safety standards. These rules and standards should ensure, that these gases can technically and safely be injected into, and transported through the natural gas system and should also address the chemical characteristics of these gases.

(25) Long-term contracts will continue to be an important part of the gas supply of Member States and should be maintained as an option for gas supply undertakings in so far as they do not undermine the objectives of this Directive and are compatible with the Treaty, including competition rules. It is therefore necessary to take them into account in the planning of supply and transportation capacity of gas undertakings.

(26) In order to ensure the maintenance of high 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.

Member States should ensure that when they are connected to the gas system customers are informed about their rights to be supplied with natural gas of a specified quality at reasonable prices. Measures taken by Member States to protect final customers may differ according to households and small and medium sized enterprises.

(27) The respect of the public service requirements is a fundamental requirement of this Directive, and it is important that common minimum standards, respected by all Member States, are specified in this Directive, which take into account the objectives of consumer protection, security of supply, environmental protection and equivalent levels of competition in all Member States. It is important that the public service requirements can be interpreted on a national basis, taking into account national circumstances and subject to the observance of Community law.

(28) Measures implemented by Member States to achieve the objectives of social and economic cohesion may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools. These tools may include liability mechanisms to guarantee the necessary investment.

(29) To the extent to which measures taken by Member States to fulfil public service obligations constitute State aid under Article 87(1) of the Treaty, there is an obligation according to Article 88(3) of the Treaty to notify them to the Commission

(30) Since the objective of the proposed action, namely the creation of a fully operational internal gas market, 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 at Community level, the Community may adopt measures in accordance with the principle of subsidiarity and proportionality as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(31) In the light of the experience gained with the operation of Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grid⁷, measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including cross-border flows of gas between Member States. To ensure homogeneity in the treatment of access to the gas networks, also in the case of transit, that Directive should be repealed, without prejudice to the continuity of contracts concluded under the said Directive. The repeal of Directive 91/296/EEC should not prevent long-term contracts being concluded in the future.

⁷ 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).

(32) Given the scope of the amendments that are being made to Directive 98/30/EC, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast.

(33) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.

(34) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁸,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I SCOPE AND DEFINITIONS

Article 1 Scope

1. This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the rules relating to the organisation and functioning of the natural gas sector, access to the market, the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas and the operation of systems.
2. The rules established by this Directive for natural gas, including liquefied natural gas (LNG), shall also apply to biogas and gas from biomass or other types of gas in so far as such gases can technically and safely be injected into, and transported through, the natural gas system.

Article 2 Definitions

For the purposes of this Directive:

1. „natural gas undertaking“ means any natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical and/or maintenance tasks related to those functions, but shall not include final customers;
2. „upstream pipeline network“ means any pipeline or network of pipelines operated and/or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;
3. „transmission“ means the transport of natural gas through a high pressure pipeline network

⁸ OJ L 184, 17.7.1999, p. 23.

other than an upstream pipeline network with a view to its delivery to customers, but not including supply;

4. „transmission system operator“ means a natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transportation of gas;

5. „distribution“ means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;

6. „distribution system operator“ means a natural or legal person who carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas;

7. „supply“ means the sale, including resale, of natural gas, including LNG, to customers;

8. „supply undertaking“ means any natural or legal person who carries out the function of supply;

9. „storage facility“ means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;

10. „storage system operator“ means a natural or legal person who carries out the function of storage and is responsible for operating a storage facility;

11. „LNG facility“ means a terminal which is used for the liquefaction of natural gas or the importation, offloading, and re-gaseification of LNG, and shall include ancillary services and temporary storage necessary for the re-gaseification process and subsequent delivery to the transmission system, but shall not include any part of LNG terminals used for storage;

12. „LNG system operator“ means a natural or legal person who carries out the function of liquefaction of natural gas, or the importation, offloading, and re-gaseification of LNG and is responsible for operating a LNG facility;

13. „system“ means any transmission networks, distribution networks, LNG facilities and/or storage facilities owned and/or operated by a natural gas undertaking, including linepack and its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission, distribution and LNG;

14. „ancillary services“ means all services necessary for access to and the operation of transmission and/or distribution networks and/or LNG facilities and/or storage facilities including load balancing and blending, but excluding facilities reserved exclusively for transmission system operators carrying out their functions;

15. „linepack“ means the storage of gas by compression in gas transmission and distribution systems,

but excluding facilities reserved for transmission system operators carrying out their functions;

16. „interconnected system“ means a number of systems which are linked with each other;

17. „interconnector“ means a transmission line which crosses or spans a border between Member States for the sole purpose of connecting the national transmission systems of these Member States;

18. „direct line“ means a natural gas pipeline complementary to the interconnected system;

19. „integrated natural gas undertaking“ means a vertically or horizontally integrated undertaking;

20. „vertically integrated undertaking“ means a natural gas undertaking or a group of undertakings whose mutual relationships are defined in Article 3(3) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁹ and where the undertaking/group concerned is performing at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas;

21. „horizontally integrated undertaking“ means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non-gas activity;

22. „related undertakings“ means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 44(2)(g)¹⁰ of the Treaty on consolidated accounts¹¹, and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;

23. „system users“ means any natural or legal persons supplying to, or being supplied by, the system;

24. „customers“ means wholesale and final customers of natural gas and natural gas undertakings which purchase natural gas;

25. „household customers“ means customers purchasing natural gas for their own household consumption;

26. „non-household customers“ means customers purchasing natural gas which is not for their own household use;

27. „final customers“ means customers purchasing natural gas for their own use;

28. „eligible customers“ means customers who are free to purchase gas from the supplier of their choice, within the meaning of Article 23 of this Directive;

29. „wholesale customers“ means any natural or legal persons other than transmission system operators and distribution system operators who purchase natural gas for the purpose of resale inside

⁹ OJ L 395, 30.12.1989, p. 1. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).

¹⁰ The title of Directive 83/349/EEC has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g).

¹¹ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

or outside the system where they are established;

30. „long-term planning“ means the planning of supply and transportation capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;

31. „emergent market“ means a Member State in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;

32. „security“ means both security of supply of natural gas and technical safety;

33. „new infrastructure“ means an infrastructure not completed by the entry into force of this Directive.

CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3

Public service obligations and customer protection

1. Member States shall ensure, on the basis of their institutional organisation and with due regard to 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, secure and environmentally sustainable market in natural gas, and shall not discriminate between these undertakings as regards either rights or obligations.

2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on undertakings operating in the gas 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 environmental protection, including energy efficiency and climate protection. Such obligations shall be clearly defined, transparent, non discriminatory, verifiable and shall guarantee equality of access for EU gas companies to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals, as referred to in this paragraph, 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, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers, including appropriate measures to help them avoid disconnection. In this context, they may take appropriate measures to protect customers in remote areas who are connected to the gas system. Member States may appoint a supplier of last resort for customers connected to the gas network. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding general contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is effectively

able to switch to a new supplier. As regards at least household customers these measures shall include those set out in Annex A.

4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection, which may include means to combat climate change, and security of supply. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for 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 insofar 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 insofar 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.

6. Member States shall, upon implementation of this Directive, inform the Commission of all measures adopted to fulfil public service obligations, including consumer and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from the provisions of this Directive. They shall notify the Commission subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.

Article 4

Authorisation procedure

1. In circumstances where an authorisation (e.g. licence, permission, concession, consent or approval) is required for the construction or operation of natural gas facilities, the Member States or any competent authority they designate shall grant authorisations to build and/or operate such facilities, pipelines and associated equipment on their territory, in accordance with paragraphs 2 to 4. Member States or any competent authority they designate may also grant authorisations on the same basis for the supply of natural gas and for wholesale customers.

2. Where Member States have a system of authorisation, they shall lay down objective and non discriminatory criteria which shall be met by an undertaking applying for an authorisation to build and/or operate natural gas facilities or applying for an authorisation to supply natural gas. The non discriminatory criteria and procedures for the granting of authorisations shall be made public.

3. Member States shall ensure that the reasons for any refusal to grant an authorisation are objective and non discriminatory and are given to the applicant. Reasons for such refusals shall be forwarded to the Commission for information. Member States shall establish a procedure enabling the applicant to appeal against such refusals.

4. For the development of newly supplied areas and efficient operation generally, and without pre-

judice to Article 24, Member States may decline to grant a further authorisation to build and operate distribution pipeline systems in any particular area once such pipeline systems have been or are proposed to be built in that area and if existing or proposed capacity is not saturated.

Article 5

Monitoring of security of supply

Member States shall ensure the monitoring of security of supply issues. Where Member States consider it appropriate, they may delegate this task to the regulatory authorities referred to in Article 25(1). This monitoring shall, in particular, cover the supply/demand balance on the national market, the level of expected future demand and available supplies, envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the networks, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers. The competent authorities shall publish, by 31 July each year at the latest a report outlining the findings resulting from the monitoring of these issues, as well as any measures taken or envisaged to address them and shall forward this report to the Commission forthwith.

Article 6

Technical rules

Member States shall ensure that technical safety criteria are defined and that technical rules establishing the minimum technical design and operational requirements for the connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines, are developed and made public. These technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services¹².

CHAPTER III

TRANSMISSION, STORAGE AND LNG

Article 7

Designation of system operators

Member States shall designate or shall require natural gas 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.

¹² OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

Member States shall take the measures necessary to ensure that transmission, storage and LNG system operators act in accordance with Articles 8 to 10.

Article 8

Tasks of system operators

1. Each transmission, storage and/or LNG system operator shall:
 - (a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment;
 - (b) refrain from discriminating between system users or classes of system users, particularly in favour of its related undertakings;
 - (c) provide any other transmission system operator, any other storage system operator, any other LNG system operator and/or any distribution system operator, 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;
 - (d) provide system users with the information they need for efficient access to the system.
2. Rules adopted by transmission system operators for balancing the gas transmission system shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 25(2) in a non-discriminatory and cost-reflective way and shall be published.
3. Member States may require transmission system operators to comply with minimum requirements for the maintenance and development of the transmission system, including interconnection capacity.
4. 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.

Article 9

Unbundling of transmission system operators

1. Where the transmission system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission. These rules shall not create an obligation to separate the ownership of assets of the transmission system from the vertically integrated undertaking.
2. In order to ensure the independence of the transmission system operator referred to in paragraph 1, the following minimum criteria shall apply:
 - (a) those persons responsible for the management of the transmission system operator 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 natural gas;

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

(c) the transmission system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 25(2) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the transmission system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;

(d) the transmission system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 25(1) and shall be published.

Article 10

Confidentiality for transmission system operators

1. Without prejudice to Article 16 or any other legal duty to disclose information, each transmission, storage and/or LNG system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner.

2. Transmission system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

CHAPTER IV

DISTRIBUTION AND SUPPLY

Article 11

Designation of distribution system operators

Member States shall designate, or shall require undertakings which own or are responsible for distribution systems 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 distribution system operators and shall ensure that those operators act in accordance with Articles 12 to 14.

Article 12

Tasks of distribution system operators

1. Each distribution system operator shall operate, maintain and develop under economic conditions a secure, reliable and efficient system, with due regard for the environment.
2. In any event, the distribution system operator shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.
3. Each distribution system operator shall provide any other distribution system operator, and/or any transmission, and/or LNG system operator, and/or storage system operator with sufficient information to ensure that the transport and storage of natural gas takes place in a manner compatible with the secure and efficient operation of the interconnected system.
4. Each distribution system operator shall provide system users with the information they need for efficient access to the system.
5. Where distribution system operators are responsible for balancing the gas distribution system, rules adopted by them for that purpose shall be objective, transparent and non-discriminatory, including rules for the charging of system users for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by system operators shall be established pursuant to a methodology compatible with Article 25(2) in a non-discriminatory and cost-reflective way and shall be published.

Article 13

Unbundling of distribution system operators

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. These rules shall not create an obligation to separate the ownership of assets of the distribution system from the vertically integrated undertaking.
2. In addition to the requirements of paragraph 1, where the distribution system operator is part of

a vertically integrated undertaking, it shall be independent in terms of its organisation and decision making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:

- (a) those persons responsible for the management of the distribution system operator 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 natural gas;
- (b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;
- (c) the distribution system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 25(2), in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;
- (d) the distribution system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 25(1) and shall be published.

Member States may decide not to apply paragraphs 1 and 2 to integrated natural gas undertakings serving less than 100000 connected customers.

Article 14

Confidentiality for distribution system operators

1. Without prejudice to Article 16 or any other legal duty to disclose information, each distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner.
2. Distribution system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

Article 15

Combined operator

The rules in Articles 9(1) and Article 13(1) shall not prevent the operation of a combined transmission, LNG, storage and distribution system operator, which is independent in terms of its legal form, organisation and decision making from other activities not relating to transmission LNG, storage and distribution system operations and which meets the requirements set out in points (a) to (d). These rules shall not create an obligation to separate the ownership of assets of the combined system from the vertically integrated undertaking:

- (a) those persons responsible for the management of the combined system operator 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 and supply of natural gas;
- (b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the combined system operator are taken into account in a manner that ensures that they are capable of acting independently;
- (c) the combined system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 25(2) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the combined system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission and distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;
- (d) the combined system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 25(1) and shall be published.

CHAPTER V

UNBUNDLING AND TRANSPARENCY OF ACCOUNTS

Article 16

Right of access to accounts

1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article 25(1) and the dispute settlement authorities referred to in Article 20(3), shall, insofar as necessary to carry out their functions, have right of access to the accounts of natural gas undertakings as set out in Article 17.

2. Member States and any designated competent authority, including the regulatory authorities referred to in Article 25(1) and the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

Article 17

Unbundling of accounts

1. Member States shall take the necessary steps to ensure that the accounts of natural gas undertakings are kept in accordance with paragraphs 2 to 5. Where undertakings benefit from a derogation from this provision on the basis of Article 28(2) and (4), they shall at least keep their internal accounts in accordance with this Article.

2. Natural gas undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 44(2)(g)¹³ of the Treaty on the annual accounts of certain types of companies¹⁴. Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public at their head office.

3. Natural gas undertakings shall, in their internal accounting, keep separate accounts for each of their transmission, distribution, LNG and storage 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. They shall also keep accounts, which may be consolidated, for other gas activities not relating to transmission, distribution, LNG and storage. Until 1 July 2007, they shall keep separate accounts for supply activities for eligible customers and supply

¹³ The title of Directive 78/660/EEC has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g).

¹⁴ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

activities for non-eligible customers. Revenue from ownership of the transmission/distribution network shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-gas activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.

4. The audit, referred to in paragraph 2, shall, in particular, verify that the obligation to avoid discrimination and cross-subsidies referred to in paragraph 3, is respected.

5. Undertakings shall specify in their internal accounting the rules for the allocation of assets and liabilities, expenditure and income as well as for depreciation, without prejudice to nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in paragraph 3. These internal rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated.

6. The annual accounts shall indicate in notes any transaction of a certain size conducted with related undertakings.

CHAPTER VI

ORGANISATION OF ACCESS TO THE SYSTEM

Article 18

Third party access

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, including supply undertakings, and applied objectively and without discrimination between system users. Member States shall ensure that these tariffs, or the methodologies underlying their calculation shall be approved prior to their entry into force by a regulatory authority referred to in Article 25(1) and that these tariffs - and the methodologies, where only methodologies are approved - are published prior to their entry into force.

2. Transmission system operators shall, if necessary 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.

3. The provisions of this Directive shall not prevent the conclusion of long-term contracts in so far as they comply with Community competition rules

Article 19

Access to storage

1. For the organisation of access to storage facilities and linepack 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 ancillary services, Member States may choose either or both of the

procedures referred to in paragraphs 3 and 4. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

2. The provisions of paragraph 1 shall not apply to ancillary services and temporary storage that are related to LNG facilities and are necessary for the re-gaseification process and subsequent delivery to the transmission system.

3. 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 inter-connected system to be able to negotiate access to storage and linepack, when technically and/or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. The parties shall be obliged to negotiate access to storage, linepack and other ancillary services in good faith.

Contracts for access to storage, linepack and other ancillary services shall be negotiated with the relevant storage system operator or natural gas undertakings. Member States shall require storage system operators and natural gas undertakings to publish their main commercial conditions for the use of storage, linepack and other ancillary services within the first six months following implementation of this Directive and on an annual basis every year thereafter.

4. In the case of regulated access Member States shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the inter-connected system a right to access to storage, linepack and other ancillary services, on the basis of published tariffs and/or other terms and obligations for use of that storage and linepack, when technically and/or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. 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.

Article 20

Access to upstream pipeline networks

1. Member States shall take the necessary measures to ensure that natural gas undertakings and eligible customers, wherever they are located, are able to obtain access to upstream pipeline networks, including facilities supplying technical services incidental to such access, in accordance with this Article, except for the parts of such networks and facilities which are used for local production operations at the site of a field where the gas is produced. The measures shall be notified to the Commission in accordance with the provisions of Article 33.

2. The access referred to in paragraph 1 shall be provided in a manner determined by the Member State in accordance with the relevant legal instruments. Member States shall apply the objectives of fair and open access, achieving a competitive market in natural gas and avoiding any abuse of a dominant position, taking into account security and regularity of supplies, capacity which is or

can reasonably be made available, and environmental protection. The following may be taken into account:

(a) the need to refuse access where there is an incompatibility of technical specifications which cannot be reasonably overcome;

(b) the need to avoid difficulties which cannot be reasonably overcome and could prejudice the efficient, current and planned future production of hydrocarbons, including that from fields of marginal economic viability;

(c) the need to respect the duly substantiated reasonable needs of the owner or operator of the upstream pipeline network for the transport and processing of gas and the interests of all other users of the upstream pipeline network or relevant processing or handling facilities who may be affected; and

(d) the need to apply their laws and administrative procedures, in conformity with Community law, for the grant of authorisation for production or upstream development.

3. Member States shall ensure that they have in place dispute settlement arrangements, including an authority independent of the parties with access to all relevant information, to enable disputes relating to access to upstream pipeline networks to be settled expeditiously, taking into account the criteria in paragraph 2 and the number of parties which may be involved in negotiating access to such networks.

4. In the event of cross border disputes, the dispute settlement arrangements for the Member State having jurisdiction over the upstream pipeline network which refuses access shall be applied. Where, in cross border disputes, more than one Member State covers the network concerned, the Member States concerned shall consult with a view to ensuring that the provisions of this Directive are applied consistently.

Article 21

Refusal of access

1. Natural gas undertakings may refuse access to the system on the basis of lack of capacity or where the access to the system would prevent them from carrying out the public service obligations referred to in Article 3(2) which are assigned to them or on the basis of serious economic and financial difficulties with take-or-pay contracts having regard to the criteria and procedures set out in Article 27 and the alternative chosen by the Member State in accordance with paragraph 1 of that Article. Duly substantiated reasons shall be given for such a refusal.

2. Member States may take the measures necessary to ensure that the natural gas undertaking refusing access to the system on the basis of lack of capacity or a lack of connection makes the necessary enhancements as far as it is economic to do so or when a potential customer is willing to pay for them. In circumstances where Member States apply Article 44, Member States shall take such measures.

Article 22**New infrastructure**

1. Major new gas infrastructures, i.e. interconnectors between Member States, LNG and storage facilities, may, upon request, be exempted from the provisions of Articles 18, 19, 20, and 25(2), (3) and (4) under the following conditions:

- (a) the investment must enhance competition in gas supply and enhance security of supply;
- (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted;
- (c) the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;
- (d) charges are levied on users of that infrastructure;
- (e) the exemption is not detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected.

2. Paragraph 1 shall apply also to significant increases of capacity in existing infrastructures and to modifications of such infrastructures which enable the development of new sources of gas supply.

3. (a) The regulatory authority referred to in Article 25 may, on a case by case basis, decide on the exemption referred to in paragraphs 1 and 2. However, Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State its opinion on the request for an exemption. This opinion shall be published together with the decision.

(b) (i) The exemption may cover all or parts of, respectively, the new infrastructure, the existing infrastructure with significantly increased capacity or the modification of the existing infrastructure.

(ii) In deciding to grant an exemption consideration shall be given, on a case by case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the interconnector.

(iii) When deciding on the conditions in this subparagraph account shall, in particular, be taken of the duration of contracts, additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.

(c) When granting an exemption the relevant authority may decide upon the rules and mechanisms for management and allocation of capacity insofar as this does not prevent the implementation of long term contracts.

(d) The exemption decision, including any conditions referred to in (b), shall be duly reasoned and published.

(e) In the case of an interconnector any exemption decision shall be taken after consultation with the other Member States or regulatory authorities concerned.

4. The exemption decision shall be notified, without delay, by the competent authority to the Com-

mission, together with all the relevant information with respect to the decision. This information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision.

In particular, the information shall contain:

- (a) the detailed reasons on the basis of which the regulatory authority, or Member State, granted the exemption, including the financial information justifying the need for the exemption;
- (b) the analysis undertaken of the effect on competition and the effective functioning of the internal gas market resulting from the grant of the exemption;
- (c) the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;
- (d) in case the exemption relates to an interconnector, the result of the consultation with the Member States concerned or regulatory authorities;
- (e) the contribution of the infrastructure to the diversification of gas supply.

Within two months after receiving a notification, the Commission may request that the regulatory authority or the Member State concerned amend or withdraw the decision to grant an exemption. The two month period may be extended by one additional month where additional information is sought by the Commission.

If the regulatory authority or Member State concerned does not comply with the request within a period of four weeks, a final decision shall be taken in accordance with the procedure referred to in Article 30(2).

The Commission shall preserve the confidentiality of commercially sensitive information.

Article 23**Market opening and reciprocity**

1. Member States shall ensure that the eligible customers are:

- (a) until 1 July 2004, the eligible customers as specified in Article 18 of Directive 98/30/EC. Member States shall publish by 31 January each year the criteria for the definition of these eligible customers;
- (b) from 1 July 2004, at the latest, all non-household customers;
- (c) from 1 July 2007, all customers.

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

- (a) contracts for the supply with an eligible customer in the system of another Member State shall not be prohibited if the customer is eligible in both systems involved;
- (b) in cases where transactions as described in point (a) are refused because the customer is eligible in only one of the two systems, the Commission may, taking into account the situation in the market and the common interest, oblige the refusing party to execute the requested supply, at the request of one of the Member States of the two systems.

Article 24**Direct lines**

1. Member States shall take the necessary measures to enable:

- (a) natural gas undertakings established within their territory to supply the eligible customers through a direct line;
- (b) any such eligible customer within their territory to be supplied through a direct line by natural gas undertakings.

2. In circumstances where an authorisation (e.g. licence, permission, concession, consent or approval) is required for the construction or operation of direct lines, the Member States or any competent authority they designate shall lay down the criteria for the grant of authorisations for the construction or operation of such lines in their territory. These criteria shall be objective, transparent and non-discriminatory.

3. Member States may make authorisations to construct a direct line subject either to the refusal of system access on the basis of Article 21 or to the opening of a dispute settlement procedure under Article 25.

Article 25**Regulatory authorities**

1. Member States shall designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent of the interests of the gas industry. They shall, through the application of this Article, at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market, monitoring in particular:

- (a) the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority or authorities of those Member States with which interconnection exists;
- (b) any mechanisms to deal with congested capacity within the national gas system;
- (c) the time taken by transmission and distribution system operators to make connections and repairs;
- (d) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;
- (e) the effective unbundling of accounts as referred to in Article 17, to ensure there are no cross subsidies between transmission, distribution, storage, LNG and supply activities;
- (f) the access conditions to storage, linepack and to other ancillary services as provided for in Article 19;
- (g) the extent to which transmission and distribution system operators fulfil their tasks in accordance with Articles 8 and 12;

(h) the level of transparency and competition.

The authorities established pursuant to this Article shall publish an annual report on the outcome of their monitoring activities referred to in points (a) to (h).

2. The regulatory authorities shall be responsible for fixing or approving prior to their entry into force, at least the methodologies used to calculate or establish the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs. These tariffs, or methodologies, shall allow the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks;

(b) the provision of balancing services.

3. Notwithstanding paragraph 2, Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State the tariffs or at least the methodologies referred to in that paragraph as well as the modifications in paragraph 4. The relevant body shall, in such a case, have the power to either approve or reject a draft decision submitted by the regulatory authority.

These tariffs or the methodologies or modifications thereto shall be published together with the decision on formal adoption. Any formal rejection of a draft decision shall also be published, including its justification.

4. Regulatory authorities shall have the authority to require transmission, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in paragraphs 1, 2 and 3, to ensure that they are proportionate and applied in a non-discriminatory manner.

5. Any party having a complaint against a transmission, LNG or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 4 and in Article 19 may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

6. Any party having a complaint against a transmission, LNG or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 4 and in Article 19 may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

7. Member States shall take measures to ensure that regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 5 in an efficient and expeditious manner.

8. Member States shall create appropriate and efficient mechanisms for regulation, control and

transparency so as to avoid any abuse of a 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.

9. Member States shall ensure that the appropriate measures are 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.

10. In the event of cross border disputes, the deciding regulatory authority shall be the regulatory authority which has jurisdiction in respect of the system operator, which refuses use of, or access to, the system.

11. Complaints referred to in paragraphs 5 and 6 shall be without prejudice to the exercise of rights of appeal under Community and national law.

12. 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.

CHAPTER VII FINAL PROVISIONS

Article 26 Safeguard measures

1. In the event of a sudden crisis in the energy market or where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may temporarily take the necessary safeguard measures.

2. Such measures shall cause the least possible disturbance to the functioning of the internal market and shall not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

3. The Member State concerned shall without delay notify these measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.

Article 27 Derogations in relation to take-or-pay commitments

1. If a natural gas undertaking encounters, or considers it would encounter, serious economic and financial difficulties because of its take-or-pay commitments accepted in one or more gas-purchase contracts, an application for a temporary derogation from Article 18 may be sent to the Member State concerned or the designated competent authority. Applications shall, according to the choice

of Member States, be presented on a case-by-case basis either before or after refusal of access to the system. Member States may also give the natural gas undertaking the choice of presenting an application either before or after refusal of access to the system. Where a natural gas undertaking has refused access, the application shall be presented without delay. The applications shall be accompanied by all relevant information on the nature and extent of the problem and on the efforts undertaken by the natural gas undertaking to solve the problem.

If alternative solutions are not reasonably available, and taking into account the provisions of paragraph 3, the Member State or the designated competent authority may decide to grant a derogation.

2. The Member State, or the designated competent authority, shall notify the Commission without delay of its decision to grant a derogation, together with all the relevant information with respect to the derogation. This information may be submitted to the Commission in an aggregated form, enabling the Commission to reach a well-founded decision. Within eight weeks of its receipt of this notification, the Commission may request that the Member State or the designated competent authority concerned amend or withdraw the decision to grant a derogation.

If the Member State or the designated competent authority concerned does not comply with this request within a period of four weeks, a final decision shall be taken expeditiously in accordance with the procedure referred to in Article 30(2).

The Commission shall preserve the confidentiality of commercially sensitive information.

3. When deciding on the derogations referred to in paragraph 1, the Member State, or the designated competent authority, and the Commission shall take into account, in particular, the following criteria:

- (a) the objective of achieving a competitive gas market;
- (b) the need to fulfil public service obligations and to ensure security of supply;
- (c) the position of the natural gas undertaking in the gas market and the actual state of competition in this market;
- (d) the seriousness of the economic and financial difficulties encountered by natural gas undertakings and transmission undertakings or eligible customers;
- (e) the dates of signature and terms of the contract or contracts in question, including the extent to which they allow for market changes;
- (f) the efforts made to find a solution to the problem;
- (g) the extent to which, when accepting the take-or-pay commitments in question, the undertaking could reasonably have foreseen, having regard to the provisions of this Directive, that serious difficulties were likely to arise;
- (h) the level of connection of the system with other systems and the degree of interoperability of these systems; and
- (i) the effects the granting of a derogation would have on the correct application of this Directive as regards the smooth functioning of the internal natural gas market.

A decision on a request for a derogation concerning take or pay contracts concluded before the entry into force of this Directive should not lead to a situation in which it is impossible to find economically viable alternative outlets. Serious difficulties shall in any case be deemed not to exist when the sales of natural gas do not fall below the level of minimum offtake guarantees contained in gas purchase take or pay contracts or in so far as the relevant gas purchase take-or-pay contract can be adapted or the natural gas undertaking is able to find alternative outlets.

4. Natural gas undertakings which have not been granted a derogation as referred to in paragraph 1 shall not refuse, or shall no longer refuse, access to the system because of take-or-pay commitments accepted in a gas purchase contract. Member States shall ensure that the relevant provisions of Chapter VI namely Articles 18 to 25 are complied with.

5. Any derogation granted under the above provisions shall be duly substantiated. The Commission shall publish the decision in the *Official Journal of the European Union*.

6. The Commission shall, within five years of the entry into force of this Directive, submit a review report on the experience gained from the application of this Article, so as to allow the European Parliament and the Council to consider, in due course, the need to adjust it.

Article 28

Emergent and isolated markets

1. Member States not directly connected to the interconnected system of any other Member State and having only one main external supplier may derogate from Articles 4, 9, 23 and/or 24 of this Directive. A supply undertaking having a market share of more than 75 % shall be considered to be a main supplier. This derogation shall automatically expire from the moment when at least one of these conditions no longer applies. Any such derogation shall be notified to the Commission.

2. A Member State, qualifying as an emergent market, which because of the implementation of this Directive would experience substantial problems may derogate from Articles 4, 7, 8(1) and (2), 9, 11, 12(5), 13, 17, 18, 23(1) and/or 24 of this Directive. This derogation shall automatically expire from the moment when the Member State no longer qualifies as an emergent market. Any such derogation shall be notified to the Commission.

3. On the date at which the derogation referred to in paragraph 2 expires, the definition of eligible customers shall result in an opening of the market equal to at least 33 % of the total annual gas consumption of the national gas market. Two years thereafter, Article 23(1)(b) shall apply, and three years thereafter, Article 23(1)(c). Until Article 23(1)(b) applies the Member State referred to in paragraph 2 may decide not to apply Article 18 as far as ancillary services and temporary storage for the re-gaseification process and its subsequent delivery to the transmission system are concerned.

4. Where implementation of this Directive would cause substantial problems in a geographically limited area of a Member State, in particular concerning the development of the transmission and major distribution infrastructure, and with a view to encouraging investments, the Member State may apply to the Commission for a temporary derogation from Article 4, Article 7, Article 8(1) and

(2), Article 9, Article 11, Article 12(5), Article 13, Article 17, Article 18, Article 23(1) and/or Article 24 for developments within this area.

5. The Commission may grant the derogation referred to in paragraph 4, taking into account, in particular, the following criteria:

- the need for infrastructure investments, which would not be economic to operate in a competitive market environment,
- the level and pay-back prospects of investments required,
- the size and maturity of the gas system in the area concerned,
- the prospects for the gas market concerned,
- the geographical size and characteristics of the area or region concerned, and socioeconomic and demographic factors.

(a) For gas infrastructure other than distribution infrastructure a derogation may be granted only if no gas infrastructure has been established in this area, or has been so established for less than 10 years. The temporary derogation may not exceed 10 years from the time gas is first supplied in the area.

(b) For distribution infrastructure a derogation may be granted for a time period which may not exceed 20 years for the distribution infrastructure from the time gas is first supplied through the said system in the area.

6. Luxembourg may benefit from a derogation from Articles 8(3) and 9 for a period of five years from 1 July 2004. Such a derogation shall be reviewed before the end of the five year period and any decision to renew the derogation for another five years shall be taken in accordance with the procedure referred to in Article 30(2). Any such derogation shall be notified to the Commission.

7. The Commission shall inform the Member States of applications made under paragraph 4 prior to taking a decision pursuant to paragraph 5, taking into account respect for confidentiality. This decision, as well as the derogations referred to in paragraphs 1 and 2, shall be published in the Official Journal of the European Union.

8. Greece may derogate from Articles 4, 11, 12, 13, 18, 23 and/or 24 of this Directive for the geographical areas and time periods specified in the licences issued by it, prior to 15 March 2002 and in accordance with Directive 98/30/EC, for the development and exclusive exploitation of distribution networks in certain geographical areas.

Article 29

Review Procedure

In the event that the report referred to in Article 31(3) reaches the conclusion whereby, given the effective manner in which network access has been carried out in a Member State - which gives rise to fully effective, non-discriminatory and unhindered network access -, the Commission concludes that certain obligations imposed by this Directive on undertakings (including those with respect to

legal unbundling for distribution system operators) are not proportionate to the objective pursued, the Member State in question may submit a request to the Commission for exemption from the requirement in question.

The request shall be notified, without delay, by the Member State to the Commission, together with all the relevant information necessary to demonstrate that the conclusion reached in the report on effective network access being ensured will be maintained.

Within three months of its receipt of a notification, the Commission shall adopt an opinion with respect to the request by the Member State concerned, and where appropriate, submit proposals to the European Parliament and to the Council to amend the relevant provisions of the Directive. The Commission may propose, in the proposals to amend the Directive, to exempt the Member State concerned from specific requirements subject to that Member State implementing equally effective measures as appropriate.

Article 30 **Committee**

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. The Committee shall adopt its rules of procedure.

Article 31 **Reporting**

1. The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and the Council before the end of the first year following the entry into force of this Directive, and thereafter on an annual basis. The report shall cover at least:

- (a) the experience gained and progress made in creating a complete and fully operational internal market in natural gas and the obstacles that remain in this respect including aspects of market dominance, concentration in the market, predatory or anti-competitive behaviour;
- (b) the derogations granted under this Directive, including implementation of the derogation provided for in Article 13(2) with a view to a possible revision of the threshold;
- (c) the extent to which the unbundling and tarification requirements contained in this Directive have been successful in ensuring fair and non-discriminatory access to the Community's gas system and equivalent levels of competition, as well as the economic, environmental and social consequences of the opening of the gas market for customers;
- (d) an examination of issues relating to system capacity levels and security of supply of natural gas in the Community, and in particular the existing and projected balance between demand and supply,

taking into account the physical capacity for exchanges between areas and the development of storage (including the question of the proportionality of market regulation in this field);

(e) special attention will be given to the measures taken in Member States to cover peak demand and to deal with shortfalls of one or more suppliers;

(f) a general assessment of the progress achieved with regard to bilateral relations with third countries which produce and export or transport natural gas, including progress in market integration, trade and access to the networks of such third countries;

(g) the need for possible harmonisation requirements which are not linked to the provisions of this Directive.

Where appropriate, this report may include recommendations and measures to counteract negative effects of market dominance and market concentration.

2. Every two years, the report referred to in paragraph 1 shall also cover an analysis of the different measures taken in Member States to meet public service obligations, together with an examination of the effectiveness of those measures, and in particular their effects on competition in the gas market. Where appropriate, the report may include recommendations as to the measures to be taken at national level to achieve high public service standards or measures intended to prevent market foreclosure.

3. The Commission shall, no later than 1 January 2006, forward to the European Parliament and Council, a detailed report outlining progress in creating the internal gas market. The report shall, in particular, consider:

- the existence of non-discriminatory network access;
- effective regulation;
- the development of interconnection infrastructure, the conditions of transit, and the security of supply situation in the Community;
- the extent to which the full benefits of the opening of the market are accruing to small enterprises and households, notably with respect to public service standards;
- the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour;
- the extent to which customers are actually switching suppliers and renegotiating tariffs;
- price developments, including supply prices, in relation to the degree of the opening of markets;
- whether effective and non-discriminatory third party access to gas storage exists when technically and/or economically necessary for providing efficient access to the system;
- the experience gained in the application of the Directive as far as the effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.

Where appropriate, the Commission shall submit proposals to the European Parliament and the

Council, in particular to guarantee high public service standards.

Where appropriate, the Commission shall submit proposals to the European Parliament and the Council, in particular to ensure full and effective independence of distribution system operators before 1 July 2007. When necessary, these proposals shall, in conformity with competition law, also concern measures to address issues of market dominance, market concentration and predatory or anti-competitive behaviour.

Article 32 **Repeals**

1. Directive 91/296/EEC shall be repealed with effect from 1 July 2004, without prejudice to contracts concluded pursuant to Article 3(1) of Directive 91/296/EEC, which shall continue to be valid and to be implemented under the terms of the said Directive.

2. Directive 98/30/EC shall be repealed from 1 July 2004, without prejudice to the obligations of Member States concerning the deadlines for transposition and application of the said Directive. References made to the repealed Directive shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex B.

Article 33 **Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 2004. They shall forthwith inform the Commission thereof.

2. Member States may postpone the implementation of Article 13(1) until 1 July 2007. This shall be without prejudice to the requirements contained in Article 13(2).

3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 34 **Entry into force**

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

Article 35

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 26 June 2003.

For the European Parliament

The President

P. Cox

For the Council

The President

A. Tsochatzopoulos

ANNEX A **Measures on consumer protection**

Without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC of the European Parliament and of the Council¹ and Council Directive 93/13/EC², the measures referred to in Article 3 are to ensure that customers:

(a) have a right to a contract with their gas service provider that specifies:

- the identity and address of the supplier;
- the services provided, the service quality levels offered, as well as the time for the initial connection;
- if offered, 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, the existence of any right of withdrawal;
- 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).

Conditions shall be fair and well known in advance. In any case, this information should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract:

(b) are given adequate notice of any intention to modify contractual conditions and are informed

¹ OJ C 240 E, 28.8.2001, p. 60 and OJ C 227 E, 24.9.2002, p. 393.

² OJ C 36, 8.2.2002, p. 10.

about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect. Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions, notified to them by their gas service provider;

(c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services;

(d) are offered a wide choice of payment methods. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. Customers shall be protected against unfair or misleading selling methods;

(e) shall not be charged for changing supplier;

(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Such procedures shall 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/EC³;

(g) connected to the gas system are informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices.

ANNEX B
Correlation table

Directive 98/30/EC	This Directive
Article 1	Article 1 Scope
Article 2	Article 2 Definitions
Article 3	Article 3 PSOs and Customer protection
Article 4	Article 4 Authorisation procedure
—	Article 5 Monitoring of security of supply
Article 5	Article 6 Technical rules
Article 6	Article 7 Designation of TSOs
Article 7	Article 8 Tasks of TSOs
—	Article 9 Unbundling of TSOs
Article 8	Article 10 Confidentiality for TSOs
Article 9(1)	Article 11 Designation of DSOs
Article 10	Article 12 Tasks of DSOs
—	Article 13 Unbundling of DSOs
Article 11	Article 14 Confidentiality for DSOs

³ OJ L 115, 17.4.1998, p. 31.

—	Article 15	Combined operator
Article 12	Article 16	Right of access to accounts
Article 13	Article 17	Unbundling of accounts
Article 14-16	Article 18	Third Party Access
—	Article 19	Access to storage
Article 23	Article 20	Access to upstream pipeline networks
Article 17	Article 21	Refusal of access
—	Article 22	New infrastructure
Article 18 and 19	Article 23	Market opening and reciprocity
Article 20	Article 24	Direct lines
Article 21(2)-(3) and 22	Article 25	Regulatory authorities
Article 24	Article 26	Safeguard measures
Article 25	Article 27	Derogations in relation to take-or-pay commitments
Article 26	Article 28	Emergent and Isolated Markets
—	Article 29	Review procedure
—	Article 30	Committee
Article 27 and 28	Article 31	Reporting
—	Article 32	Repeals
Article 29	Article 33	Implementation
Article 30	Article 34	Entry into force
Article 31	Article 35	Addressees
—	Annex A	Measures on consumer protection

Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply

(Official Journal L 127 , 29/04/2004 P. 0092 - 0096)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

After consulting the Committee of the Regions,

Having regard to the opinion of the European Parliament³,

Whereas:

(1) Natural gas (gas) is becoming an increasingly important component in Community energy supply, and, as indicated in the Green Paper „Towards a European strategy for the security of energy supply“, the European Union is expected in the longer term to become increasingly dependent on gas imported from non-EU sources of supply.

(2) Following 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 gas⁴ and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC⁵, the Community gas market is being liberalised. Consequently, regarding security of supply, any difficulty having the effect of reducing gas supply could cause serious disturbances in the economic activity of the Community; for this reason, there is a growing need to ensure security of gas supply.

(3) The completion of the internal gas market necessitates a minimum common approach to security of supply, in particular through transparent and non-discriminatory security of supply policies compatible with the requirements of such a market, in order to avoid market distortions. Definition of clear roles and responsibilities of all market players is therefore crucial in safeguarding security of gas

¹ OJ C 331 E, 31.12.2002, p. 262.

² OJ C 133, 6.6.2003, p. 16.

³ Opinion not yet published in the Official Journal.

⁴ OJ L 204, 21.7.1998, p. 1.

⁵ OJ L 176, 15.7.2003, p. 57.

supply and the well-functioning of the internal market.

(4) Security of supply obligations imposed on companies should not impede the well functioning of the internal market and should not impose unreasonable and disproportionate burden on gas market players, including new market entrants and small market players.

(5) In view of the growing gas market in the Community, it is important that the security of gas supply is maintained, in particular as regards household customers.

(6) A large choice of instruments are available for the industry and, if appropriate, for Member States, to comply with the security of supply obligations. Bilateral agreements between Member States could be one of the means to contribute to the achievement of the minimum security of supply standards, having due regard to the Treaty and secondary legislation, in particular Article 3(2) of Directive 2003/55/EC.

(7) Indicative minimum targets for gas storage could be set either at national level or by the industry. It is understood that this should not create any additional investment obligations.

(8) Considering the importance of securing gas supply, i.e. on the basis of long-term contracts, the Commission should monitor the developments on the gas market on the basis of reports from Member States.

(9) In order to meet growing demand for gas and diversify gas supplies as a condition for a competitive internal gas market, the Community will need to mobilise significant additional volumes of gas over the coming decades much of which will have to come from distant sources and transported over long distances.

(10) The Community has a strong common interest with gas supplying and transit countries in ensuring continued investments in gas supply infrastructure.

(11) Long-term contracts have played a very important role in securing gas supplies for Europe and will continue to do so. The current level of long term contracts is adequate on the Community level, and it is believed that such contracts will continue to make a significant contribution to overall gas supplies as companies continue to include such contracts in their overall supply portfolio.

(12) Considerable progress has been made in developing liquid trading platforms and through gas release programmes at national level. This trend is expected to continue.

(13) The establishment of genuine solidarity between Member States in major emergency supply situations is essential, even more so as Member States become increasingly interdependent regarding security of supply.

(14) The sovereign rights of Member States over their own natural resources are not affected by this Directive.

(15) A Gas Coordination Group should be established, which should facilitate coordination of security of supply measures at Community level in the event of a major supply disruption, and may also assist member States in coordinating measures taken at a national level. In addition, it should exchange information on security of gas supply on a regular basis, and should consider aspects relevant in the context of a major supply disruption.

(16) Member States should adopt and publish national emergency provisions.

(17) This Directive should provide rules applicable in the event of a major supply disruption; the foreseeable length of such a supply disruption should cover a significant period of time of at least eight weeks.

(18) Regarding the handling of a major supply disruption, this Directive should provide for a mechanism based on a three step approach. The first step would involve the reactions of the industry to the supply disruption; if this were not sufficient, Member States should take measures to solve the supply disruption. Only if the measures taken at stage one and two have failed should appropriate measures be taken at Community level.

(19) Since the objective of this Directive, namely ensuring an adequate level for the security of gas supply, in particular in the event of a major supply disruption, whilst contributing to the proper functioning of the internal gas market, cannot, in all circumstances, be sufficiently achieved by the Member States, particularly in light of the increasing interdependency of the Member States regarding security of gas supply, and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS DIRECTIVE:

Article 1 **Objective**

This Directive establishes measures to safeguard an adequate level for the security of gas supply. These measures also contribute to the proper functioning of the internal gas market. It establishes a common framework within which Member States shall define general, transparent and non-discriminatory security of supply policies compatible with the requirements of a competitive internal gas market; clarify the general roles and responsibilities of the different market players and implement specific non-discriminatory procedures to safeguard security of gas supply.

Article 2 **Definitions**

For the purpose of this Directive:

1. „long-term gas supply contract“ means a gas supply contract with a duration of more than 10 years;
2. „major supply disruption“ shall mean a situation where the Community would risk to lose more than 20 % of its gas supply from third countries and the situation at Community level is not likely to be adequately managed with national measures.

Article 3 **Policies for securing gas supply**

1. In establishing their general policies with respect to ensuring adequate levels of security of gas supply, Member States shall define the roles and responsibilities of the different gas market players in achieving these policies, and specify adequate minimum security of supply standards that must be complied with by the players on the gas market of the Member State in question. The standards shall be implemented in a non-discriminatory and transparent way and shall be published.
2. Member States shall take the appropriate steps to ensure that the measures referred to in this Directive do not place an unreasonable and disproportionate burden on gas market players and are compatible with the requirements of a competitive internal gas market.
3. A non-exhaustive list of instruments for the security of gas supply is given in the Annex.

Article 4 **Security of supply for specific customers**

1. Member States shall ensure that supplies for household customers inside their territory are protected to an appropriate extent at least in the event of:
 - (a) a partial disruption of national gas supplies during a period to be determined by Member States taking into account national circumstances;
 - (b) extremely cold temperatures during a nationally determined peak period;
 - (c) periods of exceptionally high gas demand during the coldest weather periods statistically occurring every 20 years,
 These criteria are referred to in this Directive as „security of supply standards“.
2. Member States may extend the scope of paragraph 1 in particular to small and medium-sized enterprises and other customers that cannot switch their gas consumption to other energy sources, including measures for the security of their national electricity system if it depends on gas supplies.
3. A non-exhaustive list in the Annex sets out examples of instruments which may be used in order to achieve the security of supply standards.
4. Member States, having due regard to the geological conditions of their territory and the economic and technical feasibility, may also take the necessary measures to ensure that gas storage facilities located within their territory contribute to an appropriate degree to achieving the security of supply standards.
5. If an adequate level of interconnection is available, Member States may take the appropriate measures in cooperation with another Member State, including bilateral agreements, to achieve the security of supply standards using gas storage facilities located within that other Member State. These measures, in particular bilateral agreements, shall not impede the proper functioning of the internal gas market.

6. Member States may set or require the industry to set indicative minimum targets for a possible future contribution of storage, either located within or outside the Member State, to security of supply. These targets shall be published.

Article 5 **Reporting**

1. In the report published by Member States pursuant to Article 5 of Directive 2003/55/EC, Member States shall also cover the following:

- (a) the competitive impact of the measures taken pursuant to Articles 3 and 4 on all gas market players;
- (b) the levels of storage capacity;
- (c) the extent of long-term gas supply contracts concluded by companies established and registered on their territory, and in particular their remaining duration, based on information provided by the companies concerned, but excluding commercially sensitive information, and the degree of liquidity of the gas market;
- (d) the regulatory frameworks to provide adequate incentives for new investment in exploration and production, storage, LNG and transport of gas, taking into account Article 22 of Directive 2003/55/EC as far as implemented by the Member State.

2. This information shall be considered by the Commission in the reports that it issues pursuant to Article 31 of Directive 2003/55/EC in the light of the consequences of that Directive for the Community as a whole and the overall efficient and secure operation of the internal gas market.

Article 6 **Monitoring**

1. The Commission shall monitor, on the basis of the reports referred to in Article 5(1):

- (a) the degree of new long-term gas supply import contracts from third countries;
- (b) the existence of adequate liquidity of gas supplies;
- (c) the level of working gas and of the withdrawal capacity of gas storage;
- (d) the level of interconnection of the national gas systems of Member States;
- (e) the foreseeable gas supply situation in function of demand, supply autonomy and available supply sources at Community level concerning specific geographic areas in the Community.

2. Where the Commission concludes that gas supplies in the Community will be insufficient to meet foreseeable gas demand in the long term, it may submit proposals in accordance with the Treaty.

3. By 19 May 2008 the Commission shall submit a review report to the European Parliament and the Council on the experience gained from the application of this Article.

Article 7 **Gas Coordination Group**

1. A Gas Coordination Group is hereby established in order to facilitate the coordination of security of supply measure (the Group).
2. The Group shall be composed of the representatives of Member States and representative bodies of the industry concerned and of relevant consumers, under the chairmanship of the Commission.
3. The Group shall adopt its Rules of Procedure.

Article 8 **National emergency measures**

1. Member States shall prepare in advance and, if appropriate, update national emergency measures and shall communicate these to the Commission. Member States shall publish their national emergency measures.
2. Member States' emergency measures shall ensure, where appropriate, that market players are given sufficient opportunity to provide an initial response to the emergency situation.
3. Subject to Article 4(1), Member States may indicate to the Chair of the Group events which they consider, because of their magnitude and exceptional character, cannot be adequately managed with national measures.

Article 9 **Community mechanism**

1. If an event occurs that is likely to develop into a major supply disruption for a significant period of time, or in the case of an event indicated by a Member State according to Article 8(3), the Commission shall convene the Group as soon as possible, at the request of a Member State or on its own initiative.
2. The Group shall examine, and, where appropriate, assist the Member States in coordinating the measures taken at national level to deal with the major supply disruption.
3. In carrying out its work, the Group shall take full account of:
 - (a) the measures taken by the gas industry as a first response to the major supply disruption;
 - (b) the measures taken by Member States, such as those taken pursuant to Article 4, including relevant bilateral agreements.
4. Where the measures taken at national level referred to in paragraph 3 are inadequate to deal with the effects of an event referred to in paragraph 1, the Commission may, in consultation with the Group, provide guidance to Member States regarding further measures to assist those Member States particularly affected by the major supply disruption.

5. Where the measures taken at national level pursuant to paragraph 4 are inadequate to deal with the effects of an event referred to in paragraph 1, the Commission may submit a proposal to the Council regarding further necessary measures.

6. Any measures at Community level referred to in this Article shall contain provisions aimed at ensuring fair and equitable compensation of the undertakings concerned by the measures to be taken.

Article 10

Monitoring of implementation

1. By 19 May 2008, the Commission shall, in the light of the manner in which Member States have implemented this Directive, report on the effectiveness of the instruments used with regard to Article 3 and 4 and their effect on the internal gas market and on the evolution of competition on the internal gas market.

2. In the light of the results of this monitoring, where appropriate, the Commission may issue recommendations or present proposals regarding further measures to enhance security of supply.

Article 11

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 19 May 2006. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 12

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Article 13

This Directive is addressed to the Member States.

Done at Luxembourg, 26 April 2004.

For the Council

The President

J. Walsh

ANNEX

Non-exhaustive list of instruments to enhance the security of gas supply referred to in Article 3(3) and Article 4(3)

- working gas in storage capacity,
- withdrawal capacity in gas storage,
- provision of pipeline capacity enabling diversion of gas supplies to affected areas,
- liquid tradable gas markets,
- system flexibility,
- development of interruptible demand,
- use of alternative back-up fuels in industrial and power generation plants,
- cross-border capacities,
- cooperation between transmission system operators of neighbouring Member States for coordinated dispatching,
- coordinated dispatching activities between distribution and transmission system operators,
- domestic production of gas,
- production flexibility,
- import flexibility,
- diversification of sources of gas supply,
- long term contracts,
- investments in infrastructure for gas import via regasification terminals and pipelines.

Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks

(Official Journal L 289, 3/11/2005 P. 0001 - 0013)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Following consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

Whereas:

(1) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas³ has made a significant contribution towards the creation of an internal market for gas. It is now necessary to provide for structural changes in the regulatory framework to tackle remaining barriers to the completion of the internal market in particular regarding the trade of gas. Additional technical rules are necessary, in particular regarding third party access services, principles of capacity allocation mechanisms, congestion management procedures and transparency requirements.

(2) Experience gained in the implementation and monitoring of a first set of Guidelines for Good Practice, adopted by the European Gas Regulatory Forum (the Forum) in 2002, demonstrates that in order to ensure the full implementation of the rules set out in the Guidelines in all Member States, and in order to provide a minimum guarantee of equal market access conditions in practice, it is necessary to provide for them to become legally enforceable.

(3) A second set of common rules entitled „the Second Guidelines for Good Practice“ was adopted at the meeting of the Forum on 24- 25 September 2003 and the purpose of this Regulation is to lay down, on the basis of those Guidelines, basic principles and rules regarding network access and

third party access services, congestion management, transparency, balancing and the trading of capacity rights.

(4) Article 15 of Directive 2003/55/EC allows for a combined transmission and distribution system operator. Therefore, the rules set out in this Regulation do not require modification of the organisation of national transmission and distribution systems that are consistent with the relevant provisions of Directive 2003/55/EC and in particular Article 15 thereof.

(5) High pressure pipelines linking up local distributors to the gas network which are not primarily used in the context of local distribution are included in the scope of this Regulation.

(6) It is necessary to specify the criteria according to which tariffs for access to the network are determined, in order to ensure that they fully comply with the principle of non-discrimination and the needs of a well-functioning internal market and take fully into account the need for system integrity and reflect actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including appropriate return on investments, and where appropriate taking account of the benchmarking of tariffs by the regulatory authorities.

(7) In calculating tariffs for access to networks it is important to take account of actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, as well as of the need to provide appropriate return on investments and incentives to construct new infrastructure. In this respect, and in particular if effective pipeline-to-pipeline competition exists, the benchmarking of tariffs by the regulatory authorities will be a relevant consideration.

(8) The use of market-based arrangements, such as auctions, to determine tariffs has to be compatible with the provisions laid down in Directive 2003/55/EC.

(9) A common minimum set of third party access services is necessary to provide a common minimum standard of access in practice throughout the Community, to ensure that third party access services are sufficiently compatible and to allow the benefits accruing from a well-functioning internal market for gas to be exploited.

(10) References to harmonised transportation contracts in the context of non-discriminatory access to the network of transmission system operators do not mean that the terms and conditions of the transportation contracts of a particular system operator in a Member State must be the same as those of another transmission system operator in that Member State or in another Member State, unless minimum requirements are set which must be met by all transportation contracts.

(11) The management of contractual congestion of networks is an important issue in completing the internal gas market. It is necessary to develop common rules which balance the need to free up unused capacity in accordance with the „use-it-or-lose-it“ principle with the rights of the holders of the capacity to use it when necessary, while at the same time enhancing liquidity of capacity.

(12) Although physical congestion of networks is rarely a problem at present in the Community, it may become one in the future. It is important therefore to provide the basic principle for the alloca-

¹ OJ C 241, 28.9.2004, p. 31.

² Opinion of the European Parliament of 20 April 2004 (OJ C 104 E, 30.4.2004, p. 306), Council common position of 12 November 2004 (OJ C 25 E, 1.2.2005, p. 44), position of the European Parliament of 8 March 2005 (not yet published in the Official Journal) and Council Decision of 12 July 2005.

³ OJ L 176, 15.7.2003, p. 57.

tion of congested capacity in such circumstances.

(13) For network users to gain effective access to gas networks they need information in particular on technical requirements and available capacity to enable them to exploit business opportunities occurring within the framework of the internal market. Common minimum standards on such transparency requirements are necessary. The publication of such information may be done by different means, including electronic means.

(14) Non-discriminatory and transparent balancing systems for gas, operated by transmission system operators, are important mechanisms, particularly for new market entrants which may have more difficulty balancing their overall sales portfolio than companies already established within a relevant market. It is therefore necessary to lay down rules to ensure that transmission system operators operate such mechanisms in a manner compatible with non-discriminatory, transparent and effective access conditions to the network.

(15) The trading of primary capacity rights is an important part of developing a competitive market and creating liquidity. This Regulation should therefore lay down basic rules on that issue.

(16) It is necessary to ensure that undertakings acquiring capacity rights are able to sell them to other licensed undertakings in order to ensure an appropriate level of liquidity on the capacity market. This approach, however, does not preclude a system where capacity unused for a given period, determined at national level, is made re-available to the market on a firm basis.

(17) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted pursuant to it.

(18) In the Guidelines annexed to this Regulation, specific detailed implementing rules are defined on the basis of the second Guidelines for Good Practice. Where appropriate, these rules will evolve over time, taking into account the differences of national gas systems.

(19) When proposing to amend the Guidelines laid down in the Annex to this Regulation, the Commission should ensure prior consultation of all relevant parties concerned with the Guidelines, represented by the professional organisations, and of the Member States within the Forum and should request the input of the European Regulators Group for Electricity and Gas.

(20) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission.

(21) This Regulation and the guidelines adopted in accordance with it are without prejudice to the application of the Community rules on competition.

(22) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁴.

(23) Since the objective of this Regulation, namely the setting of fair rules for access conditions to

⁴ OJ L 184, 17.7.1999, p. 23.

natural gas transmission systems, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1 **Subject matter and scope**

1. This Regulation aims at setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market.

This objective shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, the establishment of third party access services and harmonised principles for capacity allocation and congestion management, the determination of transparency requirements, balancing rules and imbalance charges and facilitating capacity trading.

2. Member States may establish an entity or body set up in compliance with Directive 2003/55/EC for the purpose of carrying out one or more functions typically attributed to the transmission system operator, which shall be subject to the requirements of this Regulation.

Article 2 **Definitions**

1. For the purpose of this Regulation, the following definitions shall apply:

1. „transmission“ means the transport of natural gas through a network, which mainly contains high pressure pipelines, other than an upstream pipeline network and other than the part of high pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;
2. „transportation contract“ means a contract which the transmission system operator has concluded with a network user with a view to carrying out transmission;
3. „capacity“ means the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time unit, to which the network user is entitled in accordance with the provisions of the transportation contract;
4. „unused capacity“ means firm capacity which a network user has acquired under a transportation contract but which that user has not nominated by the deadline specified in the contract;

5. „congestion management“ means management of the capacity portfolio of the transmission system operator with a view to optimal and maximum use of the technical capacity and the timely detection of future congestion and saturation points;
6. „secondary market“ means the market of the capacity traded otherwise than on the primary market;
7. „nomination“ means the prior reporting by the network user to the transmission system operator of the actual flow that he wishes to inject into or withdraw from the system;
8. „re-nomination“ means the subsequent reporting of a corrected nomination;
9. „system integrity“ means any situation in respect of a transmission network including necessary transmission facilities in which the pressure and the quality of the natural gas remain within the minimum and maximum limits laid down by the transmission system operator, so that the transmission of natural gas is guaranteed from a technical standpoint;
10. „balancing period“ means the period within which the offtake of an amount of natural gas, expressed in units of energy, must be offset by every network user by means of the injection of the same amount of natural gas into the transmission network in accordance with the transportation contract or the network code;
11. „network user“ means a customer or a potential customer of a transmission system operator, and transmission system operators themselves in so far as it is necessary for them to carry out their functions in relation to transmission;
12. „interruptible services“ means services offered by the transmission system operator in relation to interruptible capacity;
13. „interruptible capacity“ means gas transmission capacity that can be interrupted by the transmission system operator according to the conditions stipulated in the transportation contract;
14. „long-term services“ means services offered by the transmission system operator with a duration of one year or more;
15. „short-term services“ means services offered by the transmission system operator with a duration of less than one year;
16. „firm capacity“ means gas transmission capacity contractually guaranteed as uninterruptible by the transmission system operator;
17. „firm services“ means services offered by the transmission system operator in relation to firm capacity;
18. „technical capacity“ means the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network;
19. „contracted capacity“ means capacity that the transmission system operator has allocated to a network user by means of a transportation contract;
20. „available capacity“ means the part of the technical capacity that is not allocated and is still available to the system at that moment;
21. „contractual congestion“ means a situation where the level of firm capacity demand exceeds the technical capacity;

22. „primary market“ means the market of the capacity traded directly by the transmission system operator;
 23. „physical congestion“ means a situation where the level of demand for actual deliveries exceeds the technical capacity at some point in time.
2. The definitions contained in Article 2 of Directive 2003/55/EC, which are relevant for the application of this Regulation, shall also apply with the exception of the definition of transmission in point 3 of that Article.

Article 3

Tariffs for access to networks

1. Tariffs, or the methodologies used to calculate them, applied by transmission system operators and approved by the regulatory authorities pursuant to Article 25(2) of Directive 2003/55/EC, as well as tariffs published pursuant to Article 18(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including appropriate return on investments, and where appropriate taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a non-discriminatory manner.
Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the regulatory authority.
- Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.
2. Tariffs for network access shall not restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 25² of Directive 2003/55/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles including in relation to balancing.

Article 4

Third party access services

1. Transmission system operators shall:
 - (a) ensure that they offer services on a non-discriminatory basis to all network users. In particular, where a transmission system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions, either using harmonised transportation contracts or a common network code approved by the competent authority in accordance with the procedure

laid down in Article 25 of Directive 2003/55/EC;

(b) provide both firm and interruptible third party access services. The price of interruptible capacity shall reflect the probability of interruption;

(c) offer to network users both long and short-term services.

2. Transportation contracts signed with non-standard start dates or with a shorter duration than a standard annual transportation contract shall not result in arbitrarily higher or lower tariffs not reflecting the market value of the service, in accordance with the principles laid down in Article 3¹.

3. Where appropriate, third party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees must not constitute any undue market entry barriers and must be non-discriminatory, transparent and proportionate.

Article 5

Principles of capacity allocation mechanisms and congestion management procedures

1. The maximum capacity at all relevant points referred to in Article 6(3) shall be made available to market participants, taking into account system integrity and efficient network operation.

2. Transmission system operators shall implement and publish non-discriminatory and transparent capacity allocation mechanisms, which shall:

(a) provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure;

(b) be compatible with the market mechanisms including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances;

(c) be compatible with the network access systems of the Member States.

3. When transmission system operators conclude new transportation contracts or renegotiate existing transportation contracts, these contracts shall take into account the following principles:

(a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis;

(b) network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so. Member States may require notification or information of the transmission system operator by network users.

4. When capacity contracted under existing transportation contracts remains unused and contractual congestion occurs, transmission system operators shall apply paragraph 3 unless this would infringe the requirements of the existing transportation contracts. Where this would infringe the existing transportation contracts, transmission system operators shall, following consultation with the competent authorities, submit a request to the network user for the use on the secondary market of unused capacity in accordance with paragraph 3.

5. In the event that physical congestion exists, non-discriminatory, transparent capacity allocation

mechanisms shall be applied by the transmission system operator or, as appropriate, the regulatory authorities.

Article 6

Transparency requirements

1. Transmission system operators shall make public detailed information regarding the services they offer and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access.

2. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas network, transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.

3. For the services provided, each transmission system operator shall make public information on technical, contracted and available capacities on a numerical basis for all relevant points including entry and exit points on a regular and rolling basis and in a user-friendly standardised manner.

4. The relevant points of a transmission system on which the information must be made public shall be approved by the competent authorities after consultation with network users.

5. Where a transmission system operator considers that it is not entitled for confidentiality reasons to make public all the data required, it shall seek the authorisation of the competent authorities to limit publication with respect to the point or points in question.

The competent authorities shall grant or refuse the authorisation on a case by case basis, taking into account in particular the need to respect legitimate commercial confidentiality and the objective of creating a competitive internal gas market. If the authorisation is granted, available capacity shall be published without indicating the numerical data that would contravene confidentiality.

No such authorisation as referred to in this paragraph shall be granted where three or more network users have contracted capacity at the same point.

6. Transmission system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.

Article 7

Balancing rules and imbalance charges

1. Balancing rules shall be designed in a fair, non-discriminatory and transparent manner and shall be based on objective criteria. Balancing rules shall reflect genuine system needs taking into account the resources available to the transmission system operator.

2. In the case of non-market based balancing systems, tolerance levels shall be designed in a way that either reflects seasonality or results in a tolerance level higher than that resulting from seasonality, and that reflects the actual technical capabilities of the transmission system. Tolerance levels

shall reflect genuine system needs taking into account the resources available to the transmission system operator.

3. Imbalance charges shall be cost-reflective to the extent possible, whilst providing appropriate incentives on network users to balance their input and offtake of gas. They shall avoid cross-subsidisation between network users and shall not hamper the entry of new market entrants.

Any calculation methodology for imbalance charges as well as the final tariffs shall be made public by the competent authorities or the transmission system operator as appropriate.

4. Transmission system operators may impose penalty charges on network users whose input into and offtake from the transmission system is not in balance according to the balancing rules referred to in paragraph 1.

5. Penalty charges which exceed the actual balancing costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, shall be taken into account when calculating tariffs in a way that does not reduce the interest in balancing and shall be approved by the competent authorities.

6. In order to enable network users to take timely corrective action, transmission system operators shall provide sufficient, well-timed and reliable on-line based information on the balancing status of network users. The level of information provided shall reflect the level of information available to the transmission system operator. Where they exist, charges for the provision of such information shall be approved by the competent authorities and shall be made public by the transmission system operator.

7. Member States shall ensure that transmission system operators endeavour to harmonise balancing regimes and streamline structures and levels of balancing charges in order to facilitate gas trade.

Article 8

Trading of capacity rights

Each transmission system operator shall take reasonable steps to allow capacity rights to be freely tradable and to facilitate such trade. Each such operator shall develop harmonised transportation contracts and procedures on the primary market to facilitate secondary trade of capacity and recognise the transfer of primary capacity rights where notified by network users. The harmonised transportation contracts and procedures shall be notified to the regulatory authorities.

Article 9

Guidelines

1. Where appropriate, Guidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation shall specify:

(a) details of third party access services including the character, duration and other requirements of these services, in accordance with Article 4;

(b) details of the principles underlying capacity allocation mechanisms and on the application of congestion management procedures in the event of contractual congestion, in accordance with Article 5;

(c) details on the definition of the technical information necessary for network users to gain effective access to the system and the definition of all relevant points for transparency requirements, including the information to be published at all relevant points and the time schedule according to which this information shall be published, in accordance with Article 6.

2. Guidelines on the issues listed in paragraph 1 are laid down in the Annex. They may be amended by the Commission; this shall be done in accordance with the procedure referred to in Article 14(2).

3. The application and amendment of Guidelines adopted pursuant to this Regulation shall reflect differences between national gas systems, and shall therefore not require uniform detailed terms and conditions of third party access at Community level. They may, however, set minimum requirements to be met to achieve non-discriminatory and transparent network access conditions necessary for an internal gas market, which may then be applied in the light of differences between national gas systems.

Article 10

Regulatory authorities

When carrying out their responsibilities under this Regulation, the regulatory authorities of the Member States established under Article 25 of Directive 2003/55/EC shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 9 of this Regulation.

Where appropriate they shall cooperate with each other and with the Commission.

Article 11

Provision of information

Member States and the regulatory authorities shall, on request, provide to the Commission all information necessary for the purposes of Article 9.

The Commission shall fix a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

Article 12

Right of Member States to provide for more detailed measures

This Regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out in this Regulation and the Guidelines referred to in Article 9.

Article 13**Penalties**

1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 1 July 2006 at the latest and shall notify it without delay of any subsequent amendment affecting them.

2. Penalties provided for pursuant to paragraph 1 shall not be of a criminal law nature.

Article 14**Committee procedure**

1. The Commission shall be assisted by the Committee set up by Article 30 of Directive 2003/55/EC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

Article 15**Commission report**

The Commission shall monitor the implementation of this Regulation. In its report under Article 31(3) of Directive 2003/55/EC, the Commission shall also report on the experience gained in the application of this Regulation. In particular the report shall examine to what extent the Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for gas transmission networks in order to contribute to customer choice in a well functioning internal market and to long-term security of supply. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

Article 16**Derogations and exemptions**

This Regulation shall not apply to:

(a) natural gas transmission systems situated in Member States for the duration of derogations granted under Article 28 of Directive 2003/55/EC; Member States which have been granted derogations under Article 28 of Directive 2003/55/EC may apply to the Commission for a temporary derogation from the application of this Regulation, for a period of up to two years from the date at which the

derogation referred to in this point expires;

(b) interconnectors between Member States and significant increases of capacity in existing infrastructures and modifications of such infrastructures which enable the development of new sources of gas supply as referred to in Article 22(1) and (2) of Directive 2003/55/EC which are exempted from the provisions of Articles 18, 19, 20 and 25(2), (3) and (4) of that Directive as long as they are exempted from the provisions referred to in this subparagraph; or

(c) natural gas transmission systems which have been granted derogations under Article 27 of Directive 2003/55/EC.

Article 17**Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 July 2006 with the exception of the second sentence of Article 9(2), which shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 28 September 2005.

For the European Parliament

The President

J. Borrell Fontelles

For the Council

The President

D. Alexander

ANNEX

GUIDELINES ON

1. Third party access services,
2. Principles underlying the capacity allocation mechanisms, congestion management procedures and their application in the event of contractual congestion, and
3. Definition of the technical information necessary for network users to gain effective access to the system, the definition of all relevant points for transparency requirements and the information to be published at all relevant points and the time schedule according to which this information shall be published

1. Third party access services

(1) Transmission system operators shall offer firm and interruptible services down to a minimum period of one day.

(2) Harmonised transportation contracts and common network codes shall be designed in a manner that facilitates trading and re-utilisation of capacity contracted by network users without hampering capacity release.

(3) Transmission system operators shall develop network codes and harmonised contracts following proper consultation with network users.

(4) Transmission system operators shall implement standardised nomination and re nomination procedures. They shall develop information systems and electronic communication means to provide adequate data to network users and to simplify transactions, such as nominations, capacity contracting and transfer of capacity rights between network users.

(5) Transmission system operators shall harmonise formalised request procedures and response times according to best industry practice with the aim of minimising response times. They shall provide for on-line screen based capacity booking and confirmation systems and nomination and re-nomination procedures no later than 1 July 2006 after consultation with the relevant network users.

(6) Transmission system operators shall not separately charge network users for information requests and transactions associated with their transportation contracts and which are carried out according to standard rules and procedures.

(7) Information requests that require extraordinary or excessive expenses such as feasibility studies may be charged separately, provided the charges can be duly substantiated.

(8) Transmission system operators shall cooperate with other transmission system operators in coordinating the maintenance of their respective networks in order to minimise any disruption of transmission services to network users and transmission system operators in other areas and in order to ensure equal benefits with respect to security of supply including in relation to transit.

(9) Transmission system operators shall publish at least once a year, by a predetermined deadline,

all planned maintenance periods that might affect network users' rights from transportation contracts and corresponding operational information with adequate advance notice. This shall include publishing on a prompt and non-discriminatory basis any changes to planned maintenance periods and notification of unplanned maintenance, as soon as that information becomes available to the transmission system operator. During maintenance periods, transmission system operators shall publish regularly updated information on the details of and expected duration and effect of the maintenance.

(10) Transmission system operators shall maintain and make available to the competent authority upon request a daily log of the actual maintenance and flow disruptions that have occurred. Information shall also be made available on request to those affected by any disruption.

2. Principles underlying capacity allocation mechanisms, congestion management procedures and their application in the event of contractual congestion

2.1. Principles underlying capacity allocation mechanisms and congestion management procedures

(1) Capacity allocation mechanisms and congestion management procedures shall facilitate the development of competition and liquid trading of capacity and shall be compatible with market mechanisms including spot markets and trading hubs. They shall be flexible and capable of adapting to evolving market circumstances.

(2) These mechanisms and procedures shall take into account the integrity of the system concerned as well as security of supply.

(3) These mechanisms and procedures shall neither hamper the entry of new market participants nor create undue barriers to market entry. They shall not prevent market participants, including new market entrants and companies with a small market share, from competing effectively.

(4) These mechanisms and procedures shall provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure.

(5) Network users shall be advised about the type of circumstance that could affect the availability of contracted capacity. Information on interruption should reflect the level of information available to the transmission system operator.

(6) Should difficulties in meeting contractual delivery obligations arise due to system integrity reasons, transmission system operators should notify network users and seek a non-discriminatory solution without delay.

Transmission system operators shall consult network users regarding procedures prior to their implementation and agree them with the regulatory authority.

2.2. Congestion management procedures in the event of contractual congestion

(1) In the event that contracted capacity goes unused, transmission system operators shall make this capacity available on the primary market on an interruptible basis via contracts of differing duration,

as long as this capacity is not offered by the relevant network user on the secondary market at a reasonable price.

(2) Revenues from released interruptible capacity shall be split according to rules laid down or approved by the relevant regulatory authority. These rules shall be compatible with the requirement of an effective and efficient use of the system.

(3) A reasonable price for released interruptible capacity may be determined by the relevant regulatory authorities taking into account the specific circumstances prevailing.

(4) Where appropriate, transmission system operators shall make reasonable endeavours to offer at least parts of the unused capacity to the market as firm capacity.

3. Definition of the technical information necessary for network users to gain effective access to the system, the definition of all relevant points for transparency requirements and the information to be published at all relevant points and the time schedule according to which this information shall be published

3.1. Definition of the technical information necessary for network users to gain effective access to the system

Transmission system operators shall publish at least the following information about their systems and services:

- (a) a detailed and comprehensive description of the different services offered and their charges;
- (b) the different types of transportation contracts available for these services and, as applicable, the network code and/or the standard conditions outlining the rights and responsibilities of all network users including harmonised transportation contracts and other relevant documents;
- (c) the harmonised procedures applied when using the transmission system, including the definition of key terms;
- (d) provisions on capacity allocation, congestion management and anti-hoarding and re-utilisation procedures;
- (e) the rules applicable for capacity trade on the secondary market vis à vis the transmission system operator;
- (f) if applicable, the flexibility and tolerance levels included in transportation and other services without separate charge, as well as any flexibility offered in addition to this and the corresponding charges;
- (g) a detailed description of the gas system of the transmission system operator indicating all relevant points interconnecting its system with that of other transmission system operators and/or gas infrastructure such as liquefied natural gas (LNG) and infrastructure necessary for providing ancillary services as defined by Article 2(14) of Directive 2003/55/EC;
- (h) information on gas quality and pressure requirements;

- (i) the rules applicable for connection to the system operated by the transmission system operator;
- (j) any information, in a timely manner, on proposed and/or actual changes to the services or conditions, including the items listed in points (a) to (i).

3.2. Definition of all relevant points for transparency requirements

Relevant points shall include at least:

- (a) all entry points to a network operated by a transmission system operator;
- (b) the most important exit points and exit zones covering at least 50 % of total exit capacity of the network of a given transmission system operator, including all exit points or exit zones covering more than 2 % of total exit capacity of the network;
- (c) all points connecting different networks of transmission system operators;
- (d) all points connecting the network of a transmission system operator with an LNG terminal;
- (e) all essential points within the network of a given transmission system operator including points connecting to gas hubs. All points are considered essential which, based on experience, are likely to experience physical congestion;
- (f) all points connecting the network of a given transmission system operator to infrastructure necessary for providing ancillary services as defined by Article 2(14) of Directive 2003/55/EC.

3.3. Information to be published at all relevant points and the time schedule according to which this information should be published

- (1) At all relevant points, transmission system operators shall publish the following information about the capacity situation down to daily periods on the Internet on a regular/rolling basis and in a user-friendly standardised manner:
 - (a) the maximum technical capacity for flows in both directions,
 - (b) the total contracted and interruptible capacity,
 - (c) the available capacity.
- (2) For all relevant points, transmission system operators shall publish available capacities for a period of at least 18 months ahead and shall update this information at least every month or more frequently, if new information becomes available.
- (3) Transmission system operators shall publish daily updates of availability of short-term services (day-ahead and week-ahead) based, *inter alia*, on nominations, prevailing contractual commitments and regular long-term forecasts of available capacities on an annual basis for up to 10 years for all relevant points.
- (4) Transmission system operators shall publish historical maximum and minimum monthly capacity utilisation rates and annual average flows at all relevant points for the past three years on a rolling basis.

(5) Transmission system operators shall keep a daily log of actual aggregated flows for at least three months.

(6) Transmission system operators shall keep effective records of all capacity contracts and all other relevant information in relation to calculating and providing access to available capacities, to which relevant national authorities shall have access to fulfil their duties.

(7) Transmission system operators shall provide user-friendly instruments for calculating tariffs for the services available and for verifying on-line the capacity available.

(8) Where transmission system operators are unable to publish information in accordance with paragraphs 1, 3 and 7, they shall consult with their relevant national authorities and set up an Action Plan for implementation as soon as possible, but not later than 31 December 2006.

ACQUIS COMMUNAUTAIRE
ENVIRONNEMENT

Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

(Official Journal L 175 , 05/07/1985 P. 0040 - 0048)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 235 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas the 1973⁴ and 1977⁵ action programmes of the European Communities on the environment, as well as the 1983⁶ action programme, the main outlines of which have been approved by the Council of the European Communities and the representatives of the Governments of the Member States, stress that the best environmental policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects; whereas they affirm the need to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes; whereas to that end, they provide for the implementation of procedures to evaluate such effects;

Whereas the disparities between the laws in force in the various Member States with regard to the assessment of the environmental effects of public and private projects may create unfavourable competitive conditions and thereby directly affect the functioning of the common market; whereas, therefore, it is necessary to approximate national laws in this field pursuant to Article 100 of the Treaty;

Whereas, in addition, it is necessary to achieve one of the Community's objectives in the sphere of the protection of the environment and the quality of life;

Whereas, since the Treaty has not provided the powers required for this end, recourse should be had to Article 235 of the Treaty;

Whereas general principles for the assessment of environmental effects should be introduced with

¹ OJ No C 169, 9. 7. 1980, p. 14.

² OJ No C 66, 15. 3. 1982, p. 89.

³ OJ No C 185, 27. 7. 1981, p. 8.

⁴ OJ No C 112, 20. 12. 1973, p. 1.

⁵ OJ No C 139, 13. 6. 1977, p. 1.

⁶ OJ No C 46, 17. 2. 1983, p. 1.

a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment;

Whereas development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out; whereas this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question;

Whereas the principles of the assessment of environmental effects should be harmonized, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment;

Whereas projects belonging to certain types have significant effects on the environment and these projects must as a rule be subject to systematic assessment;

Whereas projects of other types may not have significant effects on the environment in every case and whereas these projects should be assessed where the Member States consider that their characteristics so require;

Whereas, for projects which are subject to assessment, a certain minimal amount of information must be supplied, concerning the project and its effects;

Whereas the effects of a project on the environment must be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life;

Whereas, however, this Directive should not be applied to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process;

Whereas, furthermore, it may be appropriate in exceptional cases to exempt a specific project from the assessment procedures laid down by this Directive, subject to appropriate information being supplied to the Commission,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive:

'project' means:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extrac-

tion of mineral resources;

„developer“ means:

the applicant for authorization for a private project or the public authority which initiates a project;

„development consent“ means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project.

3. The competent authority or authorities shall be that or those which the Member States designate as responsible for performing the duties arising from this Directive.

4. Projects serving national defence purposes are not covered by this Directive.

5. This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.

Article 2

1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue *inter alia*, of their nature, size or location are made subject to an assessment with regard to their effects.

These projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

3. Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.

In this event, the Member States shall:

(a) consider whether another form of assessment would be appropriate and whether the information thus collected should be made available to the public;

(b) make available to the public concerned the information relating to the exemption and the reasons for granting it;

(c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where appropriate, to their own nationals.

The Commission shall immediately forward the documents received to the other Member States.

The Commission shall report annually to the Council on the application of this paragraph.

Article 3

The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with the Articles 4 to 11, the direct and indirect

effects of a project on the following factors:

- human beings, fauna and flora,
- soil, water, air, climate and the landscape,
- the inter-action between the factors mentioned in the first and second indents,
- material assets and the cultural heritage.

Article 4

1. Subject to Article 2(3), projects of the classes listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Projects of the classes listed in Annex II shall be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require. To this end Member States may *inter alia* specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10.

Article 5

1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex III inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard *inter alia* to current knowledge and methods of assessment.

2. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

- a description of the project comprising information on the site, design and size of the project,
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- the data required to identify and assess the main effects which the project is likely to have on the environment,
- a non-technical summary of the information mentioned in indents 1 to 3.

3. Where they consider it necessary, Member States shall ensure that any authorities with relevant information in their possession make this information available to the developer.

Article 6

1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the request for development consent. Member States shall designate the authorities to be consulted for this purpose in general terms or in each case when the request for consent is made. The information gathered pursuant to Article 5 shall be forwarded to these authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. Member States shall ensure that:

- any request for development consent and any information gathered pursuant to Article 5 are made available to the public,

- the public concerned is given the opportunity to express an opinion before the project is initiated.

3. The detailed arrangements for such information and consultation shall be determined by the Member States, which may in particular, depending on the particular characteristics of the projects or sites concerned:

- determine the public concerned,

- specify the places where the information can be consulted,

- specify the way in which the public may be informed, for example by bill-posting within a certain radius, publication in local newspapers, organization of exhibitions with plans, drawings, tables, graphs, models,

- determine the manner in which the public is to be consulted, for example, by written submissions, by public enquiry,

- fix appropriate time limits for the various stages of the procedure in order to ensure that a decision is taken within a reasonable period.

Article 7

Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall forward the information gathered pursuant to Article 5 to the other Member State at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between two Member States on a reciprocal and equivalent basis.

Article 8

Information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.

Article 9

When a decision has been taken, the competent authority or authorities shall inform the public concerned of:

- the content of the decision and any conditions attached thereto,

- the reasons and considerations on which the decision is based where the Member States' legislation so provides. The detailed arrangements for such information shall be determined by the Member States.

If another Member State has been informed pursuant to Article 7, it will also be informed of the decision in question.

Article 10

The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to industrial and commercial secrecy and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the reception of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.

Article 11

1. The Member States and the Commission shall exchange information on the experience gained in applying this Directive.

2. In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4(2), or of the types of projects concerned which, pursuant to Article 4(2), are subject to assessment in accordance with Articles 5 to 10.

3. Five years after notification of this Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness. The report shall be based on the aforementioned exchange of information.

4. On the basis of this exchange of information, the Commission shall submit to the Council additional proposals, should this be necessary, with a view to this Directive's being applied in a sufficiently coordinated manner.

Article 12

- 1. Member States shall take the measures necessary to comply with this Directive within three years of its notification⁷.
- 2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 13

The provisions of this Directive shall not affect the right of Member States to lay down stricter rules regarding scope and procedure when assessing environmental effects.

Article 14

This Directive is addressed to the Member States.

Done at Luxembourg, 27 June 1985.

For the Council

The President

A. BIONDI

ANNEX I

PROJECTS SUBJECT TO ARTICLE 4 (1)

- 1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
- 2. Thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
- 3. Installations solely designed for the permanent storage or final disposal of radioactive waste.
- 4. Integrated works for the initial melting of cast-iron and steel.

⁷ This Directive was notified to the Member States on 3 July 1985.

- 5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.
- 6. Integrated chemical installations.
- 7. Construction of motorways, express roads¹ and lines for long-distance railway traffic and of airports² with a basic runway length of 2 100 m or more.
- 8. Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes.
- 9. Waste-disposal installations for the incineration, chemical treatment or land fill of toxic and dangerous wastes.

ANNEX II

PROJECTS SUBJECT TO ARTICLE 4 (2)

- 1. Agriculture
 - (a) Projects for the restructuring of rural land holdings.
 - (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes.
 - (c) Water-management projects for agriculture.
 - (d) Initial afforestation where this may lead to adverse ecological changes and land reclamation for the purposes of conversion to another type of land use.
 - (e) Poultry-rearing installations.
 - (f) Pig-rearing installations.
 - (g) Salmon breeding.
 - (h) Reclamation of land from the sea.
- 2. Extractive industry
 - (a) Extraction of peat.
 - (b) Deep drillings with the exception of drillings for investigating the stability of the soil and in particular:
 - geothermal drilling,

¹ For the purposes of the Directive, 'express road' means a road which complies with the definition in the European Agreement on main international traffic arteries of 15 November 1975.

² For the purposes of this Directive, 'airport' means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

- drilling for the storage of nuclear waste material,
- drilling for water supplies.

(c) Extraction of minerals other than metalliferous and energy-producing minerals, such as marble, sand, gravel, shale, salt, phosphates and potash.

(d) Extraction of coal and lignite by underground mining.

(e) Extraction of coal and lignite by open-cast mining.

(f) Extraction of petroleum.

(g) Extraction of natural gas.

(h) Extraction of ores.

(i) Extraction of bituminous shale.

(j) Extraction of minerals other than metalliferous and energy-producing minerals by open-cast mining.

(k) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

(l) Coke ovens (dry coal distillation).

(m) Installations for the manufacture of cement.

3. Energy industry

(a) Industrial installations for the production of electricity, steam and hot water (unless included in Annex I).

(b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables.

(c) Surface storage of natural gas.

(d) Underground storage of combustible gases.

(e) Surface storage of fossil fuels.

(f) Industrial briquetting of coal and lignite.

(g) Installations for the production or enrichment of nuclear fuels.

(h) Installations for the reprocessing of irradiated nuclear fuels.

(i) Installations for the collection and processing of radioactive waste (unless included in Annex I).

(j) Installations for hydroelectric energy production.

4. Processing of metals

(a) Iron and steelworks, including foundries, forges, drawing plants and rolling mills (unless included in Annex I).

(b) Installations for the production, including smelting, refining, drawing and rolling, of nonferrous metals, excluding precious metals.

(c) Pressing, drawing and stamping of large castings.

(d) Surface treatment and coating of metals.

(e) Boilermaking, manufacture of reservoirs, tanks and other sheet-metal containers.

(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines.

(g) Shipyards.

(h) Installations for the construction and repair of aircraft.

(i) Manufacture of railway equipment.

(j) Swaging by explosives.

(k) Installations for the roasting and sintering of metallic ores.

5. Manufacture of glass

6. Chemical industry

(a) Treatment of intermediate products and production of chemicals (unless included in Annex I).

(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides.

(c) Storage facilities for petroleum, petrochemical and chemical products.

7. Food industry

(a) Manufacture of vegetable and animal oils and fats.

(b) Packing and canning of animal and vegetable products.

(c) Manufacture of dairy products.

(d) Brewing and malting.

(e) Confectionery and syrup manufacture.

(f) Installations for the slaughter of animals.

(g) Industrial starch manufacturing installations.

(h) Fish-meal and fish-oil factories.

(i) Sugar factories.

8. Textile, leather, wood and paper industries

(a) Wool scouring, degreasing and bleaching factories.

(b) Manufacture of fibre board, particle board and plywood.

(c) Manufacture of pulp, paper and board.

(d) Fibre-dyeing factories.

(e) Cellulose-processing and production installations.

(f) Tannery and leather-dressing factories.

9. Rubber industry

Manufacture and treatment of elastomer-based products.

10. Infrastructure projects

- (a) Industrial-estate development projects.
- (b) Urban-development projects.
- (c) Ski-lifts and cable-cars.
- (d) Construction of roads, harbours, including fishing harbours, and airfields (projects not listed in Annex I).
- (e) Canalization and flood-relief works.
- (f) Dams and other installations designed to hold water or store it on a long-term basis.
- (g) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport.
- (h) Oil and gas pipeline installations.
- (i) Installation of long-distance aqueducts.
- (j) Yacht marinas.

11. Other projects

- (a) Holiday villages, hotel complexes.
- (b) Permanent racing and test tracks for cars and motor cycles.
- (c) Installations for the disposal of industrial and domestic waste (unless included in Annex I).
- (d) Waste water treatment plants.
- (e) Sludge-deposition sites.
- (f) Storage of scrap iron.
- (g) Test benches for engines, turbines or reactors.
- (h) Manufacture of artificial mineral fibres.
- (i) Manufacture, packing, loading or placing in cartridges of gunpowder and explosives.
- (j) Knackers' yards.

12. Modifications to development projects included in Annex I and projects in Annex I undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than one year.

ANNEX III

INFORMATION REFERRED TO IN ARTICLE 5 (1)

1. Description of the project, including in particular:

- a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,

- a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,

- an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

2. Where appropriate, an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description¹ of the likely significant effects of the proposed project on the environment resulting from:

- the existence of the project,
- the use of natural resources,
- the emission of pollutants, the creation of nuisances and the elimination of waste;

and the description by the developer of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under the above headings.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

¹ This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.

Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment

(Official Journal L 073, 14/03/1997 P. 0005 - 0015)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s¹ thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 189c of the Treaty⁴,

(1) Whereas Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment⁵ aims at providing the competent authorities with relevant information to enable them to take a decision on a specific project in full knowledge of the project's likely significant impact on the environment; whereas the assessment procedure is a fundamental instrument of environmental policy as defined in Article 130r of the Treaty and of the Fifth Community Programme of policy and action in relation to the environment and sustainable development;

(2) Whereas, pursuant to Article 130r(2) of the Treaty, Community policy on the environment is based on the precautionary principle and on the principle that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay;

(3) Whereas the main principles of the assessment of environmental effects should be harmonized and whereas the Member States may lay down stricter rules to protect the environment;

(4) Whereas experience acquired in environmental impact assessment, as recorded in the report on

¹ OJ No C 130, 12. 5. 1994, p. 8 and OJ No C 81, 19. 3. 1996, p. 14.

² OJ No C 393, 31. 12. 1994, p. 1.

³ OJ No C 210, 14. 8. 1995, p. 78.

⁴ European Parliament Opinion of 11 October 1995 (OJ No C 287, 30. 10. 1995, p. 101), Council common position of 25 June 1996 (OJ No C 248, 26. 8. 1996, p. 75) and European Parliament Decision of 13 November 1996 (OJ No C 362, 2. 12. 1996, p. 103).

⁵ OJ No L 175, 5. 7. 1985, p. 40. Directive as last amended by the 1994 Act of Accession.

the implementation of Directive 85/337/EEC, adopted by the Commission on 2 April 1993, shows that it is necessary to introduce provisions designed to clarify, supplement and improve the rules on the assessment procedure, in order to ensure that the Directive is applied in an increasingly harmonized and efficient manner;

(5) Whereas projects for which an assessment is required should be subject to a requirement for development consent; whereas the assessment should be carried out before such consent is granted;

(6) Whereas it is appropriate to make additions to the list of projects which have significant effects on the environment and which must on that account as a rule be made subject to systematic assessment;

(7) Whereas projects of other types may not have significant effects on the environment in every case; whereas these projects should be assessed where Member States consider they are likely to have significant effects on the environment;

(8) Whereas Member States may set thresholds or criteria for the purpose of determining which such projects should be subject to assessment on the basis of the significance of their environmental effects; whereas Member States should not be required to examine projects below those thresholds or outside those criteria on a case-by-case basis;

(9) Whereas when setting such thresholds or criteria or examining projects on a case-by-case basis for the purpose of determining which projects should be subject to assessment on the basis of their significant environmental effects, Member States should take account of the relevant selection criteria set out in this Directive; whereas, in accordance with the subsidiarity principle, the Member States are in the best position to apply these criteria in specific instances;

(10) Whereas the existence of a location criterion referring to special protection areas designated by Member States pursuant to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds⁶ and 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁷ does not imply necessarily that projects in those areas are to be automatically subject to an assessment under this Directive;

(11) Whereas it is appropriate to introduce a procedure in order to enable the developer to obtain an opinion from the competent authorities on the content and extent of the information to be elaborated and supplied for the assessment; whereas Member States, in the framework of this procedure, may require the developer to provide, *inter alia*, alternatives for the projects for which it intends to submit an application;

(12) Whereas it is desirable to strengthen the provisions concerning environmental impact assessment in a transboundary context to take account of developments at international level;

(13) Whereas the Community signed the Convention on Environmental Impact Assessment in a Transboundary Context on 25 February 1991,

⁶ OJ No L 103, 25. 4. 1979, p. 1. Directive as last amended by the 1994 Act of Accession.

⁷ OJ No L 206, 22. 7. 1992, p. 7.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 85/337/EEC is hereby amended as follows:

1. Article 2(1) shall be replaced by the following:

„1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.;

2. The following paragraph shall be inserted in Article 2:

„2a. Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control⁸.

3. The first subparagraph of Article 2(3) shall read as follows:

„3. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.;

4. In Article 2(3)(c) the words „where appropriate’ shall be replaced by the words „where applicable’;

5. Article 3 shall be replaced by the following:

„Article 3

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage;
- the interaction between the factors mentioned in the first, second and third indents.;

6. Article 4 shall be replaced by the following:

„Article 4

1. Subject to Article 2(3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

- (a) a case-by-case examination,
- or

(b) thresholds or criteria set by the Member State

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.;

7. Article 5 shall be replaced by the following:

„Article 5

1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard *inter alia* to current knowledge and methods of assessment.

2. Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6(1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

- a description of the project comprising information on the site, design and size of the project,
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- the data required to identify and assess the main effects which the project is likely to have on the environment,
- an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,
- a non-technical summary of the information mentioned in the previous indents.

4. Member States shall, if necessary, ensure that any authorities holding relevant information, with

⁸ OJ No L 257, 10. 10. 1996, p. 26.;

particular reference to Article 3, shall make this information available to the developer.';

8. Article 6(1) shall be replaced by the following:

„1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.';

Article 6(2) shall be replaced by the following:

„2. Member States shall ensure that any request for development consent and any information gathered pursuant to Article 5 are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted.';

9. Article 7 shall be replaced by the following:

„Article 7

1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, *inter alia*:

(a) a description of the project, together with any available information on its possible transboundary impact;

(b) information on the nature of the decision which may be taken,

and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the Environmental Impact Assessment procedure, and may include the information referred to in paragraph 2.

2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the Environmental Impact Assessment procedure, the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information gathered pursuant to Article 5 and relevant information regarding the said procedure, including the request for development consent.

3. The Member States concerned, each insofar as it is concerned, shall also:

(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6(1) and the public concerned in the territory of the Member State likely to be significantly affected; and

(b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project

is intended to be carried out.

4. The Member States concerned shall enter into consultations regarding, *inter alia*, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.

5. The detailed arrangements for implementing the provisions of this Article may be determined by the Member States concerned.';

10. Article 8 shall be replaced by the following:

„Article 8

The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.';

11. Article 9 shall be replaced by the following:

„Article 9

1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

- the content of the decision and any conditions attached thereto,

- the main reasons and considerations on which the decision is based,

- a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1.';

12. Article 10 shall be replaced by the following:

„Article 10

The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.';

13. Article 11(2) shall be replaced by the following:

„2. In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4(2).';

14. Article 13 shall be deleted;

15. Annexes I, II and III shall be replaced by Annexes I, II, III and IV as they appear in the Annex.

Article 2

Five years after the entry into force of this Directive, the Commission shall send the European Parliament and the Council a report on the application and effectiveness of Directive 85/337/EEC as amended by this Directive. The report shall be based on the exchange of information provided for by Article 11(1) and (2).

On the basis of this report, the Commission shall, where appropriate, submit to the Council additional proposals with a view to ensuring further coordination in the application of this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 March 1999 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. If a request for development consent is submitted to a competent authority before the end of the time limit laid down in paragraph 1, the provisions of Directive 85/337/EEC prior to these amendments shall continue to apply.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 3 March 1997.

For the Council

The President

M. DE BOER

ANNEX I**PROJECTS SUBJECT TO ARTICLE 4(1)**

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2. - Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and

- nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors* (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3. (a) Installations for the reprocessing of irradiated nuclear fuel.

(b) Installations designed:

- for the production or enrichment of nuclear fuel,

- for the processing of irradiated nuclear fuel or high-level radioactive waste,

- for the final disposal of irradiated nuclear fuel,

- solely for the final disposal of radioactive waste,

- solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4. - Integrated works for the initial smelting of cast-iron and steel;

- Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.

6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:

(i) for the production of basic organic chemicals;

(ii) for the production of basic inorganic chemicals;

(iii) for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);

* Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

- (iv) for the production of basic plant health products and of biocides;
 - (v) for the production of basic pharmaceutical products using a chemical or biological process;
 - (vi) for the production of explosives.
7. (a) Construction of lines for long-distance railway traffic and of airports¹ with a basic runway length of 2 100 m or more;
- (b) Construction of motorways and express roads²;
- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length.
8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;
- (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.
9. Waste disposal installations for the incineration, chemical treatment as defined in Annex IIA to Directive 75/442/EEC³ under heading D9, or landfill of hazardous waste (i.e. waste to which Directive 91/689/EEC⁴ applies).
10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.
11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
12. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;
- (b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 % of this flow.
- In both cases transfers of piped drinking water are excluded.
13. Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC⁵.

¹ For the purposes of this Directive, 'airport' means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

² For the purposes of the Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

³ OJ No L 194, 25. 7. 1975, p. 39. Directive as last amended by Commission Decision 94/3/EC (OJ No L 5, 7. 1. 1994, p. 15).

⁴ OJ No L 377, 31. 12. 1991, p. 20. Directive as last amended by Directive 94/31/EC (OJ No L 168, 2. 7. 1994, p. 28).

⁵ OJ No L 135, 30. 5. 1991, p. 40. Directive as last amended by the 1994 Act of Accession.

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 m³/day in the case of gas.
15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
16. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.
17. Installations for the intensive rearing of poultry or pigs with more than:
- (a) 85 000 places for broilers, 60 000 places for hens;
 - (b) 3 000 places for production pigs (over 30 kg); or
 - (c) 900 places for sows.
18. Industrial plants for the
- (a) production of pulp from timber or similar fibrous materials;
 - (b) production of paper and board with a production capacity exceeding 200 tonnes per day.
19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.

ANNEX II

PROJECTS SUBJECT TO ARTICLE 4(2)

1. Agriculture, silviculture and aquaculture
- (a) Projects for the restructuring of rural land holdings;
 - (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
 - (c) Water management projects for agriculture, including irrigation and land drainage projects;
 - (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;
 - (e) Intensive livestock installations (projects not included in Annex I);
 - (f) Intensive fish farming;
 - (g) Reclamation of land from the sea.
2. Extractive industry
- (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);
 - (b) Underground mining;

(c) Extraction of minerals by marine or fluvial dredging;

(d) Deep drillings, in particular:

- geothermal drilling,

- drilling for the storage of nuclear waste material,

- drilling for water supplies,

with the exception of drillings for investigating the stability of the soil;

(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

3. Energy industry

(a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);

(b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);

(c) Surface storage of natural gas;

(d) Underground storage of combustible gases;

(e) Surface storage of fossil fuels;

(f) Industrial briquetting of coal and lignite;

(g) Installations for the processing and storage of radioactive waste (unless included in Annex I);

(h) Installations for hydroelectric energy production;

(i) Installations for the harnessing of wind power for energy production (wind farms).

4. Production and processing of metals

(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;

(b) Installations for the processing of ferrous metals:

(i) hot-rolling mills;

(ii) smitheries with hammers;

(iii) application of protective fused metal coats;

(c) Ferrous metal foundries;

(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);

(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;

(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;

(g) Shipyards;

(h) Installations for the construction and repair of aircraft;

(i) Manufacture of railway equipment;

(j) Swaging by explosives;

(k) Installations for the roasting and sintering of metallic ores.

5. Mineral industry

(a) Coke ovens (dry coal distillation);

(b) Installations for the manufacture of cement;

(c) Installations for the production of asbestos and the manufacture of asbestos-products (projects not included in Annex I);

(d) Installations for the manufacture of glass including glass fibre;

(e) Installations for smelting mineral substances including the production of mineral fibres;

(f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

6. Chemical industry (Projects not included in Annex I)

(a) Treatment of intermediate products and production of chemicals;

(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;

(c) Storage facilities for petroleum, petrochemical and chemical products.

7. Food industry

(a) Manufacture of vegetable and animal oils and fats;

(b) Packing and canning of animal and vegetable products;

(c) Manufacture of dairy products;

(d) Brewing and malting;

(e) Confectionery and syrup manufacture;

(f) Installations for the slaughter of animals;

(g) Industrial starch manufacturing installations;

(h) Fish-meal and fish-oil factories;

(i) Sugar factories.

8. Textile, leather, wood and paper industries

(a) Industrial plants for the production of paper and board (projects not included in Annex I);

(b) Plants for the pretreatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles;

(c) Plants for the tanning of hides and skins;

(d) Cellulose-processing and production installations.

9. Rubber industry

Manufacture and treatment of elastomer-based products.

10. Infrastructure projects

- (a) Industrial estate development projects;
- (b) Urban development projects, including the construction of shopping centres and car parks;
- (c) Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I);
- (d) Construction of airfields (projects not included in Annex I);
- (e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
- (f) Inland-waterway construction not included in Annex I, canalization and flood-relief works;
- (g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);
- (h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
- (i) Oil and gas pipeline installations (projects not included in Annex I);
- (j) Installations of long-distance aqueducts;
- (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;
- (m) Works for the transfer of water resources between river basins not included in Annex I.

11. Other projects

- (a) Permanent racing and test tracks for motorized vehicles;
- (b) Installations for the disposal of waste (projects not included in Annex I);
- (c) Waste-water treatment plants (projects not included in Annex I);
- (d) Sludge-deposition sites;
- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;
- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.

12. Tourism and leisure

- (a) Ski-runs, ski-lifts and cable-cars and associated developments;

- (b) Marinas;

- (c) Holiday villages and hotel complexes outside urban areas and associated developments;

- (d) Permanent camp sites and caravan sites;

- (e) Theme parks.

13. - Any change or extension of projects listed in Annex I or Annex II, already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment;

- Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

ANNEX III**SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3)**

1. Characteristics of projects

The characteristics of projects must be considered having regard, in particular, to:

- the size of the project,
- the cumulation with other projects,
- the use of natural resources,
- the production of waste,
- pollution and nuisances,
- the risk of accidents, having regard in particular to substances or technologies used.

2. Location of projects

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:

- the existing land use,
- the relative abundance, quality and regenerative capacity of natural resources in the area,
- the absorption capacity of the natural environment, paying particular attention to the following areas:

- (a) wetlands;

- (b) coastal zones;

- (c) mountain and forest areas;

- (d) nature reserves and parks;

- (e) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Directive 79/409/EEC and 92/43/EEC;

- (f) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;

(g) densely populated areas;

(h) landscapes of historical, cultural or archaeological significance.

3. Characteristics of the potential impact

The potential significant effects of projects must be considered in relation to criteria set out under 1 and 2 above, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population),
- the transfrontier nature of the impact,
- the magnitude and complexity of the impact,
- the probability of the impact,
- the duration, frequency and reversibility of the impact.

ANNEX IV INFORMATION REFERRED TO IN ARTICLE 5(1)

1. Description of the project, including in particular:

- a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,
- a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,
- an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description¹ of the likely significant effects of the proposed project on the environment resulting from:

- the existence of the project,
- the use of natural resources,
- the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the developer of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under the above headings.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

(Official Journal L 156 , 25/06/2003 P. 0017 - 0025)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴, in the light of the joint text approved by the Conciliation Committee on 15 January 2003,

Whereas:

(1) Community legislation in the field of the environment aims to contribute to preserving, protecting and improving the quality of the environment and protecting human health.

(2) Community environmental legislation includes provisions for public authorities and other bodies to take decisions which may have a significant effect on the environment as well as on personal health and well-being.

(3) Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.

(4) Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered,

¹ OJ C 154 E, 29.5.2001, p. 123.

² OJ C 221, 7.8.2001, p. 65.

³ OJ C 357, 14.12.2001, p. 58.

⁴ Opinion of the European Parliament of 23 October 2001 (OJ C 112, 9.5.2002, p. 125 (E)), Council Common Position of 25 April 2002 (OJ C 170 E, 16.7.2002, p. 22) and Decision of the European Parliament of 5 September 2002 (not yet published in the Official Journal). Decision of the European Parliament of 30 January 2003 and Decision of the Council of 4 March 2003.

including *inter alia* by promoting environmental education of the public.

(5) On 25 June 1998 the Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Århus Convention). Community law should be properly aligned with that Convention with a view to its ratification by the Community.

(6) Among the objectives of the Århus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

(7) Article 6 of the Århus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not so listed which may have a significant effect on the environment.

(8) Article 7 of the Århus Convention provides for public participation concerning plans and programmes relating to the environment.

(9) Article 9(2) and (4) of the Århus Convention provides for access to judicial or other procedures for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of the Convention.

(10) Provision should be made in respect of certain Directives in the environmental area which require Member States to produce plans and programmes relating to the environment but which do not contain sufficient provisions on public participation, so as to ensure public participation consistent with the provisions of the Århus Convention, in particular Article 7 thereof. Other relevant Community legislation already provides for public participation in the preparation of plans and programmes and, for the future, public participation requirements in line with the Århus Convention will be incorporated into the relevant legislation from the outset.

(11) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment⁵, and Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control⁶ should be amended to ensure that they are fully compatible with the provisions of the Århus Convention, in particular Article 6 and Article 9(2) and (4) thereof.

(12) Since the objective of the proposed action, namely to contribute to the implementation of the obligations arising under the Århus Convention, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

⁵ OJ L 175, 5.7.1985, p. 40. Directive as amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5).

⁶ OJ L 257, 10.10.1996, p. 26.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective

The objective of this Directive is to contribute to the implementation of the obligations arising under the Århus Convention, in particular by:

- (a) providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment;
- (b) improving the public participation and providing for provisions on access to justice within Council Directives 85/337/EEC and 96/61/EC.

Article 2

Public participation concerning plans and programmes

1. For the purposes of this Article, „the public“ shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

2. Member States shall ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under the provisions listed in Annex I.

To that end, Member States shall ensure that:

(a) the public is informed, whether by public notices or other appropriate means such as electronic media where available, about any proposals for such plans or programmes or for their modification or review and that relevant information about such proposals is made available to the public including *inter alia* information about the right to participate in decision-making and about the competent authority to which comments or questions may be submitted;

(b) the public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made;

(c) in making those decisions, due account shall be taken of the results of the public participation;

(d) having examined the comments and opinions expressed by the public, the competent authority makes reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process.

3. Member States shall identify the public entitled to participate for the purposes of paragraph 2, including relevant non-governmental organisations meeting any requirements imposed under national law, such as those promoting environmental protection.

The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public to prepare and participate effectively.

Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of

public participation required by this Article.

4. This Article shall not apply to plans and programmes designed for the sole purpose of serving national defence or taken in case of civil emergencies.

5. This Article shall not apply to plans and programmes set out in Annex I for which a public participation procedure is carried out under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment⁷ or under Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy⁸.

Article 3

Amendment of Directive 85/337/EEC

Directive 85/337/EEC is hereby amended as follows:

1. in Article 1(2), the following definitions shall be added:

„‘the public’ means: one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

‘the public concerned’ means: the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;“

2. in Article 1, paragraph 4 shall be replaced by the following:

„4. Member States may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects serving national defence purposes, if they deem that such application would have an adverse effect on these purposes.“;

3. in Article 2(3), points (a) and (b) shall be replaced by the following:

„(a) consider whether another form of assessment would be appropriate;

(b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it.“;

4. in Article 6, paragraphs 2 and 3 shall be replaced by the following paragraphs:

„2. The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

(a) the request for development consent;

⁷ OJ L 197, 21.7.2001, p. 30.

⁸ OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

(d) the nature of possible decisions or, where there is one, the draft decision;

(e) an indication of the availability of the information gathered pursuant to Article 5;

(f) an indication of the times and places where and means by which the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

(a) any information gathered pursuant to Article 5;

(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information⁹, information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States.

6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article."

5. Article 7 shall be amended as follows:

(a) paragraphs 1 and 2 shall be replaced by the following:

„1. Where a Member State is aware that a project is likely to have significant effects on the envi-

ronment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, *inter alia*:

(a) a description of the project, together with any available information on its possible transboundary impact;

(b) information on the nature of the decision which may be taken, and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to Article 6(3)(a) and (b)."

(b) paragraph 5 shall be replaced by the following:

„5. The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project."

6. Article 9 shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

„1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

- the content of the decision and any conditions attached thereto,

- having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process,

- a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects."

(b) Paragraph 2 shall be replaced by the following:

„2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.

The consulted Member States shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory."

⁹ OJ L 41, 14.2.2003, p. 26.

7. the following Article shall be inserted:

„Article 10a

Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively,

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

Member States shall determine at what stage the decisions, acts or omissions may be challenged.

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

In order to further the effectiveness of the provisions of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.”;

8. in Annex I, the following point shall be added:

„22. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.”;

9. in Annex II, No 13, first indent, the following shall be added at the end:

„(change or extension not included in Annex I)”.

Article 4

Amendment of Directive 96/61/EC

Directive 96/61/EC is hereby amended as follows:

1. Article 2 shall be amended as follows:

(a) the following sentence shall be added to point 10(b):

„For the purposes of this definition, any change to or extension of an operation shall be deemed to be substantial if the change or extension in itself meets the thresholds, if any, set out in Annex I.”;

(b) the following points shall be added:

„13. „the public’ shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

14. „the public concerned’ shall mean the public affected or likely to be affected by, or having an interest in, the taking of a decision on the issuing or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;”

2. in Article 6(1), first subparagraph, the following indent shall be added:

„- the main alternatives, if any, studied by the applicant in outline.”

3. Article 15 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

„1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the procedure for:

- issuing a permit for new installations,

- issuing a permit for any substantial change in the operation of an installation,

- updating of a permit or permit conditions for an installation in accordance with Article 13, paragraph 2, first indent.

The procedure set out in Annex V shall apply for the purposes of such participation.”;

(b) the following paragraph shall be added:

„5. When a decision has been taken, the competent authority shall inform the public in accordance with the appropriate procedures and shall make available to the public the following information:

(a) the content of the decision, including a copy of the permit and of any conditions and any subsequent updates; and

(b) having examined the concerns and opinions expressed by the public concerned, the reasons and considerations on which the decision is based, including information on the public participation process.”;

4. the following Article shall be inserted:

„Article 15a

Access to justice

Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively,

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

Member States shall determine at what stage the decisions, acts or omissions may be challenged.

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(14) shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.”;

5. Article 17 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

„1. Where a Member State is aware that the operation of an installation is likely to have significant negative effects on the environment of another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 12(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex V at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between the two Member States on a reciprocal and equivalent basis.”;

(b) the following paragraphs shall be added:

„3. The results of any consultations pursuant to paragraphs 1 and 2 must be taken into consideration when the competent authority reaches a decision on the application.

4. The competent authority shall inform any Member State, which has been consulted pursuant to paragraph 1, of the decision reached on the application and shall forward to it the information referred to in Article 15(5). That Member State shall take the measures necessary to ensure that that information is made available in an appropriate manner to the public concerned in its own territory.”;

6. an Annex V shall be added, as set out in Annex II to this Directive.

Article 5 **Reporting and review**

By 25 June 2009, the Commission shall send a report on the application and effectiveness of this Directive to the European Parliament and to the Council. With a view to further integrating environ-

mental protection requirements, in accordance with Article 6 of the Treaty, and taking into account the experience acquired in the application of this Directive in the Member States, such a report will be accompanied by proposals for amendment of this Directive, if appropriate. In particular, the Commission will consider the possibility of extending the scope of this Directive to other plans and programmes relating to the environment.

Article 6 **Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 25 June 2005 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 7 **Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 8 **Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 26 May 2003.

For the European Parliament

The President

P. Cox

For the Council

The President

G. Drys

ANNEX I**PROVISIONS FOR PLANS AND PROGRAMMES REFERRED TO IN ARTICLE 2**

- (a) Article 7¹ of Council Directive 75/442/EEC of 15 July 1975 on waste¹.
- (b) Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances².
- (c) Article 5¹ of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources³.
- (d) Article 6¹ of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste⁴.
- (e) Article 14 of Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste⁵.
- (f) Article 8³ of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management⁶.

ANNEX II

In Directive 96/61/EC, the following Annex shall be added:

„ANNEX V

Public participation in decision-making

1. The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided:
 - (a) the application for a permit or, as the case may be, the proposal for the updating of a permit or of permit conditions in accordance with Article 15(1), including the description of the elements listed in Article 6(1);
 - (b) where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 17;
 - (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
 - (d) the nature of possible decisions or, where there is one, the draft decision;

¹ OJ L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

² OJ L 78, 26.3.1991, p. 38. Directive as last amended by Commission Directive 98/101/EC (OJ L 1, 5.1.1999, p. 1).

³ OJ L 375, 31.12.1991, p. 1.

⁴ OJ L 377, 31.12.1991, p. 20. Directive as last amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

⁵ OJ L 365, 31.12.1994, p. 10.

⁶ OJ L 296, 21.11.1996, p. 55.

(e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;

(f) an indication of the times and places where, or means by which, the relevant information will be made available;

(g) details of the arrangements for public participation and consultation made pursuant to point 5.

2. Member States shall ensure that, within appropriate time-frames, the following is made available to the public concerned:

(a) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned were informed in accordance with point 1;

(b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information¹, information other than that referred to in point 1 which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with point 1.

3. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.

4. The results of the consultations held pursuant to this Annex must be taken into due account in the taking of a decision.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Annex.

¹ OJ L 41, 14.2.2003, p. 26."

Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC

(Official Journal L 121 , 11/05/1999 P. 0013 - 0018)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s¹ thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 189c of the Treaty³,

(1) Whereas the objectives and principles of the Community's environmental policy as set out in the action programmes on the environment and in particular the Fifth Environmental Action Programme⁴ on the basis of principles enshrined in Article 130r of the Treaty, aim in particular to ensure the effective protection of all people from the recognised risks from sulphur dioxide emissions and to protect the environment by preventing sulphur deposition exceeding critical loads and levels;

(2) Whereas Article 129 of the Treaty provides that health protection requirements are to form a constituent part of the Community's other policies; whereas Article 3(o) of the Treaty also provides that the activities of the Community should include a contribution to the attainment of a high level of health protection;

(3) Whereas emissions of sulphur dioxide contribute significantly to the problem of acidification in the Community; whereas sulphur dioxide also has a direct effect on human health and on the environment;

(4) Whereas acidification and atmospheric sulphur dioxide damage sensitive ecosystems, reduce biodiversity and reduce amenity value as well as detrimentally affecting crop production and the growth of forests; whereas acid rain falling in cities may cause significant damage to buildings and the architectural heritage; whereas sulphur dioxide pollution may also have a significant effect upon human health, particularly among those sectors of the population suffering from respiratory diseases;

(5) Whereas acidification is a transboundary phenomenon requiring Community as well as national or local solutions;

¹ OJ C 190, 21.6.1997, p. 9, and OJ C 259, 18.8.1998, p. 5.

² OJ C 355, 21.11.1997, p. 1.

³ Opinion of the European Parliament of 13 May 1998 (OJ C 167, 1.6.1998, p. 111), Council Common Position of 6 October 1998 (OJ C 364, 25.11.1998, p. 20) and Decision of the European Parliament of 9 February 1999 (not yet published in the Official Journal).

⁴ OJ C 138, 17.5.1993, p. 5.

(6) Whereas emissions of sulphur dioxide contribute to the formation of particulate matter in the atmosphere;

(7) Whereas the Community and the individual Member States are Contracting Parties to the UN-ECE Convention on Long-Range Transboundary Air Pollution; whereas the second UN-ECE Protocol on transboundary pollution by sulphur dioxide foresees that the Contracting Parties should reduce sulphur dioxide emissions in line with or beyond the 30 % reduction specified in the first Protocol and whereas the second UN-ECE Protocol is based on the premise that critical loads and levels will continue to be exceeded in some sensitive areas; whereas further measures to reduce sulphur dioxide emissions will still be required if the objectives in the Fifth Environmental Action Programme are to be respected; whereas the Contracting Parties should therefore make further significant reductions in emissions of sulphur dioxide;

(8) Whereas sulphur which is naturally present in small quantities in oil and coal has for decades been recognised as the dominant source of sulphur dioxide emissions which are one of the main causes of „acid rain“ and one of the major causes of the air pollution experienced in many urban and industrial areas;

(9) Whereas the Commission has recently published a communication on a cost-effective strategy to combat acidification in the Community; whereas the control of sulphur dioxide emissions originating from the combustion of certain liquid fuels was identified as being an integral component of this cost-effective strategy; whereas the Community recognises the need for measures regarding all other fuels;

(10) Whereas studies have shown that benefits from reducing sulphur emissions by reductions in the sulphur content of fuels will often be considerably greater than the estimated costs to industry in this Directive and whereas the technology exists and is well established for reducing the sulphur level of liquid fuels;

(11) Whereas, in conformity with the principle of subsidiarity and the principle of proportionality referred to in Article 3b of the Treaty, the objective of reducing the emissions of sulphur dioxide arising from the combustion of certain types of liquid fuels cannot be achieved effectively by Member States acting individually; whereas uncoordinated action offers no guarantee of achieving the desired objective, is potentially counterproductive and will result in considerable uncertainty in the market for the fuel products affected; whereas, in view of the need to reduce sulphur dioxide emissions across the Community, it is therefore more effective to take action at the level of the Community; whereas this Directive limits itself to the minimum requirements necessary to achieve the desired objective;

(12) Whereas in Council Directive 93/12/EEC of 23 March 1993 relating to the sulphur content of certain liquid fuels⁵ the Commission was asked to submit to the Council a proposal prescribing lower limits for the sulphur content in gas oil and new limits for aviation kerosene; whereas it would be appropriate to lay down limits for the sulphur content of other liquid fuels, in particular heavy fuel oils, bunker fuel oils, marine gas oils and gas oils, on the basis of cost effectiveness studies;

⁵ OJ L 74, 27.3.1993, p. 81.

(13) Whereas, in accordance with Article 130t of the Treaty, this Directive should not prevent any Member State from maintaining or introducing more stringent protective measures; whereas such measures must be compatible with the Treaty and should be notified to the Commission;

(14) Whereas a Member State, before introducing new, more stringent protective measures, should notify the draft measures to the Commission in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁶;

(15) Whereas, with regard to the limit on the sulphur content of heavy fuel oil, it is appropriate to provide for derogations in Member States and regions where the environmental conditions allow;

(16) Whereas, with regard to the limit on the sulphur content of heavy fuel oil, it is also appropriate to provide for derogations for their use in combustion plants which comply with the emission limit values laid down in Council Directive 88/609/EEC of 24 November 1988⁷ on the limitation of emissions of certain pollutants into the air from large combustion plants; whereas in the light of the forthcoming revision of Directive 88/609/EEC, it may be necessary to review and, if appropriate, to revise certain provisions of this Directive;

(17) Whereas for refinery combustion plants excluded from the scope of Article 3(3)(i)(c) of this Directive the emissions of sulphur dioxide averaged over such plants should not exceed the limits set out in Directive 88/609/EEC or any future revision of that Directive; whereas, in the application of this Directive, Member States should bear in mind that substitution by fuels other than those pursuant to Article 2 should not produce an increase in emissions of acidifying pollutants;

(18) Whereas a limit value of 0,2 % for the sulphur content of gas oils has already been established pursuant to Directive 93/12/EEC; whereas that limit value should be changed to 0,1 % until 1 January 2008;

(19) Whereas, in accordance with the 1994 Act of Accession, Austria and Finland have a derogation for a period of four years from the date of accession regarding the provisions in Directive 93/12/EEC concerning the sulphur content of gas oil;

(20) Whereas the limit values of 0,2 % (from the year 2000) and of 0,1 % (from the year 2008) for the sulphur content of gas oils intended for marine use in sea-going ships may present technical and economic problems for Greece throughout its territory, for Spain with regard to the Canary Islands, for France with regard to the French Overseas Departments, and for Portugal with regard to the archipelagoes of Madeira and Azores; whereas a derogation for Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores should not have a negative effect upon the market in gas oil intended for marine use and given that exports of gas oil for marine use from Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores to other Member States should satisfy the requirements in force in the importing Member State; whereas Greece, the Canary Islands, the French Overseas Departments and

⁶ OJ L 109, 26.4.1983, p. 8. Directive as last amended by Commission Decision 96/139/EC (OJ L 32, 10.2.1996, p. 31).

⁷ OJ L 336, 7.12.1988, p. 1. Directive as last amended by Directive 94/66/EC (OJ L 337, 24.12.1994, p. 83).

the Archipelagoes of Madeira and Azores should therefore be afforded a derogation from the limit values of sulphur by weight for gas oil used for marine purposes;

(21) Whereas sulphur emissions from shipping due to the combustion of bunker fuels with a high sulphur content contribute to sulphur dioxide pollution and problems of acidification; whereas the Community will be advocating more effective protection of areas sensitive to SOx emissions and a reduction in the normal limit value for bunker fuel oil (from the present 4,5 %) at the continuing and future negotiations on the MARPOL Convention within the International Maritime Organisation (IMO); whereas the Community initiatives to have the North Sea/Channel declared a special low SOx emission control area should be continued;

(22) Whereas more profound research into the effects of acidification on ecosystems and the human body is needed; whereas the Community is assisting such research under the Fifth Framework Research Programme⁸;

(23) Whereas in the case of a disruption in the supply of crude oil, petroleum products or other hydrocarbons, the Commission may authorise application of a higher limit within a Member State's territory;

(24) Whereas Member States should establish the appropriate mechanisms for monitoring compliance with the provisions of this Directive; whereas reports on the sulphur content of liquid fuels should be submitted to the Commission;

(25) Whereas, for reasons of clarity, it will be necessary to amend Directive 93/12/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1 **Purpose and scope**

1. The purpose of this Directive is to reduce the emissions of sulphur dioxide resulting from the combustion of certain types of liquid fuels and thereby to reduce the harmful effects of such emissions on man and the environment.

2. Reductions in the emissions of sulphur dioxide resulting from the combustion of certain petroleum-derived liquid fuels shall be achieved by imposing limits on the sulphur content of such fuels as a condition for their use within the territory of the Member States.

The limitations on the sulphur content of certain petroleum-derived liquid fuels as laid down in this Directive shall not, however, apply to:

- (a) - petroleum derived liquid fuels used by seagoing ships, except those fuels falling within the definition in Article 2(3),
- marine gas oil used by ships crossing a frontier between a third country and a Member State;

⁸ OJ L 26, 1.2.1999, p. 1.

- (b) fuels intended for processing prior to final combustion;
- (c) fuels to be processed in the refining industry.

Article 2

Definitions

For the purpose of this Directive:

1. heavy fuel oil means:

- any petroleum-derived liquid fuel falling within CN code 2710 00 71 to 2710 00 78, or
- any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;

2. gas oil means:

- any petroleum-derived liquid fuel falling within CN code 2710 00 67 or 2710 00 68, or
- any petroleum-derived liquid fuel which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method.

Diesel fuels as defined in Article 2(2) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC⁹ are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition;

3. marine gas oil means fuels intended for marine use which meet the definition in point 2 or which have a viscosity or density falling within the ranges of viscosity or density defined for marine distillates in Table I of ISO 8217 (1996);

4. ASTM method means the methods laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products;

5. combustion plant means any technical apparatus in which fuels are oxidised in order to use the heat generated;

6. critical load means a quantitative estimate of exposure to one or more pollutants below which significant harmful effects on sensitive elements of the environment do not occur according to current knowledge.

⁹ OJ L 350, 28.12.1998, p. 58.

Article 3

Maximum sulphur content of heavy fuel oil

1. Member States shall take all necessary steps to ensure that as from 1 January 2003 within their territory heavy fuel oils are not used if their sulphur content exceeds 1,00 % by mass.

2. Provided that the air quality standards for sulphur dioxide laid down in Directive 80/779/EEC¹⁰ or in any Community legislation which repeals and replaces these standards and other relevant Community provisions are respected and the emissions do not contribute to critical loads being exceeded in any Member State, a Member State may authorise heavy fuel oils with a sulphur content of between 1,00 and 3,00 % by mass to be used in part or the whole of its territory. Such authorisation shall apply only while emissions from a Member State do not contribute to critical loads being exceeded in any Member State.

3. (i) Subject to appropriate monitoring of emissions by competent authorities paragraphs 1 and 2 shall not apply to heavy fuel oils used:

(a) in combustion plants which fall within the scope of Directive 88/609/EEC, which are considered new plants in accordance with the definition given in Article 2(9) of that Directive and which comply with the sulphur dioxide emission limits for such plants set out in Article 4 of and Annex IV to that Directive;

(b) in other combustion plants, which do not fall under the scope of (a), where the emissions of sulphur dioxide from the plant are less than or equal to 1700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis;

(c) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all plants in the refinery (excluding combustion plants which fall under the scope of (a)), irrespective of the type of fuel or fuel combination used, are within a limit to be set by each Member State, which shall not exceed 1700 mg/Nm³.

(ii) Member States shall take the necessary measures to ensure that any combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 shall not be operated without a permit issued by a competent authority, which specifies the emission limits.

4. The provisions of paragraph 3 shall be reviewed and, if appropriate, revised in the light of any future revision of Directive 88/609/EEC.

5. If a Member State avails itself of the possibilities referred to in paragraph 2, it shall, at least 12 months beforehand, inform the Commission and the public. The Commission shall be given sufficient information to assess whether the criteria mentioned in paragraph 2 are met. The Commission shall inform the other Member States.

Within six months of the date on which it receives the information from the Member State, the Commission shall examine the measures envisaged and, in accordance with the procedure set out

¹⁰ OJ L 229, 30.8.1980, p. 30. Directive as last amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

in Article 9, take a decision which it shall communicate to the Member States. This decision shall be reviewed every eight years on the basis of information to be provided to the Commission by the Member States concerned in accordance with the procedure set out in Article 9.

Article 4

Maximum sulphur content in gas oil

1. Member States shall take all necessary steps to ensure that gas oils, including marine gas oils, are not used within their territory as from:

- July 2000 if their sulphur content exceeds 0,20 % by mass,
- 1 January 2008 if their sulphur content exceeds 0,10 % by mass.

2. By way of derogation from paragraph 1, Spain, for the Canary Islands, France, for the French Overseas Departments, Greece, for the whole or part of its territory, and Portugal, for the archipelagoes of Madeira and Azores may authorise the use of gas oils for marine use with a sulphur content in excess of the limits set out in paragraph 1.

3. Provided that the air quality standards for sulphur dioxide laid down in Directive 80/779/EEC or in any Community legislation which repeals and replaces these standards and other relevant Community provisions are respected and the emissions do not contribute to critical loads being exceeded in any Member State, a Member State may authorise gas oil with a sulphur content between 0,10 and 0,20 % by mass to be used in part or the whole of its territory. Such authorisation shall apply only while emissions from a Member State do not contribute to critical loads being exceeded in any Member State and shall not extend beyond 1 January 2013.

4. If a Member State avails itself of the possibilities referred to in paragraph 3, it shall, at least 12 months beforehand, inform the Commission and the public. The Commission shall be given sufficient information to assess whether the criteria mentioned in paragraph 3 are met. The Commission shall inform the other Member States.

Within six months of the date on which it receives the information from the Member State, the Commission shall examine the measures envisaged and, in accordance with the procedure set out in Article 9, take a decision which it shall communicate to the Member States.

Article 5

Change in the supply of fuels

If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a Member State to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that Member State shall inform the Commission thereof. The Commission may authorise a higher limit to be applicable within the territory of that Member State for a period not exceeding six months; it shall notify its decision to the Council and the Member States. Any Member State may refer that decision to the Council within one month. The Council, acting by

a qualified majority, may adopt a different decision within two months.

Article 6

Sampling and analysis

1. Member States shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 and 4. The sampling shall commence within six months of the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out with sufficient frequency and in such a way that the samples are representative of the fuel examined.

2. The reference method adopted for determining the sulphur content shall be that defined by:

(a) ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and marine gas oil;

(b) EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil.

The arbitration method will be PrEN ISO 14596. The statistical interpretation of the verification of the sulphur content of the gas oils used shall be carried out in accordance with ISO standard 4259 (1992).

Article 7

Reporting and review

1. On the basis of the results of the sampling and analysis carried out in accordance with Article 6, Member States shall by 30 June of each year supply the Commission with a short report on the sulphur content of the liquid fuels falling within the scope of this Directive and used within their territory during the preceding calendar year. This report shall include a summary of derogations granted pursuant to Article 3(3).

2. On the basis *inter alia* of the annual reports submitted in accordance with paragraph 1 and the observed trends in air quality and acidification, the Commission shall, by 31 December 2006, submit a report to the European Parliament and to the Council. The Commission may submit with its report proposals aimed at revising this Directive and in particular the limit values laid down for each fuel category and the exceptions and derogations provided for in Article 3(3) and (3), and Article 4(2) and (3).

3. The Commission shall consider which measures could be taken to reduce the contribution to acidification of the combustion of marine fuels other than those specified in Article 2(2) and, if appropriate, make a proposal by the end of 2000.

Article 8**Amendments to Directive 93/12/EEC**

1. Directive 93/12/EEC is amended as follows:

- (a) in Article 1, paragraph 1(a) and paragraph 2 are deleted;
- (b) in Article 2, the first subparagraph of paragraph 2 and paragraph 3 are deleted;
- (c) Articles 3 and 4 are deleted.

2. Paragraph 1 shall apply as from 1 July 2000.

Article 9**Advisory Committee**

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 10**Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 2000. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 11**Penalties**

Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties determined must be effective, proportionate and dissuasive.

Article 12**Entry into force**

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

Article 13**Addressees**

This Directive is addressed to the Member States.

Done at Luxembourg, 26 April 1999.

For the Council

The President

J. FISCHER

Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants

(Official Journal L 309 , 27/11/2001 P. 0001 - 0021)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the Economic and Social Committee²,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³, in the light of the joint text approved by the Conciliation Committee on 2 August 2001,

Whereas:

(1) Council Directive 88/609/EEC of 24 November 1988 on the limitation of emissions of certain pollutants into the air from large combustion plants⁴ has contributed to the reduction and control of atmospheric emissions from large combustion plants. It should be recast in the interests of clarity.

(2) The Fifth Environmental Action Programme⁵ sets as objectives that the critical loads and levels of certain acidifying pollutants such as sulphur dioxide (SO₂) and nitrogen oxides (NO_x) should not be exceeded at any time and, as regards air quality, that all people should be effectively protected against recognised health risks from air pollution.

(3) All Member States have signed the Gothenburg Protocol of 1 December 1999 to the 1979 Convention of the United Nations Economic Commission for Europe (UNECE) on long-range transboundary air pollution to abate acidification, eutrophication and ground-level ozone, which includes, *inter alia*, commitments to reduce emissions of sulphur dioxide and oxides of nitrogen.

(4) The Commission has published a Communication on a Community strategy to combat acidifica-

¹ OJ C 300, 29.9.1998, p. 6, OJ C 212 E, 25.7.2000, p. 36.

² OJ C 101, 12.4.1999, p. 55.

³ Opinion of the European Parliament of 14 April 1999 (OJ C 219, 30.7.1999, p. 175), Council Common Position of 9 November 2000 (OJ C 375, 28.12.2000, p. 12) and Decision of the European Parliament of 14 March 2001 (not yet published in the Official Journal). Decision of the European Parliament of 20 September 2001 and Decision of the Council of 27 September 2001..

⁴ OJ L 336, 7.12.1988, p. 1. Directive as last amended by Council Directive 94/66/EC (OJ L 337, 24.12.1994, p. 83).

⁵ OJ C 138, 17.5.1993, p. 1.

tion in which the revision of Directive 88/609/EEC was identified as being an integral component of that strategy with the long term aim of reducing emissions of sulphur dioxide and nitrogen oxides sufficiently to bring depositions and concentrations down to levels below the critical loads and levels.

(5) In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, the objective of reducing acidifying emissions from large combustion plants cannot be sufficiently achieved by the Member States acting individually and uncoordinated action offers no guarantee of achieving the desired objective; in view of the need to reduce acidifying emissions across the Community, it is more effective to take action at Community level.

(6) Existing large combustion plants are significant contributors to emissions of sulphur dioxide and nitrogen oxides in the Community and it is necessary to reduce these emissions. It is therefore necessary to adapt the approach to the different characteristics of the large combustion plant sector in the Member States.

(7) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control⁶ sets out an integrated approach to pollution prevention and control in which all the aspects of an installation's environmental performance are considered in an integrated manner; combustion installations with a rated thermal input exceeding 50 MW are included within the scope of that Directive; pursuant to Article 15(3) of that Directive an inventory of the principal emissions and sources responsible is to be published every three years by the Commission on the basis of data supplied by the Member States. Pursuant to Article 18 of that Directive, acting on a proposal from the Commission, the Council will set emission limit values in accordance with the procedures laid down in the Treaty for which the need for Community action has been identified, on the basis, in particular, of the exchange of information provided for in Article 16 of that Directive.

(8) Compliance with the emission limit values laid down by this Directive should be regarded as a necessary but not sufficient condition for compliance with the requirements of Directive 96/61/EC regarding the use of best available techniques. Such compliance may involve more stringent emission limit values, emission limit values for other substances and other media, and other appropriate conditions.

(9) Industrial experience in the implementation of techniques for the reduction of polluting emissions from large combustion plants has been acquired over a period of 15 years.

(10) The Protocol on heavy metals to the UNECE Convention on long-range transboundary air pollution recommends the adoption of measures to reduce heavy metals emitted by certain installations. It is known that benefits from reducing dust emissions by dust abatement equipment will provide benefits on reducing particle-bound heavy metal emissions.

(11) Installations for the production of electricity represent an important part of the large combustion plant sector.

⁶ OJ L 257, 10.10.1996, p. 26.

(12) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity⁷ is intended *inter alia* to have the effect of distributing new production capacity among new arrivals in the sector.

(13) The Community is committed to a reduction of carbon dioxide emissions. Where it is feasible the combined production of heat and electricity represents a valuable opportunity for significantly improving overall efficiency in fuel use.

(14) A significant increase in the use of natural gas for producing electricity is already underway and is likely to continue, in particular through the use of gas turbines.

(15) In view of the increase in energy production from biomass, specific emission standards for this fuel are justified.

(16) The Council Resolution of 24 February 1997 on a Community strategy for waste management⁸ emphasises the need for promoting waste recovery and states that appropriate emission standards should apply to the operation of facilities in which waste is incinerated in order to ensure a high level of protection for the environment.

(17) Industrial experience has been gained concerning techniques and equipment for the measurement of the principal pollutants emitted by large combustion plants; the European Committee for Standardisation (CEN) has undertaken work with the aim of providing a framework securing comparable measurement results within the Community and guaranteeing a high level of quality of such measurements.

(18) There is a need to improve knowledge concerning the emission of the principal pollutants from large combustion plants. In order to be genuinely representative of the level of pollution of an installation, such information should also be associated with knowledge concerning its energy consumption.

(19) This Directive is without prejudice to the time limits within which the Member States must transpose and implement Directive 88/609/EEC,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive shall apply to combustion plants, the rated thermal input of which is equal to or greater than 50 MW, irrespective of the type of fuel used (solid, liquid or gaseous).

⁷ OJ L 27, 30.1.1997, p. 20.

⁸ OJ C 76, 11.3.1997, p. 1.

Article 2

For the purpose of this Directive:

- (1) „emission“ means the discharge of substances from the combustion plant into the air;
- (2) „waste gases“ means gaseous discharges containing solid, liquid or gaseous emissions; their volumetric flow rates shall be expressed in cubic metres per hour at standard temperature (273 K) and pressure (101,3 kPa) after correction for the water vapour content, hereinafter referred to as (Nm³/h);
- (3) „emission limit value“ means the permissible quantity of a substance contained in the waste gases from the combustion plant which may be discharged into the air during a given period; it shall be calculated in terms of mass per volume of the waste gases expressed in mg/Nm³, assuming an oxygen content by volume in the waste gas of 3 % in the case of liquid and gaseous fuels, 6 % in the case of solid fuels and 15 % in the case of gas turbines;
- (4) „rate of desulphurisation“ means the ratio of the quantity of sulphur which is not emitted into the air at the combustion plant site over a given period to the quantity of sulphur contained in the fuel which is introduced into the combustion plant facilities and which is used over the same period;
- (5) „operator“ means any natural or legal person who operates the combustion plant, or who has or has been delegated decisive economic power over it;
- (6) „fuel“ means any solid, liquid or gaseous combustible material used to fire the combustion plant with the exception of waste covered by Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incineration plants⁹, Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste incineration plants¹⁰, and Council Directive 94/67/EC of 16 December 1994 concerning the incineration of hazardous waste¹¹ or any subsequent Community act repealing and replacing one or more of these Directives;
- (7) „combustion plant“ means any technical apparatus in which fuels are oxidised in order to use the heat thus generated.

This Directive shall apply only to combustion plants designed for production of energy with the exception of those which make direct use of the products of combustion in manufacturing processes. In particular, this Directive shall not apply to the following combustion plants:

- (a) plants in which the products of combustion are used for the direct heating, drying, or any other treatment of objects or materials e.g. reheating furnaces, furnaces for heat treatment;
- (b) post-combustion plants i.e. any technical apparatus designed to purify the waste gases by combustion which is not operated as an independent combustion plant;
- (c) facilities for the regeneration of catalytic cracking catalysts;

⁹ OJ L 163, 14.6.1989, p. 32.

¹⁰ OJ L 203, 15.7.1989, p. 50.

¹¹ OJ L 365, 31.12.1994, p. 34.

- (d) facilities for the conversion of hydrogen sulphide into sulphur;
- (e) reactors used in the chemical industry;
- (f) coke battery furnaces;
- (g) cowpers;
- (h) any technical apparatus used in the propulsion of a vehicle, ship or aircraft;
- (i) gas turbines used on offshore platforms;
- (j) gas turbines licensed before 27 November 2002 or which in the view of the competent authority are the subject of a full request for a licence before 27 November 2002 provided that the plant is put into operation no later than 27 November 2003 without prejudice to Article 7(1) and Annex VIII(A) and (B);

Plants powered by diesel, petrol and gas engines shall not be covered by this Directive.

Where two or more separate new plants are installed in such a way that, taking technical and economic factors into account, their waste gases could, in the judgement of the competent authorities, be discharged through a common stack, the combination formed by such plants shall be regarded as a single unit;

(8) „multi-fuel firing unit“ means any combustion plant which may be fired simultaneously or alternately by two or more types of fuel;

(9) „new plant“ means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted on or after 1 July 1987;

(10) „existing plant“ means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted before 1 July 1987;

(11) „biomass“ means products consisting of any whole or part of a vegetable matter from agriculture or forestry which can be used as a fuel for the purpose of recovering its energy content and the following waste used as a fuel:

- (a) vegetable waste from agriculture and forestry;
- (b) vegetable waste from the food processing industry, if the heat generated is recovered;
- (c) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;
- (d) cork waste;
- (e) wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coating, and which includes in particular such wood waste originating from construction and demolition waste;
- (12) „gas turbine“ means any rotating machine which converts thermal energy into mechanical work, consisting mainly of a compressor, a thermal device in which fuel is oxidised in order to heat the working fluid, and a turbine.

(13) „Outermost Regions“ means the French Overseas Departments with regard to France, the Azores and Madeira with regard to Portugal and the Canary Islands with regard to Spain.

Article 3

1. Not later than 1 July 1990 Member States shall draw up appropriate programmes for the progressive reduction of total annual emissions from existing plants. The programmes shall set out the timetables and the implementing procedures.
2. In accordance with the programmes mentioned in paragraph 1, Member States shall continue to comply with the emission ceilings and with the corresponding percentage reductions laid down for sulphur dioxide in Annex I, columns 1 to 6, and for oxides of nitrogen in Annex II, columns 1 to 4, by the dates specified in those Annexes, until the implementation of the provisions of Article 4 that apply to existing plants.
3. When the programmes are being carried out, Member States shall also determine the total annual emissions in accordance with Annex VIII(C).
4. If a substantial and unexpected change in energy demand or in the availability of certain fuels or certain generating installations creates serious technical difficulties for the implementation by a Member State of its programme drawn up under paragraph 1, the Commission shall, at the request of the Member State concerned and taking into account the terms of the request, take a decision to modify, for that Member State, the emission ceilings and/or the dates set out in Annexes I and II and communicate its decision to the Council and to the Member States. Any Member State may within three months refer the decision of the Commission to the Council. The Council, acting by a qualified majority, may within three months take a different decision.

Article 4

1. Without prejudice to Article 17 Member States shall take appropriate measures to ensure that all licences for the construction or, in the absence of such a procedure, for the operation of new plants which in the view of the competent authority are the subject of a full request for a licence before 27 November 2002, provided that the plant is put into operation no later than 27 November 2003 contain conditions relating to compliance with the emission limit values laid down in part A of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust.
2. Member States shall take appropriate measures to ensure that all licences for the construction or, in the absence of such a procedure, for the operation of new plants, other than those covered by paragraph 1, contain conditions relating to compliance with the emission limit values laid down in part B of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust.
3. Without prejudice to Directive 96/61/EC and Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management¹², Member States shall, by 1 January 2008 at the latest, achieve significant emission reductions by:
 - (a) taking appropriate measures to ensure that all licences for the operation of existing plants contain

¹² OJ L 296, 21.11.1996, p. 55.

conditions relating to compliance with the emission limit values established for new plants referred to in paragraph 1; or

(b) ensuring that existing plants are subject to the national emission reduction plan referred to in paragraph 6;

and, where appropriate, applying Articles 5, 7 and 8.

4. Without prejudice to Directives 96/61/EC and 96/62/EC, existing plants may be exempted from compliance with the emission limit values referred to in paragraph 3 and from their inclusion in the national emission reduction plan on the following conditions:

(a) the operator of an existing plant undertakes, in a written declaration submitted by 30 June 2004 at the latest to the competent authority, not to operate the plant for more than 20000 operational hours starting from 1 January 2008 and ending no later than 31 December 2015;

(b) the operator is required to submit each year to the competent authority a record of the used and unused time allowed for the plants' remaining operational life.

5. Member States may require compliance with emission limit values and time limits for implementation which are more stringent than those set out in paragraphs 1, 2, 3 and 4 and in Article 10. They may include other pollutants, and they may impose additional requirements or adaptation of plant to technical progress.

6. Member States may, without prejudice to this Directive and Directive 96/61/EC, and taking into consideration the costs and benefits as well as their obligations under Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants¹³ and Directive 96/62/EC, define and implement a national emission reduction plan for existing plants, taking into account, *inter alia*, compliance with the ceilings as set out in Annexes I and II.

The national emission reduction plan shall reduce the total annual emissions of nitrogen oxides (NO_x), sulphur dioxide (SO₂) and dust from existing plants to the levels that would have been achieved by applying the emission limit values referred to in paragraph 3 to the existing plants in operation in the year 2000, (including those existing plants undergoing a rehabilitation plan in 2000, approved by the competent authority, to meet emission reductions required by national legislation) on the basis of each plant's actual annual operating time, fuel used and thermal input, averaged over the last five years of operation up to and including 2000.

The closure of a plant included in the national emission reduction plan shall not result in an increase in the total annual emissions from the remaining plants covered by the plan.

The national emission reduction plan may under no circumstances exempt a plant from the provisions laid down in relevant Community legislation, including *inter alia* Directive 96/61/EC.

The following conditions shall apply to national emission reduction plans:

(a) the plan shall comprise objectives and related targets, measures and timetables for reaching these objectives and targets, and a monitoring mechanism;

¹³ Official Journal L 121, 11/5/1999, p. 22, the Eds.

(b) Member States shall communicate their national emission reduction plan to the Commission no later than 27 November 2003;

(c) within six months of the communication referred to in point (b) the Commission shall evaluate whether or not the plan meets the requirements of this paragraph. When the Commission considers that this is not the case, it shall inform the Member State and within the subsequent three months the Member State shall communicate any measures it has taken in order to ensure that the requirements of this paragraph are met;

(d) the Commission shall, no later than 27 November 2002, develop guidelines to assist Member States in the preparation of their plans.

7. Not later than 31 December 2004 and in the light of progress towards protecting human health and attaining the Community's environmental objectives for acidification and for air quality pursuant to Directive 96/62/EC, the Commission shall submit a report to the European Parliament and the Council in which it shall assess:

(a) the need for further measures;

(b) the amounts of heavy metals emitted by large combustion plants;

(c) the cost-effectiveness and costs and advantages of further emission reductions in the combustion plants sector in Member States compared to other sectors;

(d) the technical and economic feasibility of such emission reductions;

(e) the effects of both the standards set for the large combustion plants sector including the provisions for indigenous solid fuels, and the competition situation in the energy market, on the environment and the internal market;

(f) any national emission reduction plans provided by Member States in accordance with paragraph 6.

The Commission shall include in its report an appropriate proposal of possible end dates or of lower limit values for the derogation contained in footnote 2 to Annex VI A.

8. The report referred to in paragraph 7 shall, as appropriate, be accompanied by related proposals, having regard to Directive 96/61/EC.

Article 5

By way of derogation from Annex III:

(1) Plants, of a rated thermal input equal to or greater than 400 MW, which do not operate more than the following numbers of hours a year (rolling average over a period of five years),

- until 31 December 2015, 2000 hours;

- from 1 January 2016, 1500 hours;

shall be subject to a limit value for sulphur dioxide emissions of 800 mg/Nm³.

This provision shall not apply to new plants for which the licence is granted pursuant to Article 4(2).

(2) Until 31 December 1999, the Kingdom of Spain may authorise new power plants with a rated

thermal input equal to or greater than 500 MW burning indigenous or imported solid fuels, commissioned before the end of 2005 and complying with the following requirements:

- (a) in the case of imported solid fuels, a sulphur dioxide emission limit value of 800 mg/Nm³;
- (b) in the case of indigenous solid fuels, at least a 60 % rate of desulphurisation, provided that the total authorised capacity of such plants to which this derogation applies does not exceed:
 - 2000 MWe in the case of plants burning indigenous solid fuels;
 - in the case of plants burning imported solid fuels either 7500 or 50 % of all the new capacity of all plants burning solid fuels authorised up to 31 December 1999, whichever is the lower.

Article 6

In the case of new plants for which the licence is granted pursuant to Article 4() or plants covered by Article 10, Member States shall ensure that the technical and economic feasibility of providing for the combined generation of heat and power is examined. Where this feasibility is confirmed, bearing in mind the market and the distribution situation, installations shall be developed accordingly.

Article 7

1. Member States shall ensure that provision is made in the licences or permits referred to in Article 4 for procedures relating to malfunction or breakdown of the abatement equipment. In case of a breakdown the competent authority shall in particular require the operator to reduce or close down operations if a return to normal operation is not achieved within 24 hours, or to operate the plant using low polluting fuels. In any case the competent authority shall be notified within 48 hours. In no circumstances shall the cumulative duration of unabated operation in any twelve-month period exceed 120 hours. The competent authority may allow exceptions to the limits of 24 hours and 120 hours above in cases where, in their judgement:

- (a) there is an overriding need to maintain energy supplies, or
- (b) the plant with the breakdown would be replaced for a limited period by another plant which would cause an overall increase in emissions.

2. The competent authority may allow a suspension for a maximum of six months from the obligation to comply with the emission limit values provided for in Article 4 for sulphur dioxide in respect of a plant which to this end normally uses low-sulphur fuel, in cases where the operator is unable to comply with these limit values because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage. The Commission shall immediately be informed of such cases.

3. The competent authority may allow a derogation from the obligation to comply with the emission limit values provided for in Article 4 in cases where a plant which normally uses only gaseous fuel, and which would otherwise need to be equipped with a waste gas purification facility, has to resort exceptionally, and for a period not exceeding 10 days except where there is an overriding need to

maintain energy supplies, to the use of other fuels because of a sudden interruption in the supply of gas. The competent authority shall immediately be informed of each specific case as it arises. Member States shall inform the Commission immediately of the cases referred to in this paragraph.

Article 8

1. In the case of plants with a multi-firing unit involving the simultaneous use of two or more fuels, when granting the licence referred to in Articles 4(1) or 4(2), and in the case of such plants covered by Articles 4(3) or 10, the competent authority shall set the emission limit values as follows:

- (a) firstly by taking the emission limit value relevant for each individual fuel and pollutant corresponding to the rated thermal input of the combustion plant as given in Annexes III to VII,
- (b) secondly by determining fuel-weighted emission limit values, which are obtained by multiplying the above individual emission limit value by the thermal input delivered by each fuel, the product of multiplication being divided by the sum of the thermal inputs delivered by all fuels,
- (c) thirdly by aggregating the fuel-weighted limit values.

2. In multi-firing units using the distillation and conversion residues from crude-oil refining for own consumption, alone or with other fuels, the provisions for the fuel with the highest emission limit value (determinative fuel) shall apply, notwithstanding paragraph 1 above, if during the operation of the combustion plant the proportion contributed by that fuel to the sum of the thermal inputs delivered by all fuels is at least 50 %.

Where the proportion of the determinative fuel is lower than 50 %, the emission limit value is determined on a pro rata basis of the heat input supplied by the individual fuels in relation to the sum of the thermal inputs delivered by all fuels as follows:

- (a) firstly by taking the emission limit value relevant for each individual fuel and pollutant corresponding to the rated heat input of the combustion plant as given in Annexes III to VII,
- (b) secondly by calculating the emission limit value of the determinative fuel (fuel with the highest emission limit value according to Annexes III to VII and, in the case of two fuels having the same emission limit value, the fuel with the higher thermal input); this value is obtained by multiplying the emission limit value laid down in Annexes III to VII for that fuel by a factor of two, and subtracting from this product the emission limit value of the fuel with the lowest emission limit value,
- (c) thirdly by determining the fuel-weighted emission limit values, which are obtained by multiplying the calculated fuel emission limit value by the thermal input of the determinative fuel and the other individual emission limit values by the thermal input delivered by each fuel, the product of multiplication being divided by the sum of the thermal inputs delivered by all fuels,
- (d) fourthly by aggregating the fuel-weighted emission limit values.

3. As an alternative to paragraph 2, the following average emission limit values for sulphur dioxide may be applied (irrespective of the fuel combination used):

- (a) for plants referred to in Article 4(1) and (2): 1000 mg/Nm³, averaged over all such plants within

the refinery;

(b) for new plants referred to in Article 4(2): 600 mg/Nm³, averaged over all such plants within the refinery, with the exception of gas turbines.

The competent authorities shall ensure that the application of this provision does not lead to an increase in emissions from existing plants.

4. In the case of plants with a multi-firing unit involving the alternative use of two or more fuels, when granting the licence referred to in Article 4(1) and (2), and in the case of such plants covered by Articles 4(3) or 10, the emission limit values set out in Annexes III to VII corresponding to each fuel used shall be applied.

Article 9

Waste gases from combustion plants shall be discharged in controlled fashion by means of a stack. The licence referred to in Article 4 and licences for combustion plants covered by Article 10 shall lay down the discharge conditions. The competent authority shall in particular ensure that the stack height is calculated in such a way as to safeguard health and the environment.

Article 10

Where a combustion plant is extended by at least 50 MW, the emission limit values as set in part B of Annexes III to VII shall apply to the new part of the plant and shall be fixed in relation to the thermal capacity of the entire plant. This provision shall not apply in the cases referred to in Article 8(2) and (3).

Where the operator of a combustion plant is envisaging a change according to Articles 2(10)(b) and 12(2) of Directive 96/61/EC, the emission limit values as set out in part B of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust shall apply.

Article 11

In the case of construction of combustion plants which are likely to have significant effects on the environment in another Member State, the Member States shall ensure that all appropriate information and consultation takes place, in accordance with Article 7 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment¹⁴.

¹⁴ OJ L 175, 5.7.1985, p. 40. Directive as last amended by Council Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5).

Article 12

Member States shall take the necessary measures to ensure the monitoring, in accordance with Annex VIII(A), of emissions from the combustion plants covered by this Directive and of all other values required for the implementation of this Directive. Member States may require that such monitoring shall be carried out at the operator's expense.

Article 13

Member States shall take appropriate measures to ensure that the operator informs the competent authorities within reasonable time limits about the results of the continuous measurements, the checking of the measuring equipment, the individual measurements and all other measurements carried out in order to assess compliance with this Directive.

Article 14

1. In the event of continuous measurements, the emission limit values set out in part A of Annexes III to VII shall be regarded as having been complied with if the evaluation of the results indicates, for operating hours within a calendar year, that:

(a) none of the calendar monthly mean values exceeds the emission limit values; and

(b) in the case of:

(i) sulphur dioxide and dust: 97 % of all the 48 hourly mean values do not exceed 110 % of the emission limit values,

(ii) nitrogen oxides: 95 % of all the 48 hourly mean values do not exceed 110 % of the emission limit values.

The periods referred to in Article 7 as well as start-up and shut-down periods shall be disregarded.

2. In cases where only discontinuous measurements or other appropriate procedures for determination are required, the emission limit values set out in Annexes III to VII shall be regarded as having been complied with if the results of each of the series of measurements or of the other procedures defined and determined according to the rules laid down by the competent authorities do not exceed the emission limit values.

3. In the cases referred to in Article 5(2) and (3), the rates of desulphurisation shall be regarded as having been complied with if the evaluation of measurements carried out pursuant to Annex VIII, point A.3, indicates that all of the calendar monthly mean values or all of the rolling monthly mean values achieve the required desulphurisation rates.

The periods referred to in Article 7 as well as start-up and shut-down periods shall be disregarded.

4. For new plants for which the licence is granted pursuant to Article 4(2), the emission limit values shall be regarded, for operating hours within a calendar year, as complied with if:

(a) no validated daily average value exceeds the relevant figures set out in part B of Annexes III to VII, and

(b) 95 % of all the validated hourly average values over the year do not exceed 200 % of the relevant figures set out in part B of Annexes III to VII.

The „validated average values“ are determined as set out in point A.6 of Annex VIII.

The periods referred to in Article 7 as well as start up and shut down periods shall be disregarded.

Article 15

1. Member States shall, not later than 31 December 1990, inform the Commission of the programmes drawn up in accordance with Article 3(1).

At the latest one year after the end of the different phases for reduction of emissions from existing plants, the Member States shall forward to the Commission a summary report on the results of the implementation of the programmes.

An intermediate report is required as well in the middle of each phase.

2. The reports referred to in paragraph 1 shall provide an overall view of:

(a) all the combustion plants covered by this Directive,

(b) emissions of sulphur dioxide, and oxides of nitrogen expressed in tonnes per annum and as concentrations of these substances in the waste gases,

(c) measures already taken or envisaged with a view to reducing emissions, and of changes in the choice of fuel used,

(d) changes in the method of operation already made or envisaged,

(e) definitive closures of combustion plants already effected or envisaged, and

(f) where appropriate, the emission limit values imposed in the programmes in respect of existing plants.

When determining the annual emissions and concentrations of pollutants in the waste gases, Member States shall take account of Articles 12, 13 and 14.

3. Member States applying Article 5 or the provisions of the Nota Bene in Annex III or the footnotes in Annex VI.A shall report thereon annually to the Commission.

Article 16

The Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

Article 17

1. Directive 88/609/EEC shall be repealed with effect from 27 November 2002, without prejudice to paragraph 2 or to the obligations of Member States concerning the time limits for transposition and application of that Directive listed in Annex IX hereto.

2. In the case of new plants licensed before 27 November 2002 Article 4(1) of this Directive, Article 4(1), Article 5(2), Article 6, Article 15(3), Annexes III, VI, VIII and point A.2 of Annex IX to Directive 88/609/EEC as amended by Directive 94/66/EC shall remain in effect until 1 January 2008 after which they shall be repealed.

3. References to Directive 88/609/EEC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex X hereto.

Article 18

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 27 November 2002. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. For existing plant, and for new plant for which a licence is granted pursuant to Article 4(1), the provisions of point A.2 of Annex VIII shall be applied from 27 November 2004.

3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 19

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

Article 20

This Directive is addressed to the Member States.

Done at Luxembourg, 23 October 2001.

For the European Parliament

The President

N. Fontaine

For the Council

The President

A. Neyts-Uyttebroeck

ANNEX I

CEILINGS AND REDUCTION TARGETS FOR EMISSIONS OF SO2 FROM EXISTING PLANTS^{1 2}

	0	1	2	3	4	5	6	7	8	9
Member State	SO ₂ emissions by large combustion plants 1980 ktonnes	Emission ceiling (ktonnes/year)			% reduction over 1980 emissions			% reduction over adjusted 1980 emissions		
		Phase 1	Phase 2	Phase 3	Phase 1	Phase 2	Phase 3	Phase 1	Phase 2	Phase 3
		1993	1998	2003	1993	1998	2003	1993	1998	2003
Belgium	530	318	212	159	- 40	- 60	- 70	- 40	- 60	- 70
Denmark	323	213	141	106	- 34	- 56	- 67	- 40	- 60	- 70
Germany	2 225	1 335	890	668	- 40	- 60	- 70	- 40	- 60	- 70
Greece	303	320	320	320	+ 6	+ 6	+ 6	- 45	- 45	- 45
Spain	2 290	2 290	1 730	1 440	0	- 24	- 37	- 21	- 40	- 50
France	1 910	1 146	764	573	- 40	- 60	- 70	- 40	- 60	- 70
Ireland	99	124	124	124	+ 25	+ 25	+ 25	- 29	- 29	- 29
Italy	2 450	1 800	1 500	900	- 27	- 39	- 63	- 40	- 50	- 70
Luxembourg	3	1,8	1,5	1,5	- 40	- 50	- 60	- 40	- 50	- 50
Netherlands	299	180	120	90	- 40	- 60	- 70	- 40	- 60	- 70
Portugal	115	232	270	206	+ 102	+ 135	+ 79	- 25	- 13	- 34
United Kingdom	3 883	3 106	2 330	1 553	- 20	- 40	- 60	- 20	- 40	- 60
Austria	90	54	36	27	- 40	- 60	- 70	- 40	- 60	- 70
Finland	171	102	68	51	- 40	- 60	- 70	- 40	- 60	- 70
Sweden	112	67	45	34	- 40	- 60	- 70	- 40	- 60	- 70

1 Additional emissions may arise from capacity authorised on or after 1 July 1987.

2 Emissions coming from combustion plants authorised before 1 July 1987 but not yet in operation before that date and which have not been taken into account in establishing the emission ceilings fixed by this Annex shall either comply with the requirements established by this Directive for new plants or be accounted for in the overall emissions from existing plants that must not exceed the ceilings fixed in this Annex.

ANNEX II
CEILINGS AND REDUCTION TARGETS FOR EMISSIONS OF
NOX FROM EXISTING PLANTS^{1 2}

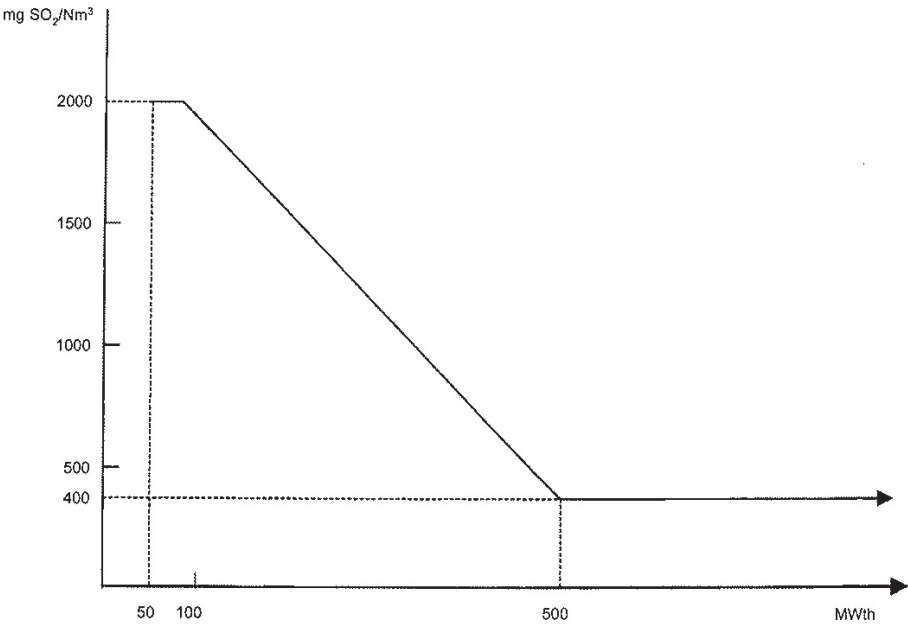
Member State	0	1	2	3	4	5	6
	NO _x emissions (as NO ₂) by large combustion plants 1980 ktonnes	NO _x emission ceilings (ktonnes/year)		% reduction over 1980 emissions		% reduction over adjusted 1980 emissions	
		Phase 1	Phase 2	Phase 1	Phase 2	Phase 1	Phase 2
		1993 ⁽¹⁾	1998	1993 ⁽¹⁾	1998	1993 ⁽¹⁾	1998
Belgium	110	88	66	- 20	- 40	- 20	- 40
Denmark	124	121	81	- 3	- 35	- 10	- 40
Germany	870	696	522	- 20	- 40	- 20	- 40
Greece	36	70	70	+ 94	+ 94	0	0
Spain	366	368	277	+ 1	- 24	- 20	- 40
France	400	320	240	- 20	- 40	- 20	- 40
Ireland	28	50	50	+ 79	+ 79	0	0
Italy	580	570	428	- 2	- 26	- 20	- 40
Luxembourg	3	2,4	1,8	- 20	- 40	- 20	- 40
Netherlands	122	98	73	- 20	- 40	- 20	- 40
Portugal	23	59	64	+ 157	+ 178	- 8	0
United Kingdom	1 016	864	711	- 15	- 30	- 15	- 30
Austria	19	15	11	- 20	- 40	- 20	- 40
Finland	81	65	48	- 20	- 40	- 20	- 40
Sweden	31	25	19	- 20	- 40	- 20	- 40

⁽¹⁾ Member States may for technical reasons delay for up to two years the phase 1 date for reduction in NO_x emissions by notifying the Commission within one month of the notification of this Directive.

1 Additional emissions may arise from capacity authorised on or after 1 July 1987.
2 Emissions coming from combustion plants authorised before 1 July 1987 but not yet in operation before that date and which have not been taken into account in establishing the emission ceilings fixed by this Annex shall either comply with the requirements established by this Directive for new plants or be accounted for in the overall emissions from existing plants that must not exceed the ceilings fixed in this Annex.

ANNEX III
EMISSION LIMIT VALUES FOR SO₂
Solid fuel

A. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 6 %) to be applied by new and existing plants pursuant to Article 4(1) and 4(3) respectively:



NB. Where the emission limit values above cannot be met due to the characteristics of the fuel, a rate of desulphurisation of at least 60 % shall be achieved in the case of plants with a rated thermal input of less than or equal to 100 MWth, 75 % for plants greater than 100 MWth and less than or equal to 300 MWth and 90 % for plants greater than 300 MWth. For plants greater than 500 MWth, a desulphurisation rate of at least 94 % shall apply or of at least 92 % where a contract for the fitting of flue gas desulphurisation or lime injection equipment has been entered into, and work on its installation has commenced, before 1 January 2001.

B. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 6 %) to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines.

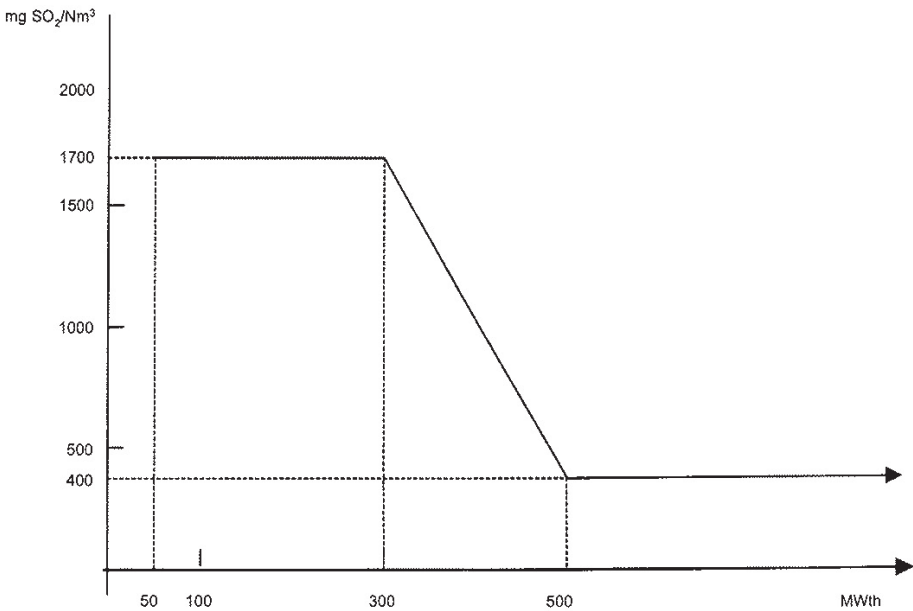
Type of fuel	50 to 100 MWth	100 to 300 MWth	> 300 MWth
Biomass	200	200	200
General case	850	200 ⁽¹⁾	200

⁽¹⁾ Except in the case of the 'Outermost Regions' where 850 to 200 mg/Nm³ (linear decrease) shall apply.

NB. Where the emission limit values above cannot be met due to the characteristics of the fuel, installations shall achieve 300 mg/Nm³ SO₂, or a rate of desulphurisation of at least 92 % shall be achieved in the case of plants with a rated thermal input of less than or equal to 300 MWth and in the case of plants with a rated thermal input greater than 300 MWth a rate of desulphurisation of at least 95 % together with a maximum permissible emission limit value of 400 mg/Nm³ shall apply.

ANNEX IV
EMISSION LIMIT VALUES FOR SO₂
Liquid fuels

A. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3 %) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:



B. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3 %) to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines

50 to 100 MWth	100 to 300 MWth	> 300 MWth
850	400 to 200 (linear decrease) ⁽¹⁾	200

⁽¹⁾ Except in the case of the 'Outermost Regions' where 850 to 200 mg/Nm³ (linear decrease) shall apply.

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodes to be licensed before 31 December 2007 the emission limit value of 1 700 mg/Nm³ shall apply.

ANNEX V
EMISSION LIMIT VALUES FOR SO₂
Gaseous fuels

A. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3 %) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

Type of fuel	Limit values (mg/Nm ³)
Gaseous fuels in general	35
Liquefied gas	5
Low calorific gases from gasification of refinery residues, coke oven gas, blast-furnace gas	800
Gas from gasification of coal	⁽¹⁾

⁽¹⁾ The Council will fix the emission limit values applicable to such gas at a later stage on the basis of proposals from the Commission to be made in the light of further technical experience.

B. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3 %) to be applied by new plants pursuant to Article 4(2):

Gaseous fuels in general	35
Liquefied gas	5
Low calorific gases from coke oven	400
Low caloric gases from blast furnace	200

ANNEX VI

EMISSION LIMIT VALUES FOR NO_x (MEASURED AS NO₂)

- A. NO_x emission limit values expressed in mg/Nm³ (O₂ content 6 % for solid fuels, 3 % for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

Type of fuel:	Limit values ⁽¹⁾ (mg/Nm ³)
Solid ⁽²⁾ , ⁽³⁾ :	
50 to 500 MWth:	600
>500 MWth:	500
From 1 January 2016	
50 to 500 MWth:	600
>500 MWth:	200
Liquid:	
50 to 500 MWth:	450
>500 MWth:	400
Gaseous:	
50 to 500 MWth:	300
>500 MWth:	200

⁽¹⁾ Except in the case of the 'Outermost Regions' where the following values shall apply:

Solid in general: 650
Solid with < 10 % vol comps: 1 300
Liquid: 450
Gaseous: 350

⁽²⁾ Until 31 December 2015 plants of a rated thermal input greater than 500 MW, which from 2008 onwards do not operate more than 2 000 hours a year (rolling average over a period of five years), shall:

- in the case of plant licensed in accordance with Article 4(3)(a), be subject to a limit value for nitrogen oxide emissions (measured as NO₂) of 600 mg/Nm³;
- in the case of plant subject to a national plan under Article 4(6), have their contribution to the national plan assessed on the basis of a limit value of 600 mg/Nm³.

From 1 January 2016 such plants, which do not operate more than 1 500 hours a year (rolling average over a period of five years), shall be subject to a limit value for nitrogen oxide emissions (measured as NO₂) of 450 mg/Nm³.

⁽³⁾ Until 1 January 2018 in the case of plants that in the 12 month period ending on 1 January 2001 operated on, and continue to operate on, solid fuels whose volatile content is less than 10 %, 1 200 mg/Nm³ shall apply.

ANNEX VII

EMISSION LIMIT VALUES FOR DUST

- A. Dust emission limit values expressed in mg/Nm³ (O₂ content 6 % for solid fuels, 3 % for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

Type of fuel	Rated thermal input (MW)	Emission limit values (mg/Nm ³)
Solid	≥ 500 < 500	50 ⁽²⁾ 100
Liquid ⁽¹⁾	all plants	50
Gaseous	all plants	5 as a rule 10 for blast furnace gas 50 for gases produced by the steel industry which can be used elsewhere

⁽¹⁾ A limit value of 100 mg/Nm³ may be applied to plants with a rated thermal input of less than 500 MWth burning liquid fuel with an ash content of more than 0.06 %.

⁽²⁾ A limit value of 100 mg/Nm³ may be applied to plants licensed pursuant to Article 4(3) with a rated thermal input greater than or equal to 500 MWth burning solid fuel with a heat content of less than 5 800 kJ/kg (net calorific value), a moisture content greater than 45 % by weight, a combined moisture and ash content greater than 60 % by weight and a calcium oxide content greater than 10 %.

- B. Dust emission limit values expressed in mg/Nm³ to be applied by new plants, pursuant to Article 4(2) with the exception of gas turbines:

Solid fuels (O₂ content 6 %)

50 to 100 MWth	> 100 MWth
50	30

Liquid fuels (O₂ content 3 %)

50 to 100 MWth	> 100 MWth
50	30

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodes to be licensed before 31 December 2007 the emission limit value of 50 mg/Nm³ shall apply.

Gaseous fuels (O₂ content 3 %)

As a rule	5
For blast furnace gas	10
For gases produced by the steel industry which can be used elsewhere	30

ANNEX VIII
METHODS OF MEASUREMENT OF EMISSIONS

A. Procedures for measuring and evaluating emissions from combustion plants.

1. Until 27 November 2004

Concentrations of SO₂, dust, NO_x shall be measured continuously in the case of new plants for which a licence is granted pursuant to Article 4¹ with a rated thermal input of more than 300 MW. However, monitoring of SO₂ and dust may be confined to discontinuous measurements or other appropriate determination procedures in cases where such measurements or procedures, which must be verified and approved by the competent authorities, may be used to obtain concentration. In the case of new plants for which a licence is granted pursuant to Article 4(1) not covered by the first subparagraph, the competent authorities may require continuous measurements of those three pollutants to be carried out where considered necessary. Where continuous measurements are not required, discontinuous measurements or appropriate determination procedures as approved by the competent authorities shall be used regularly to evaluate the quantity of the above-mentioned substances present in the emissions.

2. From 27 November 2002 and without prejudice to Article 18(2)

Competent authorities shall require continuous measurements of concentrations of SO₂, NO_x, and dust from waste gases from each combustion plant with a rated thermal input of 100 MW or more.

By way of derogation from the first subparagraph, continuous measurements may not be required in the following cases:

- for combustion plants with a life span of less than 10000 operational hours;
- for SO₂ and dust from natural gas burning boilers or from gas turbines firing natural gas;
- for SO₂ from gas turbines or boilers firing oil with known sulphur content in cases where there is no desulphurisation equipment;
- for SO₂ from biomass firing boilers if the operator can prove that the SO₂ emissions can under no circumstances be higher than the prescribed emission limit values.

Where continuous measurements are not required, discontinuous measurements shall be required at least every six months. As an alternative, appropriate determination procedures, which must be verified and approved by the competent authorities, may be used to evaluate the quantity of the above mentioned pollutants present in the emissions. Such procedures shall use relevant CEN standards as soon as they are available. If CEN standards are not available ISO standards, national or international standards which will ensure the provision of data of an equivalent scientific quality shall apply.

3. In the case of plants which must comply with the desulphurisation rates fixed by Article 5 and and Annex III, the requirements concerning SO₂ emission measurements established under paragraph 2 of this point shall apply. Moreover, the sulphur content of the fuel which is introduced into the combustion plant facilities must be regularly monitored.

4. The competent authorities shall be informed of substantial changes in the type of fuel used or

in the mode of operation of the plant. They shall decide whether the monitoring requirements laid down in paragraph 2 are still adequate or require adaptation.

5. The continuous measurements carried out in compliance with paragraph 2 shall include the relevant process operation parameters of oxygen content, temperature, pressure and water vapour content. The continuous measurement of the water vapour content of the exhaust gases shall not be necessary, provided that the sampled exhaust gas is dried before the emissions are analysed. Representative measurements, i.e. sampling and analysis, of relevant pollutants and process parameters as well as reference measurement methods to calibrate automated measurement systems shall be carried out in accordance with CEN standards as soon as they are available. If CEN standards are not available ISO standards, national or international standards which will ensure the provision of data of an equivalent scientific quality shall apply.

Continuous measuring systems shall be subject to control by means of parallel measurements with the reference methods at least every year.

6. The values of the 95% confidence intervals of a single measures results shall not exceed the following percentages of the emission limit values:

Sulphur dioxide	20%
Nitrogen oxides	20%
Dust	30%

The validated hourly and daily average values shall be determined from the measured valid hourly average values after having subtracted the value of the confidence interval specified above.

Any day in which more than three hourly average values are invalid due to malfunction or maintenance of the continuous measurement system shall be invalidated. If more than ten days over a year are invalidated for such situations the competent authority shall require the operator to take adequate measures to improve the reliability of the continuous monitoring system.

B. Determination of total annual emissions of combustion plants

Until and including 2003 the competent authorities shall obtain determination of the total annual emissions of SO₂ and NO_x from new combustion plants. When continuous monitoring is used, the operator of the combustion plant shall add up separately for each pollutant the mass of pollutant emitted each day, on the basis of the volumetric flow rates of waste gases. Where continuous monitoring is not in use, estimates of the total annual emissions shall be determined by the operator on the basis of paragraph A.1 to the satisfaction of the competent authorities.

Member States shall communicate to the Commission the total annual SO₂ and NO_x emissions of new combustion plants at the same time as the communication required under paragraph C.3 concerning the total annual emissions of existing plants.

Member States shall establish, starting in 2004 and for each subsequent year, an inventory of SO₂, NO_x and dust emissions from all combustion plants with a rated thermal input of 50 MW or more. The competent authority shall obtain for each plant operated under the control of one operator at a given location the following data:

- the total annual emissions of SO₂, NO_x and dust (as total suspended particles).

- the total annual amount of energy input, related to the net calorific value, broken down in terms of the five categories of fuel: biomass, other solid fuels, liquid fuels, natural gas, other gases.

A summary of the results of this inventory that shows the emissions from refineries separately shall be communicated to the Commission every three years within twelve months from the end of the three-year period considered. The yearly plant-by-plant data shall be made available to the Commission upon request. The Commission shall make available to the Member States a summary of the comparison and evaluation of the national inventories within twelve months of receipt of the national inventories.

Commencing on 1 January 2008 Member States shall report annually to the Commission on those existing plants declared for eligibility under Article 4(4) along with the record of the used and unused time allowed for the plants' remaining operational life.

C. Determination of the total annual emissions of existing plants until and including 2003.

ANNEX IX

TIME-LIMITS FOR TRANSPOSITION AND IMPLEMENTATION

OF THE REPEALED DIRECTIVE

(referred to in Article 17(1))

Directive	Time-limits for transposition	Time-limits for application
88/609/EEC (OJ L 336, 7.12.1988, p. 1)	30 June 1990	1 July 1990 31 December 1990 31 December 1993 31 December 1998 31 December 2003
94/66/EC (OJ L 337, 24.12.1994, p. 83)	24 June 1995	

ANNEX X
CORRELATION TABLE

(Referred to in Article 17(3))

This Directive	Directive 88/609/EEC
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4(1)	Article 4(1)
Article 4(2), (3) and (4)	
Article 4(5)	Article 4(3)
Article 4(6), (7) and (8)	
Article 5	Article 5
	Article 6
Article 6	
Article 7	Article 8
Article 8	Article 9
Article 9	Article 10
Article 10	Article 11
Article 11	Article 12
Article 12	Article 13(1)
Article 13	Article 14
Article 14	Article 15
Article 15(1), (2) and (3)	Article 16(1), (2) and (4)
Article 16	
Article 17	
Article 18(1), first subparagraph, and (3)	Article 17(1) and (2)
Article 18(1), second subparagraph, and (2) and Article 19	
Article 20	Article 18
Annexes I to VIII	Annexes I to IX
Annex IX and X	—

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds

(Official Journal L 103 , 25/04/1979 P. 0001 - 0018)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas the Council declaration of 22 November 1973 on the programme of action of the European Communities on the environment⁴ calls for specific action to protect birds, supplemented by the resolution of the Council of the European Communities and of the representatives of the Governments of the Member States meeting within the Council of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment⁵;

Whereas a large number of species of wild birds naturally occurring in the European territory of the Member States are declining in number, very rapidly in some cases; whereas this decline represents a serious threat to the conservation of the natural environment, particularly because of the biological balances threatened thereby;

Whereas the species of wild birds naturally occurring in the European territory of the Member States are mainly migratory species; whereas such species constitute a common heritage and whereas effective bird protection is typically a trans-frontier environment problem entailing common responsibilities;

Whereas the conditions of life for birds in Greenland are fundamentally different from those in the other regions of the European territory of the Member States on account of the general circumstances and in particular the climate, the low density of population and the exceptional size and geographical situation of the island;

Whereas therefore this Directive should not apply to Greenland;

¹ OJ No C 24, 1. 2. 1977, p. 3; OJ No C 201, 23. 8. 1977, p. 2.

² OJ No C 163, 11. 7. 1977, p. 28.

³ OJ No C 152, 29. 6. 1977, p. 3.

⁴ OJ No C 112, 20. 12. 1973, p. 40.

⁵ OJ No C 139, 13. 6. 1977, p. 1.

Whereas the conservation of the species of wild birds naturally occurring in the European territory of the Member States is necessary to attain, within the operation of the common market, of the Community's objectives regarding the improvement of living conditions, a harmonious development of economic activities throughout the Community and a continuous and balanced expansion, but the necessary specific powers to act have not been provided for in the Treaty;

Whereas the measures to be taken must apply to the various factors which may affect the numbers of birds, namely the repercussions of man's activities and in particular the destruction and pollution of their habitats, capture and killing by man and the trade resulting from such practices; whereas the stringency of such measures should be adapted to the particular situation of the various species within the framework of a conservation policy;

Whereas conservation is aimed at the long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe; whereas it makes it possible to control natural resources and governs their use on the basis of the measures necessary for the maintenance and adjustment of the natural balances between species as far as is reasonably possible;

Whereas the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds; whereas certain species of birds should be the subject of special conservation measures concerning their habitats in order to ensure their survival and reproduction in their area of distribution; whereas such measures must also take account of migratory species and be coordinated with a view to setting up a coherent whole;

Whereas, in order to prevent commercial interests from exerting a possible harmful pressure on exploitation levels it is necessary to impose a general ban on marketing and to restrict all derogation to those species whose biological status so permits, account being taken of the specific conditions obtaining in the different regions;

Whereas, because of their high population level, geographical distribution and reproductive rate in the Community as a whole, certain species may be hunted, which constitutes acceptable exploitation; where certain limits are established and respected, such hunting must be compatible with maintenance of the population of these species at a satisfactory level;

Whereas the various means, devices or methods of large-scale or non-selective capture or killing and hunting with certain forms of transport must be banned because of the excessive pressure which they exert or may exert on the numbers of the species concerned;

Whereas, because of the importance which may be attached to certain specific situations, provision should be made for the possibility of derogations on certain conditions and subject to monitoring by the Commission;

Whereas the conservation of birds and, in particular, migratory birds still presents problems which call for scientific research; whereas such research will also make it possible to assess the effectiveness of the measures taken;

Whereas care should be taken in consultation with the Commission to see that the introduction of any species of wild bird not naturally occurring in the European territory of the Member States does not cause harm to local flora and fauna;

Whereas the Commission will every three years prepare and transmit to the Member States a composite report based on information submitted by the Member States on the application of national provisions introduced pursuant to this Directive;

Whereas it is necessary to adapt certain Annexes rapidly in the light of technical and scientific progress; whereas, to facilitate the implementation of the measures needed for this purpose, provision should be made for a procedure establishing close cooperation between the Member States and the Commission in a Committee for Adaptation to Technical and Scientific Progress,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.
2. It shall apply to birds, their eggs, nests and habitats.
3. This Directive shall not apply to Greenland.

Article 2

Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

Article 3

1. In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.
2. The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:
 - (a) creation of protected areas;
 - (b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;
 - (c) re-establishment of destroyed biotopes;
 - (d) creation of biotopes.

Article 4

1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

- (a) species in danger of extinction;
 - (b) species vulnerable to specific changes in their habitat;
 - (c) species considered rare because of small populations or restricted local distribution;
 - (d) other species requiring particular attention for reasons of the specific nature of their habitat.
- Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.*

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 above form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.

4. In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.

Article 5

Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

- (a) deliberate killing or capture by any method;
- (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;

* Emphasis added, cf. Article 16 of the Treaty establishing the Energy Community

- (c) taking their eggs in the wild and keeping these eggs even if empty;
- (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;
- (e) keeping birds of species the hunting and capture of which is prohibited.

Article 6

1. Without prejudice to the provisions of paragraphs 2 and 3, Member States shall prohibit, for all the bird species referred to in Article 1, the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognizable parts or derivatives of such birds.

2. The activities referred to in paragraph 1 shall not be prohibited in respect of the species referred to in Annex III/1, provided that the birds have been legally killed or captured or otherwise legally acquired.

3. Member States may, for the species listed in Annex III/2, allow within their territory the activities referred to in paragraph 1, making provision for certain restrictions, provided the birds have been legally killed or captured or otherwise legally acquired.

Member States wishing to grant such authorization shall first of all consult the Commission with a view to examining jointly with the latter whether the marketing of specimens of such species would result or could reasonably be expected to result in the population levels, geographical distribution or reproductive rate of the species being endangered throughout the Community. Should this examination prove that the intended authorization will, in the view of the Commission, result in any one of the aforementioned species being thus endangered or in the possibility of their being thus endangered, the Commission shall forward a reasoned recommendation to the Member State concerned stating its opposition to the marketing of the species in question. Should the Commission consider that no such risk exists, it will inform the Member State concerned accordingly.

The Commission's recommendation shall be published in the Official Journal of the European Communities.

Member States granting authorization pursuant to this paragraph shall verify at regular intervals that the conditions governing the granting of such authorization continue to be fulfilled.

4. The Commission shall carry out studies on the biological status of the species listed in Annex III/3 and on the effects of marketing on such status.

It shall submit, at the latest four months before the time limit referred to in Article 18 (1) of this Directive, a report and its proposals to the Committee referred to in Article 16, with a view to a decision on the entry of such species in Annex III/2.

Pending this decision, the Member States may apply existing national rules to such species without prejudice to paragraph 3 hereof.

Article 7

1. Owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States shall ensure that the hunting of these species does not jeopardize conservation efforts in their distribution area.

2. The species referred to in Annex II/1 may be hunted in the geographical sea and land area where this Directive applies.

3. The species referred to in Annex II/2 may be hunted only in the Member States in respect of which they are indicated.

4. Member States shall ensure that the practice of hunting, including falconry if practised, as carried on in accordance with the national measures in force, complies with the principles of wise use and ecologically balanced control of the species of birds concerned and that this practice is compatible as regards the population of these species, in particular migratory species, with the measures resulting from Article 2. They shall see in particular that the species to which hunting laws apply are not hunted during the rearing season nor during the various stages of reproduction. In the case of migratory species, they shall see in particular that the species to which hunting regulations apply are not hunted during their period of reproduction or during their return to their rearing grounds. Member States shall send the Commission all relevant information on the practical application of their hunting regulations.

Article 8

1. In respect of the hunting, capture or killing of birds under this Directive, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in Annex IV (a).

2. Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b).

Article 9

1. Member States may derogate from the provisions of Articles 5, 6, 7 and 8, where there is no other satisfactory solution, for the following reasons:

- (a) - in the interests of public health and safety,
- in the interests of air safety,
- to prevent serious damage to crops, livestock, forests, fisheries and water,
- for the protection of flora and fauna;

(b) for the purposes of research and teaching, of re-population, of re-introduction and for the bree-

ding necessary for these purposes;

(c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

2. The derogations must specify:

- the species which are subject to the derogations,
- the means, arrangements or methods authorized for capture or killing,
- the conditions of risk and the circumstances of time and place under which such derogations may be granted,
- the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom,
- the controls which will be carried out.

3. Each year the Member States shall send a report to the Commission on the implementation of this Article.

4. On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of these derogations are not incompatible with this Directive. It shall take appropriate steps to this end.

Article 10

1. Member States shall encourage research and any work required as a basis for the protection, management and use of the population of all species of bird referred to in Article 1.

2. Particular attention shall be paid to research and work on the subjects listed in Annex V. Member States shall send the Commission any information required to enable it to take appropriate measures for the coordination of the research and work referred to in this Article.

Article 11

Member States shall see that any introduction of species of bird which do not occur naturally in the wild state in the European territory of the Member States does not prejudice the local flora and fauna. In this connection they shall consult the Commission.

Article 12

1. Member States shall forward to the Commission every three years, starting from the date of expiry of the time limit referred to in Article 18(1), a report on the implementation of national provisions taken thereunder.

2. The Commission shall prepare every three years a composite report based on the information referred to in paragraph 1. That part of the draft report covering the information supplied by a Member State shall be forwarded to the authorities of the Member State in question for verification.

The final version of the report shall be forwarded to the Member States.

Article 13

Application of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of species of birds referred to in Article 1.

Article 14

Member States may introduce stricter protective measures than those provided for under this Directive.

Article 15

Such amendments as are necessary for adapting Annexes I and V to this Directive to technical and scientific progress and the amendments referred to in the second paragraph of Article 6 (4) shall be adopted in accordance with the procedure laid down in Article 17.

Article 16

1. For the purposes of the amendments referred to in Article 15 of this Directive, a Committee for the Adaptation to Technical and Scientific Progress (hereinafter called „the Committee“), consisting of representatives of the Member States and chaired by a representative of the Commission, is hereby set up.

2. The Committee shall draw up its rules of procedure.

Article 17

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by its chairman, either on his own initiative or at the request of the representative of a Member State.

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit set by the chairman having regard to the urgency of the matter. It shall act by a majority of 41 votes, the votes of the Member States being weighted as provided in Article 148(2) of the Treaty. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged where they are in accordance with the opinion of the Committee.

(b) Where the measures envisaged are not in accordance with the opinion of the Committee, or if

no opinion is delivered, the Commission shall without delay submit a proposal to the Council concerning the measures to be adopted. The Council shall act by a qualified majority.

(c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 18

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 19

This Directive is addressed to the Member States.

Done at Luxembourg, 2 April 1979.

For the Council

The President

J. François-Poncet

ANNEX I

1. Gavia immer	Great northern diver
2. Calonectris diomedea	Cory's shearwater
3. Hydrobates pelagicus	Storm petrel
4. Oceanodroma leucorhoa	Leach's petrel
5. Phalacrocorax carbo sinensis	Cormorant (continental race)
6. Botaurus stellaris	Bittern
7. Nycticorax nycticorax	Night heron
8. Ardeols ralloides	Squacco heron
9. Egretta garzetta	Little egret
10. Egretta alba	Great white heron
11. Ardea purpurea	Purple heron
12. Ciconia nigra	Black stork
13. Ciconia ciconia	White stork
14. Plegadis falcinellus	Glossy ibis
15. Platalea leucorodia	Spoonbill
16. Phoenicopterus ruber	Greater flamingo

17. Cygnus colombianus bewickii	Bewick's swan
18. Cygnus cygnus	Whooper swan
19. Anser albifrons flavirostris	White-fronted goose (Greenland race)
20. Branta leucopsis	Barnacle goose
21. Aythya nycroca	White-eyed pochard
22. Oxyura leucicephala	White-headed duck
23. Pernis apivorus	Honey buzzard
24. Milvus migrans	Black kite
25. Milvus milvus	Kite
26. Haliaeetus albicilla	White-tailed eagle
27. Gypaetus barbatus	Bearded vulture
28. Neophron percnopterus	Egyptian vulture
29. Gyps fulvus	Griffon vulture
30. Aegypius monachus	Black vulture
31. Circaetus gallicus	Short-toed eagle
32. Circus aeruginosus	Marsh harrier
33. Circus cyaneus	Hen harrier
34. Circus pygargus	Montagu's harrier
35. Aquila chrysaetus	Golden eagle
36. Hieraaetus pennatus	Booted eagle
37. Hieraaetus fasciatus	Bonelli's eagle
38. Pandion haliaetus	Osprey
39. Falco eleonora	Eleonora's falcon
40. Falco biarmicus	Lanner falcon
41. Falco peregrinus	Peregrine
42. Porphyrio porphyrio	Purple gallinule
43. Grus grus	Crane
44. Tetrao tetrao (Otis tetrao)	Little bustard
45. Otis tarda	Great bustard
46. Himantopus himantopus	Black-winged stilt
47. Recurvirostra avosetta	Avocet
48. Burhinus oedipnemos	Stone curlew
49. Glareola pratincola	Pratincole
50. Charadrius morinellus	Dotterel
51. Pluvialis apricaria	Golden plover
52. Gallinago media	Great snipe
53. Tringa glareola	Wood-sandpiper
54. Phalaropus lobatus	Red-necked phalarope
55. Larus genei	Slender-billed gull
56. Larus audouinii	Audouin's gull

57. Gelochelidon nilotica	Gull-billed tern
58. Sterna sandvicensis	Sandwich tern
59. Sterna dougallii	Roseate tern
60. Sterna hirundo	Common tern
61. Sterna paradisaea	Arctic tern
62. Sterna albifrons	Little tern
63. Chelidonias niger	Black tern
64. Pterocles alchata	Pin-tailed sandgrouse
65. Bubo bubo	Eagle owl
66. Nyctea scandiaca	Snowy owl
67. Asio flammeus	Short-eared owl
68. Alcedo atthis	Kingfisher
69. Dryocopus martius	Black woodpecker
70. Dendrocopus leucotus	White-backed woodpecker
71. Luscinia svecica	Blue-throat
72. Sylvia undata	Dartford warbler
73. Sylvia nisoria	Barred warbler
74. Sitta whiteheadi	Corsican nuthatch

ACQUIS COMMUNAUTAIRE
COMPETITION

ANNEX III**Article 81 of the EC Treaty**

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
 - any decision or category of decisions by associations of undertakings,
 - any concerted practice or category of concerted practices,
- which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82 of the EC Treaty

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 86(1) and (2) of the EC Treaty

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

Article 87 of the EC Treaty

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common

interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

ACQUIS COMMUNAUTAIRE
RENEWABLES

Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market

(Official Journal L 283 , 27/10/2001 P. 0033 - 0040)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

(1) The potential for the exploitation of renewable energy sources is underused in the Community at present. The Community recognises the need to promote renewable energy sources as a priority measure given that their exploitation contributes to environmental protection and sustainable development. In addition this can also create local employment, have a positive impact on social cohesion, contribute to security of supply and make it possible to meet Kyoto targets more quickly. It is therefore necessary to ensure that this potential is better exploited within the framework of the internal electricity market.

(2) The promotion of electricity produced from renewable energy sources is a high Community priority as outlined in the White Paper on Renewable Energy Sources (hereinafter referred to as „the White Paper“) for reasons of security and diversification of energy supply, of environmental protection and of social and economic cohesion. That was endorsed by the Council in its resolution of 8 June 1998 on renewable sources of energy⁵, and by the European Parliament in its resolution on the White Paper.⁶

¹ OJ C 311 E, 31.10.2000, p. 320 and OJ C 154 E, 29.5.2001, p. 89.

² OJ C 367, 20.12.2000, p. 5.

³ OJ C 22, 24.1.2001, p. 27.

⁴ Opinion of the European Parliament of 16 November 2000 (OJ C 223, 8.8.2001, p. 294), Council Common Position of 23 March 2001 (OJ C 142, 15.5.2001, p. 5) and Decision of the European Parliament of 4 July 2001 (not yet published in the Official Journal). Council Decision of 7 September 2001.

⁵ OJ C 198, 24.6.1998, p. 1.

⁶ OJ C 210, 6.7.1998, p. 215.

(3) The increased use of electricity produced from renewable energy sources constitutes an important part of the package of measures needed to comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and of any policy package to meet further commitments.

(4) The Council in its conclusions of 11 May 1999 and the European Parliament in its resolution of 17 June 1998 on electricity from renewable energy sources⁷ have invited the Commission to submit a concrete proposal for a Community framework on access for electricity produced from renewable energy sources to the internal market. Furthermore, the European Parliament in its resolution of 30 March 2000 on electricity from renewable energy sources and the internal electricity market⁸ underlined that binding and ambitious renewable energy targets at the national level are essential for obtaining results and achieving the Community targets.

(5) To ensure increased market penetration of electricity produced from renewable energy sources in the medium term, all Member States should be required to set national indicative targets for the consumption of electricity produced from renewable sources.

(6) These national indicative targets should be consistent with any national commitment made as part of the climate change commitments accepted by the Community under the Kyoto Protocol.

(7) The Commission should assess to what extent Member States have made progress towards achieving their national indicative targets, and to what extent the national indicative targets are consistent with the global indicative target of 12 % of gross domestic energy consumption by 2010, considering that the White Paper's indicative target of 12 % for the Community as a whole by 2010 provides useful guidance for increased efforts at Community level as well as in Member States, bearing in mind the need to reflect differing national circumstances. If necessary for the achievement of the targets, the Commission should submit proposals to the European Parliament and the Council which may include mandatory targets.

(8) Where they use waste as an energy source, Member States must comply with current Community legislation on waste management. The application of this Directive is without prejudice to the definitions set out in Annex 2a and 2b to Council Directive 75/442/EEC of 15 July 1975 on waste⁹. Support for renewable energy sources should be consistent with other Community objectives, in particular respect for the waste treatment hierarchy. Therefore, the incineration of non-separated municipal waste should not be promoted under a future support system for renewable energy sources, if such promotion were to undermine the hierarchy.

(9) The definition of biomass used in this Directive does not prejudice the use of a different definition in national legislation, for purposes other than those set out in this Directive.

(10) This Directive does not require Member States to recognise the purchase of a guarantee of origin from other Member States or the corresponding purchase of electricity as a contribution to

⁷ OJ C 210, 6.7.1998, p. 143.

⁸ OJ C 378, 29.12.2000, p. 89.

⁹ OJ L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

the fulfilment of a national quota obligation. However, to facilitate trade in electricity produced from renewable energy sources and to increase transparency for the consumer's choice between electricity produced from non-renewable and electricity produced from renewable energy sources, the guarantee of origin of such electricity is necessary. Schemes for the guarantee of origin do not by themselves imply a right to benefit from national support mechanisms established in different Member States. It is important that all forms of electricity produced from renewable energy sources are covered by such guarantees of origin.

(11) It is important to distinguish guarantees of origin clearly from exchangeable green certificates.

(12) The need for public support in favour of renewable energy sources is recognised in the Community guidelines for State aid for environmental protection¹⁰, which, amongst other options, take account of the need to internalise external costs of electricity generation. However, the rules of the Treaty, and in particular Articles 87 and 88 thereof, will continue to apply to such public support.

(13) A legislative framework for the market in renewable energy sources needs to be established.

(14) Member States operate different mechanisms of support for renewable energy sources at the national level, including green certificates, investment aid, tax exemptions or reductions, tax refunds and direct price support schemes. One important means to achieve the aim of this Directive is to guarantee the proper functioning of these mechanisms, until a Community framework is put into operation, in order to maintain investor confidence.

(15) It is too early to decide on a Community-wide framework regarding support schemes, in view of the limited experience with national schemes and the current relatively low share of price supported electricity produced from renewable energy sources in the Community.

(16) It is, however necessary to adapt, after a sufficient transitional period, support schemes to the developing internal electricity market. It is therefore appropriate that the Commission monitor the situation and present a report on experience gained with the application of national schemes. If necessary, the Commission should, in the light of the conclusions of this report, make a proposal for a Community framework with regard to support schemes for electricity produced from renewable energy sources. That proposal should contribute to the achievement of the national indicative targets, be compatible with the principles of the internal electricity market and take into account the characteristics of the different sources of renewable energy, together with the different technologies and geographical differences. It should also promote the use of renewable energy sources in an effective way, and be simple and at the same time as efficient as possible, particularly in terms of cost, and include sufficient transitional periods of at least seven years, maintain investors' confidence and avoid stranded costs. This framework would enable electricity from renewable energy sources to compete with electricity produced from non-renewable energy sources and limit the cost to the consumer, while, in the medium term, reduce the need for public support.

(17) Increased market penetration of electricity produced from renewable energy sources will allow for economies of scale, thereby reducing costs.

¹⁰ OJ C 37, 3.2.2001, p. 3.

(18) It is important to utilise the strength of the market forces and the internal market and make electricity produced from renewable energy sources competitive and attractive to European citizens.

(19) When favouring the development of a market for renewable energy sources, it is necessary to take into account the positive impact on regional and local development opportunities, export prospects, social cohesion and employment opportunities, especially as concerns small and medium-sized undertakings as well as independent power producers.

(20) The specific structure of the renewable energy sources sector should be taken into account, especially when reviewing the administrative procedures for obtaining permission to construct plants producing electricity from renewable energy sources.

(21) In certain circumstances it is not possible to ensure fully transmission and distribution of electricity produced from renewable energy sources without affecting the reliability and safety of the grid system and guarantees in this context may therefore include financial compensation.

(22) The costs of connecting new producers of electricity from renewable energy sources should be objective, transparent and non-discriminatory and due account should be taken of the benefit embedded generators bring to the grid.

(23) Since the general objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. Their detailed implementation should, however, be left to the Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1 **Purpose**

The purpose of this Directive is to promote an increase in the contribution of renewable energy sources to electricity production in the internal market for electricity and to create a basis for a future Community framework thereof.

Article 2 **Definitions**

For the purposes of this Directive, the following definitions shall apply:

- (a) „renewable energy sources“ shall mean renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases);
- (b) „biomass“ shall mean the biodegradable fraction of products, waste and residues from agricul-

ture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;

(c) „electricity produced from renewable energy sources“ shall mean electricity produced by plants using only renewable energy sources, as well as the proportion of electricity produced from renewable energy sources in hybrid plants also using conventional energy sources and including renewable electricity used for filling storage systems, and excluding electricity produced as a result of storage systems;

(d) „consumption of electricity“ shall mean national electricity production, including autoproduction, plus imports, minus exports (gross national electricity consumption).

In addition, the definitions in Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market of electricity¹¹ shall apply.

Article 3

National indicative targets

1. Member States shall take appropriate steps to encourage greater consumption of electricity produced from renewable energy sources in conformity with the national indicative targets referred to in paragraph 2. These steps must be in proportion to the objective to be attained.

2. Not later than 27 October 2002 and every five years thereafter, Member States shall adopt and publish a report setting national indicative targets for future consumption of electricity produced from renewable energy sources in terms of a percentage of electricity consumption for the next 10 years. The report shall also outline the measures taken or planned, at national level, to achieve these national indicative targets. To set these targets until the year 2010, the Member States shall:

- take account of the reference values in the Annex,
- ensure that the targets are compatible with any national commitments accepted in the context of the climate change commitments accepted by the Community pursuant to the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

3. Member States shall publish, for the first time not later than 27 October 2003 and thereafter every two years, a report which includes an analysis of success in meeting the national indicative targets taking account, in particular, of climatic factors likely to affect the achievement of those targets and which indicates to what extent the measures taken are consistent with the national climate change commitment.

4. On the basis of the Member States' reports referred to in paragraphs 2 and 3, the Commission shall assess to what extent:

- Member States have made progress towards achieving their national indicative targets,
- the national indicative targets are consistent with the global indicative target of 12 % of gross na-

tional energy consumption by 2010 and in particular with the 22,1 % indicative share of electricity produced from renewable energy sources in total Community electricity consumption by 2010.

The Commission shall publish its conclusions in a report, for the first time not later than 27 October 2004 and thereafter every two years. This report shall be accompanied, as appropriate, by proposals to the European Parliament and to the Council.

If the report referred to in the second subparagraph concludes that the national indicative targets are likely to be inconsistent, for reasons that are unjustified and/or do not relate to new scientific evidence, with the global indicative target, these proposals shall address national targets, including possible mandatory targets, in the appropriate form.

Article 4

Support schemes

1. Without prejudice to Articles 87 and 88 of the Treaty, the Commission shall evaluate the application of mechanisms used in Member States according to which a producer of electricity, on the basis of regulations issued by the public authorities, receives direct or indirect support, and which could have the effect of restricting trade, on the basis that these contribute to the objectives set out in Articles 6 and 174 of the Treaty.

2. The Commission shall, not later than 27 October 2005, present a well-documented report on experience gained with the application and coexistence of the different mechanisms referred to in paragraph 1. The report shall assess the success, including cost-effectiveness, of the support systems referred to in paragraph 1 in promoting the consumption of electricity produced from renewable energy sources in conformity with the national indicative targets referred to in Article 3(2). This report shall, if necessary, be accompanied by a proposal for a Community framework with regard to support schemes for electricity produced from renewable energy sources.

Any proposal for a framework should:

- (a) contribute to the achievement of the national indicative targets;
- (b) be compatible with the principles of the internal electricity market;
- (c) take into account the characteristics of different sources of renewable energy, together with the different technologies, and geographical differences;
- (d) promote the use of renewable energy sources in an effective way, and be simple and, at the same time, as efficient as possible, particularly in terms of cost;
- (e) include sufficient transitional periods for national support systems of at least seven years and maintain investor confidence.

¹¹ OJ L 27, 30.1.1997, p. 20.

Article 5**Guarantee of origin of electricity produced from renewable energy sources**

1. Member States shall, not later than 27 October 2003, ensure that the origin of electricity produced from renewable energy sources can be guaranteed as such within the meaning of this Directive according to objective, transparent and non-discriminatory criteria laid down by each Member State. They shall ensure that a guarantee of origin is issued to this effect in response to a request.
2. Member States may designate one or more competent bodies, independent of generation and distribution activities, to supervise the issue of such guarantees of origin.
3. A guarantee of origin shall:
 - specify the energy source from which the electricity was produced, specifying the dates and places of production, and in the case of hydroelectric installations, indicate the capacity;
 - serve to enable producers of electricity from renewable energy sources to demonstrate that the electricity they sell is produced from renewable energy sources within the meaning of this Directive.
4. Such guarantees of origin, issued according to paragraph 2, should be mutually recognised by the Member States, exclusively as proof of the elements referred to in paragraph 3. Any refusal to recognise a guarantee of origin as such proof, in particular for reasons relating to the prevention of fraud, must be based on objective, transparent and non-discriminatory criteria. In the event of refusal to recognise a guarantee of origin, the Commission may compel the refusing party to recognise it, particularly with regard to objective, transparent and non-discriminatory criteria on which such recognition is based.
5. Member States or the competent bodies shall put in place appropriate mechanisms to ensure that guarantees of origin are both accurate and reliable and they shall outline in the report referred to in Article 3(3) the measures taken to ensure the reliability of the guarantee system.
6. After having consulted the Member States, the Commission shall, in the report referred to in Article 8, consider the form and methods that Member States could follow in order to guarantee the origin of electricity produced from renewable energy sources. If necessary, the Commission shall propose to the European Parliament and the Council the adoption of common rules in this respect.

Article 6**Administrative procedures**

1. Member States or the competent bodies appointed by the Member States shall evaluate the existing legislative and regulatory framework with regard to authorisation procedures or the other procedures laid down in Article 4 of Directive 96/92/EC, which are applicable to production plants for electricity produced from renewable energy sources, with a view to:
 - reducing the regulatory and non-regulatory barriers to the increase in electricity production from renewable energy sources,
 - streamlining and expediting procedures at the appropriate administrative level, and

- ensuring that the rules are objective, transparent and non-discriminatory, and take fully into account the particularities of the various renewable energy source technologies.
2. Member States shall publish, not later than 27 October 2003, a report on the evaluation referred to in paragraph 1, indicating, where appropriate, the actions taken. The purpose of this report is to provide, where this is appropriate in the context of national legislation, an indication of the stage reached specifically in:
 - coordination between the different administrative bodies as regards deadlines, reception and treatment of applications for authorisations,
 - drawing up possible guidelines for the activities referred to in paragraph 1, and the feasibility of a fast-track planning procedure for producers of electricity from renewable energy sources, and
 - the designation of authorities to act as mediators in disputes between authorities responsible for issuing authorisations and applicants for authorisations.
 3. The Commission shall, in the report referred to in Article 8 and on the basis of the Member States' reports referred to in paragraph 2 of this Article, assess best practices with a view to achieving the objectives referred to in paragraph 1.

Article 7**Grid system issues**

1. Without prejudice to the maintenance of the reliability and safety of the grid, Member States shall take the necessary measures to ensure that transmission system operators and distribution system operators in their territory guarantee the transmission and distribution of electricity produced from renewable energy sources. They may also provide for priority access to the grid system of electricity produced from renewable energy sources. When dispatching generating installations, transmission system operators shall give priority to generating installations using renewable energy sources insofar as the operation of the national electricity system permits.
2. Member States shall put into place a legal framework or require transmission system operators and distribution system operators to set up and publish their standard rules relating to the bearing of costs of technical adaptations, such as grid connections and grid reinforcements, which are necessary in order to integrate new producers feeding electricity produced from renewable energy sources into the interconnected grid.

These rules shall be based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of these producers to the grid. The rules may provide for different types of connection.
3. Where appropriate, Member States may require transmission system operators and distribution system operators to bear, in full or in part, the costs referred to in paragraph 2.
4. Transmission system operators and distribution system operators shall be required to provide any new producer wishing to be connected with a comprehensive and detailed estimate of the costs associated with the connection. Member States may allow producers of electricity from renewable en-

ergy sources wishing to be connected to the grid to issue a call for tender for the connection work.

5. Member States shall put into place a legal framework or require transmission system operators and distribution system operators to set up and publish their standard rules relating to the sharing of costs of system installations, such as grid connections and reinforcements, between all producers benefiting from them.

The sharing shall be enforced by a mechanism based on objective, transparent and non-discriminatory criteria taking into account the benefits which initially and subsequently connected producers as well as transmission system operators and distribution system operators derive from the connections.

6. Member States shall ensure that the charging of transmission and distribution fees does not discriminate against electricity from renewable energy sources, including in particular electricity from renewable energy sources produced in peripheral regions, such as island regions and regions of low population density.

Where appropriate, Member States shall put in place a legal framework or require transmission system operators and distribution system operators to ensure that fees charged for the transmission and distribution of electricity from plants using renewable energy sources reflect realisable cost benefits resulting from the plant's connection to the network. Such cost benefits could arise from the direct use of the low-voltage grid.

7. Member States shall, in the report referred to in Article 6(2), also consider the measures to be taken to facilitate access to the grid system of electricity produced from renewable energy sources. That report shall examine, *inter alia*, the feasibility of introducing two-way metering.

Article 8 **Summary report**

On the basis of the reports by Member States pursuant to Article 3(1) and Article 6(2), the Commission shall present to the European Parliament and the Council, no later than 31 December 2005 and thereafter every five years, a summary report on the implementation of this Directive.

This report shall:

- consider the progress made in reflecting the external costs of electricity produced from non-renewable energy sources and the impact of public support granted to electricity production,
- take into account the possibility for Member States to meet the national indicative targets established in Article 3(2), the global indicative target referred to in Article 3(4) and the existence of discrimination between different energy sources.

If appropriate, the Commission shall submit with the report further proposals to the European Parliament and the Council.

Article 9 **Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 27 October 2003. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 10 **Entry into force**

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

Article 11 **Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 27 September 2001.

For the European Parliament

The President

N. Fontaine

For the Council

The President

C. Picqué

ANNEX

Reference values for Member States' national indicative targets for the contribution of electricity produced from renewable energy sources to gross electricity consumption by 2010*

This Annex gives reference values for the fixing of national indicative targets for electricity produced from renewable energy sources ('RES-E'), as referred to in Article 3(2):

	RES-E TWh 1997**	RES-E % 1997***	RES-E % 2010***
Belgium	0,86	1,1	6,0
Denmark	3,21	8,7	29,0
Germany	24,91	4,5	12,5
Greece	3,94	8,6	20,1
Spain	7,15	19,9	29,4
France	66,00	15,0	21,0
Ireland	0,84	3,6	13,2
Italy	46,46	16,0	25,0 ¹
Luxembourg	0,14	2,1	5,7 ²
Netherlands	3,45	3,5	9,0
Austria	39,05	70,0	78,1 ³
Portugal	14,30	38,5	39,0 ⁴
Finland	19,03	24,7	31,5 ⁵
Sweden	72,03	49,1	60,0 ⁶
United Kingdom	7,04	1,7	10,0
Community	338,41	13,9 %	22 %****

* In taking into account the reference values set out in this Annex, Member States make the necessary assumption that the State aid guidelines for environmental protection allow for the existence of national support schemes for the promotion of electricity produced from renewable energy sources.

** Data refer to the national production of RES-E in 1997.

*** The percentage contributions of RES-E in 1997 and 2010 are based on the national production of RES-E divided by the gross national electricity consumption. In the case of internal trade of RES-E (with recognised certification or origin registered) the calculation of these percentages will influence 2010 figures by Member State but not the Community total.

**** Rounded figure resulting from the reference values above.

1 Italy states that 22 % would be a realistic figure, on the assumption that in 2010 gross national electricity consumption will be 340 TWh.

When taking into account the reference values set out in this Annex, Italy has assumed that gross national electricity production from renewable energy sources will attain up to 76 TWh in 2010. This figure includes the contribution of the non-biodegradable fraction of municipal and industrial waste used in compliance with Community legislation on waste management.

In this respect, the capability to reach the indicative target as referred to in this Annex, is contingent, inter alia, upon the effective level of the national demand for electric energy in 2010.

2 Taking into account the indicative reference values set out in this Annex, Luxembourg takes the view that the objective set for 2010 can be achieved only if:

- total electricity consumption in 2010 does not exceed that of 1997,
- wind-generated electricity can be multiplied by a factor of 15,
- biogas-generated electricity can be multiplied by a factor of 208,
- electricity produced from the only municipal waste incinerator in Luxembourg, which in 1997 accounted for half the electricity produced from renewable energy sources, can be taken into account in its entirety,
- photovoltaically generated electricity can be raised to 80 GWh, and in so far as the above points can be achieved from the technical standpoint in the time allowed.

In the absence of natural resources, an additional increase in electricity generated by hydroelectric power stations is ruled out.

3 Austria states that 78,1 % would be a realistic figure, on the assumption that in 2010 gross national electricity consumption will be 56,1 TWh. Due to the fact that the production of electricity from renewable sources is highly dependent on hydropower and therefore on the annual rainfall, the figures for 1997 and 2010 should be calculated on a long-range model based on hydrologic and climatic conditions.

4 Portugal, when taking into account the reference values, set out in this Annex, states that to maintain the 1997 share of electricity produced from renewable sources as an indicative target for 2010 it was assumed that:

- it will be possible to continue the national electricity plan building new hydro capacity higher than 10 MW,
- other renewable capacity, only possible with financial state aid, will increase at an annual rate eight times higher than has occurred recently.

These assumptions imply that new capacity for producing electricity from renewable sources, excluding large hydro, will increase at a rate twice as high as the rate of increase of gross national electricity consumption.

5 In the Finnish action plan for renewable energy sources, objectives are set for the volume of renewable energy sources used in 2010. These objectives have been set on the basis of extensive background studies. The action plan was approved within the Government in October 1999. According to the Finnish action plan, the share of electricity produced from renewable energy sources by 2010 would be 31 %. This indicative target is very ambitious and its realisation would require extensive promotion measures in Finland.

6 When taking into account the reference values set out in this Annex, Sweden notes that the possibility of reaching the target is highly dependent upon climatic factors heavily affecting the level of hydropower production, in particular variations in pluviometry, timing of rainfall during the year and inflow. The electricity produced from hydropower can vary substantially. During extremely dry years production may amount to 51 TWh, whereas in wet years it could amount to 78 TWh. The figure for 1997 should thus be calculated with a long-range model based on scientific facts on hydrology and climatic change. It is a generally applied method in countries with important shares of hydropower production to use water inflow statistics covering a time span of 30 to 60 years. Thus, according to the Swedish methodology and based on conditions during the period 1950-1999, correcting for differences in total hydropower production capacity and inflow over the years, average hydropower production amounts to 64 TWh which corresponds to a figure for 1997 of 46 %, and in this context Sweden considers 52 % to be a more realistic figure for 2010.

Furthermore, the ability of Sweden to achieve the target is limited by the fact that the remaining unexploited rivers are protected by law. Moreover, the ability of Sweden to reach the target is heavily contingent upon:

- the expansion of combined heat and power (CHP) depending on population density, demand for heat and technology development, in particular for black liquor gasification, and
- authorisation for wind power plants in accordance with national laws, public acceptance, technology development and expansion of grids.

Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport

(Official Journal L 123 , 17/05/2003 P. 0042 - 0046)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175¹ thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

(1) The European Council meeting at Gothenburg on 15 and 16 June 2001 agreed on a Community strategy for sustainable development consisting in a set of measures, which include the development of biofuels.

(2) Natural resources, and their prudent and rational utilisation as referred to in Article 174(1) of the Treaty, include oil, natural gas and solid fuels, which are essential sources of energy but also the leading sources of carbon dioxide emissions.

(3) However, there is a wide range of biomass that could be used to produce biofuels, deriving from agricultural and forestry products, as well as from residues and waste from forestry and the forestry and agri-foodstuffs industry.

(4) The transport sector accounts for more than 30 % of final energy consumption in the Community and is expanding, a trend which is bound to increase, along with carbon dioxide emissions and this expansion will be greater in percentage terms in the candidate countries following their accession to the European Union.

(5) The Commission White Paper „European transport policy for 2010: time to decide“ expects CO₂

¹ OJ C 103 E, 30.4.2002, p. 205 and OJ C 331 E, 31.12.2002, p. 291.

² OJ C 149, 21.6.2002, p. 7.

³ OJ C 278, 14.11.2002, p. 29.

⁴ Opinion of the European Parliament of 4 July 2002 (not yet published in the Official Journal), Council Common Position of 18 November 2002 (OJ C 32 E, 11.2.2003, p. 1) and decision of the European Parliament of 12 March 2003 (not yet published in the Official Journal).

emissions from transport to rise by 50 % between 1990 and 2010, to around 1 113 million tonnes, the main responsibility resting with road transport, which accounts for 84 % of transport-related CO₂ emissions. From an ecological point of view, the White Paper therefore calls for dependence on oil (currently 98 %) in the transport sector to be reduced by using alternative fuels such as biofuels.

(6) Greater use of biofuels for transport forms a part of the package of measures needed to comply with the Kyoto Protocol, and of any policy package to meet further commitments in this respect.

(7) Increased use of biofuels for transport, without ruling out other possible alternative fuels, including automotive LPG and CNG, is one of the tools by which the Community can reduce its dependence on imported energy and influence the fuel market for transport and hence the security of energy supply in the medium and long term. However, this consideration should not detract in any way from the importance of compliance with Community legislation on fuel quality, vehicle emissions and air quality.

(8) As a result of technological advances, most vehicles currently in circulation in the European Union are capable of using a low biofuel blend without any problem. The most recent technological developments make it possible to use higher percentages of biofuel in the blend. Some countries are already using biofuel blends of 10 % and higher.

(9) Captive fleets offer the potential of using a higher concentration of biofuels. In some cities captive fleets are already operating on pure biofuels and, in some cases, this has helped to improve air quality in urban areas. Member States could therefore further promote the use of biofuels in public transport modes.

(10) Promoting the use of biofuels in transport constitutes a step towards a wider application of biomass which will enable biofuel to be more extensively developed in the future, whilst not excluding other options and, in particular, the hydrogen option.

(11) The research policy pursued by the Member States relating to increased use of biofuels should incorporate the hydrogen sector to a significant degree and promote this option, taking into account the relevant Community framework programmes.

(12) Pure vegetable oil from oil plants produced through pressing, extraction or comparable procedures, crude or refined but chemically unmodified, can also be used as biofuel in specific cases where its use is compatible with the type of engines involved and the corresponding emission requirements.

(13) New types of fuel should conform to recognised technical standards if they are to be accepted to a greater extent by customers and vehicle manufacturers and hence penetrate the market. Technical standards also form the basis for requirements concerning emissions and the monitoring of emissions. Difficulties may be encountered in ensuring that new types of fuel meet current technical standards, which, to a large extent, have been developed for conventional fossil fuels. The Commission and standardisation bodies should monitor developments and adapt and develop actively standards, particularly volatility aspects, so that new types of fuel can be introduced, whilst maintaining environmental performance requirements.

(14) Bioethanol and biodiesel, when used for vehicles in pure form or as a blend, should comply with the quality standards laid down to ensure optimum engine performance. It is noted that in the case of biodiesel for diesel engines, where the processing option is esterification, the standard prEN 14214 of the European Committee for Standardisation (CEN) on fatty acid methyl esters (FAME) could be applied. Accordingly, the CEN should establish appropriate standards for other transport biofuel products in the European Union.

(15) Promoting the use of biofuels in keeping with sustainable farming and forestry practices laid down in the rules governing the common agricultural policy could create new opportunities for sustainable rural development in a more market-orientated common agriculture policy geared more to the European market and to respect for flourishing country life and multifunctional agriculture, and could open a new market for innovative agricultural products with regard to present and future Member States.

(16) In its resolution of 8 June 1998⁵, the Council endorsed the Commission's strategy and action plan for renewable energy sources and requested specific measures in the biofuels sector.

(17) The Commission Green Paper „Towards a European strategy for the security of energy supply“ sets the objective of 20 % substitution of conventional fuels by alternative fuels in the road transport sector by the year 2020.

(18) Alternative fuels will only be able to achieve market penetration if they are widely available and competitive.

(19) In its resolution of 18 June 1998⁶, the European Parliament called for an increase in the market share of biofuels to 2 % over five years through a package of measures, including tax exemption, financial assistance for the processing industry and the establishment of a compulsory rate of biofuels for oil companies.

(20) The optimum method for increasing the share of biofuels in the national and Community markets depends on the availability of resources and raw materials, on national and Community policies to promote biofuels and on tax arrangements, and on the appropriate involvement of all stakeholders/parties.

(21) National policies to promote the use of biofuels should not lead to prohibition of the free movement of fuels that meet the harmonised environmental specifications as laid down in Community legislation.

(22) Promotion of the production and use of biofuels could contribute to a reduction in energy import dependency and in emissions of greenhouse gases. In addition, biofuels, in pure form or as a blend, may in principle be used in existing motor vehicles and use the current motor vehicle fuel distribution system. The blending of biofuel with fossil fuels could facilitate a potential cost reduction in the distribution system in the Community.

(23) Since the objective of the proposed action, namely the introduction of general principles pro-

⁵ OJ C 198, 24.6.1998, p. 1.

⁶ OJ C 210, 6.7.1998, p. 215.

viding for a minimum percentage of biofuels to be marketed and distributed, cannot be achieved sufficiently by the Member States by reason of the scale of the action, and can therefore be achieved better at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(24) Research and technological development in the field of the sustainability of biofuels should be promoted.

(25) An increase in the use of biofuels should be accompanied by a detailed analysis of the environmental, economic and social impact in order to decide whether it is advisable to increase the proportion of biofuels in relation to conventional fuels.

(26) Provision should be made for the possibility of adapting rapidly the list of biofuels, the percentage of renewable contents, and the schedule for introducing biofuels in the transport fuel market, to technical progress and to the results of an environmental impact assessment of the first phase of introduction.

(27) Measures should be introduced for developing rapidly the quality standards for the biofuels to be used in the automotive sector, both as pure biofuels and as a blending component in the conventional fuels. Although the biodegradable fraction of waste is a potentially useful source for producing biofuels, the quality standard has to take into account the possible contamination present in the waste to avoid special components damaging the vehicle or causing emissions to deteriorate.

(28) Encouragement of the promotion of biofuels should be consistent with security of supply and environmental objectives and related policy objectives and measures within each Member State. In doing so, Member States may consider cost-effective ways of publicising the possibilities of using biofuels.

(29) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁷,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive aims at promoting the use of biofuels or other renewable fuels to replace diesel or petrol for transport purposes in each Member State, with a view to contributing to objectives such as meeting climate change commitments, environmentally friendly security of supply and promoting renewable energy sources.

⁷ OJ L 184, 17.7.1999, p. 23.

Article 2

1. For the purpose of this Directive, the following definitions shall apply:

- (a) „biofuels“ means liquid or gaseous fuel for transport produced from biomass;
- (b) „biomass“ means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;
- (c) „other renewable fuels“ means renewable fuels, other than biofuels, which originate from renewable energy sources as defined in Directive 2001/77/EC⁸ and used for transport purposes;
- (d) „energy content“ means the lower calorific value of a fuel.

2. At least the products listed below shall be considered biofuels:

- (a) „bioethanol“: ethanol produced from biomass and/or the biodegradable fraction of waste, to be used as biofuel;
- (b) „biodiesel“: a methyl-ester produced from vegetable or animal oil, of diesel quality, to be used as biofuel;
- (c) „biogas“: a fuel gas produced from biomass and/or from the biodegradable fraction of waste, that can be purified to natural gas quality, to be used as biofuel, or woodgas;
- (d) „biomethanol“: methanol produced from biomass, to be used as biofuel;
- (e) „biodimethylether“: dimethylether produced from biomass, to be used as biofuel;
- (f) „bio-ETBE (ethyl-tertio-butyl-ether)“: ETBE produced on the basis of bioethanol. The percentage by volume of bio-ETBE that is calculated as biofuel is 47 %;
- (g) „bio-MTBE (methyl-tertio-butyl-ether)“: a fuel produced on the basis of biomethanol. The percentage by volume of bio-MTBE that is calculated as biofuel is 36 %;
- (h) „synthetic biofuels“: synthetic hydrocarbons or mixtures of synthetic hydrocarbons, which have been produced from biomass;
- (i) „biohydrogen“: hydrogen produced from biomass, and/or from the biodegradable fraction of waste, to be used as biofuel;
- (j) „pure vegetable oil“: oil produced from oil plants through pressing, extraction or comparable procedures, crude or refined but chemically unmodified, when compatible with the type of engines involved and the corresponding emission requirements.

⁸ Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (OJ L 283, 27.10.2001, p. 33).

Article 3

1. (a) Member States should ensure that a minimum proportion of biofuels and other renewable fuels is placed on their markets, and, to that effect, shall set national indicative targets.

(b) (i) A reference value for these targets shall be 2 %, calculated on the basis of energy content, of all petrol and diesel for transport purposes placed on their markets by 31 December 2005.

(ii) A reference value for these targets shall be 5,75 %, calculated on the basis of energy content, of all petrol and diesel for transport purposes placed on their markets by 31 December 2010.

2. Biofuels may be made available in any of the following forms:

- (a) as pure biofuels or at high concentration in mineral oil derivatives, in accordance with specific quality standards for transport applications;
- (b) as biofuels blended in mineral oil derivatives, in accordance with the appropriate European norms describing the technical specifications for transport fuels (EN 228 and EN 590);
- (c) as liquids derived from biofuels, such as ETBE (ethyl-tertio-butyl-ether), where the percentage of biofuel is as specified in Article 2(2).

3. Member States shall monitor the effect of the use of biofuels in diesel blends above 5 % by non-adapted vehicles and shall, where appropriate, take measures to ensure compliance with the relevant Community legislation on emission standards.

4. In the measures that they take, the Member States should consider the overall climate and environmental balance of the various types of biofuels and other renewable fuels and may give priority to the promotion of those fuels showing a very good cost-effective environmental balance, while also taking into account competitiveness and security of supply.

5. Member States shall ensure that information is given to the public on the availability of biofuels and other renewable fuels. For percentages of biofuels, blended in mineral oil derivatives, exceeding the limit value of 5 % of fatty acid methyl ester (FAME) or of 5 % of bioethanol, a specific labelling at the sales points shall be imposed.

Article 4

1. Member States shall report to the Commission, before 1 July each year, on:

- the measures taken to promote the use of biofuels or other renewable fuels to replace diesel or petrol for transport purposes,
- the national resources allocated to the production of biomass for energy uses other than transport, and
- the total sales of transport fuel and the share of biofuels, pure or blended, and other renewable fuels placed on the market for the preceding year. Where appropriate, Member States shall report on any exceptional conditions in the supply of crude oil or oil products that have affected the marketing of biofuels and other renewable fuels.

In their first report following the entry into force of this Directive, Member States shall indicate the level of their national indicative targets for the first phase. In the report covering the year 2006, Member States shall indicate their national indicative targets for the second phase.

In these reports, differentiation of the national targets, as compared to the reference values referred to in Article 3(1)(b), shall be motivated and could be based on the following elements:

- (a) objective factors such as the limited national potential for production of biofuels from biomass;
- (b) the amount of resources allocated to the production of biomass for energy uses other than transport and the specific technical or climatic characteristics of the national market for transport fuels;
- (c) national policies allocating comparable resources to the production of other transport fuels based on renewable energy sources and consistent with the objectives of this Directive.

2. By 31 December 2006 at the latest, and every two years thereafter, the Commission shall draw up an evaluation report for the European Parliament and for the Council on the progress made in the use of biofuels and other renewable fuels in the Member States.

This report shall cover at least the following:

- (a) the cost-effectiveness of the measures taken by Member States in order to promote the use of biofuels and other renewable fuels;
- (b) the economic aspects and the environmental impact of further increasing the share of biofuels and other renewable fuels;
- (c) the life-cycle perspective of biofuels and other renewable fuels, with a view to indicating possible measures for the future promotion of those fuels that are climate and environmentally friendly, and that have the potential of becoming competitive and cost-efficient;
- (d) the sustainability of crops used for the production of biofuels, particularly land use, degree of intensity of cultivation, crop rotation and use of pesticides;
- (e) the assessment of the use of biofuels and other renewable fuels with respect to their differentiating effects on climate change and their impact on CO₂ emissions reduction;
- (f) a review of further more long-term options concerning energy efficiency measures in transport.

On the basis of this report, the Commission shall submit, where appropriate, proposals to the European Parliament and to the Council on the adaptation of the system of targets, as laid down in Article 3(1). If this report concludes that the indicative targets are not likely to be achieved for reasons that are unjustified and/or do not relate to new scientific evidence, these proposals shall address national targets, including possible mandatory targets, in the appropriate form.

Article 5

The list contained in Article 2(2) may be adapted to technical progress in accordance with the procedure referred to in Article 6(2). When adapting this list, the environmental impact of biofuels shall be taken into account.

Article 6

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. The Committee shall adopt its Rules of Procedure.

Article 7

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2004 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 8

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 8 May 2003.

For the European Parliament

The President

P. Cox

For the Council

The President

M. Chrisochôidis

PART III

MEASURES BY THE ENERGY COMMUNITY MINISTERIAL COUNCIL

DECISION No 2007/06/MC-EnC of the Ministerial Council of the Energy Community of 18 December 2007 on the Implementation of Directive 2005/89/EC, Directive 2004/67/EC and Regulation (EC) No 1775/2005

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular Articles 2, 100 (ii) and 103 thereof,

Whereas the Ministerial Council decided on 29 June 2007 to implement Directive 2005/89/EC, Directive 2004/67/EC and Regulation (EC) N° 1775/2005 and requested the Permanent High Level Group to propose the requisite legal acts, including timetables for implementation,

Whereas the Permanent High Level Group, at its meeting on XX October 2007, elaborated and proposed to adopt the present Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. Each Contracting Party shall implement Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment before 31 December 2009.
2. For the implementation of Directive 2005/89/EC in the Contracting parties, at the exception of its Articles 8 and 9, the term „Member States“ shall apply by analogy to „Contracting Parties“.
3. The Secretariat shall monitor and review the implementation of Directive 2005/89/EC in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2010.

Article 2

1. Each Contracting Party shall implement Directive 2004/67/EC concerning measures to safeguard security of natural gas supply before 31 December 2009.
2. For the implementation of Directive 2004/67/EC in the Contracting Parties at the exception of its Articles 10 and 11, the term „Member States“ shall apply by analogy to „Contracting Parties“.
3. For the implementation of Directive 2004/67/EC in the Contracting Parties, the Coordination Group referred to at its Article 7 will be set up by a Procedural Act to be adopted by the Permanent

High Level Group.

4. The Secretariat shall monitor and review the implementation of Directive 2004/67/EC in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2010.

Article 3

1. Each Contracting Party shall implement Regulation (EC) No 1775/2005 on conditions of access to the natural gas network before 31 December 2008.

2. For the implementation of Regulation (EC) No 1775/2005 in the Contracting Parties, the term „Member States“ shall apply by analogy to „Contracting Parties“.

3. The Secretariat shall monitor and review the implementation of Regulation (EC) No 1775/2005 in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2009.

Article 4

This Decision enters into force on the day of its adoption and is addressed to the Contracting Parties.

Done at Belgrade on 18 December 2007.

For the Ministerial Council:

(Presidency)

PROCEDURAL Act No 2008/01/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular Articles 90 to 94 as well as Articles 86, 87 and 82 thereof,

Having regard to the proposal by the Secretariat,

Whereas it is of crucial importance that the provisions of the Treaty, including the Decisions adopted thereunder, are properly implemented in the national legal orders of the Parties and correctly applied by their authorities,

Whereas each Party to the Treaty is responsible for the timely implementation and correct application of Energy Community law within its own legal system,

Whereas the Treaty establishes a system of dispute settlement within the Energy Community by decision of the Ministerial Council,

Whereas the procedure leading up to such a decision may be initiated by a Party, the Secretariat or the Regulatory Board,

Whereas the Treaty gives private bodies the right to approach the Secretariat with complaints,

Whereas a Party concerned has the right to make observations in response to the request or complaint,

Whereas the Ministerial Council may decide on the existence of a breach by a Party of its obligations,

Whereas the Ministerial Council may further decide on the existence of a serious and persistent breach and on possible sanctions resulting therefrom,

Whereas the Treaty provisions establish a framework which requires more detailed procedural rules for practical implementation,

Whereas the Ministerial Council on 29 June 2007 concluded that a formal process at a level below the Ministerial will have to be considered for the issue of non-implementation of Treaty commitments by Parties to the Treaty,

Whereas the Permanent High Level Group, at its meetings on 11 March and 26 June 2008, endorsed the present Procedural Act,

HAS ADOPTED THIS PROCEDURAL ACT:

TITLE I
GENERAL PROVISIONS

Article 1
Purpose

These rules specify the procedure to be followed in cases of failure by a Party (hereinafter “the Party concerned”) to comply with a Treaty obligation or to implement a Decision addressed to it within the required period (hereinafter “Energy Community law”) as established by Articles 90 to 93 of the Treaty (hereinafter “dispute settlement procedure”).

Article 2
Failure to comply

- (1) A Party fails to comply with its obligations under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law.
- (2) Failure by a Party to comply with Energy Community law may consist of any measure by the public authorities of the Party (central, regional or local as well as legislative, administrative or judicial), including undertakings within the meaning of Article 19 of the Treaty, to which the measure is attributable.

Article 3
Burden of proof

The burden of proving the allegation of non-compliance by a Party with Energy Community law and to place before the Ministerial Council the information needed to enable it to determine whether the obligation has not been fulfilled shall rest on the initiator of the proceedings within the meaning of Article 10(1). Where, however, the Party invokes an exemption to a rule or general principle of Energy Community law, it is incumbent upon the Party concerned to prove that the requirements for such exemption are fulfilled.

Article 4
Dispute settlement procedures and private disputes

Dispute settlement procedures must relate to a violation by a Party of Energy Community law and may not concern disputes between private parties.

Article 5
Case register

- (1) The Secretariat keeps a case register at its premises under the control of the Legal Counsel.
- (2) Each dispute settlement procedure case shall be assigned an official case number. Incoming and outgoing documents shall be registered under this number in the case file. If several pending cases concern the same subject matter, they may be consolidated and processed under the same case number.
- (3) The representatives of the Energy Community institutions and their staff shall not disclose information acquired or exchanged by them pursuant to this Procedural Act and of the kind covered by Energy Community Staff Regulation 3.5. a), unless the present Rules permit such disclosure.

Article 6
Access to the case file

- (1) At their request, Parties, Participants and Observers to the Treaty, the complainant as well as private or public bodies with a legitimate interest (hereinafter “interested parties”) shall have access to the case file, subject to an eventual request by complainants to confidential treatment.
- (2) In cases of doubt, the Director of the Secretariat shall take a decision on the existence of a legitimate interest of private or public bodies requesting access to the case file.
- (3) The Secretariat shall adopt a Procedural Act laying down specific rules on access to the case file.

Article 7
Procedural documents

- (1) The language of the procedure is English. Any procedural documents expressed in another language shall be accompanied by a translation into English.
- (2) All procedural documents shall bear a date, the case number and the name and the address of the sender.
- (3) The original of every procedural document shall be signed by a person authorised to represent the sender by law, by its constitution or by authorization.
- (4) If a procedural document does not comply with the requirements set out in paragraphs 1 to 3, the Secretariat shall prescribe a reasonable period within which the sender is to comply with them.

Article 8
Costs

Costs incurred by all parties to the procedure are not recoverable.

Article 9
Time-limits

- (1) Unless otherwise indicated, time-limits established by these Rules and time-limits prescribed by the competent institutions shall be binding.
- (2) Time-limits shall be prescribed so as to specify the precise date on which the required action is to take place rather than expressing periods in days, weeks, months etc. Where that day is a Saturday, Sunday or an official holiday, the deadline shall be extended until the end of the first following working day.
- (3) Time-limits may be extended by the institution that prescribed it upon a reasoned application.
- (4) Communication by telefax and email shall be deemed sufficient for the purposes of compliance with the time-limits.

TITLE II
THE COURSE OF THE PROCEEDINGS

CHAPTER I
PRELIMINARY PROCEDURE

Article 10
Scope and purpose

- (1) When initiating a dispute settlement procedure within the meaning of Article 11, the Secretariat shall carry out the preliminary procedure set out in this Title. A Party or the Regulatory Board shall initiate dispute settlement procedures either by notification to the Secretariat or directly by submitting a reasoned request to the Ministerial Council in accordance with Article 28 below.
- (2) The purpose of the preliminary procedure is to establish the factual and legal background of cases of alleged non-compliance, and to give the Party concerned ample opportunity to be heard. In this respect, the preliminary procedure shall enable the Party concerned to comply of its own accord with the requirements of the Treaty or, if appropriate, to justify its position.

Article 11
Initiation of a dispute settlement procedure

- (1) A dispute settlement procedure may be initiated by the Secretariat by way of an opening letter in accordance with Article 12 below.
- (2) The Secretariat initiates procedures in response to alleged non-compliance arising from either a complaint by a private body, a notification by a Party or by the Regulatory Board or by its own initi-

ative. Within the Secretariat, the Legal Counsel shall coordinate the procedure.

- (3) The decision to initiate a dispute settlement procedure shall be made publicly available on the Energy Community website, stating the date of sending out the opening letter, the Party concerned and a brief summary of the subject-matter.

Article 12
Opening letter

- (1) If the Secretariat considers that a possible non-compliance of which it has become aware or issues raised in a complaint warrant the opening of a dispute settlement procedure, it addresses an opening letter to the Party concerned, requesting it to submit its observations within a specified time period. This period shall normally be two months.
- (2) The Party concerned is requested to adopt a position on the points of fact and of law raised in the opening letter.

Article 13
Reasoned opinion

- (1) In the light of the reply or absence of a reply from the Party concerned, the Secretariat may address a reasoned opinion to that Party. The reasoned opinion must contain a coherent and detailed statement of the reasons which led the Secretariat to conclude that the Party concerned failed to fulfil its obligations under the Treaty.
- (2) The reasoned opinion shall call on the Party concerned to comply with the Energy Community law within a specified time period. This period shall normally be two months.

Article 14
Submission to the Ministerial Council

In the light of the reply or absence of a reply from the Party concerned, the Secretariat may bring the matter to the attention of the Ministerial Council by way of a reasoned request in accordance with Article 28 below.

Article 15
Request for information

- (1) The Secretariat may, by simple request, require any authority of the Party concerned to provide all necessary information at any stage of the preliminary procedure.
- (2) The Secretariat may also request information from other natural or legal persons.

Article 16

Interested parties

- (1) Interested parties may submit written observations to the Secretariat within one month of the publication provided for in Article 11(3).
- (2) Private and public bodies other than Parties, Participants and Observers shall substantiate the required legitimate interest in writing.
- (3) Any written observations received shall be immediately forwarded to the Party concerned and shall be attached to the reasoned request referred to the Ministerial Council.

Article 17

Urgency

- (1) In cases of urgency due to the risk of serious and irreparable damage to an objective of the Treaty, the Secretariat may, on the basis of a prima facie finding of non-compliance, refer a reasoned request to the Ministerial Council directly.
- (2) The Ministerial Council shall review the existence of urgency.

Article 18

Suspension and discontinuance of the procedure

- (1) The Secretariat may, at any point of the preliminary procedure, decide to suspend or discontinue the procedure, in particular where the Party brings the state of non-compliance with Energy Community law to an end or where it makes credible commitments as to its intention to amend its legislation, administrative or judicial practice. Such decision may also be taken where the Party concerned successfully refutes factual assumptions or convincingly counters the legal arguments made by the initiator.
- (2) To achieve the results described in paragraph 1, the Secretariat may enter into informal bilateral discussions with the Party concerned. A short report on the results achieved shall be submitted by the initiator to the Ministerial Council upon closure of the file and be included to the case file.
- (3) The Secretariat may reopen the procedure where there has been a material change in any of the facts on which the decision was based, where the Party concerned acts contrary to its commitments or where the decision was based on incomplete, incorrect or misleading information provided by that Party.

CHAPTER II

THE ROLE OF PRIVATE BODIES

Article 19

Right to approach the Secretariat

- (1) Private bodies may lodge a complaint with the Secretariat against a Party arising from any measure the complainant considers incompatible with Energy Community law.
- (2) The notion of private body encompasses all natural and legal persons as well as companies, firms or associations having no legal personality.

Article 20

Subject-matter

- (1) A complaint has to relate to a failure to comply with Energy Community law by a Party as defined above in Article 2.
- (2) A complaint against an EU Member State will be passed on to the European Commission. The Secretariat will inform the complainant and the Ministerial Council of the transfer to the European Commission. Such transfer shall be without prejudice to the obligations arising from Title III and IV of the Treaty.

Article 21

Form of the complaint

- (1) A complaint shall be made to the Secretariat in writing, by letter, fax or e-mail.
- (2) Complainants should send supporting documentary evidence, if available, and copies of relevant correspondence with the national authorities of the Party.

Article 22

Acknowledgment of receipt

- (1) Following registration by the Secretariat and assignment of a case number, an acknowledgement will immediately be sent to the complainant.
- (2) The complainant shall be asked to indicate whether he/she wishes their complaint to be treated in a confidential or non-confidential manner. The Secretariat will abide by the choice a complainant has made regarding confidentiality, i.e. disclosure of his/her identity, in its communication with the authorities of the Party concerned, other interested parties or the general public. Where a complainant

nant has not indicated his/her choice, the Secretariat shall presume that the complainant has opted for non-confidential treatment.

(3) The Secretariat will keep the complainant informed of the course of the procedure.

Article 23
Information of the Party concerned

In its opening letter, the Secretariat shall inform the Party concerned that it acts upon complaint.

Article 24
Request for information

The Secretariat may, by simple request, require the complainant to provide all necessary information at any stage of the preliminary procedure.

Article 25
Reaction by the Secretariat

The Secretariat shall endeavour to decide whether to submit a reasoned request to the Ministerial Council or to discontinue the case within six months of registration of the complaint. The complainant shall be notified by the Secretariat in advance of this decision.

Article 26
Withdrawal of the complaint

Withdrawal of the complaint shall not affect the right of the Secretariat to pursue the procedure further.

Article 27
Notification by a Party or by the Regulatory Board

Articles 21 to 25 shall apply by analogy to cases where the Secretariat initiates a preliminary procedure upon notification by a Party or the Regulatory Board.

TITLE III
PROCEDURE BEFORE THE MINISTERIAL COUNCIL

CHAPTER I
BREACHES BY A PARTY OF ITS OBLIGATIONS (ARTICLE 91 OF THE TREATY)

Article 28
Reasoned request

(1) A reasoned request for a decision of the Ministerial Council pursuant to Article 90 of the Treaty may be submitted by the Secretariat either upon complaint, upon notification by a Party or the Regulatory Board, or by its own initiative. In these cases, the reasoned request shall be preceded by a preliminary procedure in accordance with the provisions laid down in Title II.

(2) A reasoned request may also be submitted by a Party or the Regulatory Board directly. In that case, the Party or the Regulatory Board may ask the Secretariat for factual information and legal advice before submitting the reasoned request.

(3) The reasoned request shall be based on concrete factual findings and backed up by sufficient legal analysis. The reasoned request shall contain a proposal for the decision to be taken by the Ministerial Council pursuant to Article 91 of the Treaty.

(4) The reasoned request with the relevant excerpts from the case file annexed shall be submitted to the Presidency, and the Vice-Presidency at least five months before the relevant meeting of the Ministerial Council. A copy of the reasoned request shall be sent to the Secretariat in case the latter is not the initiator.

(5) The reasoned request shall be published on the Energy Community's website providing for confidentiality of the complainant, where applicable.

Article 29
Scope of the decision

(1) The Ministerial Council decides on the proposal made in the submitted reasoned request. It applies Energy Community law including these Rules.

(2) In its decision, the Ministerial Council shall either establish the existence of a breach by a Party of its obligations arising from Energy Community law according to the proposal or dismiss the request entirely or partially.

Article 30**Notification of the Party concerned**

(1) The Presidency shall, within seven days after receiving it, forward the reasoned request and the annexes to the Party concerned.

(2) Within two months following receipt of a copy of the reasoned request, the Party concerned may reply in writing.

Article 31**Draft agenda for the Ministerial Council**

The Presidency and the Vice-Presidency, in accordance with Item IV.4 of the Rules of Procedure of the Ministerial Council, shall put the reasoned request for decision on the draft agenda for the next meeting of the Ministerial Council.

Article 32**Advisory Committee and Regulatory Board**

(1) Before taking the decision pursuant to Article 91 of the Treaty, the Presidency and the Vice-Presidency shall ask an Advisory Committee for its opinion on the reasoned request, taking into account the reply by the Party concerned. The Ministerial Council shall not be bound by the opinion of the Advisory Committee.

(2) The Advisory Committee shall be composed of three members appointed by the Ministerial Council by unanimity for a renewable term of two years, including one member nominated by the European Community. Members shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in the respective Party.

(3) The Advisory Board shall adopt its opinion by a majority including the positive vote of the member nominated by the European Community. The opinion shall be provided within two months and shall be available in sufficient time for distribution to the members of the Ministerial Council in accordance with Item IV.4 of the Rules of Procedure of the Ministerial Council. The opinion shall also be submitted to the Permanent High Level Group preparing the Ministerial Council meeting in question.

(4) The Advisory Committee shall adopt its internal rules of procedure with the assistance of the Secretariat.

(5) In cases concerning statutory, technical and regulatory rules within the meaning of Article 58(a) of the Treaty, the Presidency and the Vice-Presidency shall also ask the Regulatory Board to provide a written opinion within two months, unless the Regulatory Board initiated the procedure in question.

Article 33**Request for additional information**

The Presidency and the Vice-Presidency may request additional information and documentation from the initiator and the Party concerned.

Article 34**Decision by the Ministerial Council**

(1) At its meeting, or, as the case may be, by correspondence, the Ministerial Council takes its decision in accordance with Article 29(2).

(2) The decision by the Ministerial Council shall be taken in accordance with the rules laid down in Article 91(1) of the Treaty.

(3) The decision shall be signed by the Presidency. It shall be sent to the Party concerned, the submitter of the reasoned request and the Secretariat. The Advisory Committee's or the Regulatory Board's opinion shall be appended to the Ministerial Council's decision.

Article 35**Decision in the absence of a reply**

Where the Party concerned, after having been duly informed, fails to reply in its defence in due time, a decision shall be taken based on the facts available to the Ministerial Council at the time of its deliberations.

Article 36**Publication of the decision**

The decision taken by the Ministerial Council shall be made publicly available on the website of the Secretariat.

Article 37**Binding nature of the decision**

The decision by the Ministerial Council shall be binding on the Parties concerned from the date of its adoption.

Article 38

Consequences of a decision establishing failure to comply

- (1) Where the Ministerial Council establishes the existence of a breach of a Party's obligation pursuant to Article 91 of the Treaty, the Party concerned shall take all appropriate measures to rectify the breach and ensure compliance with Energy Community law.
- (2) The Secretariat, in accordance with Article 67(b) of the Treaty, shall review the proper implementation by the Party concerned of the decision by the Ministerial Council, and may again bring the matter before the Ministerial Council on the grounds of a failure to take the necessary measures to comply with the decision.

CHAPTER II

SERIOUS AND PERSISTENT BREACHES (ARTICLE 92 OF THE TREATY)

Article 39

Serious and persistent breach

The Ministerial Council shall establish the existence of a serious and persistent breach by a Party of its obligations under the Treaty taking into account the particularities of each individual case.

Article 40

Request

- (1) A Party, the Secretariat or the Regulatory Board may request the Ministerial Council to determine the existence of a serious and persistent breach without a preliminary procedure.
- (2) The request may follow up on a prior decision taken by the Ministerial Council under Article 91 of the Treaty or raise a new issue.
- (3) The request shall set out the allegations against the Party concerned in factual and legal terms. It shall also contain a proposal as to concrete sanctions to be taken in accordance with Article 92(1) of the Treaty.
- (4) The request shall be submitted to the Presidency and the Vice-Presidency at least 60 days before the respective meeting. A copy shall be submitted to the Secretariat for registration. The request shall not be made public.

Article 41

Decision-making procedure

- (1) The Presidency shall, within seven days after receiving it, forward the request to the Party concerned and ask it for a reply to the allegations made in the request.
- (2) The Presidency and the Vice-Presidency may ask the Advisory Committee for its written opinion.
- (3) The decision by the Ministerial Council on the existence of a serious and persistent breach shall be taken in accordance with Articles 92(1) and 93 of the Treaty.
- (4) The decision taken by the Ministerial Council shall be made publicly available on the Secretariat's website.

Article 42

Sanctions

- (1) In the decision establishing the existence of a serious and persistent breach, the Ministerial Council shall determine sanctions in accordance with Article 92(1) of the Treaty and specify a time-limit.
- (2) The obligations of the Party concerned under the Treaty shall in any case continue to be binding on that Party.
- (3) The Ministerial Council shall at each subsequent meeting verify that the grounds continue to apply on which the decision establishing the existence of a serious and persistent breach was made and sanctions were imposed.

CHAPTER III

REVOCATION OF DECISIONS

Article 43

Procedural aspects

- (1) The Ministerial Council, in accordance with Articles 91(2) and 92(2), may decide by simple majority to revoke decisions taken under Articles 91(1) and 92(1) respectively. Revocation of a decision may be proposed by any Party.
- (2) The Ministerial Council shall give reasons for its decision to revoke a previous decision and shall make the revocation decision publicly available on the Energy Community website.
- (3) A revocation shall not affect decisions taken within the domestic legal orders following up the initial decision by the Ministerial Council.

TITLE IV FINAL PROVISIONS

Article 44

Amendments to Rules of Procedure of the Ministerial Council

(1) In Item VII.5. of Procedural Act No. 2006/01 on Internal Rules of Procedure of the Ministerial Council of the Energy Community, the text after the semicolon is deleted. The semicolon is replaced by a full stop.

(2) In Item VII.6. of Procedural Act No. 2006/01 on Internal Rules of Procedure of the Ministerial Council of the Energy Community, the last sentence is deleted.

Article 45

Addressees

This Procedural Act is addressed to and shall be binding on all Parties to the Treaty and institutions set up under the Treaty.

Article 46

Entry into force

This Procedural Act shall enter into force upon adoption.

Article 47

Review

The Rules of Procedure in this Procedural Act shall be reviewed in the light of experience within two years of their adoption upon proposal by the Secretariat.

Article 48

Publication

The Director of the Energy Community Secretariat shall make this Procedural Act available to all Parties and institutions under the Treaty within 7 days after its adoption and to the public on the website of the Energy Community.

Done in Brussels on 27 June 2008

For the Ministerial Council:

(Presidency)

DECISION No 2008/02/MC-EnC of the Ministerial Council of the Energy Community on the Implementation of Commission Decision of 9 November 2006 amending the Annex to Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity

The Ministerial Council of the Energy Community,

Having regard to the Treaty establishing the Energy Community, and in particular Articles 25 and 28, in conjunction with Articles 79 and 82 thereof,

Whereas Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity, is listed at Article 11 and Annex I of the Treaty establishing the Energy Community;

Whereas the Annex to Regulation (EC) No 1228/2003 has been amended by the Commission Decision of 9 November 2006;

Whereas it is necessary to implement this amendment in the Energy Community context to align with the evolution of European Community law;

Whereas it is necessary to define the geographical scope of specific provisions of the new Annex to Regulation (EC) No 1228/2003 to adapt it to the Energy Community context, with regard to existing and planned interconnections;

Whereas the continuous cooperation and support of the transmission system operators and regulators from countries adjacent to the region defined in this decision, especially concerning the establishment and operation of the Coordinated Auction Office, are fully recognized and further welcomed, in particular as regards the Republic of Austria;

Whereas it is necessary to establish a review clause in order to take into account new network or market developments;

HAS ADOPTED THIS DECISION:

Article 1

Each Contracting Party shall implement the Commission Decision of 9 November 2006 amending the Annex to Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity.

Article 2

1. The implementation of the common coordinated congestion management method and procedure for the allocation of capacity to the market, as foreseen at Article 3 paragraph 2 of the Annex to

Regulation (EC) No 1228/2003, shall cover the following territories:

- The territories of the Adhering Parties, the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo;
- The territories of the Republic of Bulgaria, of the Hellenic Republic, of the Republic of Hungary, of Romania and of the Republic of Slovenia;
- The territory of the Republic of Italy with regard to the interconnections between the Italian Republic and the territories of the Adhering Parties.

2. For the territories referred to in paragraph 1, the common coordinated congestion management method and procedure for the allocation of capacity to the market at least yearly, monthly and day-ahead shall be applied by not later than 31 December 2009.

3. At paragraph 5.10 of the Annex to Regulation (EC) No 1228/2003, the references to the European Commission shall be understood as referring to the Energy Community Secretariat.

Article 3

The Regulatory Authority and Transmission System Operator of the Republic of Austria may participate as observers in the relevant instances in charge of the implementation of Article 2. As regards the activities of the Regulatory Board and of its working groups, this Decision is without prejudice to the rights of the regulators of Participants as defined in Article 59 of the Treaty establishing the Energy Community.

Article 4

This Decision shall be reviewed and, where necessary, amended in order to take into account new network or market developments at the latest by 31 December 2011. The review shall also take into account the correct implementation of the relevant provisions of the Energy Community Treaty, in particular as regards competition, and of the related EU legislation (Directive 2003/54/EC and Regulation (EC) No 1228/2003).

Article 5

This Decision enters into force on the day of its adoption and is addressed to the Parties.

Done in Brussels on 27 June 2008

For the Ministerial Council:

(Presidency)

