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Proposal for a
COUNCIL DIRECTIVE SYN 384
concerning common rules for the internal market
in electricity

Proposal for a
COUNCIL DIRECTIVE SYN 385
concerning common rules for the internal market
in natural gas

(presented by the Commission)

Completion of the internal market in electricity and gas

A. General explanatory memorandum

1. Introduction

- 1.1 With the publication of the White Paper⁽¹⁾ in June 1985 ("Completing the Internal Market") and the adoption of the Single Act in December 1985, the completion of the internal market by the end of 1992 became a key objective of the Community.

The Single Act introduced Article 8a into the Treaty. This article defines the internal market as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured." This definition includes energy.

Moreover, energy is such an important component of all economic activity in the Community that the completion of the internal market is inconceivable without an integrated internal energy market. The energy objectives for the Community adopted by the Council in 1986⁽²⁾ indeed explicitly mention the need for "greater integration, free from barriers to trade, of the internal energy market with a view to improving security of supply, reducing costs and improving economic competitiveness".

- 1.2 The Commission's working document on the Internal Energy Market of May 1988⁽³⁾ provided the basis for future action. It drew up an inventory of obstacles to greater integration of the energy market and gauged the distance that had to be covered. It pointed out that the energy market is an extremely diverse one, in terms of products as well as end-uses: the various forms of energy, apart from their distinct physical characteristics, may be used for heating as well as fuel, raw material or motive power, depending on how they are processed.

As far as the completion of the internal market is concerned, the various forms of energy are in different situations: Community coal is subject to relatively little intra-Community trade, oil markets already enjoy a significant amount of competition. The

(1) COM(85) 310 final, 14.6.1985.
(2) OJ No C 241, 25.9.1986.
(3) COM(88) 238 final, 2.5.1988.

main concerns are with electricity and gas whose transmission and distribution rely on a particular network infrastructure. Such asset specificity may explain why these industries have to date mostly developed on a national basis rather than on an international one. The resulting impediments to cross-border trade for electricity and gas must now be removed in order to complete the internal energy market.

- 1.3 Electricity and natural gas constitute important factors of economic activity in the EEC. An efficient supply of these energies is of vital importance for the Community's economic growth. Both the electricity and gas sectors are capital-intensive sectors requiring high investments in order to produce, transmit and above all to distribute. Hence, improving electricity and gas production and supply efficiency, in both the amount of primary energy used as well as the use of capital resources, must be considered an important policy objective in the completion of the internal market. A more efficient European energy sector will lead to a more efficient allocation of resources which will have beneficial effects on economic growth and on employment in general. This has, indeed, been recognized by a number of Member states, who have already taken steps to revise their energy production, transport and distribution structures. This is part of a more general move towards liberalization of traditionally regulated sectors, such as transportation, communications and financial services as well as energy.

A Commission study based on the Cecchini report's methodology showed that integration of the internal gas and electricity market, for example, could lead to significant savings in the electricity sector, without any adverse effects on the environment, security of supply or quality of service. These savings would come in particular from a reduction in the costs of investment in production, from the development of cogeneration, from a better utilisation of transport infrastructures and from a reduction in reserve capacity.

Indeed, a more efficient and integrated and competitive electricity and gas market will also have a positive effect on the structure of the Community's electricity and gas industry, allowing for new entrants, more diversity of fuels and technologies and an increase in the trade of energy products between Member States and thus a higher level of security of supply.

Finally, removing the barriers to intra-Community trade will allow electricity and gas users, small ones and large ones, to enjoy the benefits of a more competitive market including more freedom of choice and reduced price disparities between Member States.

2. Objectives

2.1 The main objectives for the internal market for gas and electricity are three:

2.1.1 Free movement of products

The creation of a single market without internal frontiers requires that measures be taken to ensure that electricity and natural gas can be moved both within and between Member States in response to demand. The achievement of this objective requires in turn changes to many existing national regulations regarding production, imports, exports, transmission and distribution, as well as accompanying measures, for instance to ensure that the necessary transport infrastructure exists.

2.1.2 Improved Security of supply

Security of supply is a paramount objective of energy policy. The progressive opening-up of gas and electricity markets is likely to make for a more flexible and broadly based supply that in turn will lead to a higher level of security of supply.

2.1.3 Improving competitiveness

The objective is that resources will be used in the most efficient manner and all consumers, large and small, will be able to reap the benefits of higher efficiency, which is particularly important for energy intensive industries competing in world markets.

2.2 The completion of the internal energy market may also yield benefits in other policy areas such as environmental protection, for instance by encouraging greater efficiency and a more rapid adoption of "cleaner" technologies. Reinforced environmental protection measures will also be required, as will specific action to promote energy efficiency, both in end use and in supply. The imperative for improving the efficiency of electricity end use also comes from the need to reduce CO₂ emissions to atmosphere, of which about a third of man-made emissions in the Community are accounted for by electricity generation. At the combined Energy/Environment Council of October 1990, it was agreed to stabilise total Community CO₂ emissions at 1990 levels by the year 2000 and an appropriate Community policy must now be adopted to achieve this objective.

For the supply side, a number of measures are foreseen including greater use of generating sources with no or less CO₂ emissions. Work will continue to realise the considerable potential for

improving the efficiency of energy end use, in particular through the PACE programme⁽⁴⁾ and related activities in the more general energy efficiency programme SAVE⁽⁵⁾.

3. Progress to date

Since the publication of the 1990 progress report on the internal energy market⁽⁶⁾ and in parallel with it, a number of additional steps towards the completion of the internal energy market have been taken at Community level:

- 3.1 The Commission has reinforced its application of the Treaty rules on competition. Some of its actions have a clear bearing on the internal market. Thus its decision in the Ijsselcentrale case⁽⁷⁾ found that an agreement to restrict imports of electricity infringed the provisions of Article 85 of the Treaty.

More recently the Commission has initiated infringement proceedings against Member States which maintain exclusive rights to import and export gas and electricity contrary to the provisions of Articles 30 and 37 of the Treaty.

The Commission will continue its action to apply the competition rules to the energy sector.

- 3.2 The implementation of the White Paper programme by the Council has considerable implications for energy, in particular as regards public procurement. Indeed, the Council, pursuant to the White Paper has adopted the directive on public procurement in the so-called excluded sectors, i.e. water, transport, energy and telecommunications⁽⁸⁾. This directive opens to competition the big markets of purchases and works made by entities operating in these sectors. However, the purchases of energy by entities operating in the energy sector have been excluded in the light of the prospective suppression of obstacles to cross-border energy trade, with the understanding that the Commission would make appropriate proposals at the latest by 1995.

- 3.3 The Council has also adopted a number of directives which constitute a first step towards the completion of the internal market in gas and electricity:

In the electricity sector the transit Directive, approved by the Council on 30 October, 1990⁽⁹⁾ provides that each high voltage

(4) Community Action programme for improving the efficiency of electricity use, Council Decision of 5 June 1989 (89/364/EEC).

(5) Specific Actions for Vigorous Energy Efficiency, Commission Communication to the Council COM (90) 365 final of 13 November 1990.

(6) COM(90) 124 final, 18.5.1990.

(7) OJ No L 28, 2.2.1991.

(8) OJ No L 297/1, 29.10.1990.

(9) OJ No L 313/30, 13.11.1990.

transmission utility shall facilitate power exchanges between other utilities through its grid, provided that transmission reliability is not affected. The Directive is designed to promote and maximize power exchanges between grids at European level.

In the natural gas sector the gas Transit Directive⁽¹⁰⁾ approved in the May 1991 Council meeting, is also designed to maximize and facilitate gas exchanges across non-neighbouring gas transmission utilities.

The June 1990 Council Directive on price transparency⁽¹¹⁾ provides that electric and gas utilities shall supply to the Statistical Office the rates they charge to all categories of customers on the understanding that published aggregate figures will respect confidentiality.

- 3.4 This is a first step toward the establishing of an internal gas and electricity market. With a view to pursuing the work, the Commission, as early as September 1989, in its draft directives on electricity transit [COM(89)332 final] and gas transit [COM(89)334 final] expressed its desire to give positive examination to other measures and it proposed to pursue a series of consultations with all interested parties as part of its examination of whether third party access to the European electricity and natural gas networks needs to be organised and if so under what conditions in order to guarantee the quality of service and security of supply.

Third party access (TPA) is a regime providing for an obligation, to the extent that there is capacity available, on companies operating transmission and distribution networks for electricity and gas to offer terms for the use of their grid, in particular to individual consumers or to distribution companies, in return for payment.

For this purpose, the Commission created in 1990 four Consultative Committees, two professional (PCCE and PCCG) and two Member State Committees (CCEME and CCEMG) on electricity and natural gas respectively.

The Committees met monthly throughout 1990 and during the early part of 1991 to discuss issues relating to TPA. The Commission chaired the proceedings and in May 1991 issued four reports; the position statements of certain participants are annexed to them. These reports have been an indispensable element in allowing the Commission to formulate its proposals.

(10) OJ No L 147/37, 12.6.1991.

(11) OJ No L 185/16, 17.7.1990.

4. Assessment of the present situation

4.1 The measures and initiatives described in the preceding section demonstrate that progress has been achieved towards the completion of the internal market in electricity and gas.

Nevertheless, numerous obstacles remain and must be eliminated in order to ensure the integrated operation of the Community's energy market:

- In most Member States, the arrival of new entrants to the gas and electricity industry is obstructed.
- In the natural gas sector there is virtually no gas to gas competition; there are few gas importers and markets have been shared between them by a series of long-term contracts containing onerous take or pay clauses and prices determined on the basis of the price of competing fuels.
- In the electricity sector the prevailing relationships between production, transmission, distribution and supply do not allow more than limited competition.
 - Consumers are unable to choose their supplier. Undertakings do not face competition in their markets and, in consequence, continue to behave as monopolists.
- Integrated electricity and gas undertakings publish their accounts on a consolidated basis, which limits the information available to the public on their efficiency and on the quality of the management of their various operations.
- The Member States continue to intervene in various aspects of the electricity and gas markets, such as prices and investments; these interventions are often excessive and impede the adjustment of the undertakings to their commercial environment.
- The conditions in which undertakings must operate are not harmonised.
- Electricity and gas transmission infrastructures and network interconnectors are frequently insufficient and thus impede economically justified trade.
- The markets for production and consumption equipment for electricity and gas remain partially segmented by the lack of technical harmonisation.

4.2 This overall assessment demonstrates that the measures taken so

far are not sufficient to achieve the internal market objectives and must be complemented by new measures which can rapidly and effectively change the present situation.

5. General principles of the present proposals

5.1 The Commission's proposals provide for a responsible approach based on four general principles.

5.2 The first of these principles is the need for a gradual approach. The internal market for electricity and natural gas should take shape over a period of time sufficiently long to enable the industry to adjust in a flexible and ordered manner to its new environment. This implies a step-by-step approach, with the Commission laying down a minimum level of liberalisation to be achieved at each stage, while at the same time allowing each Member State discretion to opt for greater liberalisation of the domestic market.

However, the idea of a gradual approach is not enough unless accompanied by a clear vision of the objectives pursued. Uncertainty for investors must be avoided. The electricity and gas industries are capital-intensive, and lead times for planning and construction are relatively long, as is the time needed to show a return on investments in technical and economic terms. Economic operators must have some point of reference for the future in order to decide on investment programmes. It is therefore up to the Community to pinpoint now its long-term objectives for the liberalisation of the market.

5.3 The second principle is that of subsidiarity. The Community must not impose rigid mechanisms, but rather should define a framework enabling Member States to opt for the system best suited to their natural resources, the state of their industry and their energy policies.

5.4 As its third principle, the Community must also avoid the trap of excessive regulation. The sectors in question are characterised by monopoly situations which call for a substantial degree of regulation, notably in the form of price controls. Moves towards greater liberalisation will undoubtedly make it necessary to introduce new regulations, although these will replace rather than supplement the existing ones. But the Community must take care not to go beyond what is strictly necessary in order to achieve the aims of liberalisation and, as in the case of transit for example, to leave scope for commercial negotiation between the undertakings concerned.

5.5 On the institutional front, the Commission has opted for an approach based on Articles 57.2, 66 and 100a, since this provides for a political dialogue with the Council and the European

Parliament under the cooperation procedure, and also enables the consultations with other interested parties to be pursued. However, the Commission reserves the right to make use of all the powers conferred on it by the Treaty as and when appropriate.

6. A three-stage approach.

6.1 The Commission has given expression to these principles in a three-stage approach.

6.2 The first stage consists of implementation of the three directives adopted in 1990 and 1991, on the transit of electricity, the transit of gas and on price transparency. This is where we stand at present.

6.3 The second stage, needed to continue the liberalisation process introduces new agents for change while respecting existing structures. This is based on three elements.

- i) Firstly, it is necessary to create a transparent and non-discriminatory system for granting licences for the production of electricity and the building of electricity lines and gas pipelines. Proposals on competition in the production of natural gas will be tabled by the Commission at a later stage.

The aim here is to open up investment in production and transport to independent operators, and in particular to large industrial users. This should not be done on a haphazard basis, but must take account of the vital concerns defined by the national systems for granting licences, relating in particular to energy policy, environmental protection and town and country planning.

- ii) Secondly, the concept of unbundling, i.e. separation of the management and accounting of production, transmission and distribution operations, must be put into practice in vertically-integrated undertakings. This is essential in order to ensure transparency of operations, and does not affect ownership structures.
- iii) The final element is the introduction on a limited basis of third party access (TPA), whereby the transmission and distribution companies are obliged to offer access to their network to certain eligible entities at reasonable rates, within the limits of available transmission and distribution capacity.

The eligibility criteria for this stage shall be such as to include:

- a) large industrial users whose consumption exceeds a certain threshold (for instance, in the case of gas, fertiliser

manufacturers and electricity producers, and in the case of electricity, the aluminium, steel, chemical and glass industries).

- b) The distribution companies, in such a way as to ensure that other industrial users and domestic users benefit indirectly from TPA.

All this must take place under conditions which ensure network reliability and security of supply.

6.4 The Commission wishes to see subsidiarity play a substantial role during this second phase. This will involve in particular the following:

- i) Member States will retain their regulatory powers with regard to all aspects of gas and electricity pricing for all end-users not eligible for TPA. This includes the possibility of standardising prices at national level.
- ii) The Member States will remain free to determine the extent and nature of distribution companies' rights and their public service obligations. In particular, they will be allowed to continue to grant exclusive distribution rights provided that eligible entities have access to the grid and that it is possible for any user to turn to another supplier by means of a direct line, subject to the transparency requirements contained in the proposal on public services contracts.
- iii) Member States will also be free to lay down detailed criteria, of varying stringency, for the granting of licences to build power stations and transmission and distribution lines. They will also be able to establish objective and non-discriminatory criteria for the use of power stations (dispatching);
- iv) Finally, Member States will be free to choose how they implement the directive, e.g. whether to set up a regulatory authority or to rely on competition legislation.

All these factors will ensure that Member States have the flexibility needed to take account of their particular situation.

6.5 The two draft directives annexed contain the common rules necessary for the achievement of the second stage. The Commission would like to see this second stage enter into force on 1 January 1993, D-day for the completion of the internal market. As the energy sector is of vital importance to many other industrial sectors, lack of progress in this field would be liable to jeopardize the entire operation.

6.6 A third stage will be defined in detail in the light of the experience acquired during the second. The Commission expects this stage to enter into force on 1 January 1996. It should complete the internal market for gas and electricity within the meaning of Article 8a of the Treaty. This will involve, in particular, adapting the criteria of eligibility for TPA.

7. Accompanying and harmonisation measures

The opening up of national markets must be accompanied by measures to ensure both the competition is fair and that it can be effective. Thus, the benefits of more standardisation, better transparency and other parallel measures will enhance the value and the effectiveness of the present proposals. In the present context the following accompanying measures are of particular importance:

7.1 Control of State aid

The Commission has until now regularly intervened on a case by case approach to control aid in the electricity and gas sectors. In particular, the Commission has taken a number of decisions in cases of alleged aid to industrial consumers of gas and electricity through artificially low tariffs⁽¹²⁾. In energy-intensive industries whose products are traded within the Community, subsidised electricity or gas tariffs can create significant distortions of competition.

With the opening of the Community energy market and the gradual substitution of the national dimension of security of supply by the Community one, the need arises for a more systematic and tighter control of state aid to the energy industries to avoid distortions of competition both in energy markets and in downstream markets.

The Commission has begun work on creating a level playing field for trade in gas and electricity in an integrated EC market. The first decision was prompted by the privatisation of the electricity industry in the UK⁽¹³⁾. A major difficulty of this exercise, however, is lack of clear information about what aid exists. For this reason, surveys of aid of different types are being undertaken.

(12) See the two decisions on Dutch natural gas tariffs which led to judgments by the Court of Justice on 2 February 1988 (Case Nos. 68 and 70/85) and 12 July 1990 (Case No C-169/84), and the series of decisions on special tariffs offered by EDF starting with case NN 120/88 (Péchiney), IP (89) 752 of 11 October 1989.

(13) Decision of the Commission of 28 March 1990 in cases N 34/90 and 54/90.

In its working paper of 14 September 1990 on Security of Supply, the Internal Energy Market and Energy Policy [SEC(90) 1248 final], the Commission put forward tentative proposals for improving control of State aid to the energy industries, while recognising the remaining need for national measures to ensure security of supply. To cater for national security concerns, the Commission would authorise the continuation of aid for a "reserved" sector of energy supply. The percentage of total electricity demand represented by the reserved sector would decline over time as the energy markets became more integrated. Outside this reserved sector, the normal state aid disciplines would be strictly applied.

7.2 Electricity and gas transmission infrastructures

The internal market is likely to result in increased trade in gas and electricity between Member States as a result of increased cross-border demand. Supply will be unable to respond fully unless transmission infrastructures and interconnections are developed at a sufficient pace, as mentioned above. Such shortcomings justify action to enhance the development of the infrastructure base.

The Commission will present separate proposals to foster the development and the integration, at Community level, of electricity and gas transmission infrastructures.

7.3 Standardisation

The standardisation of energy products and equipment is part of the completion of the internal market. "The single Community market will become a reality for European industry only in so far as common technical standards can be developed progressively at European rather than national level"⁽¹⁴⁾.

Work on the standardisation of energy products has already begun in the case of petroleum products, electricity and gas.

With regard to the physical characteristics and hence quality of electricity, the Commission has contacted the industrial circles concerned; harmonisation work has started, and a European standard will be drawn up towards the beginning of 1992. Characteristics such as frequency, voltage wave amplitude, harmonics, imbalances, voltage interruptions and transmissions of signals via the network will be covered.

(14) Commission Green Paper on the development of European standardization published on 28 January 1991.

Where equipment is concerned, reference to European standards in specifications is compulsory under Directive 531/90 on public procurement. The Commission is in contact with industry with a view to securing harmonised standards.

Where gas is concerned, European standards are being prepared in order to define "reference gases" representative of nominal equipment supply conditions and "limit gases" representative of extreme variations in gas characteristics.

B. Detailed proposals for electricity for the achievement of the second stage

This proposal pays particular regard to the characteristics of the electricity market and its development within the Community.

Electricity, unlike other commodities, cannot be stored by the user. The generation of electricity and its transmission through the grid must constantly be matched to demand. This matching process implies the existence of a network operator who ensures that the technical quality of the required service is maintained and that supplies are reliable.

These technical imperatives do not, however, require that the functions of generation, line construction and marketing of electricity should be carried out by one or by a small number of undertakings.

In the generation sector, new technology and new management methods have greatly reduced economies of scale and series and have reduced lead times for design and construction. The requirements of long term planning have become more flexible. Technological development of combined cycle gas-fired power stations allows for the emergence of truly independent producers. These may wish to ally themselves with large consumers in joint projects.

As regards transmission and distribution, independent lines built in the framework of the development of urban or industrial zones must be able to be connected to the grid, provided they meet adequate technical conditions.

The demand for electricity is becoming more complex. Consumers seek more of a role in decisions on security of supply and choice of technology. They want to diversify contractual practices and to protect themselves against the risk of unfavourable price developments. They want more freedom to negotiate the level of demand and the interruptibility of their load. Large consumers are ready to invest in installations sited in particular places and from which a part of the current generated is reserved for them, while another is

sold to a third party. Complementarity is also developing in installations which consume energy in the form of heat and which also generate electricity.

In this context, the proposal attempts to reconcile the technical management imperatives of the electricity grid with greater opening of possibilities for investment and an enlargement of marketing opportunities.

1. Commercial freedom of undertakings

- 1.1 A common feature of the electricity sector in most Community countries is the statutory or de facto influence of government over the way the sector operates, through regulatory or other provisions.

This State influence over the sector affects in particular the control of investments, together with various other aspects of the way the sector operates such as the control of electricity tariffs.

- 1.2 With a view to stability and to protect small consumers, it is appropriate to leave Member States with the possibility of continuing to exercise control over tariffs in the second stage.

However, in other aspects State influence goes beyond what is generally regarded as the prerogatives of the public authorities vis-à-vis undertakings. The political constraints bearing upon activities are often excessive and irksome, even if, in certain cases, the influence of Member States has remained compatible with the development of an electricity sector which is technologically advanced and economically efficient.

The development of the sector has not taken place in a transparent framework. The constraints placed on investments and siting are at times insuperable because of the manifold difficulties with which undertaking are faced. The choice of the primary sources to be used is largely imposed. Excessive State influence also deters the launching of electricity projects which meet the needs of regions situated on either side of frontiers.

- 1.3 It is therefore important that the electricity sector should be given the commercial freedom it needs to adapt to tomorrow's market. This freedom is an essential factor in the harmonisation of the conditions under which undertakings operate. Without commercial freedom, undertakings would not be able to face the competitive market on equal terms. Commercial freedom will require of undertakings greater rigour in their technological and organisational choices and will offer them greater flexibility.

The objective is to create a transparent and non-discriminatory basis on which Member States can exercise their legitimate

prerogatives concerning energy policy, security of supply, taxation, environment and other matters of public concern. These prerogatives will in fact be exercised increasingly in a transparent framework and at Community level as European integration progresses.

2. Opening up generation to competition and the role of the Member States as regards security of supply

2.1 Generation is the area in which competition can develop the most quickly given the technical and economic constraints.

While horizontal integration once seemed to be the only way of deriving the benefit of economies of scale, the situation has changed and legal protection for horizontal integration where generation is concerned would now seem to be against the economic interests of both producers and consumers.

It is therefore appropriate to allow access to the market for new entrants who wish to invest and compete with the existing producers. It is proposed that Member States should create a regime for granting licences with a view to harmonising conditions of access to the market for producers.

2.2 This opening-up should be achieved in a transparent and non-discriminatory fashion without infringing legitimate objectives concerning:

- security and safety of installations;
- environmental protection requirements;
- land use and siting;
- the technical and financial capacity of undertakings;

2.3 It is recognised that Member States have a legitimate interest in retaining a certain freedom of action as regards the nature of electricity production capacities, for reasons of energy policy and security of supply.

That is why the proposals provide for interventions by the Member States in the following levels:

- i) the possibility of introducing into the system for production licensing a certain number of restrictive criteria as regards the nature of the primary source used for electricity generation (article 4.3);
- ii) the possibility of ordering the priority utilisation of indigenous sources of electricity generation for up to 20% of needs [reduced to 15% after the year 2000 (Article 12,5);
- iii) to order the priority use of energy sources which are renewable or based on waste or cogeneration, not exceeding 25 MW each (Article 12.4), in return for a reasonable price.

These interventions shall be at national level in the first instance but shall give way progressively either to Community measures applicable in all Member States, or to a framework of national measures on principles adopted at Community level.

3. Liberalisation of line construction

- 3.1 Public or private operators should have the right to build lines so as to provide supplies to customers and obtain supplies in another region or another Member State, and to hook-up their lines to the interconnected system, provided that they meet non-discriminatory technical operational criteria.

To make this right of initiative effective, it is proposed to Member States to set up a system for granting licences for the construction and exploitation of electricity lines to harmonise the conditions applicable to investors.

This opening-up must be accomplished in a transparent and non-discriminatory manner which will allow Member States to exercise their prerogatives as regards:

- security and safety of lines and associated equipment;
- environmental protection requirements;
- land use and siting;
- public ground use;
- the technical and financial capacity of undertakings.

In practice, the construction of new lines mostly necessitates the use of public ground and the expropriation of private property. It is important that the procedures and criteria applicable in such cases should be defined and applied in a non-discriminatory manner. In particular, the concept of public interest should be interpreted broadly, in view of the importance to society of developing a more open and a more competitive electricity supply system.

- 3.2 In view of the adverse environmental impact of lines, in particular their unsightliness, it is important that Member States should be able to restrict line construction to that which is necessary in order to meet requirements. Member States should therefore be able to refuse or defer the granting of a licence for the construction of new lines if the transmission and/or distribution requirements in question can be satisfied by the existing interconnected system.
- 3.3 In economic terms, lines which directly connect a producer and a consumer while not being linked to the interconnected network are relatively unattractive since the network offers the important advantage of flexibility and reliability. However, it is probable that new lines may prove attractive over short distances and, in

the case of distribution networks, in areas which are new or being redeveloped. The right of initiative to build lines does not therefore alter the fact that the technical management of the interconnected network must be the task of a specific entity responsible for a given area. On the contrary, it entails the laying down by that entity of non-discriminatory technical and operational criteria with which the owners of lines and of independent distribution networks must comply in order to be connected to the main interconnected network.

4. Freedom of purchases and sales transactions, and third party access

- 4.1 The development of competition in generation implies that independent producers shall be able to transmit power to their own consumption installations and sell it to their own subsidiaries or to third customers.

It is virtually certain that the full development of direct transactions between producers and consumers in the electricity sector will be realised essentially on the interconnected network, in view of the small possibilities for developing direct lines (see paragraph 3.3 above).

- 4.2 A situation in which the regional electricity company were to remain the only possible buyer of production would be unacceptable. Indeed, there would be the risk that the buyer would wield considerable economic power and that he would use it to falsify market conditions to his benefit or to the benefit of the producers to whom he might be linked. On the other hand, the consumer would be in the hands of one supplier and hence there would be no guarantees that the benefits of competition would be passed to the consumers. Above all, closed supply zones and distortions at frontiers would be increased. Consumers would not benefit from non-discriminatory access to energy sources and there would be continuing pressures to relocate to certain regions those undertakings which wanted to benefit from lower prices. In other regions, consumers would be deprived of direct access to new production technologies and to their economic conditions.

- 4.3 To give a really useful effect to competition in generation, it is therefore indispensable that commercial freedom should be effective and should be capable of being exercised in the interconnected network where transport capacity is available. The use of the grid must, indeed, be able to be refused if the utilisation proposed to be made of the grid risks compromising the transfer of electricity in the execution of an existing obligation, whether legal or contractual.

It is necessary to define harmonised, transparent and non-discriminatory procedures with which producers, suppliers and consumers who wish to buy and sell electricity on the interconnected network must comply. These procedures should facilitate transactions, particularly between undertakings or natural persons located in different countries.

The implementation of these procedures will be the responsibility of the network operators. To guarantee that the transmission capacity available is not improperly reserved by contracts which are excessive in relation to requirements, it is provided that the right to use the grid shall lapse if it is not used during a certain period.

- 4.4 Given the technical complexity and innovative nature of freedom of transactions in the electricity sector, it would be desirable for Member States to provide for a period of progressive adaptation and initially to restrict the use of the interconnected network to a limited number of undertakings who are the most suited to making use of it, that is to say the large consumers and distribution undertakings.

For industrial undertakings, it is provided that the Member States shall be able to limit access by the third parties to the grid to large companies for the supply of sites the individual annual consumption of which exceeds 100 GWh/year. This quantity of energy corresponds to power consumed of about 25 MW, assuming that the customer operates for about 4000 hours a year.

In this way, 400 to 500 industrial consumers would be concerned in the Community. Those concerned in particular would be the large energy-consuming industries: aluminium, cement, steel, chemicals, etc...

As regards distributors, a volume threshold to limit the number of eligible entities would have imposed conditions which would have been too dissimilar from one country to the other, since the number and the scale of distributors vary considerably according to the Member State.

A percentage threshold has thus been preferred. It is provided that the distributor shall be eligible provided he supplies at least 3% of the energy distributed in each Member State. To avoid discriminating between distributors of different sizes, it is further provided that distributors may associate themselves so as to reach the threshold. In total, a hundred or so distributors, individual or associated, would be eligible throughout the Community.

5. Transmission system operation

5.1 The three measures relating to limited access to the grid for third parties, the liberalisation of production and the construction of lines, must be implemented in conditions of transparency and in a non-discriminatory manner, without putting in question the reliability of the technical management of networks.

5.2 Article 8 provides that, in each region, there shall be designated a person responsible for the interconnected network, charged with its technical management. Without this singleness of management, security of technical management could not be maintained. It is for the Member States to designate the transmission system operator in each region or to delegate such designation to the undertakings having possession of the grids. By region, should be understood a geographical area appropriate to the management of the electricity network. In different cases it may be a question of the whole of a Member State, or of smaller regions, even of regions including several Member States. The present structure will not therefore be affected.

The person responsible must manage the grid in a manner separate from the activities of production and distribution, so as not to favour the production or distribution divisions which might form part of the undertaking.

5.3 Article 9 sets out the essential requirements of network management. It is the safety-net which must now be made explicit, given the number of operators. Those tasks must be identified which are for the transmission system operators and not for others: the maintenance of secure operation, the provision of auxiliary services, the development of the grid, and the ensuring of the information necessary for settlement and payment.

5.4 Article 10 imposes on the transmission system operator the obligation to cooperate with the operators of interconnected systems, with a view to ensuring the coordinated development and the secure and efficient operation of the whole of the interconnected electricity system, for the benefit of all users.

5.5 Article 11 introduces an obligation to keep at the disposal of interested parties a report on the balance between supply and demand and on transmission capacity. One function of this report is to allow the Member State to be kept informed of the State of the grid and to receive the necessary assistance in its task of granting authorisations. The report is also a basic source of information accessible to all potential grid users, which allows them to begin with equal chances. Without this, it would be difficult to prevent for example, opportunities for connecting new production units in a given region from being all monopolised by projects submitted by the same undertaking.

- 5.6 Article 12 concerns the question of determining technical conditions relative to the connection to the grid of production and consumption installations, together with independent lines and other grids. It is necessary for these rules to be prepared in advance and to be accessible to interested operators. These technical conditions must ensure the maintenance of the integrity of the grid, the security of grid operations and must facilitate exchanges of electricity. They shall refer to European specifications where these exist. Without these rules, there would be too great a risk that the grid would use technical arguments to refuse connection to independent producers set to compete with existing companies, or to refuse the connection of new lines which would bring cheaper electricity, or again to discourage the connection of consumption installations which it was known would be supplied with current by competitors.
- 5.7 Article 13 governs the dispatching of installations for generation and the determination of transfers of electricity on interconnectors. This is a technical task specific to electricity, where the stability of the grid requires that at each moment supply shall equal demand. It must not be possible for the transmission system operator to derive commercial privileges from this technical task. That is why the rules must be clearly defined in advance and objective, non-discriminatory, and based on economic criteria.
- 5.8 Article 14 specifically concerns the implementation of Third Party Access to the grid (TPA). The grid is the interlocutor of all those involved in TPA; producers, distributors, consumers and possibly other networks. A rule of minimal procedure is required. The transmission system operator must receive the request of the grid user and make an offer if the request satisfies the grid constraints. If he estimates that capacity is not available, he shall so inform the potential user and give clear reasons. He shall also indicate the outlook for developing the system and the longer-term possibilities for transmission. Above all, he shall publish in advance the basic elements used in setting the financial conditions for grid use, so that any user may correctly evaluate the tariffication applicable to him. This information is essential to prevent the grid's applying exaggerated transmission prices or prices which discriminate between users.

Given that this is a natural monopoly, grid use prices must be reasonably limited to the long-term costs of the supply in question, including a reasonable return on capital invested.

- 5.9 Article 15 makes the transmission system operator responsible for the preservation of commercially sensitive information he receives. This covers, for example, information which he obtains through negotiations concerning use of the grid or information which he has for the purpose of dispatching generating plant. Without this, the transmission network operator might use such

information to favour the production division which may already exist in the same undertaking, or producers to whom he may be linked by ownership.

6. Distribution

- 6.1 At the level of distribution, it is also necessary to designate an operator for the distribution network connected to the interconnected electricity system. This operator shall define the technical conditions for independent lines to be connected to its network and shall ensure that eligible customers have access to it.

The principles set out above concerning the transmission system operator apply mutatis mutandis to the distribution system operator.

- 6.2 Provided there is access to the network for eligible entities and provided any consumer may deal with another supplier by means of a direct line, Member States may continue to grant exclusive distribution concessions, subject to the requirements as to transparency contained in the proposals for the procurement of services.
- 6.3 In any case, whatever the attitude of Member States there will in practice remain a de facto franchise at the distribution level in most cases.

It is therefore appropriate to allow Member States to regulate this relationship. Given the wide variety of distribution structures, Member States should be given as much leeway as possible for adapting the definition of the rights and public service obligations of the distributor and the rights and obligations of the consumer to local circumstances.

In particular, Member States may impose an obligation on the distributor to supply customers at regulated tariffs with the quantity of energy in respect of which they do not exercise the right, or have not the right to be supplied by other suppliers. For those consumers who cannot or do not wish to have recourse to TPA, the obligation to supply may keep its usual form and bear upon the single supplier, i.e. the distribution company. It will be for the latter to discharge its supply obligation by itself generating or by buying electricity from other generators. With a view to non-discrimination, it may be expected that this obligation will also extend to supplies made by the local distributor, to a consumer who would choose another, direct-line supplier or access to the grid, for one part only of its needs.

For those consumers who choose another direct-line supplier or third party access to the grid, "termination" and "resumption" modalities must be provided for. It will be for the Member States to define, in both cases, the appropriate duties to inform and procedures.

6.4 Monopolistic as they are in almost every case, within a supply area, electricity distribution companies do not meet the usual criteria for a competitive industrial activity. A form of indirect competition through the publication of reports on the quality of supplies and the quality of service is therefore useful. The Commission will draw up the list of common indicators necessary to ensure the comparability of reports at Community level.

7. Unbundling and transparency of accounts

In order to harmonize the conditions within which electricity undertakings operate, measures are proposed to separate the transmission and distribution activities of vertically integrated undertakings, whether public or private. This will ensure that the transmission and distribution functions are managed in a neutral way.

The Commission's approach is to require that transmission and distribution are operated as separate divisions, which is a necessary but not a sufficient condition for transparency. In addition, these divisions, and the electricity production division, must publish separate accounts. In order to avoid, in this respect, different treatment of public and private undertakings, all undertakings are required to observe the standard accounting practice for commercial companies.

This will ensure that the accounts of transmission and distribution activities will in all cases be established on a comparable basis, so that competition is fair, discrimination is avoided and regulatory or competition authorities can check that the tariffs charged for the provision of services which have some characteristics of natural monopoly are not abusive.

This kind of unbundling (separate divisions and separate accounting) is particularly important with the introduction of a third party access regime.

8. Safeguard clause

In the event of sudden disturbances in the energy market or if the security or safety of installations or persons is threatened, Member States should be able to take appropriate protection measures. These should be notified to the Commission, which may request Member States to amend or abolish such measures if they adversely affect trade between Member States to an extent contrary to the common interest.

9. Consumer protection and Users' Committee

The main source of protection for the large industrial consumer and the distribution lies in the possibility of choosing their suppliers.

The protection of the captive consumers will result, in the course of the second stage, from several mechanisms:

- i) the captive consumer will benefit from the regulatory framework established by the Member State defining the rights and public service obligations of distribution companies, in particular the rules governing the supply obligation;
- ii) the consumer will also benefit from the mechanisms of price control applied by the Member State and, where this occurs, from a measure of price standardisation applied to the whole territory of a Member State;
- iii) above all, in economic terms, the distributor who supplies the consumer is eligible for TPA, possibly in association with other distributors, and can pass on the benefit of this to the whole of its clientele.

In this way, although there are different modalities of supply for domestic and industrial customers, there is no reason to expect distortion or discrimination between categories of consumers following the liberalisation of the electricity sector.

In order to ensure the flexible and informed application of this Directive, Member States must set up appropriate mechanisms to allow users, including domestic consumers, to be consulted on questions arising from the Directive.

10. Revision clause for the implementation of the third stage

The second stage will not complete the internal market. A third stage will be necessary and will be defined in detail in the light of the experience acquired during the second stage. In order for the economic operators to know what to expect for the future, it is necessary for the Council to commit itself as from now to proceed before the 31.12.1995 with the necessary revision.

C. Detailed proposals for natural gas for the realisation of the second stage.

1. Market characteristics.

For the present proposal the following particular characteristics of the natural gas market in the Community need to be taken into account:

- i) present disparities in market structure and development
- ii) the market growth
- iii) the external dimension

1.1 Disparities in market structures and development

At present 95% of the natural gas in the Community is consumed in only 5 Member States. The other Member States have a developing gas industry or intend to set up a gas industry.

While the established gas market will increase steadily the newly established or developing gas market will grow considerably after an introductory phase.

The geological realities are such that the internal production of the Community is concentrated in the Netherlands and in the United Kingdom, but gas from the latter is only available to the UK market as no interlink with the pipeline network on the Continent exists.

Transport of natural gas is essential for the integration of the market and the European network needs to be improved and interconnections to be created and reinforced in order to create an integrated European natural gas market.

1.2 Market growth

Demand is expected to increase from the present level of 225 billion cubic meters (bcm) to around 330-350 bcm per year by the year 2010 depending on the assumptions made for economic growth, trends in energy efficiency, changes in economic structures and degree of environmental concern. Environmental considerations are likely to bring about a considerable increase in demand particularly in view of the possibility to use more natural gas for the generation of electricity after the abolition of the Community legislation relating to the use of gas in power stations⁽¹⁵⁾.

1.3 External dimension

Finally the Community is and will remain heavily dependent on suppliers from third countries. At present 40% of Community supply comes from external sources and gas imports are likely to increase from this level to approximately 60% by the year 2010. Since this gas comes from only three sources, external dependence raises security of supply issues. This high degree of external dependence reinforces the need for a well developed and fully interconnected gas grid at European level.

2. Objectives

Natural gas supply within the Community is characterised by a series of national, regional or local monopolies. Although gas competes with other fuels in most of its end-markets - such as heavy fuel oil for

(15) Council Directive 91/148/EEC of 18 March 1991 revoking Directive 75/404/EEC concerning the limitation of the use of natural gas in power stations.

industrial steam raising and gasoil for space heating in the household sector - there is no competition between gas suppliers for sales to end-consumers anywhere in the Community. In cases where competition from other fuels is not particularly intense, there is a lack of competitive pressure on gas suppliers to operate efficiently and minimise costs.

In achieving a single market for energy, the basic objective in the gas sector is the creation of gas to gas competition which will create the conditions within which the stimulus to efficiency in gas supply can operate to the benefit of both suppliers and consumers.

More competition in the Community natural gas market and the resulting increase in the potential of the market should significantly increase the number of suppliers to the European market, in particular through increased imports of liquified natural gas (LNG). The fact that more demand will be directly satisfied through contracts between consumers and producers should lead to greater market flexibility thus reinforcing security of supply at Community level.

3. Special provisions

The gas proposal is based on a parallel approach for gas and electricity, which takes fully into account, however, the differences between the two.

The present sections explain the proposed directive for natural gas to the extent that it differs from the proposed electricity directive.

3.1 Competition on the production level

The natural gas directive does not cover the exploration and production sector. The exploration and production of natural gas are closely linked to exploration and production of oil.

Community action to ensure a competitive environment in exploration and production will thus concern both the oil and gas sector.

The Commission will make the necessary proposals at the beginning of 1992.

3.2 Third party access to the network:

Given the technical complexity and the innovatory character of freedom of access for third parties in the gas sector, it is desirable that Member States should be able to provide a period of progressive adaptation and should be able to restrict, initially, the right to use the interconnected network to a limited number of undertakings, being the most suited to its use, i.e. large consumers and distribution undertakings.

For individual companies, the threshold has been set at 25 million m³ per site. This threshold includes all sites using gas as a feedstock and is also adequate for the other large chemical industries. Other large users such as large steelworks are also concerned. For electricity generation, power stations of 50MW with annual use of or above 2000 hours are covered. This means, in practice, that only base-load power stations will be involved.

For distribution companies, the threshold has been fixed at 1% of national gas consumption, as against 3% in the case of electricity. This lower threshold has been chosen because of the different structure of the gas sector. For one thing, large consumers are often connected directly to transmission companies and are not supplied by distribution companies. This implies that the market share covered by distribution companies is lower than in the electricity sector. For another thing, gas is not available throughout the territory of a Member State, but only in certain regions. This makes aggregation more difficult.

3.3 Main technical features of the natural gas sector

While the electricity grid needs at any time a precise matching of supply and demand and storage is impossible, storage of natural gas is possible and the pipelines can vary pressure, so that there is scope for variation of supply and demand in the operation of the grid. This means that central control of the grid is not needed for technical reasons and that any grid operator can be responsible for the safe and reliable operation of its own pipeline or pipelines provided the appropriate arrangements between the grid operators are made.

It is therefore not necessary to create a transmission system operator which is responsible for the entire grid for a given area; the operation of the grid can be assured by the existing and future transmission companies individually for their part of the grid system.

For the distribution of natural gas, however, a system operator is foreseen because at distribution level no parallel grid is possible in practice and the distribution company is therefore responsible for the distribution area. It is possible that a Member State will entrust the existing distribution companies with the duties of the system operator.

3.4 Storage

As storage is both an integral and essential part of the transmission system and an independent service in the natural gas sector, the liberalization of storage was included in the directive, but only to the extent that storage is linked to the functioning of the market in order to match supply and demand. Strategic storage is not covered by the proposed directive.

3.5 LNG facilities

LNG terminals are included in the directive as such facilities can be of major importance for customers wanting to use the system, particularly for regions which use LNG as the only input to the system. Because of the potential availability of LNG from sources other than traditional suppliers, liberalization of this sector will lead to more competition in the gas market as a whole.

3.6 Take or pay

3.6.1 Characteristics of Take or Pay arrangements

Existing Take or Pay (TOP) obligations need to be taken into account when liberalizing the natural gas market in order not to endanger the economic viability of existing gas companies. Existing TOP arrangements were agreed as a risk sharing mechanism between producers and gas companies, whereby gas companies guarantee to pay for a prefixed annual volume at the contract price, regardless of whether that volume is taken. Thus, the volume offtake risk is shifted by these arrangements, on a long term basis, from the producers to the gas companies. The price is normally linked to the oil price and the price risk thus remains with the producers, but this risk operates in both directions, since the price can go up or down. TOP was negotiated in order to reduce the risk of producers to a level, sufficient to justify investing in the development of high cost gasfields. This was regarded as important, particularly in developing markets where no established market guaranteed the offtake. In an interconnected European gas market such a need will exist to a much lesser extent in the future as both the offtake security for the producer and the security of supply for the consumer will be increased.

Moreover, under a system of TPA, other ways of risk sharing (i.e. between consumers and producers directly) can emerge. It is likely that the exploration of big new gas fields outside the Community with high initial transport investment will require certain offtake guarantees also in the future. Such guarantees can of course not only be given by gas companies but also by final consumers and LDCs. In practice big users, like power stations and feedstock customers, have regular long term offtake needs while LDCs have long term needs which vary considerably according to the period of the year.

3.6.2 Influence of the completion of the internal market

The completion of the internal market could change the economic circumstances of the gas industry considerably. Up to now each of the gas companies was supplying the totality of its market often defined on a national basis and could in consequence easily accept TOP arrangements covering this market. In a more

competitive environment any customer will be able to buy gas directly or to stay with his previous supplier. For the future gas companies will have to take this new situation into account when entering into new TOP arrangements. For existing TOP arrangements this is not possible unless renegotiation is provided for in the contract. Such renegotiations might be particularly necessary if the liberalization of the market leads to the decoupling of the gas price from the oil price.

To the extent that gas merchandising companies will be able to market their gas anywhere in the Community, they will have many opportunities to capture new markets as demand is expected to grow significantly in the foreseeable future. This should allow the gas companies to continue fulfilling their present commitments in a future fully opened market without undue difficulty, which should limit the cases for renegotiation.

3.6.3 Safeguard clause

The Commission proposes a special safeguard clause in the directive which allows a Member State, with the approval of the Commission, to take the appropriate measures in case one of its gas companies is faced with economic difficulties because of existing TOP obligations.

D. Conclusions

10. The Commission therefore proposes two directives based on Articles 57.2, 66 and 100a, one for electricity (see Annex 1) and the other for natural gas (see Annex 2).

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive concerning common rules for the internal market in electricity

(92/C 65/04)

COM(91) 548 final — SYN 384

(Submitted by the Commission on 24 February 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas it is important to adopt measures with the aim of establishing the internal market as provided for in Article 8a of the Treaty; whereas the internal market is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the establishing of the internal market in electricity is particularly important both in order to increase efficiency in the production, transmission and distribution of this product, while reinforcing the Community's security of supply, and in order to ensure that all users are able to purchase electricity on an equal basis thus avoiding distortions of competition in user industries;

Whereas the establishing of the internal electricity market needs to be progressive and to be implemented in phases in order to enable industry to adjust in a flexible and ordered manner to its new environment;

Whereas Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids ⁽¹⁾ and Council Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users ⁽²⁾ provide for a first phase for the completion of the internal electricity market;

Whereas it is now necessary to take further measures with a view to the establishing of the internal market for electricity;

Whereas the need to ensure a real opening-up of the market and a fair balance in the application of these measures requires the introduction of harmonized criteria and procedures for the construction and operation of generating installations; whereas these criteria and procedures must be objective, transparent and non-discriminatory in order to ensure that there is no distortion of competition arising in particular from special conditions as regards the location of generating installations within the Community and their proximity to the market;

Whereas it is therefore necessary to establish common rules for the licensing by Member States of the construction and operation of generating installations and transmission and distribution lines and to take such other steps as are required in order to ensure the effective functioning of the internal market;

Whereas the establishing of the internal market for energy, more particularly in the electricity sector, will take into account the objective of economic and social cohesion;

⁽¹⁾ OJ No L 313, 13. 11. 1990, p. 30.

⁽²⁾ OJ No L 185, 17. 7. 1990, p. 16.

Whereas electricity undertakings must, in the internal market, be able to operate on normal commercial principles;

Whereas provision should be made for customers and producers of electricity to have access to the transmission and distribution systems without discrimination and subject to the availability of capacity and in return for reasonable remuneration; whereas this provision may be limited during the next phase by Member States to large industrial companies and with regard to distribution companies under certain conditions;

Whereas each transmission system must be subject to central management and control in order to ensure the security and reliability of the system in the interests of producers and customers; whereas a transmission system operator should therefore be designated and entrusted with the management and development of the system; whereas the transmission system operator must behave in an objective, transparent and non-discriminatory manner in all aspects of his operation, including the approval of connections to the system, charges paid for services provided and dispatching of generating installations;

Whereas for similar reasons a distribution system operator must be designated to manage and develop each distribution system;

Whereas the conditions for connection to the transmission and distribution systems must be defined by reference to European specifications where possible or to other international standards and specifications;

Whereas principles of charging should be clearly laid down in order to ensure fair and transparent conditions for the use of transmission and distribution systems;

Whereas in order to ensure transparency and non-discrimination the transmission and distribution functions of vertically integrated undertakings should be operated as separate divisions with separate accounts; whereas the accounts of all electricity undertakings should provide for maximum transparency in particular to identify possible abuses of dominant position, consisting for example in abnormally high or low tariffs or in discriminatory practices relating to equivalent transactions;

Whereas provision must be made for safeguards and dispute resolution procedures;

Whereas, in accordance with the principle of subsidiarity, general principles providing for a framework

must be established at Community level, but their detailed implementation should be left to Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation; whereas therefore Member States should, subject to the Treaty provisions and those made thereunder, remain free to determine the detailed criteria for licensing the construction of power stations and of transmission and distribution lines, and to determine the non-discriminatory and objective criteria for the dispatching of power stations; whereas, moreover, Member States should be able to determine the extent and nature of distribution companies' rights (including the grant of exclusive distribution concessions in respect of all customers below the eligibility thresholds for access to the transmission and distribution system) and of their public service obligations, including the obligation to supply, the maintenance of system security and the development of the system capability to meet demand; whereas Member States also retain the power to regulate all aspects of electricity tariffs for final customers who are not eligible for access to the transmission and distribution system, for instance to ensure equal treatment of these customers;

Whereas these measures constitute a second phase of liberalization; whereas once they have been put into effect some obstacles to trade in electricity between Member States will nevertheless remain in place; whereas, therefore, it will be necessary to provide for further market liberalization including in particular a reduction in the barriers to the supply of electricity by producers to customers; whereas the precise details of this third phase, which should complete the internal electricity market, can only be defined in the light of experience during the second phase; whereas a three-year period is sufficiently long to gather the experience on which to base the definition of the third and final phase;

Whereas the present Directive does not prejudice the application of the rules of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope

Article 1

This Directive establishes common rules for the access to the market and for the criteria and procedures to be used when licensing the generation, transmission and distribution of electricity and for the operation of the inter-connected system.

Article 2

For the purposes of this Directive:

1. 'generation' shall mean the production of electricity;
2. 'producer' shall mean a legal or natural person generating electricity for his own use or for sale;
3. 'transmission' shall mean the transport of electricity on the high-voltage interconnected system in view of its delivery to customers;
4. 'distribution' shall mean the transport of electricity on lower-voltage distribution systems in view of its delivery to customers;
5. 'customers' shall mean wholesale or final purchasers of electricity;
6. 'interconnectors' shall mean equipment used to link electricity systems;
7. 'interconnected system' shall mean a number of transmission and distribution systems linked together by means of one or more interconnectors;
8. 'direct line' shall mean a line linking one or more customers with a point of supply without using the interconnected system;
9. 'economic precedence' shall mean the ranking of sources of electricity supply in accordance with economic criteria;
10. 'European specification' shall mean a common technical specification, or a European standard, or a national standard implementing a European standard;
11. 'European standard' shall mean a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electro-technical Standardization (Cenelec) as a 'European Standard (EN)' or 'Harmonization Document (HD)', according to the common rules of those organizations;
12. 'common technical specification' shall mean a technical requirement drawn up in accordance with a procedure recognized by the Member States with a view to uniform application in all Member States and published in the *Official Journal of the European Communities*;
13. 'ancillary services' shall mean all services necessary for the operation of a transmission or distribution system such as meeting load characteristics, frequency control, voltage control, reserve power etc.;
14. 'system user' shall mean any legal or natural person supplying to or being supplied by a transmission or distribution system. This shall include producers, system operators, owners of independent transmission and distribution lines, distribution companies and other customers;
15. 'supplier' shall mean a legal or natural person supplying electricity to customers;
16. 'supply' shall mean the delivery or sale of electricity to customers;
17. 'vertically integrated electricity undertaking' shall mean an electricity undertaking performing two or more of the tasks of generation, transmission and distribution of electricity.

CHAPTER II

Access to the market

Article 3

1. Member States shall ensure that electricity undertakings are operated on commercial principles and shall not discriminate between these undertakings as regards either rights or obligations.

2. Electricity undertakings shall in particular be free to adjust the nature of their business to the market and to establish within the Community activities in fields associated with the electricity business.

3. Without prejudice to Article 16 (2), Member States shall not establish, approve, influence or regulate tariffs or prices to customers in respect of the volume for which these customers exercise their right to purchase and to be supplied or to contract to purchase and to be supplied through the transmission and distribution system in accordance with Articles 6 and 7.

Article 4

1. Member States shall allow undertakings established in the Community to build, operate, purchase or sell generating installations which are located on their territory and which are intended for the generation of electricity destined for own use or for sale subject only to criteria and procedures for authorization to be established in accordance with paragraphs 2 to 6.

2. Member States shall lay down the criteria which shall be met by an undertaking applying for a licence to build or operate a generating installation. The criteria

shall be objective and non-discriminatory. They shall be published not later than six months after the date laid down in Article 28.

The criteria shall relate exclusively to:

- security and safety of the installation,
- environmental protection requirements,
- land use and siting,
- the technical and financial capacity of the applicant undertaking.

However, Member States may, for reasons of environmental policy or of security of supply, supplement these criteria by criteria restricting the nature of the primary energy source that may be used for the generation of electricity.

3. Member States shall lay down and publish, not later than six months after the date laid down in Article 28, the procedures to be followed by an undertaking applying for a licence to build and operate generating installations. The procedures shall be non-discriminatory.

The procedures may vary according to the nature of the primary energy source to be used and the technical type of the generating installations. In the case of major installations, a licence may be granted for each successive phase of construction.

4. Member States shall ensure that the criteria and procedures are applied in a manner which is non-discriminatory and that all applications are handled in a timely manner.

Any change to the criteria and procedures made during the course of an application shall be applied in a non-discriminatory manner to all applicants whose applications are under consideration.

5. Member States may attach conditions and requirements to the licence provided that such conditions and requirements are non-discriminatory and are no more restrictive than is necessary to ensure that the criteria are respected.

6. Member States shall ensure that the reasons for any refusal to grant a licence are given to the applicant and shall establish a procedure enabling the applicant to appeal against such refusals.

Article 5

1. Member States shall grant licences to build or operate electricity transmission or distribution lines and associated equipment on their territory in accordance with the provisions of paragraphs 2 to 8.

2. Member States shall lay down the criteria which shall be met by an undertaking applying for a licence to build or operate a transmission or distribution line. The criteria shall be objective and non-discriminatory. They shall be published not later than six months after the date laid down in Article 28.

The criteria shall relate exclusively to:

- security and safety of lines and associated equipment,
- environmental protection requirements,
- land use and siting,
- public ground use,
- technical and financial capacity of the applicant undertaking.

3. Member States may refuse or defer the grant of a licence, if the transmission or distribution requirements concerned can be satisfied by the existing transmission and distribution capacities available in the interconnected system at a reasonable and equitable price.

4. Member States shall lay down and publish not later than six months after the date laid down in Article 28 the procedures to be followed by an undertaking applying for a licence to build or operate transmission and distribution lines. The procedures shall be non-discriminatory.

5. Member States shall ensure that the criteria and procedures are applied in a manner which is non-discriminatory and that all applications are handled without delay.

Any change to the criteria and procedures made during the course of an application shall be applied in a non-discriminatory manner to all applicants whose applications are under consideration.

6. Any right to expropriate private property or any right to use public ground shall be granted in a non-discriminatory manner.

In so far as the public interest is taken into consideration when granting a right of expropriation or a right to use public ground, a line shall be deemed of public interest if:

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- (i) the line is necessary to meet transmission or distribution requirements which cannot be met by the existing systems;

or

- (ii) a substantial part of the capacity of the line is either open for use by third parties, or made available to the public, at a reasonable and equitable price.

7. Member States may attach conditions and requirements to the licence, provided that such conditions and requirements are non-discriminatory and are no more restrictive than is necessary to ensure that the criteria are respected.

8. Member States shall ensure that the reasons for any refusal to grant a licence are given to the applicant and shall establish a procedure enabling the applicant to appeal against such refusals.

Article 6

1. Subject to Article 5 (1), Member States shall ensure that electricity producers and suppliers established in their territory are able to supply their own premises, subsidiaries and affiliate companies and customers through a direct line.

2. Subject to Article 5 (1), Member States shall ensure that any customer established in their territory is able to purchase and to be supplied with electricity from a producer or supplier through a direct line.

Article 7

1. Member States shall ensure that electricity producers and suppliers established in their territory are able:

- (i) to supply their own premises, subsidiaries and affiliate companies in the same Member State or in another Member State through the use of the interconnected system, subject to the conclusion of agreements with the relevant transmission and distribution system operators pursuant to Articles 14 and 21 respectively;
- (ii) to supply or to contract to supply customers in the same Member State or in another Member State, through the use of the interconnected system, subject to the conclusion of agreements with the relevant transmission and distribution system operators pursuant to Articles 14 and 21 respectively.

2. Member States shall ensure that any customer established in their territory is able to purchase and to be supplied or to contract to purchase and to be supplied with electricity to be delivered from a producer or suppliers in the same Member State or in another Member State, through the use of the interconnected

system, subject to the conclusion of agreements with the relevant transmission and distribution system operators pursuant to Articles 14 and 21 respectively. A Member State may limit such use of the interconnected system:

- to companies for the supply of sites the overall individual consumption of which exceeds 100 GWh per year or such lower figure as may be specified by the Member State,
- to distribution companies, individually or in association, whose individual or aggregated sales represent at least 3 % of overall consumption in the Member State concerned or such lower figure as may be specified by the Member State.

CHAPTER III

Transmission system operation

Article 8

1. Member States shall designate or shall require the undertakings which own transmission systems (including electrical lines forming part thereof) or are responsible for system control or for dispatch to designate a system operator, which has the obligation to operate and to ensure the maintenance and development of the transmission system in a given area and its interconnectors with other systems.

2. Member States shall lay down provisions requiring the transmission system to be operated separately from the generation and distribution divisions of any integrated electricity undertakings and from any generation and distribution undertakings.

3. Member States shall ensure that the transmission system operator acts in accordance with Articles 9 to 15.

Article 9

1. The transmission system operator shall maintain a secure, reliable and efficient electricity system in its area.

2. The transmission system operator shall refrain from buying or selling electricity, except in cases where such transactions are related to:

- ancillary services referred to in paragraph 4 of this Article,
- electricity produced by generating installations referred to in Article 13 (4).

3. The transmission system operator shall use its best endeavours to develop the transmission system and to achieve the expeditious construction of such new transmission capacity as may be needed to enable the transmission capacity to adjust to the demand for the use of that capacity.

4. The transmission system operator shall take all necessary steps to ensure the availability of all ancillary services necessary to maintain a high level of reliability and security of the electricity system.

5. The transmission system operator shall ensure the availability of metered operational data and provide interested parties with all information necessary for settlement and payment.

6. The transmission system operator shall not discriminate between users or classes of users of the system or between users of the system and any of the system operator's other businesses, any businesses affiliated to it, or any of its shareholders.

Article 10

1. The transmission system operator shall provide to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation and the coordinated development of the interconnected system.

2. The transmission system operator shall facilitate transfers of electricity to and from connected systems. To that end the transmission system operator shall conclude all agreements necessary with other relevant transmission or distribution system operators to enable a user connected to its system to use the interconnected system.

The transmission system operator shall fix terms for the use of interconnectors after consultation with the system operator of the connected system.

Article 11

The transmission system operator shall prepare and publish an annual estimate on the generation capacity which is likely to be connected to the system, and on the demand for electricity. The estimate shall cover a period of at least 10 years, beginning from the year in which it is prepared.

Article 12

1. Within a period not exceeding one year from the date laid down in Article 28, the transmission system operator shall develop and publish technical rules, which

shall establish the minimum technical design and operational requirements for the connection to the system of generating installations, final customers' electrical installations, other transmission or distribution systems, and direct transmission and distribution lines. These requirements shall be objective and non-discriminatory and shall not disturb the functioning of the internal market for electricity.

2. The technical rules shall be approved by the Member State concerned, which shall, in accordance with Article 8 of Directive 83/189/EEC ⁽¹⁾, notify to the Commission the rules in respect of performance requirements and connections.

3. The technical rules shall address at least the following:

- (a) voltage and frequency performance requirements;
- (b) conditions for connection to the transmission system including tariff metering;
- (c) operating procedures and requirements.

4. The technical rules shall be defined by reference to European specifications where these exist.

In the absence of European specifications, the technical rules shall as far as possible be defined by reference to other standards having currency within the Community.

5. Technical rules shall be complied with, implemented and enforced by the transmission system operator. In instances where a user is subject to differing technical rules which are applied by two or more transmission or distribution system operators, the system operators concerned shall use their best endeavours to resolve the differences.

6. In the preparation, implementation and enforcement of the technical rules, there shall be no discrimination between users or classes of users of a system except as necessary to ensure security and quality of supply. The rules shall not impose unreasonable requirements or unduly inhibit access to the system.

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

Article 13

1. The transmission system operator shall be responsible for dispatching the generating installations in its area and for determining the use of interconnectors with other systems.

2. The dispatch of the generating installations and the use of interconnectors shall be determined by the transmission system operator according to the actual needs of the system on the basis of criteria which are approved by the Member State concerned. The criteria shall be objective, transparent and applied in a non-discriminatory manner and not disturb the functioning of the internal market for electricity.

3. The criteria for dispatch and for use of interconnectors shall take into account the economic precedence of electricity from available generating installations or interconnector transfers, the technical constraints arising on the system and any measure taken by a Member State pursuant to paragraph 5.

4. When dispatching generating installations in its area the transmission system operator shall give priority to generating installations whose capacity does not exceed 25 megawatts provided that these installations use renewable energy sources or waste or produce combined heat and power and are offered at reasonable prices.

5. A Member State may, for reasons of security of supply, direct that priority be given to the dispatch of generating installations using indigenous primary fuel sources, to an extent not exceeding in any calendar year 20 % of the overall primary energy necessary to produce the electricity consumed in the Member State concerned. This figure shall be progressively reduced to 15 % by 31 December 2000.

Article 14

1. System users and prospective system users may apply to the transmission system operator to enter into an agreement for connection to and/or use of the interconnected system.

2. In response to such an application, the transmission system operator shall propose an agreement for connection to and/or use of the interconnected system. The transmission system operator may, however, refuse to make a proposal for an agreement for use of the system if such use would prejudice the transmission of electricity in fulfilment of any statutory obligation or of contractual commitments. The reasons for any refusal shall be given to the applicant.

All applications shall be handled in a timely manner and a response shall, in any event, be given within three months following receipt of the application.

3. The proposal for an agreement shall include terms relating to an obligation on the part of the transmission system operator:

(i) to accept into the relevant system at such entry point or points such quantities of electricity as may be specified in the application;

and/or

(ii) to enable the delivery to be made of such quantities of electricity as are referred to in (i) above (less any transmission losses) at such exit point or points on the relevant system as may be specified in the application.

4. The transmission system operator shall, on request and at a reasonable charge, make available to a potential user, a statement of opportunities for electricity transactions involving the use of the system and of its interconnectors.

This statement of opportunities shall contain sufficient information to enable a potential user to make a reasonable assessment of those opportunities.

5. The transmission system operator shall publish the basis upon which the terms for connection to and use of the system and its interconnectors will be set. The publication shall contain sufficient information to enable a potential user to make a reasonable assessment of the charges that would be payable for electricity transactions involving the use of the system and of its interconnectors.

6. The basis upon which the transmission system operator's terms are set shall be such that the charges that would be payable are reasonably related to the long-term costs incurred in the provision of the relevant service, together with a reasonable rate of return on capital employed in the provision of that service.

7. The transmission system operator shall not discriminate between any persons or classes of persons in the terms for a connection to its system or for the use of its system and interconnectors.

8. The contractual right of use of the interconnected system shall be lost if the transmission capacity is not used. If capacities are partly unused the same shall apply to the unused part of the capacity.

Article 15

The transmission system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.

CHAPTER IV

Distribution system operation*Article 16*

1. Member States shall define the rights and the public service obligations of distribution companies and the rights and obligations of their customers.

2. Member States may lay upon distribution companies an obligation to supply the customers located in a given area, with respect to the volume for which they do not exercise their right, or do not have the right to be supplied by other suppliers in accordance with Articles 6 and 7. Without prejudice to Article 3 (3), the tariff for such supplies may be regulated, for instance to ensure equal treatment of the customers concerned.

3. Member States shall establish rules:

— on the procedure to be followed by customers who wish to terminate supply by the distribution company, in particular as regards the minimum notice period for termination, which shall not exceed three months,

— on the procedure to be followed by customers who wish to resume supply from the distribution company, in particular on the minimum notice period for resumption, which shall not exceed six months.

4. Member States shall designate or shall require undertakings which own or are responsible for distribution systems (including electrical lines forming part thereof) to designate a distribution system operator, which has the obligation to operate and to ensure the maintenance and development of the distribution system in a given area and its interconnectors with other systems.

5. Member States shall ensure that the distribution system operator acts in accordance with Articles 17 to 22.

Article 17

1. The distribution system operator shall maintain a secure, reliable and efficient electricity distribution system in its area.

2. The distribution system operator shall use its best endeavours to develop the distribution system and to achieve the expeditious construction of such new distribution capacity as may be needed to enable the distribution capacity to adjust to the demand for the use of that capacity.

3. The distribution system operator shall ensure the availability of metered operational data and provide

interested parties with all information necessary for settlement and payment.

4. The distribution system operator shall not discriminate between users or classes of users of the system or between users of the system and any of the system operator's other businesses, any businesses affiliated to it, or any of its shareholders.

Article 18

1. The distribution system operator shall provide to the operator of any system with which its system is interconnected sufficient information to ensure the secure and efficient operation and the coordinated development of the interconnected electricity system.

2. The distribution system operator shall cooperate with other relevant system operators to define all the necessary agreements for the use of the interconnected system applied for by a user connected to its system.

The distribution system operator shall in particular determine the terms for the use of the interconnectors after consultation with the system operator of the connected system.

Article 19

1. The distribution system operator shall prepare annually a report on the quality of supply and the quality of service. The report shall be brought to the attention of the authority competent for the distribution area concerned, and those competent for the neighbouring areas, and shall be made available to the Member State and the Statistical Office of the European Communities (SOEC) upon request.

2. The Commission shall establish the appropriate criteria for the content of the reports in order to ensure their comparability on Community level.

Article 20

1. Within a period not exceeding one year from the date laid down in Article 28, the distribution system operator shall develop and publish technical rules, which shall establish the minimum design and operational technical requirements for the connection to the system of generating installations, customers' electrical installations, transmission and other distribution systems and direct transmission and distribution lines. These requirements shall be objective and non-discriminatory and shall not disturb the functioning of the internal market for electricity.

2. The technical rules shall be approved by the Member State concerned which shall, in accordance with Article 8 of Directive 83/189/EEC, notify to the

Commission the rules in respect of performance requirements and connections.

3. The technical rules shall address at least the following:

- (a) voltage and frequency performance requirements;
- (b) conditions for connection to and operation of the distribution system including tariff metering;
- (c) operating procedures and requirements.

4. The technical rules shall be defined by reference to European specifications where these exist.

In the absence of European specifications, the technical rules shall as far as possible be defined by reference to other standards having currency within the Community.

5. Technical rules shall be complied with, implemented and enforced by the distribution system operator. In instances where a user is subject to differing technical rules which are applied by two or more transmission or distribution system operators, the system operators concerned shall use their best endeavours to resolve the differences.

6. In the preparation, implementation and enforcement of the technical rules, there shall be no discrimination between users or classes of users of a system except as necessary to ensure security and quality of supply. The rules shall not impose unreasonable requirements or unduly inhibit access to the system.

Article 21

1. System users and prospective system users may apply to the distribution system operator to enter into an agreement for connection to and/or use of the interconnected system.

2. In response to such an application, the distribution system operator shall propose an agreement for connection to and/or use of the interconnected system. The distribution system operator may, however, refuse to make a proposal for an agreement for use of the system if such use would prejudice the distribution of electricity in fulfilment of any statutory obligation or of contractual commitments. The reasons for any refusal shall be given to the applicant.

All applications shall be handled in a timely manner and a response shall, in any event, be given within three months following receipt of the application.

3. The proposal for an agreement shall include terms relating to an obligation on the part of the distribution system operator:

- (i) to accept into the relevant system at such entry point or points such quantities of electricity as may be specified in the application;

and/or

- (ii) to enable the delivery to be made of such quantities of electricity as are referred to in (i) above (less any distribution losses) at such exit point or points on the relevant system as may be specified in the application.

4. The distribution system operator shall, on request and at a reasonable charge, make available to a potential user a statement of opportunities for electricity transactions involving the use of the system and of its interconnectors.

This statement of opportunities shall contain sufficient information to enable a potential user to make a reasonable assessment of those opportunities.

5. The distribution system operator shall publish the basis upon which the terms for connection to and/or use of the system and its interconnectors will be set. The publication shall contain sufficient information to enable a potential user to make a reasonable assessment of the charges that would be payable for electricity transactions involving the use of the system and of its interconnectors.

6. The basis upon which the distribution system operator's terms are set shall be such that the charges that would be payable are reasonably related to the long-term costs incurred in the provision of the relevant service, together with a reasonable rate of return on the capital employed in the provision of that service.

7. The distribution system operator shall not discriminate between any persons or classes of persons in the terms for a connection to its system or for the use of the system and interconnectors.

8. The contractual right of use of the interconnected system shall be lost if the distribution capacity is not used. If capacities are partly unused, the same shall apply to the unused part of the capacity.

Article 22

The distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.

CHAPTER V

Unbundling and transparency of accounts

Article 23

Member States shall make the necessary arrangements for ensuring that vertically integrated electricity undertakings organize their electricity generation, transmission and distribution activities — as the case may be — in as many separate divisions as there are activities. Any State aid granted to one division may not benefit another division.

Article 24

1. Member States shall take the necessary steps to ensure that the accounts of electricity undertakings are drawn up in accordance with paragraphs 2 to 7.

2. Vertically integrated undertakings shall, in their internal accounting, keep separate accounts for each division established in accordance with Article 23, as they would be required to do if the activities in question were carried out by separate companies, and shall publish a balance sheet and a profit and loss account for each division in their annual management report.

3. Electricity undertakings, whatever their system of ownership or legal form, shall draw up, publish and submit to audit their annual accounts in accordance with the rules of national legislation concerning the annual accounts of limited liability companies adopted to implement Directive 78/660/EEC⁽¹⁾. Undertakings which are not legally obliged to publish their annual accounts shall hold a copy of these at the disposition of the public in their head office.

4. In addition, the accounts of electricity distribution undertakings and the accounts of the distribution division of vertically integrated undertakings shall distinguish between:

- (a) electricity supply costs from distribution costs and other charges;
- (b) sales of electricity for industrial purposes from sales for other purposes.

5. Undertakings shall specify in notes to the annual accounts the rules for the allocation of charges which they follow in drawing up the separate accounts pursuant to paragraph 2. These rules may be amended only in exceptional cases. Such amendments must be mentioned in the annual report and must be duly substantiated.

6. The depreciation rules applied to the different categories of fixed assets shall appear separately in the notes among the rules of valuation.

7. The annual accounts shall indicate in notes any important transaction conducted with associated undertakings within the meaning of Article 33 of Directive 83/349/EEC⁽²⁾ or affiliated undertakings or undertakings which belong to the same owner.

CHAPTER VI

Final provisions

Article 25

In the event of a sudden crisis in the energy market and where physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may take the necessary protection 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 shall amend or abolish such measures, in so far as they distort competition and adversely affect trade to an extent contrary to the common interest.

Article 26

Member States shall establish a dispute resolution procedure by which the parties can settle disputes on matters covered by this Directive.

Article 27

Each Member State shall establish a consultative procedure enabling system users including domestic consumers in its territory to be consulted, at least once a year, on matters arising under this Directive, and in particular on the transmission and distribution system reports established pursuant to Articles 11 and 19.

Article 28

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992. They shall forthwith inform the Commission thereof.

⁽¹⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽²⁾ OJ No L 193, 18. 7. 1983, p. 1.

When Member States adopt these measures, these 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 29

The Commission shall review the application of this

Directive and make appropriate proposals with a view to establishing the internal market for electricity. On the basis of these proposals the Council shall make the necessary amendments to this Directive, for implementation by 1 January 1996.

Article 30

This Directive is addressed to the Member States.

Proposal for a Council Directive concerning common rules for the internal market in natural gas

(92/C 65/05)

COM(91) 548 final — SYN 385

(Submitted by the Commission on 24 February 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas it is important to adopt measures with the aim of establishing the internal market as provided for in Article 8a of the Treaty; whereas the internal market is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the establishing of the internal market in natural gas is particularly important both in order to increase the efficiency of the natural gas industry, while reinforcing the Community's security of supply, and in order to ensure that all users are able to purchase natural gas on an equal basis, thus avoiding distortion of competition in user industries;

Whereas the establishing of the internal market, more particularly in the natural gas sector, contributes to the achievement of the objectives of the Community's energy strategy by improving environmental protection and reinforcing security of supply through the diversification of energy sources;

Whereas the establishing of the internal natural gas market needs to be progressive and to be implemented in phases in order to enable industry to adjust in a flexible and ordered manner to its new environment;

Whereas Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids⁽¹⁾ and Council Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users⁽²⁾ provide for a first phase for the establishing of the internal natural gas market;

Whereas it is now necessary to take further measures with a view to the establishment of the internal market for gas;

Whereas it is therefore necessary to establish common rules for the licensing by Member States of the construction and operation of liquefied natural gas (LNG) terminals, transmission and distribution lines and storage facilities and to take such other steps as are required in order to ensure the effective functioning of the common market;

Whereas the establishing of the internal market for energy, more particularly in the natural gas sector, will take into account the objective of economic and social cohesion;

Whereas natural gas companies must, in the internal market, be able to operate on normal commercial principles;

⁽¹⁾ OJ No L 147, 12. 6. 1991, p. 37.

⁽²⁾ OJ No L 185, 17. 7. 1990, p. 16.

Whereas provision should be made for customers and producers of natural gas to have access to the transmission and distribution systems, LNG facilities and storage facilities, without discrimination and subject to the availability of capacity and in return for reasonable remuneration; whereas this provision may be limited during the next phase by Member States to large industrial companies and with regard to distribution companies under certain conditions;

Whereas the transmission grid system is controlled by transmission companies each of which ensures the security and reliability of its part of the system in the interest of producers, importers and customers; whereas each transmission company must behave in an objective, transparent and non-discriminatory manner in all aspects of its operation, including the approval of connections to the system and charges paid for services provided;

Whereas each distribution system must be subject to central management and control in order to ensure the security and reliability of the system in the interest of suppliers and of customers; whereas a distribution system operator should therefore be designated and entrusted with the management and the development of the system; whereas the distribution system operator must behave in an objective, transparent and non-discriminatory manner in all aspects of his operation, including the approval of connections to the system, and charges paid for services provided;

Whereas the conditions for connection to the transmission and distribution systems, LNG facilities and storage facilities must be defined by reference to European specifications where possible or other international standards and specifications;

Whereas principles of charging should be clearly laid down in order to ensure fair and transparent conditions for the use of LNG terminals, storage facilities, transmission and distribution systems;

Whereas in order to ensure transparency and non-discrimination the transmission, distribution and storage functions of vertically integrated undertakings should be operated as separate divisions with separate accounts; whereas the accounts of all natural gas undertakings should provide for maximum transparency, in particular to identify possible abuses of dominant position, consisting for example in abnormally high or low tariffs or in discriminatory practices relating to equivalent transactions;

Whereas provision must be made for safeguards and dispute resolution procedures;

Whereas specific provision must be made for safeguards in case of natural gas undertaking being in economic difficulties because of the impossibility to respect take-off volumes which are part of 'Take or Pay' obligations;

Whereas, in accordance with the principle of subsidiarity, general principles providing for a framework must be established at Community level, but their detailed implementation should be left to the Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation; whereas therefore Member States should, subject to the provisions of the Treaty and made under the Treaty, remain free to determine the detailed criteria for licensing distribution lines and storage and LNG facilities; whereas, moreover, Member States should be able to determine the extent and the nature of distribution companies' rights (including the grant of exclusive distribution concessions in respect of all customers below the eligibility thresholds for access to the transmission and distribution system) and of their public service obligations, including the obligation to supply, the maintenance of system security and the development of the system capability to meet demand; whereas Member States also retain the power to regulate all aspects of gas tariffs for final customers who are not eligible for access to the transmission and distribution system, for instance to ensure equal treatment of these customers;

Whereas these measures constitute a second phase of liberalization; whereas once they have been put into effect some obstacles to trade in natural gas between Member States will nevertheless remain in place; whereas, therefore, it will be necessary to provide for further market liberalization including in particular a reduction in the barriers to the supply of natural gas by producers to customers; whereas the precise details of this third phase, which should complete the internal natural gas market, can only be defined in the light of experience during the second phase; whereas a three-year period is sufficiently long to gather the experience on which to base the definition of the third and final phase;

Whereas the present Directive does not prejudice the application of the rules of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope

Article 1

This Directive establishes common rules for the access to the market and for the criteria and procedures to be used

when licensing the transmission, storage and distribution of natural gas and for the operation of the interconnected system.

Article 2

For the purposes of this Directive:

1. 'transmission' shall mean the transport of natural gas through a high pressure pipeline in view of its delivery to customers;
2. 'transmission company' shall mean any company that owns or operates a high pressure pipeline;
3. 'distribution' shall mean the transport of natural gas on local or regional pipeline systems in view of its delivery to customers;
4. 'customers' shall mean wholesale and final purchasers of natural gas;
5. 'LNG facility' shall mean a terminal which is used for the handling of liquified natural gas (LNG);
6. 'storage facility' shall mean a facility owned or operated by a producer or a gas company for the storage of gas in order to balance supply and demand;
7. 'interconnected system' shall mean a number of transmission and distribution systems which are linked with each other;
8. 'direct line' shall mean a line linking one or more customers with a point of supply without using the interconnected system;
9. 'distribution system operator' shall mean an undertaking having the responsibility of operating and developing a natural gas distribution system;
10. 'European specification' shall mean a common technical specification or a European standard, or a national standard implementing a European standard;
11. 'European standard' shall mean a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as a 'European Standard (EN)' or 'Harmonization Document (HD)', according to the common rules of those organizations;
12. 'common technical specification' shall mean a technical requirement drawn up in accordance with a procedure recognized by the Member States with a view to uniform application in all Member States and published in the *Official Journal of the European Communities*;
13. 'ancillary services' shall mean all services necessary for the operation of transmission or distribution systems including in particular storage, load balancing, blending, reserve gas supply etc.;

14. 'system user' shall mean any legal or natural person supplying to or being supplied by a transmission or distribution system. This shall include in particular producers, importers, transmission companies, distribution system operators, owners of independent transmission and distribution lines, suppliers and other customers;

15. 'supplier' shall mean a legal or natural person supplying natural gas to customers;

16. 'supply' shall mean the delivery and sale of natural gas to customers;

17. 'vertically integrated natural gas company' shall mean a natural gas company performing two or more of the tasks of production, import, storage, transmission and distribution of natural gas.

CHAPTER II

Access to the market

Article 3

1. Member States shall ensure that natural gas companies are operated on commercial principles and shall not discriminate between these undertakings as regards either rights or obligations.

2. Natural gas companies shall in particular be free to adjust the nature of their business to the market and to establish within the Community activities in fields associated with the natural gas business.

3. Without prejudice to Article 14 (2), Member States shall not establish, approve, influence or regulate tariffs or prices to customers in respect of the volume for which these customers exercise their right to purchase and to be supplied or to contract to purchase and to be supplied through the transmission and distribution system in accordance with Articles 5 and 6.

Article 4

1. Member States shall grant licences to build or operate LNG facilities, storage facilities, transmission and distribution lines and associated equipment on their territory, in accordance with paragraphs 2 to 8.

2. Member States shall lay down the criteria which shall be met by an undertaking applying for a licence to build or operate LNG facilities, storage facilities and transmission and distribution lines. The criteria shall be objective and non-discriminatory. They shall be published not later than six months after the date laid down in Article 27.

The criteria shall relate exclusively to:

- security and safety of lines and associated equipment,

- environmental protection requirements,
- land use and siting,
- public ground use,
- technical and financial capacity of the applicant undertaking.

3. Member States may refuse or defer the grant of a licence for the construction of lines if the transmission or distribution requirements concerned can be satisfied by the existing transmission and distribution capacities available in the interconnected system at a reasonable and equitable price.

4. Member States shall lay down and publish not later than six months after the date laid down in Article 27 the procedures to be followed by an undertaking applying for a licence to build or operate LNG facilities, storage facilities and transmission and distribution lines. The procedures shall be non-discriminatory.

5. Member States shall ensure that the criteria and procedures are applied in a manner which is non-discriminatory and that all applications are handled without delay.

Any change to the criteria and procedures made during the course of an application shall be applied in a non-discriminatory manner to all applicants whose applications are under consideration.

6. Any right to expropriate private property or any right to use public ground shall be granted in a non-discriminatory manner.

In so far as the public interest is taken into consideration when granting a right of expropriation or a right to use public ground, a line, an LNG facility or a storage facility shall be deemed of public interest if:

- (i) the line or the LNG facility or the storage facility is necessary to meet supply, transmission or distribution requirements which cannot be satisfied by the existing systems;

or

- (ii) a substantial part of the capacity of the line, of the LNG facility or of the storage facility is either open for use by third parties, or made available to the public at a reasonable and equitable price.

7. Member States may attach conditions and requirements to the licence, provided that such conditions and requirements are non-discriminatory and are no more restrictive than is necessary to ensure that the criteria are respected.

8. Member States shall ensure that the reasons for any refusal to grant a licence are given to the applicant and

shall establish a procedure enabling the applicant to appeal against such refusals.

Article 5

1. Subject to Article 4 (1), Member States shall ensure that gas producers and suppliers established in their territory are able to supply their own premises, subsidiaries and affiliate companies and customers through a direct line.

2. Subject to Article 4 (1), Member States shall ensure that any customer established in their territory is able to purchase and to be supplied with gas from a producer or suppliers through a direct line.

Article 6

1. Member states shall ensure that gas producers and suppliers established in their territory are able:

- (i) to supply their own premises, subsidiaries and affiliate companies in the same Member State or in another Member State through the use of the interconnected system, subject to the conclusion of agreements with the relevant transmission companies and distribution system operators pursuant to Articles 12 or 19 respectively;
- (ii) to supply or to contract to supply customers in the same Member State or in another Member State, through the use of the interconnected system, subject to the conclusion of agreements with the relevant transmission companies and distribution system operators pursuant to Articles 12 or 19 respectively.

2. Member States shall ensure that any customer established in their territory is able to purchase and to be supplied or to contract to purchase and to be supplied with gas to be delivered from a producer or producers through the use of the interconnected system, subject to the conclusion of agreements with the relevant transmission companies and distribution system operators pursuant to Articles 12 or 19 respectively. A Member State may limit such use of the interconnected system:

- to companies for the supply of sites whose overall individual consumption exceeds 25 mio m³ per year or such lower figure as may be specified by the Member State,
- to distribution companies, individually or in association; whose individual or aggregated sales represent at least 1 % of overall consumption in the Member State concerned or such lower figure as may be specified by the Member State.

CHAPTER III

Transmission system operation

Article 7

Member States shall take the measures necessary to ensure that transmission companies act in accordance with Articles 8 to 13.

Article 8

1. The task of operating the integrated grid system shall be assured individually by each transmission company which shall maintain a secure, reliable and efficient natural gas system in its part of the interconnected system.

2. Each transmission company shall use its best endeavours to develop the transmission system and to achieve the expeditious construction of such new transmission capacity as may be needed to enable the transmission capacity to adjust to the demand for the use of that capacity.

3. Each transmission company shall take all necessary steps to ensure the availability of all ancillary services necessary to maintain a high level of reliability and security of its system.

4. Each transmission company shall ensure the availability of metered operational data and provide interested parties with all information necessary for settlement and payment.

5. Each transmission company shall not discriminate between users or classes of users of the system or between users of the system and any of the transmission company's other businesses, any businesses affiliated to it, or any of its shareholders.

Article 9

1. Each transmission company shall provide to any other transmission company or distribution system operator with which its system is connected sufficient information to ensure the secure and efficient operation and the coordinated development of the interconnected system.

2. Each transmission company shall facilitate transfers of natural gas to and from connected systems. To that end the transmission company shall conclude all agreements necessary with other relevant transmission companies or distribution system operators to enable a user connected to its system to use the interconnected system.

Article 10

Each transmission company shall prepare and publish an annual estimate on the demand for gas in its area and on

the system transmission capability including transfer capabilities to and from neighbouring systems. The estimate shall cover a period of at least 10 years beginning from the year in which it is prepared.

Article 11

1. Within a period not exceeding one year from the date laid down in Article 27, each transmission company shall develop and publish technical rules, which shall establish the minimum technical design and operational requirements for the connection to its system of LNG facilities, storage facilities, customers' natural gas installations, other transmission or distribution systems, and direct transmission and distribution lines. These requirements shall be objective and non-discriminatory and shall not disturb the functioning of the internal market for gas.

2. The technical rules shall be approved by the Member State concerned, which shall, in accordance with Article 8 of Directive 83/189/EEC (1), notify to the Commission the rules in respect of performance requirements and connections.

3. The technical rules shall address at least the following:

(a) pressure requirements;

(b) conditions for connection to and operation of the transmission system, including tariff metering.

4. The technical rules shall be defined by reference to European specifications where these exist.

In the absence of European specifications, the technical rules shall as far as possible be defined by reference to other standards having currency within the Community.

5. The technical rules shall be implemented by the transmission company which shall ensure compliance by all system users. In instances where a user is subject to differing technical rules which are applied by two or more transmission companies or distribution system operators, the transmission company shall use its best endeavours to resolve the differences in cooperation with the other transmission companies and with the distribution system operators concerned.

(1) OJ No L 109, 26. 4. 1983, p. 8.

6. In the preparation, implementation and enforcement of the technical rules, there shall be no discrimination between users or classes of users of a system except as necessary to ensure security and quality of supply. The rules shall not impose unreasonable requirements or unduly inhibit access to the system.

Article 12

1. System users and prospective systems users may apply to a transmission company to enter into an agreement for connection to and/or use of its system or of an LNG facility or any storage facility owned or operated by the transmission company.

2. In response to such an application, the transmission company shall propose an agreement for connection to and/or use of the interconnected system or of the LNG facilities or the storage facilities. The transmission company may, however, refuse to make a proposal for an agreement for use of the system including the abovementioned facilities, if such use would prejudice the transmission or storage of natural gas or the import or the export of LNG in fulfilment of any statutory obligation or contractual commitments. The reasons for any refusal shall be given to the applicants.

All applications shall be handled in a timely manner and a response shall, in any event, be given within three months following receipt of the application.

3. The proposal for an agreement shall include terms relating to an obligation on the part of the transmission company:

(i) to accept into the relevant system at such entry point or points such quantities of natural gas as may be specified in the application;

and/or

(ii) to accept into the relevant LNG facility or storage facility such quantities of natural gas as may be specified in the application;

and/or

(iii) to enable the delivery to be made of such quantities of natural gas as are referred to in (i) and (ii) (less any transmission losses) at such exit point or points on the relevant system as may be specified in the application.

4. A transmission company shall, on request and at a reasonable charge, make available to a potential user a statement of opportunities for transactions involving the use of its system including any LNG facilities and storage facilities which form part of the system.

This statement of opportunities shall contain sufficient information to enable a potential user to make a reasonable assessment of those opportunities.

5. Each transmission company shall publish the basis upon which the terms for connection to and use of the system will be set. The publication shall contain sufficient information to enable a potential user to make a reasonable assessment of the charges that would be payable for natural gas transactions involving the use of the system, including LNG facilities and storage facilities which form part of the system.

6. The basis upon which the transmission company's terms are set shall be such that the charges that would be payable are reasonably related to the long-term costs incurred in the provision of the relevant service, together with a reasonable rate of return on capital employed in the provision of that service.

7. The transmission company shall not discriminate between any persons or classes of persons in the terms for a connection to its system or for the use of its system.

8. The contractual right of usage of LNG facilities, storage or transmission capacities shall be lost if these capacities are not used. If capacities are partly unused the same shall apply to the unused part of the capacity.

Article 13

Each transmission company shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.

CHAPTER IV

Distribution system operation

Article 14

1. Member States shall define the rights and the public service obligations of distribution companies and the rights and obligations of their customers.

2. Member States may lay upon distribution companies an obligation to supply the customers located in a given area, with respect to the volume for which they do not exercise their right, or do not have the right to be supplied by other suppliers, in accordance with Articles 5 and 6. Without prejudice to Article 3 (3), the tariff for such supplies may be regulated, for instance to ensure equal treatment of the customers concerned.

3. Member States shall establish rules:

— on the procedure to be followed by customers who wish to terminate supply by the distribution company, in particular as regards the minimum notice period for termination, which shall not exceed three months,

— on the procedure to be followed by customers who wish to resume supply from the distribution company, in particular on the minimum notice period for resumption, which shall not exceed six months.

4. Member States shall designate or shall require the undertakings which own or are responsible for distribution systems (including natural gas lines forming part thereof) to designate a distribution system operator, which has the obligation to operate and to ensure the maintenance and development of the distribution system in a given area.

5. Member States shall ensure that the distribution system operator acts in accordance with the provisions in Articles 15 to 20.

Article 15

1. The distribution system operator shall maintain a secure, reliable and efficient natural gas distribution system in its area.

2. The distribution system operator shall use its best endeavours to develop the distribution system and to achieve the expeditious construction of such new distribution capacity as may be needed to enable the distribution capacity to adjust to the demand for the use of that capacity.

3. The distribution system operator shall ensure the availability of metered operational data and provide interested parties with all information necessary for settlement and payment.

4. The distribution system operator shall not discriminate between users or classes of users of the system or between users of the system and any of the undertaking's other businesses, any businesses affiliated to it, or any of its shareholders.

Article 16

1. The distribution system operator shall provide to any transmission company or to the distribution system operator of any system with which its system is interconnected sufficient information to ensure the secure and efficient operation and the coordinated development of the interconnected natural gas system.

2. The distribution system operator shall cooperate with relevant transmission companies and distribution system operators to define all the agreements necessary for the use of the interconnected system by a user connected to its system.

Article 17

1. The distribution system operator shall prepare annually a report on the quality of supply and the quality of service. The report shall be brought to the attention of the authority competent for the neighbouring areas, and

shall be made available to the Member State and the Statistical Office of the European Communities (SOEC) upon request.

2. The Commission shall establish the appropriate criteria for the content of the reports in order to ensure their comparability on Community level.

Article 18

1. Within a period not exceeding one year from the date laid down in Article 27, the distribution system operator shall develop and publish technical rules, which shall establish the minimum technical design and operational requirements for the connection to its system of storage facilities, customers' natural gas installations, transmission and other distribution systems and direct transmission and distribution lines. These requirements shall be objective and non-discriminatory and shall not disturb the functioning of the internal market for gas.

2. The technical rules shall be approved by the Member State concerned, which shall, in accordance with Article 8 of Directive 83/189/EEC, notify to the Commission the rules in respect of performance requirements and connections.

3. The technical rules shall address at least the following:

- (a) pressure requirements;
- (b) conditions for connection to and operation of the distribution system including tariff metering.

4. The technical rules shall be defined by reference to European specifications where these exist.

In the absence of European specifications, the technical rules shall as far as possible be defined by reference to other standards having currency within the Community.

5. Technical rules shall be complied with, implemented and enforced by the distribution system operator. In instances where a user is subject to differing technical rules which are applied by two or more transmission companies or distribution system operators, the distribution system operator shall use its best endeavours to resolve the differences in cooperation with the other system operator or with the transmission companies concerned.

6. In the preparation, implementation and enforcement of the technical rules, there shall be no discrimination between users or classes of users of a system except as necessary to ensure security and quality

of supply. The rules shall not impose unreasonable requirements or unduly inhibit access to the system.

Article 19

1. System users and prospective system users may apply to the distribution system operator to enter into an agreement for connection to and/or use of the interconnected system or of a storage facility owned or operated by the distribution system operator.

2. In response to such an application, the distribution system operator shall propose an agreement for connection to and/or use of the interconnected system or of the storage facility. The distribution system operator may, however, refuse to make a proposal for an agreement if such use would prejudice the distribution of natural gas in fulfilment of any statutory obligation or contractual commitments. The reasons for any refusal shall be given to the applicant.

All applications shall be handled in a timely manner and a response shall, in any event, be given within three months following receipt of the application.

3. The proposal for an agreement shall include terms relating to an obligation on the part of the distribution system operator:

(i) to accept into the relevant system at such entry point or points such quantities of natural gas as may be specified in the application;

and/or

(ii) to accept into the relevant storage facility such quantities of natural gas as may be specified in the application;

and/or

(iii) to enable the delivery to be made of such quantities of natural gas as are referred to in (i) and (ii) (less any transmission losses) at such exit point or points on the relevant system as may be specified in the application.

4. The distribution system operator shall, on request and at a reasonable charge, make available to a potential user a statement of opportunities for natural gas transactions involving the use of the distribution system, including any storage facilities which form part of the system.

This statement of opportunities shall contain sufficient information to enable a potential user to make a reasonable assessment of those opportunities.

5. The distribution system operator shall publish the basis upon which the terms for connection to and/or use of the system will be set. The publication shall contain sufficient information to enable a potential user to make a reasonable assessment of the charges that would be payable for natural gas transactions involving the use of

the system including any storage facilities which form part of the system.

6. The basis upon which the distribution system operator's terms are set shall be such that the charges that would be payable are reasonably related to the long-term costs incurred in the provision of the relevant service, together with a reasonable rate of return on the capital employed in the provision of that service.

7. The distribution system operator shall not discriminate between any persons or classes of persons in the terms for a connection to its system or for the use of its system.

8. The contractual right of usage of distribution capacities shall be lost if these capacities are not used. If capacities are partly unused the same shall apply to the unused part of the capacity.

Article 20

The distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.

CHAPTER V

Unbundling and transparency of accounts

Article 21

Member States shall make the necessary arrangements for ensuring that vertically integrated natural gas companies organize their natural gas production, transmission, storage and distribution activities — as the case may be — in as many separate divisions as there are activities. Any State aid granted to one division may not benefit another division.

Article 22

1. Member States shall take the necessary steps to ensure that the accounts of natural gas companies are drawn up in accordance with paragraphs 2 to 9.

2. Vertically integrated companies shall, in their internal accounting, keep separate accounts for each division established in accordance with Article 21, as they would be required to do if the activities in question were carried out by separate companies, and shall publish a separate balance sheet and a profit and loss account for each division in their annual management report.

3. Natural gas companies, whatever their system of ownership or legal form, shall draw up, publish and submit to audit their annual accounts in accordance with the rules of national legislation concerning the annual accounts of limited liability companies adopted to

implement Directive 78/660/EEC⁽¹⁾. Undertakings which are not legally obliged to publish their annual accounts shall hold a copy of these at the disposition of the public in their head office.

4. In addition, the profit and loss accounts of natural gas transmission companies and the accounts of the transmission division of vertically integrated companies shall distinguish natural gas supply costs from transmission costs and other charges.

5. The accounts of natural gas storage companies and the accounts of the storage division of vertically integrated companies shall distinguish natural gas supply costs from cushion gas costs and other charges.

6. The accounts of natural gas distribution companies and the accounts of the distribution division of vertically integrated companies shall distinguish:

- (a) natural gas supply costs from distribution costs and other charges;
- (b) sales of natural gas for industrial purposes from sales for other purposes.

7. Companies shall specify in notes to the annual accounts the rules for the allocation of charges which they follow in drawing up the separate accounts pursuant to paragraph 2. These rules may be amended only in exceptional cases. Such amendments must be mentioned in the annual management report and must be duly substantiated.

8. The depreciation rules applied to the different categories of fixed asset shall appear separately in the notes among the rules of valuation.

9. The annual accounts shall indicate in the notes any important transaction conducted with associated or affiliated companies within the meaning of Article 33 of Directive 83/349/EEC⁽²⁾ or with companies which belong to the same shareholders.

CHAPTER VI

Final provisions

Article 23

In the event of a sudden crisis in the energy market and where physical safety or security of persons, apparatus or

installations or system integrity is threatened, a Member State may take necessary protection 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 shall amend or abolish such measures in so far as they distort competition and adversely affect trade to an extent contrary to the common interest.

Article 24

1. If one or more companies within a Member State's territory comes into major economic difficulties because their sales of natural gas have fallen below the level of the minimum offtake guarantees contained in gas purchase contracts entered into before 1 July 1991, the Member State concerned shall notify the Commission of any plan to take measures to alleviate these economic difficulties. Such notification shall be made in advance and shall contain all relevant information on the nature and extent of the difficulties and on their causes. The measures must be temporary and limited to those which are necessary to alleviate the difficulties in question, and must not adversely affect trade between Member States to an extent contrary to the common interest. The plan shall only be put into effect by the Member State with the approval of the Commission, which shall give its decision within three months of the notification.

2. The Commission shall make a report to the European Parliament and the Council on the operation of paragraph 1 by 31 December 1994, and shall propose any appropriate measures in relation to the provisions of this Directive.

Article 25

Member States shall establish a dispute resolution procedure by which the parties can settle disputes on matters covered by this Directive.

Article 26

Each Member State shall establish a consultative procedure enabling system users including domestic consumers in its territory to be consulted, at least once a year, on matters arising under this Directive, and in particular on the transmission and distribution system reports established pursuant to Article 10 and 17.

⁽¹⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽²⁾ OJ No L 193, 18. 7. 1983, p. 1.

Article 27

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, these 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 28

The Commission shall review the application of this Directive and make appropriate proposals with a view to establishing the internal market for natural gas. On the basis of these proposals the Council shall make the necessary amendments to this Directive, for implementation by 1 January 1996.

Article 29

This Directive is addressed to the Member States.

DOCUMENTS

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