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AND THE EUROPEAN PARLIAMENT

on State of liberalisation of the energy markets

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Objectives of the Commission

The main objective of the Commission in developing the internal energy market has been to recognize greater integration of the national energy markets as a way to improve security of supply, reduce costs and improve competitiveness. A Community wide market without internal frontiers will provide for a more flexible and diversified energy supply and will thus contribute to a higher degree of security of supply for the Community as a whole. More competition in the energy sector will also improve efficiency of the EU energy industry, thus increasing competitiveness. It will also reduce prices for energy consumers, helping them to gain a competitive edge in production. The single market has contributed to growth, competitiveness and employment. For the European Community thus the question is not whether the completion of the internal energy market is necessary but how to realize it in the most efficient way.

Obstacles to the internal energy market - The reasons for liberalization

There are still substantial obstacles to trade in electricity and gas across borders and even within national borders in some cases. These barriers are the result of exclusive rights that have been granted to the national utilities in those two sectors. It is worth noting that the prices for electricity and gas in Europe are on average 40% higher than in the United States. For certain industries, the energy price is vital and represents a very high percentage of the production costs. Thus the compartmentalization of energy markets is liable to be detrimental to the European industry competing in world markets. Removing the obstacles to intra-Community trade will allow electricity and gas users to enjoy the benefits of a more competitive market including freedom of choice and reduced price disparities between Member States. The Commission has therefore focused on the electricity and gas sectors whose transmission and distribution rely on a particular network infrastructure. The main objectives for an internal market in electricity and gas have been:

- to improve the security of supply by a progressive opening up of the electricity and gas markets;
- to ensure the free movement of gas and electricity within and between Member States in response to demand;
- to improve competitiveness by enabling gas and electricity users to enjoy the benefits of a more competitive energy market which is vital for energy industries competing in world markets as energy is an important component of economic activity.

The Commission's approach

The Commission based its legislative proposals for the internal energy market on the following principles:

- First, the need to have a progressive approach in order to give to the energy industry sufficient time to adjust to the new environment in a flexible manner.
- Second, the Community must not impose a rigid system on Member States, but rather a framework which Member States can fill in with arrangements best suited to their national circumstances.
- Third, to avoid excessive regulation.

- Fourth, the Commission has chosen an approach based on article 100A of the Treaty, which requires agreement between Member States, following a political dialogue with the Council, the European Parliament and the Economic and Social Committee.

The first phase: Price transparency and transit Directives

The Directive on price transparency (Council Directive 90/377/EEC) was adopted on 29 June 1990. It sets up a Community procedure ensuring price transparency to the final industrial consumers of gas and electricity. The Directive provides that electric and gas utilities shall supply to the Community statistical office the rates they charge to all categories of consumers twice a year. The figures published so far show large differences in the conditions and terms on which industrial consumers of electricity and gas are supplied in the different Member States and even within the same country which is the result of the closed markets.

The Directives on transit of electricity (Council Directive on the transit of electricity through transmission grids 90/547/EEC of 29 October 1990) and gas (Council Directive on the transit of natural gas through grids 91/296/EEC of 31 May 1991), are designed to maximize and facilitate electricity and gas exchanges across non neighboring countries. However, despite that progress, it has to be recognized that this trade has only been possible between monopolistic network and public utilities and not between consumers in one Member State and producers in another.

The second phase: the hydrocarbons licensing Directive

The Directive on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons (94/22/EC of the European Parliament and the Council), was adopted on 30 May 1994. Unlike the electricity Directive which liberalizes both production and supply, the gas proposal (see below) is limited to the activities of storing, transporting, and distributing natural gas. It is the hydrocarbons Directive that covers the complementary activity of producing gas and oil. The Directive provides that Member States must grant equal and non-discriminatory access for all EU companies to the activities of prospecting, exploring and producing of oil and natural gas within the territory of the EU and the EEA.

The third phase: The Commission proposals for Directives concerning common rules for the internal market for electricity and natural gas

The Commission original proposals on the liberalization of both gas and electricity were presented on 21 February 1992 (COM (91) 548 final). After a long and intense debate, the Directive 96/92/EC concerning common rules for the internal market in electricity was adopted on 19 December 1996. One year after the adoption of the electricity Directive, on December the 8th, the Council has reached an agreement on a common position for the natural gas proposal. These events reflect the real wish of the Member States to build together an internal market for energy.

The Directive 96/92/EC

A major step has been made by the adoption of the Directive concerning common rules for the internal market in electricity by the Council of Ministers on 19 December 1996. The Directive entered into force on 19 February 1997. The electricity Directive will affect the market in the following subsections: generation, distribution-transmission, consumption and access to the networks.

Generation

For the provision of new generating capacity, Member States may choose between two alternative procedures. They may choose to follow either the authorization procedure or the tendering procedure. Whichever of these are chosen they must be based on objective, transparent, and non-discriminatory criteria and must result in an equivalent level of market opening. The tendering procedure allows for central planning: a central body draws up an estimate for the need of new capacity and the requisite capacity is allocated through a tender procedure. Tenders will be organized and decided by a fully independent authority. In the authorization procedure, anyone at any time may build and operate an electricity plant provided that the criteria that have been specified by the Member State for the grant of an authorization are met. In this case there is no central planning as the capacity necessary to meet demand is left to the market. These two options will allow companies to construct and operate new generating capacities in a new market anywhere in the European Union. Certain types of generators shall be able to obtain authorizations under both procedures (self-generators, independent power producers).

Transmission - Distribution

Member States shall designate or require undertakings which own transmission and distribution systems to designate a transmission and distribution system operator responsible for operating, ensuring the maintenance and developing the transmission and distribution system in a given area.

The transmission system operator is responsible for the dispatching of the generating installations in its area. The criteria for the dispatching must be objective, transparent and non-discriminatory. The Directive provides as an exception to this basic rule a mechanism for the favorable treatment of electricity from:

- Renewable energy sources: A Member State may require the system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or combined heat and power.
- Indigenous energy sources: Priority in the dispatching can be given also to electricity produced from indigenous fuels but only up to 15%.

Consumption

On the consumer's side the electricity market will be opened to competition through the gradual opening of the market over a six year period. The first stage is on February 1999, the second stage will be on February 2000, and the third stage will be on February 2003. The minimum market opening corresponding to the first step represents 25.37 % average Community share of electricity market opening and is calculated as the share of total consumption consumed by final consumers with an annual consumption exceeding 40 Gwh. In the second stage this will be reduced to a level of 20 Gwh representing 28 % average Community share of electricity market

opening and in the third stage the threshold is reduced to a level of 9 Gwh representing 33 % average Community share of electricity market opening. This degree of market opening is a minimum level that all Member States must respect, but which allows them to open up the market even further. The customers eligible to participate in the market opening will be determined by the Member States, under supervision of the Commission, though two categories will automatically be included: very large final consumers of over 100 Gwh and distributors for the volume of electricity consumed in their distribution network by other eligible final customers.

Access to the network

All producers and all eligible customers will be able to enter into direct contractual relationships with each other for the supply of electricity and to gain access to the network under objective and non-discriminatory conditions. Member States have the choice of three alternative procedures to meet this:

- **Negotiated third party access:** producers and consumers of electricity contract directly with each other for the supply of electricity, but they negotiate access to the network with its operator in terms of transport tariffs or other conditions. System operators must publish indicative prices for the use of the transmission and distribution system.
- **Regulated third party access:** producers and consumers of electricity contract directly with each other for the supply of electricity, but the eligible customers have a right of access to the network on the basis of published tariffs.
- **Single buyer:** producers and consumers of electricity will contract with each other for the supply of electricity. The electricity price of this contract is strictly confidential. Under the single buyer system with repurchasing obligation, the single buyer is obliged to purchase the electricity contracted by an eligible customer from a producer at a price which is a function of the sale price offered by the single buyer to the eligible customer minus a non-discriminatory transmission tariff for the use of the network. The economic advantage of the eligible customer is the difference between the price at which it would usually purchase electricity from the single buyer and the price of electricity it has contracted to purchase from another producer, minus the transmission cost. Under the single buyer system with no purchasing obligation of the single buyer, the system works no differently from regulated or negotiated TPA as mentioned above.

Direct Lines

In addition to the possibility of access to the network in order to deliver electricity contracted between eligible customers and suppliers, electricity producers and suppliers have a right to supply their own premises, subsidiaries and eligible customers through direct lines. Member States lay down the criteria for the grant of authorizations for the construction of direct lines which must be objective and non-discriminatory.

Public service obligations

It is for each Member State to decide which public service obligations they wish to achieve, and the Directive provides a mechanism enabling them to take appropriate measures in this context. These obligations will be defined by the Member States individually within a Community framework as provided in the Directive. The Member States must define the public service obligations which must be objective, transparent, non-discriminatory, verifiable and published. They must fall within one of the five Community categories which are: security of supply, regularity, quality and prices of supply as well as environmental protection. These obligations need to be notified to the Commission in order to check their compatibility with Community law. Furthermore, public service obligations are not a "carte blanche". Article 90 of the Treaty states that undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules of the Treaty, in particular the competition rules, in so far as the application of these rules does not obstruct the performance of the tasks assigned to them. In this line Member States should ensure that the obligations which they impose on electricity undertakings are proportionate to the objectives pursued. The mechanism provided in the Directive allows Member States to ensure smooth interplay between competition and the need to promote certain public services, where this is deemed to be necessary to the general interest, all within a Community framework in the spirit of the Treaty and the Communication of the Commission on services of general interest in Europe (COM(96) 443 final).

Transitional regimes

According to Article 24 of the electricity directive, Member States had the possibility to apply for a transitional regime until 20 February 1998. Transitional regimes are limited in time and allow various measures to support commitments which have been given before the entering into force of the directive and which could not be honored because of the market opening. As an example, one could think of a take or pay like power procurement contract between a generator and a distributor. The generator invested into a power plant relying on the sales contract with the distributor. The distributor, on the other hand, relied on sales to captive consumers. As consumers become eligible to choose their supplier, either the distributor may get squeezed or the generator's investment may become stranded. Therefore, under certain circumstances and after careful examination of each single case, the Commission may approve support schemes proposed by the Member States. This offers a flexible possibility to tackle specific problems of a Member State's electricity industry without inhibiting the schedule of implementation of the electricity directive and the optimal structural choices that each Member State will try to take in order to prepare for the common electricity market. Twelve Member States have applied for such a transitional regime, namely Germany, France, the UK, Ireland, the Netherlands, Belgium, Luxembourg, Spain, Portugal, Greece, Denmark and Austria. The Commission will need to collect a lot of additional data in order to prepare a decision in each case. This process will take several months but should be finished before the implementation date of the directive, which is in most Member States the 20 February 1999.

State of play in the Member States Summary

The electricity market will be opened to competition through the gradual opening of the market over a six year period which will initially cover approximately one quarter of the market and finally result in one third of the total 45 billion ECU market being liberalized. It is worth noting that a clear majority of Member States will in fact go beyond the minimum market opening provided in the Directive. In the Netherlands, 32% will be eligible during 1998 and all consumers 2008. In Sweden, since 1/1/96 all consumers are considered as eligible. In the UK, the current thresholds represent 42% of market opening while by the end of 1998 it is planned to fully open the market. In Finland, the intention is during 1998 to fully open the market. In Germany, all final customers and distributors will all be eligible. In Denmark, almost 90% of the market will be open to competition. Spain will go further, and more quickly than the requirements of the Directive. Most remaining Member States will announce their intentions in the near future. Thus, even on the most conservative assumptions, it is evident that at least 60% of the EU electricity demand will be liberalized by end 1999. This highlights the fact that despite the long debate that has taken place since the Commission first presented its proposal for a Directive, the necessity for a liberalized internal electricity market is widely recognized.

Country by country overview

Austria

Structure of the electricity system: Each of the nine Länder has its own electricity company. These regional companies own the low and medium voltage distribution grid and have a monopoly of electricity supply in their Länder. Most of the electricity generation is carried out by eight generation companies which are at least 50% owned by the Verbundgesellschaft (the national grid company). This company also owns the 380 KV and most of the 220 KV high voltage transmission grid with the exception of TIWAG and VKW grids (the regional companies recognized as TSO in the transit Directive).

Present stage of liberalization: The first draft law has been presented by the Ministry and its expected to be submitted to the Parliament in March 1998. **Generation:** authorization procedure. **Access to the network:** Single buyer with repurchasing obligation with limited exceptions. **Eligible consumers:** the threshold currently discussed: 40 GWh, representing 27%. In addition, it is planned to include also distributors, which will raise substantially the market opening.

Belgium

Structure of the electricity system: 94% of domestic electricity is produced by Electrabel, a private undertaking, and SPE, a public undertaking. These two companies operate transmission through a joint network (CPTÉ-GECOLI). Distribution is generally carried out by municipalities and Electrabel.

Present stage of liberalization: The legislative procedure has not yet started. Belgium benefits from an extra transposition period of one year. On the request of the Minister of economic affairs the control committee of electricity and gas has given its opinion on the transposition of the Directive.

Denmark

Structure of the electricity sector: The Danish electricity supply industry consists of two vertically integrated systems divided by the Great Belt. The two systems are not interconnected. The Western part is connected to Norway, Sweden and Germany while the eastern part is connected to Sweden and Germany. There are about 100 distribution companies which own the 8 generation companies. There are two operators of the transmission grid, Eltra in the Western part and Elkraft in the Eastern part.

Present stage of liberalization: an amendment to the Electricity Supply Act was adopted in May 1996 and it has entered into force 1/1/98. A proposal is expected to be presented in autumn 1998 for the missing legislation necessary to comply with the Directive. **Generation:** authorization procedure. Nuclear or coal based plants will not be authorized for environmental reasons. **Access to the network:** negotiated TPA. **Eligible customers:** Industrial consumers with a yearly consumption exceeding 100 Gwh and distribution companies with a yearly sale exceeding 100 Gwh. This represents 90% market opening.

Finland

Structure of the electricity system: The Finnish system is dominated by the state-owned company IVO and the private PVO which account in total for 80% of production. The national transmission grid is owned by FinGrid. There are around 115 distributors (local and regional).

Present stage of liberalization: Since 1 June 1995, the electricity sector in Finland has been liberalized. **Generation:** authorization system. No central dispatching exists and the balancing of supply and demand is ensured by the contracts between producers and distributors. **Access to the network:** regulated TPA, the tariffs follow the postage stamp system and they are published. **Eligible customers:** all customers are eligible. **Unbundling:** The main grid is owned by Fin Grid which is fully separated from other activities and it has also unbundled accounts. **Renewables:** subsidy schemes for investment in wind turbines and small bio mass fired CHP plants, and also tax rebates. The main part of the provisions of the electricity Directive have already been implemented in Finland.

France

Structure of the electricity system: The electricity sector is dominated by EDF which carries out 95% of generation and distribution activities and all transmission.

Present stage of liberalization: not yet decided. A large debate has been initiated through a "white paper" on the organization of the electricity system where all interested parties may express their opinion on the main options provided in the Directive.

Germany

Structure of the electricity system: the German electricity industry consists of nearly 1000 companies. On the high voltage network there are 9 supra-regional transmission companies which control also most of the generation in their areas. After the reunification of Germany, VEAG, an integrated generation and transmission company for east Germany, was created. Every regional and municipal distribution system operator is responsible for the pooling and load management in its area.

Present stage of liberalization: The energy law has already passed through the Bundestag (Parliament) and it is currently under discussion in the Bundesrat (Senate).

Generation: authorization procedure. **Access to the network:** negotiated TPA at the transmission level. At the distribution (municipal) level, the distribution companies may opt either for TPA, or for single buyer with purchase obligation for a transitional period (until 2005). **Eligible customers:** no eligibility threshold, every final consumer and distributor will be eligible. **Renewables:** dispatching guarantee at a guaranteed minimum price. **Indigenous fuels:** protection of East German lignite for the East German Länder up to 2003. **Unbundling:** it is foreseen unbundling of accounts, management unbundling for the transmission system operators and information unbundling for the potential single buyer.

Greece

Structure of the electricity system: The Public Power Corporation (PPC) operates as a state monopoly and controls virtually all power generation, transmission and distribution activities in Greece. The only exemption is power produced from small power plants by IPP's and autoproducers using renewable energy sources (and only exceptionally conventional fuels). However, all power produced by IPPs and any surplus power produced by autoproducers must be supplied exclusively to PPC.

Present stage of liberalization: Greece has already notified a two year extra transposition period and the plan for liberalization of the electricity sector has not yet been decided.

Italy

Structure of the electricity system: ENEL holds a monopoly over production, transmission and distribution of electricity as well as imports and exports only with a few exceptions: local utilities are engaged in distribution of electricity, autoproducers (Edison etc.) produce electricity for their own consumption or to sell it to firms of the same group. Production from renewables and CHP is liberalized but electricity produced must be sold to ENEL.

Present stage of liberalization: Italy has not decided yet its plans for the transposition of the Directive.

Ireland

Structure of the electricity system: The electricity sector is dominated by the Electricity Supply Board (ESB) which is a vertically integrated undertaking engaged in generation, transmission and distribution of electricity. Since 1994 the Government has launched a number of competitions for alternative energy sources for 263 MW capacity, and peat for 120 MW, representing approximately 10% of installed capacity. However, the majority of plants has yet to be built.

Present stage of liberalization: Ireland has already notified a one year extra transposition period. The formal legislative procedure is expected to start end of 1998 and it is not yet decided.

Luxembourg

Structure of the electricity system: In Luxembourg the electricity system depends almost entirely on imported electricity. It has two separate grids operated by Cegelec, a public enterprise, and Sotel, a private enterprise supplying only large industrial consumers.

Present stage of liberalization: The draft framework law has not reached a political decision yet. The relevant law and the regulations will enter into force beginning 1999. It is expected, however, that the following basic approach will be pursued: **Generation:** tendering procedure in parallel with the authorization procedure for smaller generators. **Access to the network:** not yet decided. **Market opening:** the consumers of 100 Gwh, which represent the 40% of the total electricity consumption.

Netherlands

Structure of the electricity system: There are at present 33 distribution companies which own the four companies engaged in electricity generation in Netherlands, which themselves own SEP, owner and operator of the transmission grid.

Present stage of liberalization: The law will be voted in the Parliament on 18 March and it will enter into force on 1 January 1999. The general lines are the following:

Generation: no specific authorizations. Everyone may build an electricity plant when environmental and safety requirements are satisfied. **Transmission:** companies involved in the transmission and distribution of electricity are legally unbundled from production and supply activities. **Access to the network:** Regulated TPA. **Opening of the market:** 32% in 1998, all consumers in 2008. **Renewables:** consumers are obliged to buy at least 5% electricity from renewables. The authorities issue green certificates to renewable producers (including foreign producers). These green certificates are sold to consumers in order to prove that they comply with the purchase obligation. **Public service obligations:** captive consumers are supplied at a maximum price decided by the regulator. The law includes also an "equilibrium" (reciprocity) clause.

Portugal

Structure of the electricity system: The national electricity system is divided in two subsystems: the public system (SEP) and the independent system (SEI). Transmission is carried out by an independent company.

Present stage of liberalization: In the public system generation, transmission and distribution are linked by long term contracts. Customers benefit from a uniform tariff. In the independent system there is small production (hydro, renewables) and independent producers which supply eligible customers. **Generation:** in the SEP the tendering system, in the SEI the authorization system is chosen. **Access to the network:** regulated third party access. **Eligible customers:** consumers with annual consumption of 100 GWh and distributors for an 8% of their consumption are already eligible by the Portuguese law. The implementing regulation will allow to implement TPA and then actually open the market by mid 1998. The threshold for final customers will be reduced to 40 Gwh in order to reach the level required by the Directive.

Spain

Structure of the electricity system: The generation market is dominated by Endesa, a state owned company which is planned to be privatized by 1999, and two private companies Iberdrola and Union Fenosa. In the transmission sector the dominant company is Redesa. In the distribution sector Endesa group accounts for 43% of the distribution, Iberdrola 35%, Union Fenosa 14%, etc.

Present stage of liberalization: On 1st January 1998, the legislation has entered into force introducing a liberalisation which goes even beyond the minimum requirements of the electricity Directive. The new structure is based on a spotmarket in combination with regulated TPA. The transmission system operator, Red Electrica, is independent

also in terms of ownership, i.e. no single shareholder may hold more than 10%. **Generation:** authorization procedure. In the generation market there will be a pool system for all producers. Autoproducers may give their supplementary production to the pool once they have supplied their own subsidiaries. **Access to the network:** regulated TPA. **Eligible customers:** since January 1998 consumers with a consumption of 15 GWh per year are eligible. These represent approximately 30% of total electricity consumption. On 1/1/2000, the eligibility threshold will be reduced to 9 GWh, on 2002 to 5 GWh, on 2004 to 1 GWh, while from 2007 all consumers will be eligible. **Renewables:** there will be a support mechanism providing for a purchase obligation for renewables and CHP.

Sweden

Structure of the electricity system: There are around 300 production companies, although eight of them account for 95% of the production. The largest is the state-owned Vattenfall AB which has a market share of 50%. The second largest is Sydkraft with 20% market share. Distribution is carried out by municipally owned companies (around 270). The main grid is owned by the State and operated by Svenska Kraftnät, which is a state agency.

Present stage of liberalization:

Since 1 January 1996 Sweden has a liberalized market. All customers are considered as eligible. Today 75-80% of the electricity is supplied to the customers following direct contracts with the producers. The remaining 20-25% is supplied via the spot market. **Generation:** authorization procedure. **Access to the networks:** regulated TPA. A postage stamp method is applied for the calculation of the transmission tariffs. There is no central dispatching in Sweden and the balancing of supply and demand is ensured by the spot market at the Nord Pool. **Unbundling:** Svenska Kraftnät, the system operator, is organized in a separate legal entity and it is not involved in generation or distribution of electricity. **Renewables:** renewables are supported by investment subsidies and the tax regime. Distributors also have an obligation to purchase electricity from small generators. The main part of the provisions of the electricity Directive have already been implemented.

UK

Structure of the electricity system: In the generation market there are three large producers (National Power, Power Gen, British Energy) with a steadily increasing number of IPPs. Twelve REC own the distribution grid. With regard to the transmission system, an independent TSO and NGC operate the transmission grid and the spot market.

Present stage of liberalization: The electricity system in England and Wales has already been restructured in 1990/91. **Generation:** Authorization procedure for generation capacities. **Access to the network:** operation of an electricity pool, type of regulated TPA. The pool is a spotmarket that coordinates offers for generation and estimated demand on a half-hourly basis one day in advance. All generators sell exclusively via the pool. Final consumers may only choose between suppliers on the distribution level through a regulated TPA system. Thus the 12 REC which own the distribution grid compete with each other as well as with the other supply companies. **Eligible customers:** the current threshold is at 100 KW; representing approximately 42% market opening. Since the beginning of 1998 this threshold is gradually abandoned and will result in a fully open market by the end of the year. **Unbundling:** The British

system has been fully legally unbundled in 1990. Renewables: distributors are obliged to buy from renewables producers. A non-fossil-fuel levy on electricity consumption is designed to fund the cost burden.

Common position on the natural gas

The Council on 12 February reached a common position on the internal market for natural gas. The next step is for the European Parliament to give its opinion on the common position and it is hoped that the Directive will be adopted during the first half of this year. The draft Directive provides for common rules concerning the transmission, distribution, supply and storage of natural gas. It aims at ensuring the introduction of competition to the natural gas sector, creating more efficiency, ensuring more transparency, strengthening security of supply and providing equal access for all eligible customers to this sector. The main provisions of the common position are the following:

Opening of the market:

The natural gas market will be opened to competition gradually over a ten year period through a system which includes a combination of qualitative and quantitative criteria. The application of qualitative criteria means the establishment of a threshold for the eligibility of industrial consumers which will be initially set at 25 million cubic meters, then reduced to 15 million after five years, and 5 million after ten years. Moreover, all electricity producers will be considered eligible, irrespectively of their annual consumption. However, in order to safeguard the balance of their electricity markets, Member States may introduce a threshold for the eligibility of combined heat and power producers, not exceeding the threshold envisaged for other customers.

Quantitative criteria will also apply, introducing a minimum obligatory percentage of market opening for Member States, initially set at 20%, and then raised at 28% and 33% after five and ten years respectively. To take account of possible imbalances on the level of market opening due to the different gas market structures, Member States may reduce the level of market opening if, after the application of the qualitative criteria, this exceeds 30%, 38% and 43% during the first, second and third stage respectively. In addition to this distributors, where they are not already considered eligible, will be eligible for the supply of gas consumed by their customers which are designated as eligible.

Construction or operation of natural gas facilities: for the construction and operation of natural gas facilities Member States grant authorizations according to objective, transparent and non-discriminatory criteria which should be made public. The reasons for any refusal to grant authorizations shall be notified to the applicant and the Commission, and dispute settlement procedures should be made available to the applicants.

Access to the system: natural gas undertakings and eligible customers will be able to have access to the system so as to conclude supply contracts with each other under objective and non-discriminatory conditions. To this end Member States may choose either or both procedures, negotiated or regulated third party access:

- Under negotiated TPA, natural gas undertakings and eligible customers will negotiate access to the system with the relevant natural gas undertakings so as to conclude supply contracts. Natural gas undertakings should publish the main commercial conditions for the use of the network annually.

- Member States opting for regulated TPA shall take the necessary measures to give natural gas undertakings and eligible customers a right of access to the system on the basis of published tariffs.

Member States shall ensure that each transmission, storage distribution and LNG undertaking will not discriminate between system users and should not abuse information obtained from third parties in the context of providing negotiating access to the system.

Unbundling and transparency of accounts:

Integrated undertakings have an obligation to separate internal accounts with regard to the activities of transmission, distribution, and storage.

Public service obligations: Member States may impose on natural gas undertakings, in the general economic interest, public service obligations which must be objective, transparent and non-discriminatory, verifiable and published and should fall within one of the five categories concerning security, regularity, quality and price of supplies and environmental protection. These obligations should be notified to the Commission and always comply with article 90 of the Treaty, which lays down that undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules of the Treaty, in particular the competition rules, in so far as the application of these rules does not obstruct the performance of the tasks assigned to them.

Derogations:

Chapter VII includes some specific provisions concerning derogations from the application of the Directive. The aim of these derogations is to guarantee a specific protection in certain cases, for example, for natural gas undertakings with specific economic and financial difficulties deriving from take-or-pay commitments, or in Member States where gas has been introduced recently and huge investments need to be recovered (emergent markets). In the first case, derogations will be granted on a case by case basis, and the Commission will play a decisive role, whereas in the second case, derogation will automatically expire after ten years from the first delivery of natural gas.

Conclusion

The progress made, is it satisfactory?

The liberalization of the markets for electricity and gas has started a process of structural change. With regard to the electricity Directive, some Member States have already liberalized their markets even before the adoption of the Directive such as the UK, Sweden and Finland. Others have started the discussion on the necessary changes only after the adoption of the Directive. Among them there are Member States which intend to open their markets rather quickly and they have already put in place legislation such as the Netherlands, Spain and Germany, and others who have not proceeded that much in the legislative process. However, despite the different progress that Member State have achieved so far in the legislative procedure for the implementation of the electricity Directive, it is clear that the restructuring of the electricity sector in line with the rules provided in the Directive is at present on the agenda of all Member States. As the Directive offers various options for the organization of the markets it needs to be reviewed in order to ensure that the outcome

is satisfactory. The Commission has therefore closely followed the process of implementation of the Directive into national legislation both through bilateral meetings with the Member States and in the framework of the "follow-up" Group which meets twice a year with the objective to prevent any inconsistencies and to ensure a coherent implementation of the Directive. In this context it should thus be underlined that, despite the difficulties faced by Member States during the transposition period, there is no indication whatsoever that the coherent implementation of the Directive will not be ensured with the relevant timetable as provided for in the Directive. The same approach will be followed for the gas once the Directive will be adopted.

Accompanying and follow-up measures

The adoption of the electricity Directive and the common position on the gas proposal is not the ultimate goal. Therefore the electricity Directive provides for a review clause, which requires the Commission to reconsider the Directive in the light of the experience gained in due time to permit further measures to take effect in 2006. It is expected that the same will apply for gas in ten years following the final adoption of the Directive. The Commission will thus reflect on new proposals for market opening.

In the meantime, monitoring of the implementation of the electricity Directive is vital with the aim to ensure the proper functioning of the internal market, to verify that different network access systems result in comparable market opening, the envisaged procedures for new production capacities ensure the freedom of establishment, to ensure fair competition, and to verify that effective regulatory and arbitration procedures are effective to ensure a level playing field. In this respect considerable commitments need to be made by both the Member States and the Commission to ensure that competition is fair. The Commission will ensure that competition rules are enforced in order to avoid the foreclosure of markets and any abuse of dominant positions. Merger policy will also have to be attentive to the dynamics of liberalisation which is now being put in place. Action should also be taken against any unjustified aids.

In parallel, the opening of the national energy markets will have to be accompanied with additional measures as well to ensure that competition is fair: these include harmonization in the field of technical and safety standardization and harmonization with regard to the protection of the environment. However, as the opening of the markets will be progressive, the harmonization can also be progressive and pursued in parallel. The electricity Directive in any case provides for a report on harmonization requirements which has to be prepared yearly. The first report concentrates on the treatment of renewables in the internal electricity market. An examination of existing and planned support schemes for renewables in each Member State should be carried out before it is determined what provisions might be included in any Directive providing for harmonization in this field.

In addition, the development of trans-european energy networks is absolutely vital for the balanced operation of the single market. The existence of adequate infrastructure is

sine qua non for the transfer of energy in the context of an integrated internal market and will increase security of supply.

Finally, the close examination of the social consequences of the new market rules and increased competition is vital. The Commission is concerned with regard to the effects of liberalization of the electricity and gas sectors on employment in the European Union. Therefore the Commission plans to launch a study on the effects of electricity and gas liberalization on employment and to examine carefully which accompanying measures and programs to assist re-employment might be taken.