

COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

COD384

concerning common rules for the internal market
in electricity

Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

COD385

concerning common rules for the internal market
in natural gas

(presented by the Commission pursuant to Article 189a(2) of the EC Treaty)

COMPLETION OF THE INTERNAL MARKET IN ELECTRICITY AND GAS

AMENDED PROPOSALS

A. GENERAL EXPLANATORY MEMORANDUM

1. Background

1. In accordance with Article 8a of the EEC Treaty (Article 7a of the Union Treaty) the Commission submitted two proposals for directives on 21 February 1992 concerning common rules for the internal market in electricity and common rules for the internal market in natural gas.¹

2. These two proposals contained the following points:

- introduction of a transparent and non-discriminatory system of licences for the production of electricity and the construction of electricity and gas lines;
- introduction of an initial stage of limited access to the network for private producers to cover their own needs, for major customers exceeding certain consumption thresholds and suppliers under certain conditions;
- operating rules for transmission and distribution networks in order to guarantee the smooth functioning of the internal market;
- unbundling of management and unbundling of accounts on a harmonized basis as regards vertically integrated companies;
- safeguard provisions, especially for "take or pay" contracts in natural gas.

¹ COM(91)548 final.

In keeping with the principle of subsidiarity, the Member States remained responsible for setting captive consumer tariffs, for granting exclusive supply licences for consumers below the thresholds, for establishing public service obligations, for defining detailed licensing criteria and, more generally, for pursuing national energy policy objectives.

These proposals made up the second stage of a three-stage approach, the first stage being implementation of the directives adopted in 1990 and 1991 on the transit of gas and electricity and the transparency of prices of gas and electricity to the industrial end user. The third stage was to be defined in the light of the experience gained and was meant to increase the flexibility of the internal energy market.

3. These proposals have been discussed in depth both with the other Community institutions and with the economic and industrial sectors. Third-party access to the network was discussed at length, both at a technical level in the advisory committees representing the Member States, the energy industry and consumers and at a policy level in numerous bilateral meetings with the ministers responsible for energy, the Council of Ministers and the European Parliament.
4. The Council discussed these proposals in May and November 1992 and in June this year. In its conclusions of 30 November 1992 the Council said the gas and electricity markets had to be more open, more transparent, more efficient and more competitive, bearing in mind the specific natures of the two sectors and the respective situations in the various Member States.

The Council stressed that the obstacles to the internal market still had to be removed and that fresh progress had to be made. The internal market, it said, had to comply with six principles: security of supply, environmental protection, protection of small consumers, transparency and non-discrimination, recognition of the differences between national systems and transitional provisions. There were still differences of opinion on some of the key points of the Commission's proposals, especially concerning the general mechanisms of third-party access to the network.

The Council invited the Commission to consider modifications to its proposals in the light of the Council's discussions and of the opinion of the European Parliament, concluding that discussions had to continue.

Last June the Council confirmed these conclusions and, pending the opinion of the European Parliament, looked forward that the new points put forward by the Commission (in particular the introduction of a system of negotiated network access rather than a regulated system) would be taken into account.

5. The Economic and Social Committee delivered its opinion on 27 January 1993.² This endorsed the ultimate objective and several aspects of the Commission's proposals, but rejected the system and timetable for third-party access to the network.
6. Parliament delivered its opinion at its plenary session of 17 November 1993. The amendments put forward by Parliament are based on the following principles:
 - the need for greater harmonization to accompany the gradual opening-up of the gas and electricity sectors during the transitional period plus the need for prior harmonization, in particular in the fields of environment and taxation, as a precondition to any further liberalization;
 - definition of responsibilities incumbent upon the Member States, in particular as regards the public service obligations of gas and electricity companies;
 - obligation of the Member States to create a control body called "Electricity and gas council";
 - protection of the concession rights of State, local and regional authorities and maintenance of the monopoly of distributors in their respective area;

2 CES 77/93.

- liberalization of the production and transport of electricity in two alternative ways: either a system based on a tendering procedure for new capacities or a system based on the granting of transparent and non-discriminatory licences;
- access of the competent authorities of the Member States to the internal accounts of gas and electricity companies, and establishment of a Directive on cost transparency;
- negotiated access to networks to allow large industrial consumers to benefit from the direct supply of gas and electricity. For distribution companies this option is limited only to the sector of electricity and only to those Member States which have a licensing system for the construction of production and transport facilities. It is not therefore open to distribution companies in Member States which have opted for the tendering system and central planning.

II. Amended proposals

7. Objectives of the amended proposals: the Commission takes the view that opening up the energy market should make for greater integration of the gas and electricity markets, which so far have been limited to national or regional level, and for greater competitiveness among Community companies. Energy is a major production cost factor and the competitiveness of companies which consume energy is a precondition for turning round the current trends on the job market. That said, energy cannot fulfil this role until the specific aspects of the gas and electricity sectors are taken fully on board, these being the "natural" monopoly of transport networks and the size and lead time of investments.
8. How the gas and electricity markets operate has to be compatible with all the provisions of the Treaty. The Commission's amended proposals are as follows:
 - questioning of exclusive or special rights where they affect trade between Member States;

- fair access of the various operators to these markets. It is not acceptable in the context of an internal market that undertakings in a Member States where the market in electricity and gas is closed to competition can carry out their activities on open markets in other Member States without the reverse being possible;
- taking account of the specific nature of these two sectors on the basis of a pragmatic approach permitting gradual evolution of the way they operate while having a real impact on the market place from the outset.

9. Amendments to the proposals:

The two main amendments concern

- the possibility of allowing the producers of electricity and gas to negotiate access to the network; this possibility replaces the regulated access provided for in the initial proposals. It is accompanied by arbitration mechanisms in the event of problems in negotiation or in performance of the contract, although these mechanisms cannot replace the appeal procedures provided by Community law;
- the establishment in the body of proposals of a work programme enabling the Commission to draw up, during the second stage, the harmonization proposals needed for the smooth functioning of the market without compromising Community law.

The amended proposals introduce tendering procedures for new electricity transport and production capacities as alternatives to a transparent and non-discriminatory licensing system plus simpler network operating rules.

Finally, there are amendments resulting from the entry into force of the Union Treaty and the introduction in this sector of the co-decision procedure.

10. The Commission could not accept a number of amendments which would have compromised the aims of the proposals and even their compatibility with the Treaty, namely:
- the obligation of the Member States to create an Electricity and gas council (consisting of representatives from undertakings in the sector, distribution companies, large industrial consumers, small and medium consumers and trade union organizations) designed to help the respective authorities implement the Directives;
 - the conditional link between passage to the final stage and prior harmonization, in particular in the sectors of environment and taxation;
 - the parts which could undermine the independence of the tendering procedures by conferring special responsibilities on the system operator in these procedures, thereby making him judge and judged at one and the same time;
 - the introduction of separate accounting solely between the activities of production and transmission, on the one hand, and distribution on the other, thus, without separating the transmission activities;
 - maintenance of the supply monopoly of distribution companies.

B. AMENDED PROPOSAL CONCERNING ELECTRICITY

11. In line with the Commission's general approach to the dossier as a whole, the main changes made to the proposal on the internal market in electricity are as follows:
- (a) The structure of the proposal: to take account of the fact that the rules of access to the network are now specific rules concerning production, transport and distribution, a special chapter is included.

- (b) Greater reference to public service obligations: although the Treaty itself protects de facto and de jure performance of the special task assigned to the undertakings entrusted with the operation of services of general economic interest, the amended proposal accepts the amendments from Parliament which highlight the performance of these tasks in every phase of opening up the market to competition.
- (c) The conditions for third-party access to networks: while Parliament would like this to be solely in the form of long-term contracts with large consumers the Commission takes the view that these restrictions are not justified, one, because it is always possible to refuse access to third parties where the performance of the service of general economic interest assigned to the system operator is compromised and, two, because distribution companies must be able to take advantage of the same possibilities as large consumers so that small and medium-sized consumers can benefit indirectly from the advantages of an open market. Third-party access, which was regulated in the Commission's initial proposal, is a right open to autoproducers for the supply of their own establishments and branches and to producers and transmitters for the supply of large industrial consumers and distribution companies. The conditions for exercising this right have to be negotiated both with the transmission system operator and with the distribution system operator, except where the supply of electricity arises out of a tendering procedure for the construction of production capacities; in this case access to the network is guaranteed. Disputes in the negotiation or the performance of such contracts can be submitted to arbitration to be established by the Member State. As far as Parliament's amendments are concerned, the Commission states quite clearly that recourse to arbitration can in no way affect the right of the parties to use the normal appeal procedures provided by Community law.

- (d) The criteria and procedures for authorizing production and transport are simplified and completed by the option of a tendering system for all new production and transport capacities. The amended proposal reinforces the independence and non-discriminatory nature of this procedure. Nonetheless, the licensing system will apply to all autoproducers and independent producers.
- (e) The unbundling of management is dropped although independence, at least at the administrative level of the system operator, must be guaranteed. The unbundling of accounting on a harmonized basis is maintained and completed by way of a provision permitting access of the respective authorities to internal company accounts.
- (f) The rules governing the operation of transmission and supply networks are simplified.
12. The amended proposal takes account of the six principles put forward by the Council as follows:
- security of supply: the criteria for authorizing the construction of production capacities will expressly permit the Member States to determine the nature of the primary sources used to produce electricity. The alternative system of a tendering procedure for production and transport capacities will allow for continued central planning of investments in Member States opting for this system;
 - environmental protection: provisions concerning the harmonization of production and operating conditions take account of the requirement for environmental protection, as do the criteria for authorizing the construction of new production and transport capacities. A special provision also allows the system operator when dispatching production installations to give priority to production installations using renewable sources of energy or waste or using a combined heat and power process;

- protection of small consumers: greater reference to public service obligations has been introduced in order better to take account of the need to protect small and medium consumers. The system operator may refuse access to a third party where such an operation would prevent him from performing the public service obligations assigned to him. Member States will always have the right to set tariffs for all captive consumers;
- transparency and non-discrimination: these can be found in the rules governing the unbundling of accounting and in the criteria and procedures for authorizing new production and transport capacities, in the criteria and procedures for tendering and in the rules governing the system operators;
- recognition of differences between national systems: the option of Member States to choose between a transparent and non-discriminatory licensing system for the construction of new production and transport capacities, on the one hand, and a tendering procedure, on the other, takes account of the existence of decentralized systems in some Member States and centralized systems in others;
- provisions for a period commencing 1 July 1994 and ending on 31 December 1998 have been retained.

C. AMENDED PROPOSAL CONCERNING GAS

13. The changes to the proposal concerning the internal market in gas are, mutatis mutandis, the same as for electricity as regards:

- the structure of the proposal;
- the greater reference to public service obligations;
- the conditions of third-party access to networks;
- unbundling and access to internal company accounts;
- simplified rules concerning the operation of transmission and distribution networks;
- compliance with the principles put forward by the Council.

14. The criteria and procedures for authorizing the construction or operation of LNG installations, storage installations, transmission and distribution lines and associated equipment are maintained.

D. CONCLUSIONS

The amended proposals take account of several key elements contained in the opinion of the European Parliament and of the concerns expressed by the Council, in particular in its conclusions of 30 November 1992. The Commission therefore asks the Council to adopt a position as soon as possible on these proposals for completing the internal market in the sectors of gas and electricity.

Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
concerning common rules for the internal market in electricity

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing
the European Economic Community, and
in particular Article 57(2), Article 66 and
Article 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;

THE EUROPEAN PARLIAMENT AND
THE COUNCIL OF THE EUROPEAN
UNION,

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

Having regard to the proposal from the
Commission,

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 7a 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 in order to increase efficiency in
the production, transmission and
distribution of this product, while
reinforcing the Community's security of
supply;

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 Directives 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids⁽¹⁾ and 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;

⁽¹⁾ OJ No L 313, 13.11.1990, p. 30.

⁽²⁾ OJ No L 185, 17.7.1990, p. 16.

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 the establishing of the internal market in the electricity sector should favour the interconnection and interoperability of systems;

Whereas Council Directives 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids⁽¹⁾ and 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⁾, as amended by Commission Directive 93/87/EEC⁽³⁾ 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 security of supply and consumer protection entail a number of public service obligations of general interest which free competition, left to itself, cannot be relied upon to fulfil;

⁽¹⁾ OJ No L 313, 13.11.1990, p. 30.

⁽²⁾ OJ No L 185, 17.7.1990, p. 16.

⁽³⁾ OJ No L 277, 10.11.1993, p. 32.

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;

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

Whereas the need to ensure a real opening-up of the market and a fair balance in the application of these measures now 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;

Whereas it is therefore necessary to establish common rules for the production, transmission and distribution of electricity;

Whereas in establishing of the internal market for electricity full account should be taken of the Community objective of economic and social cohesion, particularly in sectors such as the infrastructures, national or intracommunity, which serve for the transmission of electricity;

Whereas electricity undertakings must, in the internal market, be able to operate, without prejudice to constraints connected with public service obligations, 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 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 whatever the nature of the prevailing market organisation, access to the system must be open to producers and autoproducers, together with the customers connected to the system, in conformity with this Directive;

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;

Whereas at the level of distribution, concessionary rights of local, regional or State bodies may be granted and a manager 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 function of vertically integrated undertakings should be operated independently from the other activities; whereas the accounts of all electricity undertakings should provide for maximum transparency, in particular to identify possible abuses of a dominant position, consisting for example in abnormally high or low tariffs or in discriminatory practices relating to equivalent transactions; whereas to this end the accounts must be separate for each activity;

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 it is also necessary to provide for access by the competent authorities to the internal accounting documents of undertakings without thereby compromising commercial confidentiality;

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

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, 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,

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 the Commission must therefore report to the Council and the European Parliament on the application of this Directive before the end of this second phase;

Whereas this Directive does not affect 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 interconnected 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 highvoltage interconnected system in view of its delivery to customers.
4. "Distribution" shall mean the transport of electricity on lowervoltage distribution systems in view of its delivery to customers.
5. "Customers" shall mean wholesale or final purchasers of electricity.

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

Scope and definitions

ARTICLE 1

This Directive establishes common rules for the production, transmission and distribution of electricity. It lays down the rules relating to the organisation and functioning of the electricity sector, access to the market, the criteria and procedures applicable to calls for tender and the granting of licences, together with the operation of systems.

ARTICLE 2

For the purposes of this Directive:

1. "generation" means the production of electricity;
2. "producer" means a legal or natural person generating electricity for his own use or for sale;
3. "transmission" means the transport of electricity on the highvoltage interconnected system in view of its delivery to final customers or to distributors;
4. "distribution" means the transport of electricity on lowervoltage distribution systems in view of its delivery to customers;
5. "customers" means wholesale or final purchasers of electricity;

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| <p>6. "Interconnectors" shall mean equipment used to link electricity systems.</p> | <p>6. "final customer" means the customer buying electricity for his own use;</p> |
| <p>7. "interconnected system" shall mean a number of transmission and distribution systems linked together by means of one or more interconnectors.</p> | <p>7. "large industrial consumer" means a final customer whose consumption exceeds 100 GWh per year or a lower quantity as may be specified by the Member State;</p> |
| <p>8. "Direct line" shall mean a line linking one or more customers with a point of supply without using the interconnected system.</p> | <p>8. "interconnectors" means equipment used to link electricity systems;</p> |
| <p>9. "Economic precedence" shall mean the ranking of sources of electricity supply in accordance with economic criteria.</p> | <p>9. "interconnected system" means a number of transmission and distribution systems linked together by means of one or more interconnectors;</p> |
| <p>10. "European specification" shall mean a common technical specification, or a European standard, or a national standard implementing a European standard.</p> | <p>10. "direct line" means a line linking one or more customers with a point of supply without using the interconnected system;</p> |
| <p>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 organisations.</p> | <p>11. "economic precedence" means the ranking of sources of electricity supply in accordance with economic criteria;</p> |

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| <p>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.</p> | <p>12. "European specification" means a common technical specification, or a European standard, or a national standard implementing a European standard;</p> |
| <p>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..</p> | <p>13. "European standard" means 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 organisations;</p> |
| <p>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.</p> | <p>14. "common technical specification" means 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;</p> |
| <p>15. "Supplier" shall mean a legal or natural person supplying electricity to customers.</p> | <p>15. "ancillary services" means all services necessary for the operation of a transmission or distribution system such as meeting load characteristics, frequency control, voltage control, reserve power etc.;</p> |
| <p>16. "Supply" shall mean the delivery or sale of electricity to customers.</p> | <p>16. "system user" means any legal or natural person supplying to or being supplied by a transmission or distribution system;</p> |

17. "Vertically integrated electricity undertaking" shall mean an electricity undertaking performing two or more of the tasks of generation, transmission and distribution of electricity.

17. "supplier" means a legal or natural person supplying electricity to customers;

18. "supply" means the delivery or sale of electricity to customers;

19. "vertically integrated electricity undertaking" means an electricity undertaking performing two or more of the tasks of production, transmission and distribution of electricity;

20. "independent producer" means a producer who does not carry out electricity transmission or distribution functions on the territory covered by the system where he is established;

21. "autoproducer" means an independent producer who produces electricity essentially for his own use.

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.

Chapter II

General rules for the organisation of the sector

ARTICLE 3

1. Member States shall ensure that, without prejudice to paragraph 2, electricity undertakings are operated on commercial principles and shall not discriminate between these undertakings as regards either rights or obligations.

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2. Member States may, in accordance with Community law, impose public service obligations on undertakings operating in the electricity sector as regards the security, regularity, quality and price of supplies.

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 nondiscriminatory. 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:

(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

Chapter III

Production and transmission

ARTICLE 4

Member States shall determine, in accordance with Community law, the public service obligations referred to in Article 3(2) assigned to production and transmission companies.

ARTICLE 5

1. Member States must authorize the construction on their territory of production and transmission capacity on the basis of objective, transparent and non-discriminatory criteria and procedures laid down in Article 7.
2. Member States which do not wish to use the authorization procedure referred to in paragraph 1 shall draw up an inventory of the new means of production and transmission including replacement capacity, in accordance with the annual estimate referred to in Article 11. The inventory shall take account of the needs of systems for interconnection.

The requisite capacity shall be allocated by means of a tender procedure organized in accordance with the procedure laid down in Article 6.

3. However, autoproducers and independent producers must be authorised, also in Member States which have opted for the tender procedure provided in paragraph 2, to construct production capacity and electricity lines on the basis of objective, transparent and non-discriminatory criteria laid down in Article 7.

ARTICLE 6

1. The invitation to tender designed to allocate production capacity shall cover the making available of new or existing production capacity, making use, if necessary, of interconnected systems.
2. Details of the tender procedure for means of production and transmission shall be published in the Official Journal of the European Communities at least six months prior to the date on which the contract is to be awarded.

The tender specifications shall be made available to any interested undertaking established on the territory of a Member State so that it has sufficient time in which to submit a tender.

3. The tender specifications shall contain a description of the procedure to be followed by all tenderers and an exhaustive list of the criteria governing the selection of tenderers and the award of the contract. These criteria shall be objective and non-discriminatory.

4. The tender procedure shall be organised by the public authorities or by an independent entity appointed for this purpose.

ARTICLE 7

The criteria for granting the authorizations referred to in Article 5(1) and (3) relate to :

- the safety and security of installations and associated equipment;
- protection of the environment;
- land occupation and the selection of sites;
- use of public ground;
- the technical and financial capabilities of the enterprises.

These criteria may be supplemented by the taking into account of the nature of the primary sources to be used for the authorization of the construction of production capacities.

The detailed criteria and the procedures shall be made public.

Applicants shall be informed of the reasons, which must be objective and non-discriminatory, for any refusal to grant an authorization; a reason for refusal may be an infringement by the applicant of public service obligations. Appeal procedures must be made available to the applicant.

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 8

1. Member States shall designate or shall require the undertakings which own transmission systems to designate, for a period of a least fifteen years, a system operator, charged with operating and ensuring the maintenance and development of the transmission system in a given area and its interconnectors with other systems.
2. Unless the transmission system is already independent from production and distribution activities, the system operator shall be at least administratively independent from the other activities relating to the transmission system. The fees for the use of the lines and installations needed for transit shall be paid to their proprietors.
3. Member States shall ensure that the transmission system operator acts in accordance with the provisions of Articles 9 to 14.

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.

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

5. The system operator shall not discriminate between users or classes of users of the system and any of the system operator's affiliates or shareholders.

ARTICLE 10

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

The 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 not disturb the functioning of the internal market for electricity.

ARTICLE 11

The system operator shall draw up and publish an annual estimate on the generation and transmission capacity which is likely to be connected to the system, on the need for interconnections with other systems, on the potential transmission capacity, 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 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 ensure the interoperability of systems, shall be objective and non-discriminatory and shall not disturb the functioning of the internal market for electricity. The system operator shall consult the parties concerned before implementation of the technical rules.

2. The Technical rules shall be approved by the Member States concerned, which shall, in accordance with Article 8 of Council Directive 83/189/EEC⁽³⁾, 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.

⁽³⁾ OJ No L 109, 26.4.1983, p. 8.

2. The technical rules shall be approved by the Member States concerned, which shall, in accordance with Article 8 of Council Directive 83/189/EEC⁽⁴⁾, 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 be defined as far as possible by reference to other standards having currency within the Community.

5. The technical rules shall be complied with, implemented and enforced by the 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.

⁽⁴⁾ 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 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.

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 13

1. The system operator shall be responsible for dispatching the generating installations in its area and for determining the use of interconnectors with other systems.
2. Without prejudice to the supply to distribution companies of electricity from their own generating plants directly connected to their distribution system, the dispatch of the generating installations and the use of interconnectors shall be determined by the system operator, as far as contractual obligations allow, 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 shall not disturb the functioning of the internal market for electricity.
3. The criteria for dispatch of the generating installations and for the use of interconnectors shall take into account the economic precedence of electricity from available generating installations or interconnector transfers and the technical constraints arising on the system.

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.
4. When dispatching generating installations the system operator may give priority to generating installations using renewable energy sources or waste or producing combined heat and power. The electricity sold or purchased by these installations shall be priced in accordance with the guidelines laid down in recommendation 3(c) of Council Recommendation 88/611/EEC⁽⁵⁾.
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.

⁽⁵⁾ OJ No L 335, 7.12.1988, p. 29.

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.

ARTICLE 14

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.

Chapter IV

Distribution system operation

ARTICLE 15

1. Member States shall determine, in accordance with Community law, the rights and the public service obligations referred to in Article 3(2), of distribution companies and the rights and obligations of their customers.

2. Member States may impose, on distribution companies, an obligation to supply the customers located in a given area. The tariff for such supplies may be regulated, for instance to ensure equal treatment of the customers concerned.

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. 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 system operator, charged with operating and ensuring the maintenance and development of the distribution system in a given area and its interconnectors with other systems.

4. Member States shall ensure that the distribution system operator acts in accordance with Articles 16, 17 and 18.

ARTICLE 16

1. The system operator shall maintain a secure, reliable and efficient electricity distribution system in its area, while respecting people's health and the environment.

2. The system operator shall be required to fulfil the public service obligations assigned to it.

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.

3. The system operator shall use its best endeavours to encourage the optimum use of existing capacity and to ensure the expeditious construction of such new distribution capacity as may be needed to enable capacity to adjust to demand.

4. The system operator shall not discriminate between users or classes of users of the system and any of the system operator's affiliates or shareholders.

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 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 not disturb the functioning of the internal market for electricity.

ARTICLE 17

1. The system operator shall draw up and publish an annual report on the quality of supply and the quality of service.
2. The Commission shall establish the appropriate criteria for the content of the reports in order to ensure their comparability at Community level.

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) (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 its 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 of 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.

ARTICLE 18

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.

Chapter V

Unbundling and transparency of
accounts

ARTICLE 19

Member States or any competent authority they designate shall have right of access to the accounting documents of production, transmission or distribution companies which they must consult in carrying out their checks.

ARTICLE 20

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 6.
2. Vertically integrated undertakings shall, in their internal accounting, keep separate accounts for their production, transmission and distribution activities, 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 activity 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 Council Directive 78/660/EEC⁽⁴⁾. 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.

⁽⁴⁾ OJ No L 222, 14.8.1978, p. 11.

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 law concerning the annual accounts of limited liability companies adopted to implement Council Directive 78/660/EEC⁽⁶⁾. 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. 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 management report must be duly substantiated.

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

⁽⁶⁾ OJ No L 222, 14.8.1978, p. 11.

7. The annual accounts shall indicate in notes any important transaction conducted with associated undertakings within the meaning of Article 33 of Council Directive 83/349/EEC⁽⁵⁾, or affiliated undertakings or undertakings which belong to the same owner.

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

⁽⁵⁾ OJ No L 193, 18.7.1983, p. 1.

⁽⁷⁾ OJ No L 193, 18.7.1983, p. 1.

Chapter VI

Access to the system

ARTICLE 21

1. Member States shall take the necessary measures for:
 - i) electricity producers and transmitters either inside or outside the territory covered by the system to be able to negotiate access to the system so as to conclude supply contracts with final customers who are large industrial consumers and with distributors on the basis of voluntary commercial agreement;
 - ii) electricity producers to be able to negotiate access to the system so as to supply their own premises, subsidiaries and affiliate companies in the same Member State or in another Member State, by means of the interconnected system;
 - iii) producers outside the territory covered by the system to be able to conclude a supply contract following a call for tender for new production capacities, and to have access to the system to perform the contract.

2. Where the industrial consumer is connected to the distribution system, access to the system must be the subject of negotiation with the distribution company managing the system to which the consumer is connected. Similarly access to the transmission system must be negotiated with the system operator concerned.

3. Member States shall ensure that the parties negotiate in good faith and that none of them abuses its negotiating position by preventing the successful outcome of those negotiations. The system operator may refuse access where the contract in question would prevent him from carrying out the public service obligations referred to in Article 3(2) which are assigned to him.
4. Member States shall designate a competent authority, which must be independent of the parties, to settle disputes relating to the contracts and negotiations in question. Recourse to this authority shall be had without prejudice to the exercise of rights of appeal under Community law.

(See Art. 6)

ARTICLE 22

1. Member States shall ensure that all the producers and suppliers of electricity established in their territory are able, subject to Article 7, to supply their own premises, subsidiaries and customers through a direct line.
2. Member States shall ensure that any customer established in their territory is able to purchase and to be supplied with electricity by a producer or supplier through a direct line, subject to Article 7.

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.

Chapter VII

Final provisions

ARTICLE 23

In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may 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 24

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

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.

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 25

Each Member State shall establish a procedure enabling system users in its territory, including domestic consumers, auto-producers or independent producers, the social partners and organisations for the protection of the environment, to be consulted, at least once a year, on matters arising from the implementation of this Directive, and in particular on the annual estimate and the transmission and distribution system reports drawn up pursuant to Articles 11 and 17 respectively.

ARTICLE 26

1. The Commission will present a report to the Council and the European Parliament before 31 December 1995 and will attach to that report any harmonization proposals necessary to the effective operation of the internal electricity market.
2. The Council and the European Parliament will give their views on such proposals before 12 December 1997.

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 27

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 on 1 January 1999.

ARTICLE 28

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 1994. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

ARTICLE 29

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

ARTICLE 30

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ARTICLE 30

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
concerning common rules for the internal market in natural gas

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57(2), Article 66 and Article 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;

THE EUROPEAN PARLIAMENT AND
THE COUNCIL OF THE EUROPEAN
UNION,

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

Having regard to the proposal from the Commission,

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 7a 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 in order to increase efficiency in the industry of this sector, while reinforcing the Community's security of supply;

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 Directives 91/296/EEC of 31 May 1991 on the transit of natural gas through grids⁽¹⁾ and 90/377/EEC of 29 June 1991 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;

⁽¹⁾ OJ No L 147, 12.6.1991, p. 37.

⁽²⁾ OJ No L 185, 17.7.1990, p. 16.

Whereas, irrespective of the need to establish a common energy policy, the establishing of the internal market 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 the establishing of the internal market in the natural gas sector should favour the interconnection and interoperability of systems;

Whereas Council Directives 91/296/EEC of 31 May 1991 on the transit of natural gas through grids⁽¹⁾ and 90/377/EEC of 29 June 1991 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end users⁽²⁾, as amended by Commission Directive 93/87/EEC⁽³⁾, 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;

⁽¹⁾ OJ No L 147, 12.6.1991, p. 37.

⁽²⁾ OJ No L 185, 17.7.1990, p. 16.

⁽³⁾ OJ No L 277, 10.11.1993, p. 32.

Whereas security of supply and consumer protection entail a number of public service obligations of general economic interest which free competition, left to itself, cannot be relied upon to fulfil;

Whereas, however, given the continuing lack of a common energy policy, and in the light of the need to ensure security of supply and consumer protection, the natural gas sector warrants special treatment;

Whereas it is therefore necessary to establish common rules for the licensing by Member States of the construction and operation of liquified 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 it is therefore necessary to establish common rules for the licensing by Member States of the construction and operation of liquified 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 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, especially in such areas as that of infrastructure for natural gas transmission;

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

Whereas natural gas undertakings must, in the internal market, be able to operate, without prejudice to constraints connected with public service obligations, on normal commercial principles;

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 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 to distribution companies;

Whereas the transmission grid system is controlled by transmission undertakings each of which ensures the security and reliability of its part of the system;

Whereas gas undertakings responsible for natural gas transmission must adjust storage and transmission capacity to demand;

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;

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 at the level of distribution, concessionary rights of local and regional authorities or the State may be granted;

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

Whereas it is also necessary to provide for access by the competent authorities to the internal accounting documents of undertakings without thereby compromising commercial confidentiality;

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

Whereas specific provision must be made for safeguards in case of a 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 specific provision must be made for safeguards in the case of a 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 Treaty provisions and those made thereunder, 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 liberalisation; 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 liberalisation 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,

Whereas these measures constitute a second phase of liberalisation; 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 liberalisation 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 the Commission must therefore report to the Council and the European Parliament on the application of this Directive before the end of this second phase;

Whereas this Directive does not affect 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.

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

Scope and definitions

ARTICLE 1

This Directive establishes common rules for the storage, transmission and distribution of natural gas. It lays down the rules relating to the organisation and functioning of the natural gas sector, access to the market, the criteria and procedures applicable to the granting of licences for transmission, storage, distribution and supply of natural gas, together with the operation of systems.

ARTICLE 2

For the purposes of this Directive:

1. "transmission" means the transport of natural gas through a high pressure pipeline in view of its delivery to final customers or to gas companies responsible for distribution or to other transmission companies;
2. "gas company" means any undertaking carrying out all or some of the following functions: the purchase, storage, transmission, distribution or sale of natural gas, and which is responsible for the technical or maintenance tasks related to those functions;
3. "distribution" means the transport of natural gas on local or regional pipeline systems in view of its delivery to customers;

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| <p>4. "Customers" shall mean wholesale and final purchasers of natural gas.</p> | <p>4. "customers" means gas companies or final customers who purchase natural gas;</p> |
| <p>5. "LNG facility" shall mean a terminal which is used for the handling of liquified natural gas (LNG).</p> | <p>5. "final customer" means a consumer purchasing natural gas for his own consumption.</p> |
| <p>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.</p> | <p>6. "large-scale industrial consumer" means an individual consumer whose consumption exceeds 25 million m³ per year or such lower figure as may be specified by the Member State;</p> |
| <p>7. "Interconnected System" shall mean a number of transmission and distribution systems which are linked with each other.</p> | <p>7. "LNG facility" means a terminal which is used for the offloading, storage and regasification of liquified natural gas (LNG);</p> |
| <p>8. "Direct line" shall mean a line linking one or more customers with a point of supply without using the interconnected system.</p> | <p>8. "storage facility" means a facility owned or operated by a producer or a gas company for the storage of gas in order to balance seasonal, daily and hourly variations in supply and demand;</p> |
| <p>9. "Distribution system operator" shall mean an undertaking having the responsibility of operating and developing a natural gas distribution system.</p> | <p>9. "interconnected system" means a number of transmission and/or distribution systems which are linked with each other;</p> |
| <p>10. "Direct line" shall mean a line linking one or more customers with a point of supply without using the interconnected system.</p> | <p>10. "direct line" means a line linking one or more customers with a point of supply without using the interconnected system;</p> |
| <p>11. "Distribution system operator" shall mean an undertaking having the responsibility of operating and developing a natural gas distribution system.</p> | <p>11. "distribution system operator" means an undertaking having the responsibility of operating and developing a natural gas distribution system;</p> |

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| <p>10. "European specification" shall mean a common technical specification or a European standard, or a national standard implementing a European standard.</p> | <p>12. "European specification" means a common technical specification or a European standard, or a national standard implementing a European standard;</p> |
| <p>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.</p> | <p>13. "European standard" means 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 organisations;</p> |
| <p>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.</p> | <p>14. "common technical specification" means 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;</p> |
| <p>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..</p> | <p>----</p> |
| <p>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.</p> | <p>15. "system user" means 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;</p> |
| <p>15. "Supplier" shall mean a legal or natural person supplying natural gas to customers.</p> | <p>16. "supplier" means a legal or natural person supplying natural gas to customers;</p> |

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| 16. "Supply" shall mean the delivery and sale of natural gas to customers. | 17. "supply" means the delivery and sale of natural gas to customers or to the system; |
| 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. | 18. "vertically integrated natural gas company" means 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.

Chapter II

General rules for the organisation of the sector

ARTICLE 3

1. Member States shall ensure that without prejudice to paragraph 2, natural gas undertakings are operated on commercial principles and shall not discriminate between these undertakings as regards either rights or obligations.

2. Member States may, in accordance with Community law, impose public service obligations on undertakings operating in the natural gas sector as regards the security, regularity, quality and price of supplies.

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.

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 and relate to:

- safety and security of lines and associated equipment;
- protection of the environment;
- land occupation and the selection of sites;
- use of public ground;
- the technical and financial capabilities of the applicant undertaking.

The detailed criteria shall be published at the latest six months after the date given in Article 25.

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

3. Member States shall lay down and publish not later than six months after the date laid down in Article 23, 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.

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 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.

5. 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:

(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.

6. 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.

7. Member States shall ensure that the reasons for any refusal to grant a licence are objective and non-discriminatory and are given to the applicant. They shall establish a procedure enabling the applicant to appeal against such refusals.

ARTICLE 5

(becomes Article 18)

ARTICLE 6

becomes Article 17(1) (ii)

(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.

Chapter III

Storage and transport

ARTICLE 5

Member States shall take the measures necessary to ensure that transmission companies act in accordance with Articles 6 to 10.

ARTICLE 6

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 its supply capacity to adjust to demand.
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.

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.

4. Each transmission company shall not discriminate between users or classes of users of the system and any of its affiliates or shareholders.

ARTICLE 7

1. Each transmission company shall provide to any other transmission company or distribution system operator with which its system is interconnected 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 necessary agreements with other relevant transmission companies or distribution system operators to enable a user connected to its system to use the interconnected system.

ARTICLE 8

Each transmission company shall draw up and publish an annual estimate on the demand for gas in its area and on the transmission system's capacity, including transfer capacity to and from neighbouring systems. The estimate shall cover a period of at least 10 years beginning from the year in which it is drawn up.

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 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 Council Directive 83/189/EEC⁽³⁾, 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 transmissionsystem, including tariff metering.

⁽³⁾ OJ No L 109, 26.4.1983, p. 8.

ARTICLE 9

1. Within a period not exceeding one year from the date laid down in Article 23, 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 ensure the interoperability of systems, 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 Council Directive 83/189/EEC⁽⁴⁾, 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⁾ OJ No L 109, 26.4.1983, p. 8.

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.

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.

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 be defined as far as possible 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.

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.

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.

ARTICLE 10

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.

Chapter IV

Distribution system operation

ARTICLE 11

1. Member States shall determine, in accordance with Community law, the rights and the public service obligations referred to Article 3(2) assigned to distribution companies, together with the rights and obligations of their customers.
2. Member States may impose on distribution companies, an obligation to supply the customers located in a given area. The tariff for such supplies may be regulated, for instance to ensure equal treatment of the customers concerned.

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.

3. Member States shall designate or shall require undertakings which own or are responsible for distribution systems (including natural gas lines forming part thereof) to designate a system operator, charged with operating and ensuring the maintenance and development of the distribution system in a given area.
4. Member States shall ensure that the distribution system operator acts in accordance with the provisions in Articles 12, 13 and 14.

ARTICLE 12

1. The system operator shall maintain a secure, reliable and efficient natural gas distribution system in its area.
2. The system operator shall ensure that new distribution capacity is constructed as may be needed to enable capacity to adjust to demand.

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 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 13

1. The system operator shall draw up and publish an annual report on the quality of supply and the quality of service.

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

ARTICLE 14

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.

Chapter V

Unbundling and transparency of accounts

ARTICLE 15

Member States or any competent authority they designate shall have right of access to the accounting documents of production, transmission or distribution companies which they must consult in carrying out their checks.

ARTICLE 16

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 8.

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 Council Directive 78/660/EEC⁽⁴⁾. 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.

⁽⁴⁾ OJ No L 222, 14.8.1978, p. 11.

2. Vertically integrated companies shall, in their internal accounting, keep separate accounts for their natural gas production, transmission, storage and distribution activities, 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 activity in their annual management report.

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 law concerning the annual accounts of limited liability companies adopted to implement Council Directive 78/660/EEC⁽⁵⁾. 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" activity 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" activity of vertically integrated companies shall distinguish natural gas supply costs from cushion gas costs and other charges.

⁽⁵⁾ OJ No L 222, 14.8.1978, p. 11.

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⁽⁵⁾ or with companies which belong to the same shareholders.

(5) OJ No L 193, 18.7.1983, p. 1.

6. 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.

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

8. The annual accounts shall indicate in the notes any important transaction conducted with associated companies within the meaning of Article 33 of Directive 83/349/EEC⁽⁶⁾ or affiliated companies or companies which belong to the same shareholders.

(6) OJ No L 193, 18.7.1983, p. 1.

Chapter VI

Final provisions

Chapter VI

Access to the system

ARTICLE 17

1. Member States shall take the necessary measures for:
 - (i) natural gas undertakings to be able to conclude supply contracts with final customers who are large industrial consumers and with distribution companies on the basis of voluntary commercial agreement;
 - (ii) producers and suppliers of natural gas to be able to supply their own premises, subsidiaries and affiliate companies in the same Member State or in another Member State, by means of the interconnected system, subject to the conclusion of agreements with the relevant transmission companies and distribution systems operators;
2. The contracts must be negotiated with the natural gas companies which are the systems operators concerned.
3. Member States shall ensure that the parties negotiate in good faith and that none of them abuses its negotiating position by preventing the successful outcome of those negotiations. The system operator may refuse access where the contract in question would prevent him from carrying out the public service obligations referred to in Article 3(2) which are assigned to him.

4. Member States shall designate a competent authority, which must be independent of the parties, to settle disputes relating to the contracts and negotiations in question. Recourse to this authority shall be had without prejudice to the exercise of rights of appeal under Community law.

ARTICLE 18

1. Subject to Article 4, Member States shall ensure that all the producers and suppliers of natural gas established in their territory are able to supply their own establishments, affiliates and customers by means of a direct line.
2. Subject to Article 4, Member States shall ensure that any customer established in their territory is able to purchase and to be supplied with natural gas by a producer or supplier by means of a direct line.

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 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.

Chapter VII

Final provisions

ARTICLE 19

In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may 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 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 20

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 cannot be put into effect by the Member State unless it has been approved by 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 1996, 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, 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 10 and 17.

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 21

Member States shall establish a dispute resolution procedure by which the parties can settle disputes on matters covered by this Directive, in accordance with Community rules.

ARTICLE 22

Each Member State shall establish a consultative procedure enabling system users including domestic consumers in its territory, at least once a year, on matters arising from the implementation of this Directive, and in particular on the transmission and distribution system reports drawn up pursuant to Articles 8 and 13 respectively.

ARTICLE 23

1. The Commission will present a report to the Council and the European Parliament before 31 December 1995 and will attach to that report any harmonization proposals necessary to the effective operation of the internal natural gas market.
2. The Council and the European Parliament will give their views on such proposals before 12 December 1997.

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 24

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 on 1 January 1999.

ARTICLE 25

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 1994. They shall immediately 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 at the time of their official publication. The procedure for such reference shall be adopted by Member States.

ARTICLE 29

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ARTICLE 26

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

ARTICLE 27

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

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