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1 March 2002

*****I** **REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas
(COM(2001) 125 – C5-0184/2001 – 2001/0077(COD))

Part 1 : Legislative Proposal - Amendments 1-160
Committee on Industry, External Trade, Research and Energy

Rapporteurs: Claude Turmes and Bernhard Rapkay

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 2 May 2001 the Commission submitted to Parliament, pursuant to Article 251(2), Article 47(2), Article 55 and Article 95 of the EC Treaty, the proposal for a directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas (COM(2001) 125 – 2001/0077 (COD)).

At the sitting of 14 May 2001 the President of Parliament announced that she had referred this proposal to the Committee on Industry, External Trade, Research and Energy as the committee responsible and the Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Regional Policy, Transport and Tourism for their opinions (C5-0184/2001).

The Committee on Industry, External Trade, Research and Energy appointed Bernhard Rapkay and Claude Turmes rapporteurs at its meeting of 29 May 2001.

The committee considered the Commission proposal and draft report at its meetings of 11 September 2001, 18 September 2001, 18 December 2001, 8 January 2002, 23 January 2002, 19 February 2002 and 26 February 2002.

At the last meeting it adopted the draft legislative resolution by 17 votes to 2, with 17 abstentions.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Peter Michael Mombaur and Yves Piétrasanta, vice-chairmen; Bernhard Rapkay and Claude Turmes, rapporteurs; Sir Robert Atkins, Danielle Auroi (for Nuala Ahern), Ward Beysen (for Willy C.E.H. De Clercq), Guido Bodrato, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Harlem Désir, Concepció Ferrer, Jacqueline Foster (for Bashir Khanbhai), Norbert Glante, Michel Hansenne, Philippe A.R. Herzog (for Roseline Vachetta), Werner Langen, Rolf Linkohr, Caroline Lucas, Eryl Margaret McNally, Erika Mann, Hans-Peter Martin (for Hans Karlsson), Angelika Niebler, Reino Paasilinna, Samuli Pohjamo (for Elly Plooij-van Gorsel), John Purvis, Godelieve Quisthoudt-Rowohl, Daniela Raschhofer, Mechthild Rothe, Giacomo Santini (for Umberto Scapagnini, pursuant to Rule 153(2)), Konrad K. Schwaiger, W.G. van Velzen, Stefano Zappalà (for Paolo Pastorelli, pursuant to Rule 153(2)) and Olga Zrihen Zaari.

The explanatory statement will be published separately (Part 2).

The opinions of the Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market and Committee on the Environment, Public Health and Consumer Policy will be published separately (Part 2); the Committee on Regional Policy, Transport and Tourism decided on 29 May 2001 not to deliver an opinion.

The report was tabled on 1 March 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant

part-session.

LEGISLATIVE PROPOSAL

Proposal for a directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas (COM(2001) 125 – C5-0184/2001 – 2001/0077(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1

Title

Proposal for a directive of the European Parliament and of the Council amending **Directives 96/92/EC and 98/30/EC** concerning common rules for the internal market in electricity **and natural gas**

Proposal for a Directive of the European Parliament and of the Council amending **Directive 96/92/EC** concerning common rules for the internal market in electricity

(This amendment applies to the entire legislative text; the adoption of this amendment means that technical adjustments throughout the text will be necessary).

Justification

Owing to the different characteristics of the internal market in electricity and the internal market in natural gas, the rules concerning the liberalisation of the internal market in energy were set out in two separate Directives (Directive 96/92/EC and Directive 98/30/EC). The two Directives are at different stages of transposition into national law. Amendments to these two Directives should therefore also be dealt with in two separate legislative acts. See also the amendment to the draft legislative resolution.

Amendment 2

Citation 4 a (new), 4 b (new)

Having regard to the Treaty establishing the European Community, and in

¹ OJ C 240, 28.8.2001, p. 60.

*particular Articles 2, 16 and 86 thereof,,
Having regard to the Charter of
Fundamental Rights of the European
Union*

Justification

The Treaty does not refer only to competition, but also to general interest principles.

Amendment 3
Recital 1

(1) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity¹ **and Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas² have made very important contributions towards the creation of internal markets for electricity and gas.**

(1) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity¹ **has** made a very important contribution towards the creation of **the** internal **market** for electricity.

Justification

Follows on from Amendment 1. See also Amendment 92.

Amendment 4
Recital 2

(2) Experience in implementing **those Directives** demonstrates the **important** benefits that have begun to result from the internal **markets** in electricity **and gas**, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness. However, important shortcomings and possibilities for

(2) Experience in implementing **this Directive** demonstrates the benefits that have begun to result from the internal **market** in electricity, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness **in some Member States**. However, **as is pointed out by the EU Commission's**

¹ OJ L 27, 30.1.1997, p. 20.

² OJ L 204, 21.7.1998, p. 1.

improving the functioning of the markets remain.

recent benchmarking study, important shortcomings and possibilities for improving the functioning of the markets remain *in the following areas:*

- increasing the market force, the protection and the availability of fully disclosed information to small consumers,

- reducing and harmonising the tariff structures at transmission and distribution level through the adoption of ex-ante price-setting and ownership unbundling,

- taking concrete measures to ensure a level playing field with regard to generation and to reduce the risk of market domination and predatory behaviour,

- addressing the tendency in the market to raise the demand for electricity,

- creating the necessary framework to ensure new energy services which are also necessary to compensate for the job losses which have occurred in the energy industry.

Justification

It is important to stress that the benefits expressed are not universally shared. For example price reductions have not been seen across all countries and all groups of consumers. Furthermore, significant job losses have occurred. The Commission staff working paper 'First report on the implementation of the internal electricity and gas market' (SEC (2001)), highlights many of the problems occurring. It follows from Amendment 1 that the text refers only to the internal market in electricity.

Amendment 5 Recital 2a (new)

(2a) The freedoms which the EC Treaty guarantees European citizens – free movement of goods, freedom to provide services and freedom of establishment – are only possible in a fully open market, which enables all consumers freely to choose their

suppliers and all suppliers freely to deliver to their customers.

Justification

It should be pointed out that, in the current situation, citizens do not fully enjoy the freedoms they are guaranteed in primary law.

Amendment 6
Recital 4

(4) The main obstacles in arriving at a fully operational internal market are related to issues of access to the network ***and*** different degrees of market opening between Member States.

(4) The main obstacles in arriving at a fully operational internal market are related to issues of access to the network, ***pricing***, different degrees of market opening between Member States, ***different national approaches to the internalisation of environmental costs and differing levels of government support for some parts of the energy sector.***

Justification

Although the liberalisation of the energy sector continues, with the associated gains in cost transparency, this is not the same in all areas. In particular the impact and subsequent cost implications on the environment is not evenly assessed and accounted for. In addition, historical and current government support for different segments of the energy sector continue to distort the functioning of the energy market.

Amendment 7
Recital 4a (new)

(4a) For competition to function, network access must be non-discriminatory, transparent and fairly priced. The networks must also be kept attractive for investors.

Justification

The networks are the backbone of the electricity and gas industry. Network expansion to meet the economic needs of producers and consumers is a condition of effective competition in production and indispensable for security of supply.

Amendment 8

Recital 5

(5) In order to achieve non-discriminatory access to the network, the independence of the transmission system operator is of paramount importance. The provisions on unbundling should therefore be strengthened. In order to ensure non-discriminatory access to the distribution network, unbundling requirements for the distribution system operator should be introduced for both electricity and gas distribution system operators.

(5) In order to achieve non-discriminatory access to the network, the independence of the transmission system operator is of paramount importance. The provisions on unbundling should therefore be strengthened. In order to ensure non-discriminatory access to the distribution network, unbundling requirements for the distribution system operator should be introduced for both electricity and gas distribution system operators. ***The construction and maintenance of the necessary network infrastructure, including interconnection capacity and decentralised electricity generation, will contribute to ensuring a stable electricity supply.***

Justification

Decentralised production can contribute to security of supply; it is not a 'prerequisite'.

Amendment 9

Recital 6

(6) To avoid imposing a disproportionate financial and administrative burden on

(6) To avoid imposing a disproportionate financial and administrative burden on

small distribution companies, Member States should be able, where necessary, to exempt such companies from the unbundling requirements.

small distribution companies, Member States should be able, where necessary, to exempt such companies from the unbundling requirements *while ensuring that such exemptions are focused on genuinely independent local distribution companies which are not owned or controlled by other companies within the meaning of the 1998 Merger Regulation.*

Justification

Such exceptions are an important mechanism, both to ensure diversity in the market and to support small distribution companies. Therefore it is important, from the outset, to ensure that dominant companies do not abuse this.

Amendment 10 Recital 7

(7) Further measures should be taken in order to ensure transparent, predictable and non-discriminatory tariffs for access to essential transportation and related infrastructure, *including storage and other ancillary facilities*. Those tariffs should be applicable to all system users on a non-discriminatory basis.

(7) Further measures should be taken in order to ensure transparent, predictable and non-discriminatory tariffs for access to essential transportation and related infrastructure. Those tariffs should be applicable to all system users on a non-discriminatory basis.

Justification

Follows on from Amendment 1. See also Amendment 101.

Amendment 11 Recital 8

(8) In the light of the experience gained with the operation of Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids *and Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids*, measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including across borders between Member States.

(8) In the light of the experience gained with the operation of Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids, measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including *transit of electricity* across borders between Member States.

Justification

Follows on from amendment 1. See also amendment 102.

Amendment 12

Recital 9

(9) The presence of ***independent national regulatory authorities*** is an important feature in guaranteeing non-discriminatory access to the network. ***Those authorities should at least have the competence to fix or approve transmission and distribution tariffs and tariffs for access to liquefied natural gas (LNG) facilities, prior to their entry into force.***

(9) The presence of ***an effective regulatory system*** is an important feature in guaranteeing non-discriminatory access to the network. ***Legally binding access arrangements for its implementation are in this respect just as necessary as an effective authority independent of the interests of the electricity industry and of the Member States' governments. These authorities should at least have the power independently to lay down legally binding methods for calculating network access tariffs.***

Justification

The 'regulatory authorities' are not actually independent bodies in all Member States, particularly in relation to their own national governments. The new wording is also in line with the amendments to Articles 16 and 22.

Amendment 13
Recital 10

(10) **National** regulatory authorities should be able to approve tariffs on the basis of a proposal by the transmission system operator or distribution system operator(s) **or LNG system operator**, or on the basis of a proposal agreed between these operator(s) and the users of the network.

(10) Regulatory authorities should be able **to set themselves** or approve tariffs on the basis of a proposal by the transmission system operator or distribution system operator(s) or on the basis of a proposal agreed between these operator(s) and the users of the network.

Justification

It follows from Amendment 1 that the text has to refer solely to the internal market in electricity. For reasons of coherence, the same term 'Regulatory authorities' is used as in the Amendment to ARTICLE 22(1).

Amendment 14
Recital 11

(11) The benefits **resulting from** the internal market should be available to all Community industry and commerce, including small and medium-sized enterprises and to all Community citizens as quickly as possible for reasons of competitiveness and employment.

(11) The **economic** benefits of the internal market should be available to all Community industry and commerce, including small and medium-sized enterprises and to all Community citizens as quickly as possible for reasons of **fairness**, competitiveness **and, indirectly, to create** employment, **as a result of the reduction in energy costs that will be enjoyed by enterprises. The economic benefits of liberalisation must not be diminished by new energy taxes.**

Justification

All the proposed changes will improve the text. Advantage must be taken of the economic benefits resulting from the internal energy market for reasons of fairness, competitiveness and the employment that will be created as a result of reduced energy costs in a single and totally open market.

The economic benefits of market liberalisation have not been distributed evenly across the market, as some sectors, mainly large consumers, have seen much greater price reductions than domestic consumers.

Taxation of energy is not a satisfactory solution per se. Taxing energy sources on different bases could give rise to a significant conflict of objectives between security of supply and climate policy. Taxation of energy should be uniform throughout Europe to avoid distortion of competition in the Member States.

Amendment 15
Recital 12

Gas and electricity customers should be able to choose their supplier freely. Nonetheless a phased approach **to** completing the internal market for electricity **and gas** should be taken to enable industry to adjust and ensure that adequate measures and systems are in place to protect the interests of customers and ensure they have a real and effective right to choose supplier.

Electricity customers should be able to choose their supplier freely. Nonetheless a phased approach **with a specific deadline for** completing the internal market for electricity should be taken to enable industry to adjust and ensure that adequate measures and systems are in place to protect the interests of customers and ensure they have a real and effective right to choose supplier.

Justification

The two existing directives also involve a phased approach. The directive under review also provides for a specific deadline for achieving full market opening.

Amendment 16
Recital 13

(13) Progressive market opening towards full competition will gradually remove differences between Member States. Transparency and certainty in the implementation of this Directive should be ensured.

(13) Progressive market opening towards full competition will gradually remove differences between Member States. Transparency and certainty in the implementation of this Directive should be ensured. ***The basis for a functioning market economy is to have the same rules on subsidies, tax concessions and grants, and the same treatment for tax purposes of reserves etc. throughout Europe.***

Justification

These measures are imperative to create the general conditions in which the internal market in electricity can operate.

Amendment 17

Recital 14

(14) Directive 98/30/EC provides for access to storage as part of the gas system. In the light of the experience gained in implementing the internal market, additional measures should be taken to clarify the provisions for access to storage and other ancillary services and to reinforce the separation of the operation of transmission and distribution systems, and gas storage and LNG facilities. *delete*

Justification

Follows on from Amendment 1. This recital refers only to the Gas Directive. See also Amendment 108.

Amendment 18

Recital 16

*(16) In the interest of security of supply, the supply/demand balance in individual Member States should be **monitored and** appropriate **action taken** if security of supply **is** compromised.*

*(16) In the interest of security of supply, the supply/demand balance in individual Member States should be **examined, followed by an overall examination of the situation at Community level, taking account of physical transfer capacity between areas with surpluses and areas with shortfalls. Such monitoring should be carried out sufficiently early to enable appropriate measures to be adopted and implemented** if security of supply **or the environment are** compromised. **Energy efficiency and energy-saving measures should be promoted through tax incentives.***

Justification

In the interests of security of supply, Member States must develop a long-term forecasting approach, led by transmission system operators and based on the drawing up of estimates of conditions for striking a balance between electricity supply and demand.

Within the context of the internal market for electricity, giving a picture for each Member State does not properly reflect the reality of the situation. In order to have an overall picture of the availability of resources across the whole of the European market, and in order to take account of the contribution of the transmission network, it is proposed that assessments of the situation in each Member State be combined in order to produce a European level assessment. This assessment should include an overview and a breakdown by relevant geographical area, taking account of bottlenecks occurring at interconnections. The European estimate should be published under the aegis of the Commission and could be drawn up under the guidance of ETSO and the TSO associations.

Amendment 19

Recital 16 b (new) (Directive 96/92/EC)

(16 b) The EU Commission, the European Parliament along with Member States should decide in the shortest possible time on a Directive on the promotion of combined heat and power and a Directive on energy and electricity savings measures. These should set EU and national targets with decisions on the most appropriate mechanism for achieving these targets being left to Member States. These Directives should come into force in parallel with the market opening.

Justification

Self-explanatory.

Amendment 20
Recital 17

(17) Member States should ensure that all customers enjoy the right to be supplied with electricity of a specified quality at affordable and reasonable prices. In order to ensure the maintenance of the highest possible standards of public service in the Community, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards.

(17) Member States should ensure that all customers enjoy the right to be supplied with electricity **and - where connected - gas** of a specified quality at affordable, **easily and clearly comparable, transparent** and reasonable prices. In order to ensure the maintenance of the highest possible standards of public service in the Community, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards.

Justification

A guarantee of affordable access to energy for private consumers is a key part of universal service obligations. There is no reason to consider electricity alone in that context, especially if one considers the prime role of gas as regards heating (and cooking also), albeit with due consideration given to the need for consumers to be connected to the gas grid. To ensure that liberalisation of the energy market does not threaten consumers access to energy, a right to be supplied with gas of a specified quality at affordable and reasonable prices, when the consumer is connected.

Consumers will find it very difficult to make comparisons between alternative offers if prices are not easily and clearly comparable and transparent. For consumers to benefit from increased competition, prices need to be comparable.

Amendment 21
Recital 19

(19) **Directives 96/92/EC and 98/30/EC** should therefore be amended accordingly.

(19) **Directive 96/92/EC** should therefore be amended accordingly.

Justification

Follows on from Amendment 1. See also Amendment 113.

Amendment 22

Recital 20

(20) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the creation of fully operational internal electricity **and gas markets**, in which fair competition prevails, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(20) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the creation of **a** fully operational internal electricity **market**, in which fair competition prevails, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

Justification

Follows on from Amendment 1. See also Amendment 114.

Amendment 23

Recital 21

(21) To ensure homogeneity in the treatment of access to the electricity **and gas** networks, also in the case of transit, **Directives** 90/547/EEC **and** 91/296/EEC should be repealed,

(21) To ensure homogeneity in the treatment of access to the electricity networks, also in the case of transit, **Directive** 90/547/EEC should be repealed,

Justification

Follows on from Amendment 1. See also Amendment 115.

Amendment 24
Recital 22 (new)

(22) Electricity production and quantities of electricity should be subject to certified and accredited verification.

Justification

Objective verification ensures that genuine competition with fair market conditions takes place in the energy sector.

Amendment 25
ARTICLE 1
Title

Amendments to Directive 96/92/EC ***deleted***

Justification

Follows on from Amendment 1.

Amendment 26
ARTICLE 1, PARAGRAPH 1 (-a)
Article 2, paragraph 8 (Dir. 96/92/EC)

(-a) paragraph 8 is replaced by the following text:

(8) 'Wholesale customers' shall mean any natural or legal persons, if the Member States recognise their existence, who purchase or sell electricity and who do not carry out transmission, generation or distribution functions inside or outside the system where they are established. There are two kinds of wholesale customers:

(a) Wholesale traders : any natural or legal persons, if the Member States recognise their existence, who purchase or sell

wholesale electricity not intended for their own final consumption and who do not carry out transmission, generation or distribution functions inside or outside the system where they are established

(b) Suppliers : any natural or legal persons, if the Member States recognise their existence, who purchase electricity not intended for their own final consumption and sell it to the final customer and who do not carry out transmission, generation or distribution functions inside or outside the system where they are established.

Justification

This is a good opportunity to enhance the definition of 'wholesale customers' by dividing them into 'suppliers' and a new category of 'traders' (wholesale trader, wholesale mediator, wholesale intermediary), whose definition differs from that of suppliers in that they do not deal with the final customer but purchase and sell energy without supplying it to final customers.

Amendment 27

ARTICLE 1, PARAGRAPH 1, point a a (new)

Article 2, point 18 (Dir. 96/92/EC)

(a a) point 18 is replaced by the following:

"18. 'vertically integrated undertaking` shall mean an undertaking performing two or more of the following functions: on the one hand, transmission or distribution activities and, on the other hand, generation or sale/supply of electricity or services;"

Justification

Without this clarification, any generating company would be regarded as integrated, as such companies are obliged to sell the electricity which they generate (they do not generate

electricity for their own use). Network activities, on the one hand, should therefore be separated from generation and sales activities open to competition, on the other hand.

Amendment 28

ARTICLE 1, PARAGRAPH 1, a b (new)

Article 2, point 21 (Directive 96/92/EC)

(ab) point 21 is replaced by the following:

"21. 'long-term planning' shall mean the planning of the need for investment in generation, transmission and distribution capacity on a long-term basis, with a view to meeting the demand for electricity of the system and securing supplies to customers."

Justification

No further justification is necessary.

Amendment 29

ARTICLE 1, PARAGRAPH 1, b a (new)

Article 2, point 23 a (Directive 96/92/EC)

(ba) The following point 23a is inserted:

"23a. 'physical energy services' shall mean the physical amenities provided by energy-using equipment, for example cooking, illumination, thermal comfort, food refrigeration, transportation or product manufacturing."

Justification

No further justification is necessary.

Amendment 30
ARTICLE 1, PARAGRAPH 1, point b b (new)
Article 2, point 23 b (new) (Dir. 96/92/EG)

***(b b) The following point 23b is inserted:
'23b. 'Energy Efficiency Demand Side Management (EE-DSM)' shall mean programmes and activities involving energy undertakings and other actors, for example energy service companies, in the sector of end use of energy, which reduce primary energy consumption while providing the same level of physical energy services. Such policies shall be developed within the framework of the energy efficiency directive.'***

Justification

It is appropriate to refer here to the provisions of the energy efficiency directive rather than simply referring to the replacement of electricity by other forms of energy. Replacing electricity in this way is sometimes desirable and sometimes not with regard to energy efficiency.

Amendment 31
ARTICLE 1, PARAGRAPH 1, b c (new)
Article 2, point 23 c (Directive 96/92/EC)

***(bc) The following point 23c is inserted:
"23c. 'retail' shall mean the sale of electricity to the final consumer."***

Justification

No further justification is necessary.

Amendment 32
ARTICLE 1, PARAGRAPH 1, b d (new)
Article 2, point 23 d (Directive 96/92/EC)

(bd) The following point 23d is inserted:
23d. 'renewable energy sources' shall mean renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases).

Justification

No further justification is necessary. The definition corresponds to the one contained in European Parliament and Council Directive 2001/77/EG of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market.

Amendment 33
ARTICLE 1, PARAGRAPH 1, b e (new)
Article 2, POINT 23 e (new) (Dir. 96/92/EC)

(b e) The following point 23 e (new) is inserted:

23 e. An 'embedded generator' is one which has been connected to the distribution system and has no links for external trade

Justification

No further justification is necessary.

Amendment 34
ARTICLE 1, PARAGRAPH 1, b f (new)
Article 2, point 23 f (Directive 96/92/EC)

(bf) The following point 23f is inserted:
23f. 'eligible consumers' shall mean consumers who have access to competitive suppliers of electricity in accordance with this Directive.

Justification

No further justification is necessary.

Amendment 35

ARTICLE 1, PARAGRAPH 1, b g (new)
Article 2, Paragraph 23 g (new) (Dir. 96/92/EC)

(b g) The following point 23 g (new) is inserted:

23 g. “Local owned utilities” are those that are majority owned by local authorities.

Justification

No further justification is necessary.

Amendment 36

ARTICLE 1, PARAGRAPH 1, b h (new)
Article 2, point 23 h (Directive 96/92/EC)

(bh) The following point 23h is inserted:

23h. 'centralised generation' shall mean generating facilities which are subsumed into dispatch systems as provided by Article 8 of this Directive or connected to the interconnected system.

Justification

No further justification is necessary.

Amendment 37

ARTICLE 1, PARAGRAPH 1, b i (new)

Article 2, point 23 i (Directive 96/92/EC)

(bi) The following point 23i is inserted:

23i. 'decentralised generation' shall mean generating facilities which are not subsumed into central dispatch or are served by direct lines within the meaning of Article 21.

Justification

No further justification is necessary.

Amendment 38

ARTICLE 1, PARAGRAPH 1, b i (new)
Article 2, point 23 i (Directive 96/92/EC)

(bi) The following point 23i is inserted:

"23i. 'independent private electricity undertakings' shall mean undertakings which are wholly owned and controlled by a single legal undertaking which is not itself owned or controlled by any other entity within the meaning of the 1998 Merger Regulation."

Justification

No further justification is necessary.

Amendment 39

ARTICLE 1, PARAGRAPH 1, b j (new)
Article 2, point 23 j (Directive 96/92/EC)

(bj) The following point 23j is inserted:

23j. 'disclosure' shall mean making available in aggregate form commercial information associated with the production of the electricity used. This disclosure may relate to the sources used to produce the electricity, their location,

costs or environmental impact.

Justification

No further justification is necessary.

Amendment 40
ARTICLE 1, PARAGRAPH 2
Article 3, Paragraph 1 (Dir. 96/92/EC)

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive market in electricity, and shall not discriminate between these undertakings as regards either rights or obligations

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive market ***and a secure and environmentally sustainable supply and retail*** in electricity, and shall not discriminate between these undertakings as regards either rights or obligations

Justification

See justification to amendment 41.

Amendment 41
ARTICLE 1, PARAGRAPH 2
Article 3, Paragraph 2 (Dir. 96/92/EC)

2. Having regard to the relevant provisions of the treaty, in particular Article 86, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security,

2. Having regard to the relevant provisions of the Treaty, in particular Article 86, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security,

including security of supply, regularity, quality and price of supplies and to environmental protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. As a means of carrying out public service obligations in relation to security of supply, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

including security of supply, regularity, quality and price of supplies and to environmental protection (***including climate change) and energy efficiency and to research and development.*** Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. ***Public service obligations should not unduly restrict competition between electricity enterprises.*** As a means of carrying out public service obligations in relation to security of supply, ***energy efficiency in generation, transmission and end use and the promotion and use of renewable energy sources.*** Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system. ***National regulatory authorities shall monitor the evolution of retail tariffs, in particular in relation to national consumer prices, income and the cost of living. Proper consultation of consumer associations and other relevant undertakings shall be conducted in that matter. Member States may, in the light of national conditions, require designated undertakings not to charge domestic consumers above certain price caps. Once a sufficient level of competition have been reached, all price caps should be removed.***

Justification

The 1997 Treaty of Amsterdam requires Community policy to contribute to sustainable development. The EU's energy policy reflects this by requiring that sustainable development is one of the three core objectives, the others being competitive energy systems and security of supply. It is thus necessary to ensure that environmental protection through the promotion of renewable energy and through energy efficiency measures is given equal importance with security of supply and competitive energy systems.

As important is the need to stress the need for public service obligations and in particular the need to enable Member States, if they feel it necessary and adhering to the subsidiarity principle,, to impose price caps for domestic consumers. It is the view of Energy Watch (the UK Energy Consumer Council) that until the market is working effectively and consumers are adequately protected, price caps should not be removed.

Amendment 42
ARTICLE 1, PARAGRAPH 2
Article 3, Paragraphs 3 (Dir. 96/92/EG)

3. Member States shall ensure that all **customers** enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at affordable and reasonable prices. They shall take appropriate measures to protect final **customers** and to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. These measures shall include, in particular, those set out in the Annex.

3. Member States shall ensure that all **consumers** enjoy universal service, that is the right to be supplied with electricity **or physical energy services** of a specified quality within their territory at affordable and reasonable prices. **Affordability should be properly defined, taking into consideration national consumer prices, incomes and the cost of living. Universal service is a dynamic concept, which needs to be reviewed periodically. Nothing in this legislation should prevent Member States from strengthening the market position of the domestic, small and medium consumers in promoting the possibilities of voluntary aggregation of representation for this class of consumers for tendering.** They shall take appropriate measures to protect final **consumers** and to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. **Member States shall ensure that there are adequate safeguards to protect vulnerable consumers from disconnection .** These measures shall include, in particular, **issues relating to disclosure of electricity sources and price setting for domestic consumers. Member States shall ensure that effective, transparent systems and procedures exist enabling individual customers to transfer to a new supplier.**

Justification

To facilitate the further liberalisation of the market for domestic consumers universal service needs to be defined as a minimum set of services of specified quality, available to all users independent of their geographical location and, in the light of specific national conditions, at

an affordable price. Reference has also to be made to the dynamic nature of universal service, which should evolve over time, in line with technological and societal changes.

In order to enable customers to benefit from liberalisation it is vital that effective, transparent systems, procedures and safeguards are in place to give customers the possibility to switch suppliers easily, while at the same time protecting the most vulnerable from disconnection. Furthermore, this legislation should not prohibit domestic or small and medium enterprises from developing voluntary aggregation system to benefit small consumers as occurs in some Member States, e.g. Sweden.

Amendment 43

ARTICLE 1, PARAGRAPH 2

Article 3, Paragraph 3a (new) (Dir. 96/92/EC)

3a. Member States shall ensure that electricity entities supplying final consumers specify certain minimum information in the bills sent to each final consumer and all advertising and promotional materials directed at final consumers. The percentage contribution of each energy source to the commercial fuel mix for the electricity which is delivered or is intended to be delivered as well as the overall fuel mix of the company over the preceding six month period must be clearly stated . The percentage production from CHP plants should also be noted. For quantities of electricity which companies obtain via the spot market, the fuel mix which the electricity exchange is required to publish every six months shall be used as a basis for the information provided for the electricity. In addition the overall impact of this average to the production of greenhouse gases, particulate emissions (SO₂ and Nox) and nuclear waste, must be displayed Penalties should be imposed on companies that fail to fully disclose their electricity sources in line with the requirements of the Directive.

A certified body shall ensure complete transparency in regard to quantity and to

Justification

In its Communication to the Council and Parliament on completing the internal energy Market, it is noted that to complete the internal market and to reap its full benefits a number of measures are necessary, including those relating to consumer protection. A vital part of this lies in providing adequate, appropriate and standardised information on the sources used in the production of electricity.

Experience shows that disclosure of electricity sources is technically feasible and economically viable. To try and ensure that consumers are presented with a true reflection of their electricity production, it is necessary for the utility to state both the percentage mix of the different energy sources used to generate the electricity sold to the consumer and that of the utility as a whole to avoid utilities claiming that all the cleaner electricity is sold to the domestic consumer while the other 'dirty' electricity is sold to industrial consumers. In addition to the mix of electricity sold, consumers must be informed about the volume of greenhouse gases and other pollutants, such as nuclear waste produced during the production of electricity.

Not disclosing the electricity mix would not only harm the small consumers in their informed choice but would also limit environmental auditing schemes of the business community and public authorities because of lack of information on the electricity mix. Therefore without disclosure Greening the power sector will get much more difficult.

Amendment 44

ARTICLE 1, PARAGRAPH 2

Article 3, paragraph 3 a (new) (Directive 96/92/EC)

3a. Contracts with domestic consumers with a connection capacity of below 10 kW must offer the customer at least one type of contract without a fixed minimum price irrespective of volume.

Justification

There are certain fixed production costs. The inclusion of a fixed premium in the tariff structure makes it possible to take such costs more fully into account. That possibility should be open to undertakings, therefore, even if they must also offer a contract which does not set a

fixed minimum price irrespective of volume.

Amendment 45
ARTICLE 1, PARAGRAPH 2
Article 3, paragraph 4b (new) (Directive 96/92/EC)

4b. Member States shall set minimum criteria to be observed by transmission and distribution undertakings as regards the time within which connections must be made and repairs must be effected.

Justification

These are essential public service obligations, which are mentioned in the Commission's explanatory statement and should be specified in the directive.

Amendment 46
ARTICLE 1, PARAGRAPH 3
Article 3 a, paragraph 1 (Directive 96/92/EC)

1. Member States shall, ***every two years***, notify the Commission of all measures adopted to fulfil universal service and public service obligations, whether or not such measures require derogation from the provisions of this Directive. ***This notification shall relate, to the requirements of Article 3(4) and the maintenance of service standards***

1. Member States shall, ***upon implementation of this Directive***, notify the Commission of all measures adopted to fulfil universal service, ***including consumer protection***, and public service obligations, ***including those relating to environmental protection, through the promotion of renewable energy sources and energy efficiency demand-side management measures***, whether or not such measures require a derogation from the provisions of this Directive. ***They shall notify the Commission subsequently every two years of any changes to the measures adopted to fulfil universal service and public service obligations – including***

*those relating to environmental protection
– whether or not such measures require
derogation from the provisions of this
Directive.*

Justification

No further justification is necessary.

Amendment 47
ARTICLE 1, PARAGRAPH 3
Article 3 a, paragraph 2 (Directive 96/92/EC)

2. The Commission shall publish, every two years, a report analysing the different measures taken in the Member States to meet high public service standards, together with an examination of the effectiveness of those measures.

Where appropriate, the Commission shall make recommendations as to measures to be taken at national level to achieve high public service standards."

2. The Commission shall publish, ***on the first occasion after notification by the Member States and thereafter*** every two years, a report analysing the different measures taken in the Member States, to meet high public service standards, together with an examination of the effectiveness of those measures ***and their impact on competition.***

Where appropriate, the Commission shall make recommendations as to measures to be taken at national level to achieve high public service standards."

Justification

Clarification needed.

Amendment 48
ARTICLE 1, PARAGRAPH 3
Article 3a, Paragraph 2a (new) (Dir. 96/92/EC)

2a. Consumers shall also be informed about their rights regarding universal services.

Justification

Self explanatory

Amendment 49
ARTICLE 1, PARAGRAPH 5
Article 5, paragraph 2(g) (Dir. 96/92/EC)

(g) *the nature of the primary sources* Deleted

Justification

This provision introduces an ambiguous distinction between primary sources which is contrary to the spirit of the directive, which seeks to encourage investment decisions on the basis of considerations of cost and efficiency. If the aim is to deter the use of sources considered particularly pollutant, the provisions contained in points (b) and (c) seem more than adequate; it should also be remembered that there is a vast body of Community law governing environmental protection and, given the obvious consideration that the present directive may not run counter to existing provisions, there is no point including superfluous provisions here.

Amendment 50
ARTICLE 1, PARAGRAPH 5
Article 5, Paragraph 4 a (new) (Dir. 96/92/EG)

4 a. Small decentralised and/or embedded generators shall benefit from simplified authorisation procedures. These accelerated procedures should apply to all facilities of less than 15 MW (the size specified within the Clean Development Mechanisms accelerated authorisation program) and to all embedded generators. Authorisation should not apply to enterprises or domestic premises that wish

to generate their own electricity using fuel cell, micro CHP or similar technology .

Justification

To encourage the development of decentralised energy sources while acknowledging the more limited environmental and social impacts that the smaller power stations have, an accelerated set of procedures should be adopted. An upper limit for the accelerated procedure of 15 MW is proposed which correlates to the limit used in the Clean Development Mechanism of the Kyoto Protocol.

Amendment 51

ARTICLE 1, PARAGRAPH 6

Article 6, Paragraph 1 (Dir. 96/92/EG)

1. Member States shall ensure the possibility, in the interests of security of supply, to tender for new capacity on the basis of published criteria. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the capacity being built *is* not sufficient to ensure security of supply.

1. Member States shall ensure the possibility, in the interests of security of supply, ***and environmental protection***, to tender for new capacity ***or energy efficiency demand side management measures*** on the basis of published criteria A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the capacity ***or demand side management measures*** being built ***are*** not sufficient to ensure security of supply ***requirements and environmental targets. Member States must issue a call for tenders for the provision of new capacity on the basis of published criteria. If more than one Member State is concerned, the Commission may ensure that the calls for tenders are coordinated.***

Justification

As Security of Supply and environmental protection should be given equal importance in developing energy policies, then it should be possible to launch a tender procedure on the bases of either justification. Furthermore, given the energy efficiency places a key role in both reducing the environmental impact of energy production and use and has a fundamental role in increasing security of supply Member States should be able to call for tender for energy efficiency projects which will replace the need for new capacity.

If more than one Member State is involved in issuing such tenders, the Commission must take responsibility for coordinating the calls for tender to prevent distortions of competition and excess investment.

Amendment 52

ARTICLE 1, PARAGRAPH 6 (b a) (new)
Article 6, paragraph 4 (Directive 96/92/EC)

(ba) Paragraph 4 is deleted.

Justification

The fulfilment of long-term supply contracts is insufficient justification for a tendering process and the exception should no longer apply.

Amendment 53

ARTICLE 1, PARAGRAPH 7
Article 6 a, Paragraph 1, (Dir. 96/92/EG)

1. Member States shall designate a body, which may be the independent regulatory authority referred to in Article 22, to monitor security of supply issues. This body shall monitor, in particular, the supply/demand balance on the national market, the level of expected future demand and envisaged additional capacity under planning or construction, and the ***level of competition on the market***. This body shall publish, by 31 July each year at the latest a report outlining its findings on these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.

1. Member States shall designate a body, which may be the independent regulatory authority referred to in Article 22, to monitor security of supply issues. This body shall monitor, in particular the supply/demand balance on the national market, the level of expected future demand and envisaged additional capacity under planning or construction and the ***extent to which energy networks are in working order and their maintenance and assess the potential transmission capacity***. This body shall publish, by 31 July each year at the latest a report outlining its findings on all these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.

This body shall contribute to the development of the internal market for

electricity and to the promotion of harmonisation and the creation of a level playing field for electricity at the European level by co-operating with each other and with the Commission in a transparent manner to ensure the consistent application, in all Member States, of the provisions of this Directive for electricity.

To this end, this body shall, in particular, seek to agree on the types of instruments and remedies best suited to address particular types of situations in the European marketplace for electricity.

Where the Commission issues recommendations to Member States on the harmonised application of the provisions in this Directive in order to further the achievement of the objectives set out in this Directive, Member States shall ensure that national regulatory authorities take the utmost account of those recommendations in carrying out their tasks.

Justification

Market liberalisation shows that as energy undertakings have strengthened their position, some have also cut back their maintenance activities. As a result, power cuts caused by weather conditions, for example can last an inordinately long time. It is therefore necessary for a review of security of supply includes assessments of the maintenance of the energy networks and also the capacities of the transmission system.

The objective is to complete the internal market for electricity in the EU. Each Member State has a body with a supervisory function. In order to achieve a level playing field within Europe, procedures should be established which take account of national market aspects as well as ensuring the completion of the EU internal market. Close cooperation is therefore necessary between the Commission and national supervisory bodies.

Amendment 54
ARTICLE 1, PARAGRAPH 7
Article 6a paragraph 1a (new) (Dir. 96/92/EC)

1a. Cooperation will take place, inter alia, in a Committee or in a group comprising European regulators for the electricity sector. The Commission shall set up a European Regulators Group for the European electricity market which would constitute a suitable mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for electricity, and to seek to achieve consistent application, in all Member States. The secretariat of this committee or group shall be managed by the European Commission. Member States shall decide which bodies are national regulatory authorities for the purposes of this Directive.

Justification

The secretariat of this committee or group must be taken care of by the European Commission.

Amendment 55

ARTICLE 1, PARAGRAPH 7

Article 6 a, paragraph 2 (Dir. 96/92/EC)

2. On the basis of ***the report*** referred to in paragraph 1 the Commission shall, on an annual basis, forward a Communication to the European Parliament and the Council examining issues relating to security of supply of electricity in the Community, and in particular the existing and projected balance between demand and supply. Where appropriate, the Commission shall issue recommendations.

2. On the basis of the estimates drawn up by each Member State, the Commission shall launch a comprehensive survey of demand satisfaction across the whole of the internal market, taking into account the physical capacity for exchanges within the system between areas that are in surplus and areas that are in deficit. On the basis of ***this comprehensive survey and the national reports*** referred to in paragraph 1 the Commission shall, on an annual basis, forward a Communication to the European Parliament and the Council examining issues relating to security of supply of electricity in

the Community, and in particular the existing and projected balance between demand and supply. Where appropriate, the Commission shall issue recommendations.

Justification

To ensure security of supply, Member States must develop a long-term future-oriented approach, led by the transmission system operators and based on the establishment of estimates of the conditions required to strike a balance between electricity demand and supply.

In the context of the internal market in electricity, it is impossible to obtain a realistic view of the situation from the vantagepoint of individual Member States. In order to obtain a comprehensive view of the availability of resources across the whole European market, and to take account of the potential contribution of the transmission network, we propose incorporating the Member States' respective estimates into a pan-European estimate; this forecast should include a comprehensive overview and a breakdown covering the relevant geographic areas in the light of the interconnection bottlenecks identified. This pan-European estimate should be published under the aegis of the Commission, possibly under the guidance of ETSO and the TSO associations.

Amendment 56
ARTICLE 1, PARAGRAPH 8
Article 7 (Dir. 96/92/EC)

1. Member States shall designate or shall require undertakings which own transmission systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more system operators to be responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and its interconnectors with other systems, in order to guarantee security of supply.

2. Member States shall ensure that technical rules establishing the minimum

technical design and operational requirements for the connection to the system of generating installations, distribution systems, directly connected consumers' equipment, interconnector circuits and direct lines are developed and published. These requirements shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations.

3. The system operator shall be responsible for managing energy flows on the system, taking into account exchanges with other interconnected systems. To that end, the system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services.

4. The system operator or operators shall submit an annual report to the regulatory authority referred to in Article 22, paragraph 1, concerning the measures taken by the operator to prevent discriminatory conduct. The system operator shall publish that report simultaneously.

5. The system operator shall not discriminate between system users or classes of system users, particularly in favour of its subsidiaries or shareholders.

6. Unless the system operator is already fully independent from other activities not relating to the transmission system in terms of ownership, the system operator shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission. *In order to ensure the independence of the system operator, the following*

6. Unless the system operator is already fully independent from other activities not relating to the transmission system in terms of ownership, *by 1 January 2003*, the system operator *within the integrated electricity undertaking* shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission.

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

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

(c) the system operator must **exercise full control over all** assets necessary to **maintain and develop** the network;

(d) the system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded.

The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer appointed by and reporting to the President/Chief Executive of the integrated electricity undertaking to which the system operator belongs. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority and published **develop the network**;

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

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

(c) the system operator must **have sufficient decision-making rights with respect to assets necessary to ensure the maintenance and development of** the network. **It must have sufficient revenues to allow it access to free capital markets ;**

(d) the system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded.

The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer appointed by and reporting to the President/Chief Executive of the integrated electricity undertaking to which the system operator belongs. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority and published

Justification

The intention of making these amendments to the operating rules for transmission system operators is to reduce bureaucracy and to give greater clarity of the functions and roles of the different actors.

By requiring the system operator to produce an annual report it will give greater accountability and less bureaucracy for those concerned.

Changes have also been introduced to permit the division of roles between the system operator and the transmission asset owner which is the essential feature of the 'separation model' emerging in some Member States of the EU (Great Britain and Ireland) within the framework of the Directive. The model, while not excluding other options, facilitates market integration across the Member States in a transparent and cost-effective way.

The proposed amendment is also clearer and expressly specifies that, in order to maintain and develop the network, the system operator should have independent access to the necessary means. However, this should not imply restrictions as regards share ownership.

Amendment 57
ARTICLE 1, PARAGRAPH 10
Article 8, paragraph 4 a (new) (Directive 96/92/EC)

In Article 8 the following paragraph 4a is added:

"4a. The costs of connecting new producers of electricity from renewable energy sources and combined heat and power shall be objective, transparent and non-discriminatory. A European benchmarking system shall ensure that there are no obstacles to the stimulation of dispersed generation."

Justification

The cost of connecting new renewable energy sources, especially offshore wind farms and cogeneration plants may reduce the attractiveness of investments. Clear and fair tariffs need to be set which take into consideration the additional benefits these technologies bring.

Amendment 58
ARTICLE 1, PARAGRAPH 10
Article 8, paragraph 5 (Directive 96/92/EC)

5. Member States may require transmission system operators ***to meet minimum levels of investment*** for the maintenance and development of the transmission system, including interconnection capacity.

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

Justification

To stipulate compulsory investment constitutes undue encroachment on market players' proprietary rights and should be replaced by more flexible instruments.

Amendment 59

ARTICLE 1, PARAGRAPH 10

Article 8, Paragraph 6 (Dir. 96/92/EG)

6. Rules adopted by transmission and distribution system operators for balancing, in real time generation and consumption of electricity, shall be transparent and non-discriminatory. Tariffs and terms and conditions for the provision of such services by system operators shall be established in a non-discriminatory way reflecting prevailing market prices and shall be fixed or approved by the national regulatory authority prior to their entry into force.

6. Rules adopted by transmission and distribution system operators for balancing, in real time generation and consumption of electricity, shall be transparent and non-discriminatory. Tariffs, and terms and conditions for the provision of such services by system operators shall be established in a non-discriminatory way reflecting prevailing market prices and shall be fixed or approved ***and published*** by the national regulatory authority prior to their entry into force. ***National regulatory authorities shall promote the setting up of transparent market based mechanisms for the supply and purchase of balancing power as soon as it is feasible according to the liquidity levels of the national electricity market.***

Justification

The experience of northern markets indicates that the direct balancing of generation and consumption can operate as a genuinely competitive market. We take the view that over-regulation of such services would have the effect of discouraging investment in flexible generating entities. Furthermore, competitive markets for 'balancing energy' can lead to transparent prices, which, however, are only apparent ex-post.

Amendment 60

ARTICLE 1, PARAGRAPH 10 A (new)

(10a) Article 9 is amended as follows:

"Article 9

The transmission system operator should be placed under a positive obligation to release in a timely manner all aggregated information concerning interconnectors, grid usage and capacity allocation to interested parties. Non-aggregated information may be treated as commercially confidential."

Justification

In the interests of consumers a more specific disclosure policy should be developed by the TSO. The previous Directive specified that the TSO should 'preserve the confidentiality of commercially sensitive information'. This offers insufficient guidance on the type of material that may be released and is not in line with best practice in those systems where the TSO regularly provides such information.

Amendment 61

ARTICLE 1, PARAGRAPH 11

Article 10, paragraph 4, 1st subparagraph (Dir. 96/92/EC)

4. Unless the system operator is already fully independent from other activities not relating to the distribution system in terms of ownership, the system operator shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to distribution.

4. Unless the system operator is already fully independent from other activities not relating to the distribution system in terms of ownership, the system operator ***within the integrated electricity undertaking*** shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to distribution.

Justification

This is merely a clarification necessary to ensure consistency in interpretation of the text as a whole in relation to integrated electricity undertakings - and is parallel to the associated clarification of Article 7.6.

Amendment 62
ARTICLE 1, PARAGRAPH 11
Article 10, paragraph 4(c) (Dir. 96/92/EC)

c) The system operator must ***exercise full control over all*** assets necessary to ***maintain and develop*** the network.

c) The system operator must ***have sufficient decision-making rights with respect to*** assets necessary to ***ensure the maintenance and development of*** the network. ***It must have sufficient revenues to allow it access to free capital markets;***

Justification

The proposed amendment is clearer and expressly specifies that, in order to maintain and develop the network, the system operator should have independent access to the necessary means. However, this should not imply restrictions as regards share ownership. These changes are also necessary to ensure consistency with Article 7(6) (c).

Amendment 63
ARTICLE 1, PARAGRAPH 11
Article 10, paragraph 4, point (d) (Directive 96/92/EC)

(d) the system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. ***The programme must set out the specific obligations of employees to meet this objective.*** It must be drawn up and its respect monitored by a compliance officer ***appointed by and reporting*** to the President/Chief Executive of the ***integrated electricity*** undertaking ***to which the system operator belongs.*** An annual report, setting out the measures taken, ***must be submitted by the compliance officer*** to the national regulatory authority ***and published.***

(d) the system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. It must be drawn up and its respect monitored by a compliance officer, ***who shall report*** to the President/Chief Executive of the undertaking ***and submit an*** annual report, setting out the measures taken, to the national regulatory authority.

Justification

Amendment of the Directive should not serve to limit the forms and ways of financing an operator's business. The operator should be in a position to control the assets that will be needed to maintain and develop a network. On the other hand, ownership of a network should not be deemed to derive solely from the operator's activities. On the contrary, it should also be permissible to raise capital by leasing the network and through transfers to reserves.

Amendment 64

ARTICLE 1, PARAGRAPH 11

Article 10, paragraph 4, subparagraph 4 (new) (Directive 96/92/EC)

For the constitution of new utilities which are to be and remain fully owned or directly operated by the local authorities or bodies subject to their control, the value of the existing distribution network will be evaluated using the principle of 'valeur comptable' (present book value).

Justification

As consumers have already paid for the investment in the distribution infrastructure, local authority or community utilities should not have to pay again for the commercial value of the grid infrastructure.

Amendment 65
ARTICLE 1, PARAGRAPH 11 B (new)
Article 12 (Directive 96/92/EC)

(11b) Article 12 is amended as follows:

"The distribution system operator must have a positive obligation to release in a timely manner all aggregated information concerning interconnections, grid usage and capacity allocation to interested parties. Non-aggregated information may be treated as commercially confidential."

Justification

In the interests of consumers a more specific disclosure policy should be developed by the DSO. The previous Directive specified that the DSO should 'preserve the confidentiality of commercial sensitive information', which offers insufficient guidance on type of material that maybe released.

Amendment 66
ARTICLE 1, PARAGRAPH 12a (new)
Article 13 (Dir. 96/92/EC)

Article 13 to read as follows.:

13. Member States or any competent authority they designate as well as the dispute settlement authorities referred to in Article 20 (3) shall have right of access to the accounts of generation, retail, transmission, distribution or trading/supply undertakings which they need to consult in carrying out their checks

Justification

It is essential that transparent accounting of the different sectors of the electricity system can be guaranteed. Therefore access must be given to authorised bodies when dealing with disputes.

Amendment 67
ARTICLE 1, PARAGRAPH 13
Article 14, paragraph 3 (Dir. 96/92/EC)

3. Integrated electricity undertakings shall, in their internal accounting, keep separate accounts for their **generation, distribution and supply activities**, and, where appropriate, consolidated accounts for other, non-electricity activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. The internal accounts shall include a balance sheet and a profit and loss account for each activity.

3. Integrated electricity undertakings shall, in their internal accounting, keep separate accounts for their **transmission and supply activities on the one hand and their generating or sale/supply activities on the other hand**, and, where appropriate, consolidated accounts for other, non-electricity activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. **Distribution charges shall comprise only relevant expenses necessary to operate the distribution system, operation maintenance, investment costs and the normal rate of return to be fixed by the regulatory authority.** The internal accounts shall include a balance sheet and a profit and loss account for each activity.

Justification

The purpose of separate accounting is to make it possible to check that there is no cross-subsidisation between activities where undertakings are in competition and activities where they operate a monopoly. There is no point in any further separation of the accounts.

Amendment 68
ARTICLE 1, PARAGRAPH 13
Article 14, paragraph 5 a (new) (Directive 96/92/EC)

In Article 14, the following paragraph 5 a is added:

"5a. In order to ensure the availability of funds for future decommissioning and to avoid obstacles to fair competition in the

energy market, Member States must adopt separate accounting for the financing of future decommissioning or waste management activities. These funds must be reviewed and audited annually by an independent body, such as the regulator or regulatory bodies, to verify that the revenues and the associated interest raised for these future activities shall only be used for these purposes, that is for decommissioning or waste management activities and not used directly or indirectly to fund activities in the market.

Justification

Member States have adopted different methods of financial management for decommissioning funds in the nuclear sector. The Commission has noted that this could lead to distortions and discrimination between different electricity producers as some decommissioning funds are accessed by the utility while others are held by the waste management company. This gives significant purchasing advantage for those with access to the considerable funds. Given the financial importance of these funds a single approach needs to be adopted for all Member States. Such a requirement is in line with Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings. Furthermore, this proposal is broadly in line with the Commission's second report to the Council and the European Parliament on harmonisation requirements concerning common rules for the internal market in electricity, COM(1999) 164.

Amendment 69

ARTICLE 1, PARAGRAPH 15

Article 16, paragraph 1 (Directive 96/92/EC)

1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs, applicable to all *eligible* customers and applied objectively and without discrimination between system users. These tariffs **shall be approved** prior to their entry into force **by a national regulatory authority established in conformity with Article 22.**

1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs (**regulated system access**) or **published general terms and conditions (negotiated system access)**, applicable to all customers and applied objectively and without discrimination between system users. **Member States shall ensure that these tariffs or the factors on which they are based are examined by authorities in**

accordance with Article 22, paragraph 1, prior to their entry into force.

Justification

The amendment is in line with the new wording of Article 22.

Amendment 70
ARTICLE 1, PARAGRAPH 15
Article 16, paragraph 2 (Dir. 96/92/EC)

2. *The operator of a transmission or distribution system may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3.*"

2. *Where a transmission system operator or distribution system operator lacks the capacity to provide access to the system, it must quote terms for reinforcing the network. Such terms shall be based on an approved methodology for connection.*

Justification

Operators should not simply be able to refuse transmission access on the grounds of lack of capacity. In the interests of transparency, they should be required to offer terms for connection which recognise the time needed to reinforce the network, and to develop an approved methodology for connection terms. If existing capacity is insufficient this would provide for recovery of the costs associated with network reinforcement.

Amendment 71
ARTICLE 1, PARAGRAPH 16
Articles 17 and 18

(16) ***Articles 17 and 18 are*** deleted.

(17) ***Article 18 is*** deleted.

Justification

See justification of the amendment to Article 17, paragraph 2a.

Amendment 72
ARTICLE 1, PARAGRAPH 16
Article 17, paragraph 2 a

The following Article 17, paragraph 2a is inserted:

2a. The Member States shall ensure that the difference between the physically available and the actually physically used capacity is made accessible to system users.

Justification

Only a definition which expressly takes account of the physically used rather than the contractual capacity will in fact ensure that available capacity is fully open to competition.

Amendment 73
ARTICLE 1, PARAGRAPH 17
Article 19, paragraph 2 a (new) (Directive 96/92/EC)

2a. Electricity which is produced in a Member State which has not reached its quota or targets for energy efficiency, renewable energy sources or combined heat and power within the meaning of the existing and forthcoming Directives may be subject to the same procedures as in Article 19(2).

Justification

The ruling of 18 March 2001 by the European Court of Justice states that the protection of

the environment is a valid reason for taking action within the market. Furthermore, the failure of utilities or Member States to introduce technology with lower or no environmental impact can distort the functioning of the market and thus should be open to reciprocity requirements.

Amendment 74

ARTICLE 1, PARAGRAPH 17 a (new)
Article 19 Paragraph 2b (new) (Dir. 96/92/EC)

2b. A Member State may derogate from paragraph 2(b) provided that no entity that is a supplier of electricity or gas to final household customers in that Member State holds (directly or indirectly) any interest in another entity that is a supplier of electricity or gas to final household customers in another Member State where that other Member State has not derogated from paragraph 2(b). Any such derogation shall be notified to the Commission annually one year in advance. No derogation shall be permitted after 1 January 2008.

Justification

Some Member States might welcome flexibility in the date for full (household) market opening. This amendment allows a Member State to notify the Commission that it has not yet opened its household electricity market. But to ensure a level playing field, the monopoly supplier(s) in that Member State (or any affiliate) would not be allowed to have interests in energy supply companies operating in Member States that have opened their household markets. This allows the goal of a single European electricity market to be achieved no later than 1 January 2008.

This also reinforces the principles of reciprocity in the original electricity directive and supports the objective of creating sustainable competition. It prevents monopoly rent from a household energy market that is closed to competition being used to cross-subsidise affiliates in Member States where the household energy market is open.

Amendment 75
ARTICLE 1, PARAGRAPH 19
Article 22 Paragraph 1 (Dir. 96/92/EC)

1. Member States shall ***establish national regulatory authorities. These authorities shall*** be wholly independent of interests of the electricity industry. They shall at least have the sole responsibility:

(a) to fix or approve terms and conditions for connection and access to national networks, including transmission and distribution tariffs;

(b) to fix or approve tariffs, or changes in tariffs at national level, to reflect costs or revenues related to cross border transmission of electricity;

(c) to ***define the rules on the*** management and allocation of interconnection capacity, in conjunction with the national regulatory authority or authorities of those Member

1. Member States shall ***designate one or more competent bodies as regulatory authorities. They shall in addition have the highest possible degree of independence from the Governments of Member States and they must*** be wholly independent of interests of the electricity industry. ***They shall have responsibility to monitor the market continuously, with particular regard to the level of competition and to establish a level playing field in the electricity market.*** They shall at least have the sole responsibility:

(a) to fix or approve, ***prior to their application*** , terms and conditions for connection and access to national networks, including transmission and distribution tariffs ***or benchmarking tariffs for all customers, taking into account the long-term marginal avoided costs for decentralised power production or embedded generation***

(a a) to supervise the unbundling of accounts and to take further measures to ensure there are no cross-subsidies between: generation, transmission and distribution activities and transmission, distribution and trading/supply and retail activities ;

(a b) to fix or approve prior to their applications terms and conditions for the provision of balancing services.

(b) to fix or approve, ***prior to their application*** tariffs, or changes in tariffs at national level, to reflect costs or revenues related to cross border transmission of electricity;

(c) to ***ensure that there are non-discriminatory and pro-competition processes for access,*** management and allocation of interconnection capacity, in

States with which interconnection exists;

(d) to **fix or approve any mechanisms** to deal with congested capacity within the national electricity system;

(e) to ensure the respect of the requirements set out in Article 3(3) and (4).

conjunction with the national regulatory authority or authorities of those Member States with which interconnection exists;

(d) to **ensure that there are non-discriminatory and pro-competitive processes** to deal with congested capacity within the national electricity system;

(e) to ensure the respect of the requirements set out in Article 3(3) and (4).

(e a) to approve and establish the binding nature of the procedures for calculating transmission and distribution tariffs.

(e b) to monitor trading activities in the electricity market.

(e c) to observe and report on the market developments in terms of concentration and advise relevant national authorities entrusted with the control of mergers and concentrations of proposed ownership changes in industry.

Justification

1. The addition to paragraph 1 should prevent any conflict of interest arising if the state is both the system operator and responsible for regulation.

1a It is important that users are given clear information regarding tariffs prior to their use to guarantee transparency. Particular attention should be placed on decentralised generation given its importance in grid stability.

1a,a The separating of generation and supply activities within the electricity sector would deter producers from selling direct to final consumers. That would also prevent independent energy producers and autoproducers which use renewable energy sources or CHP from selling their electricity surplus. With regard to this new provision, therefore, we see no benefit in separating production and supply.

1b It is important that users are given clear information regarding tariffs prior to their use to guarantee transparency.

1c, 1d - National regulatory authorities should ensure that capacity allocation is carried out in a way that supports the development of a competitive market.

1 e,a – The regulation of energy markets must not become the subject of a regulatory dispute as concrete economic activities are at stake.

1 e.b – The establishment of more energy trading markets makes it necessary to specify that one role of the regulator is to monitor trading activities.

1 e.c.- Given the current market trend to increase market concentration and the dominance of a small number of companies, the regulator must both monitor and report on this important issue.

Amendment 76
ARTICLE 1, PARAGRAPH 19
Article 22, paragraph 1a (new)

1a The method used to calculate transmission and distribution tariffs for the provision of balancing energy services and the rules referred to in Article 8, paragraph 6 shall, prior to their entry into force, be determined by the Member States in legally binding form and be approved by the regulatory authorities.

Justification

The addition to paragraph 1 should prevent any conflict of interest arising if the state is both the system operator and responsible for regulation.

In paragraph 1 a (new), following the unofficial compromise proposal from the Belgian Presidency, the opportunity should be grasped to evaluate agreements between groupings ex ante and make them binding. On the basis of the amendment, an agreement between groupings can be made legally binding not only by way of approval but also by way of a legal reference/clarification of an imprecise legal concept. This key amendment combines effective regulation with respect for the subsidiarity principle.

Amendment 77
ARTICLE 1 PARAGRAPH 19
Article 22 Paragraph 1 b (new) (Dir. 96/92/EC)

1 b. The competent bodies shall have the

authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, prices, rules and mechanisms referred to in paragraph 1, to ensure that those are reasonable and applied in a non-discriminatory manner.

Justification

The competent authorities must be able to intervene quickly and effectively to determine the terms and conditions of access if new suppliers are to gain access to the market.

Amendment 78

ARTICLE 1 PARAGRAPH 19

Article 22 Paragraph 1 c (new) (Dir. 96/92/EC)

1c. Any party having a well founded complaint against a transmission or distribution system operator over terms and conditions, prices, rules and mechanisms referred to in paragraph 1 may refer the complaint to the competent body which shall issue a binding decision within two months.

Justification

The competent authorities must be able to intervene quickly and effectively to determine the terms and conditions of access if new suppliers are to gain access to the market.

Amendment 79

ARTICLE 1, PARAGRAPH 19

Article 22, Paragraph 2 (Dir. 96/92/EG)

2. Member States shall create appropriate

2. Member States shall create appropriate

and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory *or anti-competitive* behaviour. These mechanisms, *including annual assessments by the regulator* shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

The relevant authorities of the different Member States will provide the European Commission on each 31st July with a report on market dominance, predatory and anti-competitive behaviour. This report will in addition review the changing ownership patterns and also set practical measures taken on the national level to ensure a sufficient variety of market actors.

The Commission shall specifically monitor market concentration in the electricity market in consultation with the European Energy Regulators Committee. It shall take account of any risks of dominant market position abuse and predatory agreements, the potential benefits of economies of scale or decentralised production, the unifying effects of transfrontier concentrations and the implications for security of supply.

Justification

Throughout the EU electricity sector concentration of the market actors is occurring. It is therefore essential that this key issue is monitored to assess its impact on both a national and European Level. This assessment must also include specific recommendations which could be taken at a national level to ensure that there are sufficient market actors. In this vein the scope of the regulator or regulatory authorities to review anti-competitive behaviour to ensure that companies can not obstruct the development of competition.

Amendment 80
ARTICLE 1, PARAGRAPH 19
Article 22, paragraph 2 a (new) (Directive 96/92/EC)

2a. The Commission must support the regulatory authorities by facilitating the exchange of information on the activities of companies in other Member States, to avoid excessive concentration in the European market. This exchange of information must respect the confidentiality rules laid down in Articles 9 and 12.

Justification

The regulatory body needs to consider the implications of market concentration and advise the appropriate authorities in Member States, given the regulatory bodies' experience of market operation.

Amendment 81
ARTICLE 1, PARAGRAPH 19
Article 22 Paragraph 3a-f (new) (Dir. 96/92/EC)

3 a. Member States shall ensure that regulatory authorities have the power to require transmission and distribution network operators to modify the mechanisms, terms and conditions and processes by which suppliers gain access to their networks to ensure that those are reasonable and applied in a non-discriminatory manner.

3 b. Member States shall ensure that regulatory authorities have the power to require the release of electricity or electricity transportation capacity from long-term contracts at market prices where in the view of the regulatory authority this is necessary for the development of sustainable competition.

3 c. Member States shall ensure that national regulatory authorities have the power to impose public service obligations on electricity undertakings relating to the introduction and promotion of appropriate energy efficiency measures consistent with the development of sustainable competition.

Member States shall ensure that small enterprises and household consumers may obtain energy efficiency advice from their chosen electricity supplier.

3 d. The Commission shall set up a European Regulators Group for the European electricity market which would constitute a suitable mechanism for encouraging cooperation and coordination of national regulatory authorities in order to promote harmonisation and creation of a level playing field in the internal market for electricity, and to seek to achieve consistent application, in all Member States. The secretariat of this committee or group shall be managed by the European Commission. Member States shall decide which bodies are national regulatory authorities for the purpose of this Directive.

3 e. In every Member State the National regulator shall report on a least an annual basis to its respective national Parliament . Member States shall also create a regulatory supervisory committee, made up of representatives of interested parties from a cross section of society

3 f. Electricity companies shall have a right of appeal against a decision of a national regulatory authority, to a tribunal which is independent of government and the regulator.

Justification

3 a - An appeals mechanism is necessary to ensure the smooth running of the system. Furthermore, regional differentiation between entry and/or exit fees can give allocation signals, thereby improve system efficiency and avoid the construction of new lines in the transmission or distribution system.

3 b - Long-term can provide positive benefits for security of supply, but a prerequisite for competition is availability of supplies and transportation capacity to many participants. Where energy supplies or transportation capacities are reserved under long-term agreements this might be a barrier to competition. Whilst respecting the contractual arrangements, regulators must have the power to require release of sufficient energy or capacity to market participants with compensation paid by the participants to the holder of the long-term agreement.

3 c - The national energy regulator has an important role to play in giving provision for energy efficiency obligations to be set for electricity undertakings - in particular network operators and suppliers to small-enterprise and household end consumers. By the provision of energy efficiency information, such programs may be targeted to specific groups, such as the elderly, fuel-poor, by housing-type or small enterprise sectors.

3 d - The secretariat of this committee or group must be taken care of by the European Commission.

3 e - In order to allow democratic debate, as in the UK, the regulator shall present its assessments of the functioning of the electricity market. Furthermore, with the growing importance of the regulator in a liberalised market increases the need for clear communication and dialogue to take place between interested and affected parties and the regulatory authorities. Such a review process is necessary to ensure the success of the reform process.

3 f - A stable and predictable regulatory framework is in the interests of all market participants. To guard against arbitrary or capricious decision-making, energy companies must have the right to appeal against regulatory decisions to an independent tribunal. Appeals mechanisms should be consistent between regulated sectors and the attached wording reflects that applying to the European telecoms sector.

Amendment 82
ARTICLE 1, PARAGRAPH 20
Article 23 a, paragraph 1 (Directive 96/92/EC)

Member States shall inform the Commission **by 31 March of each year at the latest** of imports of electricity that have taken place during the previous **calendar year** from third countries.

1. Regulatory authorities shall inform the Commission **every 3 months** of imports of electricity **through commercial contracts** that have taken place during the previous **month** from third countries. **The imported electricity must comply with the disclosure requirements of the Annex referred to in Article 3, thus declare its percentage fuel mix and the relative importance of each energy source with respect to the production of greenhouse gases, particulates (SO₂ and NO_x) and nuclear waste.**

Justification

The growing volume of electricity being imported from non-Member States makes it necessary to ensure that the same disclosure standards apply to electricity generated outside the Union as to that generated inside, to avoid distortions of the market. The national regulators must

have access to the information on electricity imports and exports on a daily basis. This information can and should be easily conveyed to the Commission on a regular, monthly, basis.

Amendment 83
ARTICLE 1, PARAGRAPH 20
Article 23 a, paragraph 1 a (new) (Directive 96/92/EC)

1a. The Commission shall come forward with proposals as a matter of urgency to regulate third-country access to the internal electricity and gas markets, so as to avoid energy being marketed at excessively low prices ('dumping'); in particular, insists that those proposals should specify that any importation of electricity into the internal market must be subject to production and transmission standards similar to those in the EU, in particular as far environmental and safety criteria are concerned.

Justification

This was a point raised in the Parliament's report on the Commission's second report to the Council and the European Parliament on the state of liberalisation of the energy markets (COM(1999) 198 - COM(1999) 164 - COM(1999) 612 - COM(2000) 297 - C5-0163/2000 - 2000/2097(COS)), A5-0180/2000, 22 June 2000.

Amendment 84
ARTICLE 1, PARAGRAPH 20 A (new)
Article 24 (Directive 96/92/EC)

(20a) Article 24 is deleted.

Justification

The revision of the Electricity Market Directive should not enable further requests for transitional aid to be made. Applications should only be eligible if they were made within one year of the original Directive's entry into force; no further assistance should be provided in connection with the revised Directive.

Amendment 85
ARTICLE 1, PARAGRAPH 20a (new)
Article 25, paragraph 1 (Dir. 96/92/EC)

In Article 25, paragraph 1 is replaced by the following:

1. The Commission shall submit a report to the European Parliament and the Council, before the end of the first year following the entry into force of this Directive, on harmonisation requirements which are not linked to the provisions of this Directive. If necessary, the Commission shall attach to this report any harmonisation proposals necessary for the effective operation of the internal market in electricity.

Justification

The aim is to establish a committee to advise the Commission on matters relating to trade in electricity in the single market. As a body made up of technicians and experts from 'independent' operators from the major European networks, and provided that transmission activities are fully separated from other electric market activities, the committee in question could be effective in providing proposals and consultation with regard to the activities of the European Commission on matters relating to the smooth functioning of the market.

Amendment 86
ARTICLE 1, PARAGRAPH 21
Article 26 (Dir. 96/92/EG)

The Commission shall review the application of this Directive and submit a report to the European Parliament and the Council, by [indicate a date] ***at the latest and by [indicate a date] at the latest***, on the experience gained and progress made in creating a complete and fully operational internal market in electricity ***in order to allow the European Parliament and the***

The Commission shall review the application of this Directive and submit a report to the European Parliament and the Council, by **1st October each year** on the experience gained and progress made in creating a complete and fully operational internal market in electricity. The report shall ***contain four sections***.

Council to consider, in due time, the possibility of provisions for further improving the internal market in electricity. In particular, the report shall examine the extent to which the unbundling and tariffication requirements of this Directive have been successful in ensuring fair and non-discriminatory access to the Community's electricity system. The report shall also examine possible necessary harmonisation requirements that are not linked to the provisions of this Directive.

1) Report on the State of Security of Supply as related to article 6a.

2) Report on market dominance and anti-competitive and predatory behaviour and diversity of market actors. This part of the report shall examine the extent to which the unbundling and tariffication requirements of this Directive have been successful in ensuring fair and non-discriminatory access to the Community's electricity system.

3) Report on progress to implementation of harmonisation and creation of a level playing field in the internal electricity market.

4) Report on the three aspects of sustainability of the market.

Justification

The Directive requires reporting by Commission on a number of issues, for bureaucratic and reasons of simplicity such reports should be co-ordinated to enable their presentation to be co-ordinated. The reports mentioned in this amendment refer to reports described in other sections of this directive and are not new reports.

Amendment 87 ARTICLE 3

Directives 90/547/EEC and 91/296/EEC are

Directive 90/547/EEC is repealed with effect

repealed with effect from 1 January 2003.

from 1 January 2003.

Justification

Follows on from Amendments 1.

Amendment 88
ARTICLE 4, PARAGRAPH 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **31 December 2002** at the latest. They shall forthwith inform the Commission thereof

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive **2 years after the date set under Article 5** at the latest. They shall forthwith inform the Commission thereof.

Justification

A reasonable delay of implementation is required to allow Member States to transpose the provisions of the directive into national law.

Above all, gas undertakings need stability and legal security. Therefore it is important to foresee a realistic delay instead of having a directive not being transposed in some Member States due to a lack of time.

Amendment 89
ANNEX 1,
Paragraphs a - f c (new) (Dir. 96/92/EC)

Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council and Council Directive 93/13/EC

(a) Member States shall ensure that final customers have a right to a contract with their electricity service provider that specifies:

The identity and address of the supplier;
Services provided, the service quality levels

Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council and Council Directive 93/13/EC:

(a) Member States shall ensure that final customers have a right to a contract with their electricity service provider that specifies:

the identity and address of the supplier;
services provided, the service quality levels

offered, as well as the time for the initial connection;

The types of maintenance service offered;

The means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

The duration of the contract, the conditions for renewal and termination of services and of the contract;

Any compensation and the refund arrangements which apply if contracted service quality levels are not met; and

The method of initiating procedures for settlement of disputes in accordance with point (f).

offered, as well as the time for the initial connection;

the types of maintenance service offered;

the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

the duration of the contract, the conditions for renewal and termination of services and of the contract;

Any compensation and the refund arrangements which apply if contracted service quality levels are not met; and

The method of initiating procedures for settlement of disputes in accordance with point (f).

Conditions shall be fair and well-known in advance. In any case, this information should be provided prior to the conclusion of the contract.

Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract.

b) Member States shall ensure that final customers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions.

c) Member States shall ensure that transparent information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of electricity services is available to the public, and particularly to final customers.

d) Member States shall ensure that electricity ***suppliers*** specify in the bills sent to each final consumer, ***the composition of***

b) Users and consumers shall ensure that final customers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions. ***Consumers shall be informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect.***

c) Member States shall ensure that transparent information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of electricity services is available to the public, and particularly to final customers.

d) Member States shall ensure that electricity ***entities supplying final consumers*** specify ***certain minimum***

the fuel mix used to generate the electricity that is consumed by the final consumers they supply. The relative costs of the different fuels used to generate a unit of electricity supplied to the final consumers shall be specified and the relative importance of each energy source with respect to the production of greenhouse gases.

e) Member States shall also implement appropriate measures to protect vulnerable *customers*.

f) Member States shall ensure that transparent, simple and inexpensive procedures are available for dealing with final customer complaints. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC.

information in the bills sent to each final consumer and all advertising and promotional materials directed at final consumers. The percentage contribution of each energy source to the commercial fuel mix for the electricity which is delivered or is intended to be delivered as well as the overall fuel mix of the company over the preceding six month period must be clearly stated. The percentage production from CHP plants should also be noted. For quantities of electricity which companies obtain via the spot market, the fuel mix which the electricity exchange is required to publish every six months shall be used as a basis for the information provided for the electricity. In addition the overall impact of this average to the production of greenhouse gases, particulate emissions (SO₂ and NO_x) and nuclear waste, must be displayed. Penalties should be imposed on companies that fail to fully disclose their electricity sources in line with the requirements of the Directive.

A certified body shall ensure complete transparency in regard to quantity and to methods of electricity generation (quality).

e) Member States shall also implement appropriate measures to protect vulnerable *consumers*.

f) Member States shall ensure that transparent, simple and inexpensive procedures are available for dealing with final customer complaints. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC.

f a) General terms and conditions of contracts shall be fair and transparent. A full choice of payment methods shall be available free of charge. They shall be given in a clear and comprehensible

language. Without prejudice to specific provisions of this Directive, Community rules on consumer protection shall apply. Directive 93/13/EC applies, and in particular, contracts of public services shall be subjected to the test of fairness. Consumers shall also be protected against unfair or misleading selling methods.

f b) If consumers are temporarily unable to settle their bill, they shall benefit from a staggering of their debt, with a date of payment being established.

f c) (fb) Contracts with household consumers with a connection capacity of less than 10 kW must offer the customer at least one type of contract without a fixed minimum price irrespective of volume.

Justification

a) Consumers have a right to a fair contract in which conditions must be fair and well known in advance. This is a very basic right which needs to be underlined as consumers must be in a position to make an informed choice between alternative suppliers.

b) Consumers have a right to a fair contract in which conditions must be fair and well known in advance. That means also that consumers should be promptly informed when relevant contractual conditions are modified. An effective right of withdrawal shall be in place, meaning that consumers are informed about their rights in that matter, but also that notice is given to consumers about the new conditions enough time in advance for them to make a proper decision.

d) See justification to amendment 43.

f a) It was the intention of Directive 93/13/EC on unfair contract terms to ensure that there should be no unfair contract terms in contracts for supply of public services. In order to guarantee the Directive's input, contracts of public services should also be subjected to a fairness test, although these contracts are regulated, not negotiated. This is all the more important as semi-private and private companies are being active (and will probably be even more active in the future) in that field.

f b) It is crucial to protect vulnerable consumers against complete disconnection. The above proposal is in line with what exists in some Member States (in France for instance in the field of electricity, Service Maintien d'Énergie).

f c) There are fixed production costs, and the inclusion of a fixed premium in tariffs makes it possible to more properly reflect such costs. Undertakings must therefore be allowed this option.

Amendment 90
ANNEX 1,
paragraph (fd) (new) (Dir. 96/92/EC)

(fd) There shall be no discrimination in the network price on the basis of quantity of electricity or method of generation. Cross-subsidisation of any kind shall be inadmissible.

Justification

To create a genuine internal market in electricity, it is vital to observe the principle of non-discrimination and to create fair market conditions. Excluding any form of cross-subsidisation is an essential condition for genuine competition.

Amendment 91
Title (new)

Directive of the European Parliament and of the Council amending Directive 98/30/EC concerning common rules for the internal market in natural gas

Justification

See amendment 1.

Amendment 92
Recital 1 a (new)

(1 a) Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas¹ has made a very important contribution

¹ OJ L 204, 21.7.1998, p. 1.

towards the creation of the internal market in natural gas.

Justification

See amendment 1.

Amendment 93
Recital 2a (new)

(2) Experience in implementing those Directives demonstrates the benefits that have begun to result from the internal markets in electricity and gas, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness in some Member States. However, as is pointed out by the EU Commission's Recent Benchmarking study, important shortcomings and possibilities for improving the functioning of the markets remain in the following areas:

- Increasing the market force, the protection and the availability of fully disclosed information to small consumer ,*
- Reducing and harmonising the tariff structures at transmission and distribution level through the adoption of ex-ante price settings and ownership unbundling.,*
- Taking concrete measures to ensure a level playing field at generation level and to reduce the risk of market domination and predatory behaviour,*
- Addressing the tendency in the market to raise the demand for electricity,*
- creating the necessary framework to ensure new energy services which are also necessary to compensate for the job losses incurred in the energy industry,*

Justification

See amendments 1 and 3.

Amendment 94
Recital 2 b (new)

(2b) The freedoms which the EC Treaty guarantees European citizens – free movement of goods, freedom to provide services and freedom of establishment – are only possible in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

Justification

It should be pointed out that, in the current situation, citizens do not fully enjoy the freedoms they are guaranteed in primary law.

Amendment 95
Recital 2 c (new)

(2c) In view of the anticipated increase in dependency as regards natural gas consumption, consideration should be given to initiatives and measures to encourage reciprocal arrangements for access to third country networks and restrict as far as possible distortions of competition caused by imports from countries not covered by Community legislation;

Justification

The Community's dependence on imports from natural gas suppliers is already high and likely to increase (from 40% to 60% over the next 20 years according to the Commission's Green Paper on security of supply). Under these circumstances, it is in the European Union's interests as far as possible to ensure effective and non-discriminatory access to natural gas production markets for all operators in the European energy industry. Extending the principles of the internal energy market (reciprocity, transparency, fair access to networks, competition) as far as possible to countries which possess raw materials, will contribute to developing producer countries and will help achieve the objectives of the internal market. Giving more European companies access to resources will increase competition in the Community.

Energy cooperation with Russia and the partnership policy pursued with the Mediterranean countries are positive examples of efforts to gradually align the legal frameworks of producer and consumer countries. Given the geographical limits on Community legislation, this alignment should be pursued through negotiations, bilateral agreements and treaties, which the Commission should include in an overall strategy, the objectives and results of which should be included in the report.

Amendment 96
Recital 2 d (new)

(2d) In view of the anticipated increase in dependency as regards natural gas consumption, consideration should be given to initiatives and measures to encourage reciprocal arrangements for access to third country networks and restrict as far as possible distortions of competition caused by imports from countries not covered by Community legislation

Justification

The Community's dependence on imports from natural gas suppliers is already high and likely to increase (from 40% to 60% over the next 20 years according to the Commission's Green Paper on security of supply). Under these circumstances, it is in the European Union's interests as far as possible to ensure effective and non-discriminatory access to natural gas production markets for all operators in the European energy industry. Extending the principles of the internal energy market (reciprocity, transparency, fair access to networks, competition) as far as possible to countries which possess raw materials, will contribute to developing producer countries and will help achieve the objectives of the internal market. Giving more European companies access to resources will increase competition in the Community.

Energy cooperation with Russia and the partnership policy pursued with the Mediterranean countries are positive examples of efforts to gradually align the legal frameworks of producer and consumer countries. Given the geographical limits on Community legislation, this alignment should be pursued through negotiations, bilateral agreements and treaties, which the Commission should include in an overall strategy, the objectives and results of which should be included in the report.

Amendment 97
Recital 3 a (new)

(3a) At its meeting in Lisbon on 23 and 24 March 2000, the European Council called for rapid work to be undertaken to complete the internal market in both electricity and gas sectors and to speed up liberalisation in these sectors with a view to achieving a fully operational internal market. The European Parliament, in its resolution of 6 July 2000 on the Commission's second report on the state of liberalisation of energy markets, requested the Commission to adopt a detailed timetable for the achievement of accurately defined objectives with a view to gradually but completely liberalising the energy market. .

Justification

This recital should be included in both the directive amending Directive 96/92/EC and the directive amending Directive 98/30/EC.

Amendment 98
Recital 4a (new)

(4a) The main obstacles in arriving at a fully operational internal market are related to issues of access to the network, pricing, different degrees of market opening between Member States, different national approaches to the internalisation of environmental costs and differing levels of government support for some

parts of the energy sector.

Justification

See justification to Amendment 3. This recital should be included in both the directive amending Directive 96/92/EC and the directive amending Directive 98/30/EC.

Amendment 99

Recital 5a (new)

(5a) In order to achieve non-discriminatory access to the network, the independence of the transmission system operator is of paramount importance. The provisions on unbundling should therefore be strengthened. In order to ensure non-discriminatory access to the distribution network, unbundling requirements for the distribution system operator should be introduced for gas distribution system operators. The maintenance and construction of the necessary network infrastructure, including interconnection capacity, are prerequisites for a stable supply situation

Justification

See Justification to Amendment 4. This recital should be included in both the directive amending Directive 96/92/EC and the directive amending Directive 98/30/EC.

Amendment 100

Recital 6a (new)

((6a) To avoid imposing a disproportionate financial and administrative burden on small distribution companies, Member States should be able, where necessary, to exempt such companies from the unbundling requirements .

Justification

See justification to Amendment 6. This recital should be included in both the directive amending Directive 96/92/EC and the directive amending Directive 98/30/EC.

Amendment 101

Recital 7a (new)

(7a) Further measures should be taken in order to ensure transparent, predictable and non-discriminatory tariffs for access to essential transportation and related infrastructure, including storage and other ancillary facilities. Those tariffs should be applicable to all system users on a non-discriminatory basis.

Justification

Follows on from Amendment 1. See also Amendment 10.

Amendment 102

Recital 8 a (new)

(8) In the light of the experience gained with the operation of Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids, measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including transit of gas and electricity across borders between Member States.

Justification

The Commission considers that cross-border trade in gas is sufficiently well-developed within the Community. Nevertheless, the criterion it uses to arrive at this verdict (trade as a quota of consumption) fails to take account of arrangements for access to transmission networks,

which are far from being transparent and competitive. Studies show that there are unwarranted differences in the transmission tariffs applied in the different countries and difficulties in defining the available capacity which system operators should make available to third parties.

Accordingly, along the lines of what has been done in the electricity market (where the Commission has proposed an appropriate regulation on cross-border exchanges), undertakings should be able to rely on a set of standard, clear and binding rules on international trade in natural gas particularly as regards the use of transmission infrastructures. This amendment is consistent with the general approach adopted by the Commission, which rightly believes that the parallel opening of the gas and electricity markets is of the utmost importance.

Amendment 103
Recital 9 a (new)

(9) The presence of independent regulatory authorities in the Member States is an important feature in guaranteeing non-discriminatory access to the network. Those authorities should at least have the competence to fix or approve the method for setting tariffs or the transmission and distribution tariffs and tariffs for access to liquefied natural gas (LNG) facilities and storage facilities, prior to their entry into force.

Justification

In the gas market storage is a key issue for the functioning of the market and security of supply. It is therefore necessary to ensure that the regulator takes control of tariffs for both LNG and other storage facilities.

Amendment 104
Recital 10 a (new)

(10a) National regulatory authorities in the Member States should be able to approve the method for setting tariffs or tariffs on the basis of a proposal by the transmission

system operator or distribution system operator(s) or LNG system operator and storage facilities, or on the basis of a proposal agreed between these operator(s) and the users of the network.

Justification

In the gas market storage is a key issue for the functioning of the market and security of supply. It is therefore necessary to ensure that the regulator takes control of tariffs for both LNG and other storage facilities.

Amendment 105
Recital 11a (new)

(11a) The economic benefits of the internal market should be available to all Community industry and commerce, including small and medium-sized enterprises, and to all Community citizens as quickly as possible for reasons of fairness and competitiveness.

Justification

See justification to Amendment 11.

Amendment 106
Recital 12 a (new)

(12a) Gas customers should be able to choose their supplier freely. Nonetheless a phased approach to completing the internal market for gas should be taken to enable industry to adjust and ensure that adequate measures and systems are in place to protect the interests of customers and ensure they have a real and effective right to choose their supplier.

Justification

See amendment 1.

Amendment 107
Recital 13a (new)

(13a) Progressive market opening towards full competition will gradually remove some differences between Member States. Transparency and certainty in the implementation of this Directive should be ensured.

Justification

Follows on from Amendment 1. This recital should be included in both the directive amending Directive 96/92/EC and the directive amending Directive 98/30/EC. See also Amendment 16.

Amendment 108
Recital 14a (new)

(14a) Directive 98/30/EC provides for access to storage as part of the gas system. In the light of the experience gained in implementing the internal market, additional measures should be taken to clarify the provisions for access to storage and other ancillary services and to reinforce the separation of the operation of transmission and distribution systems, and gas storage and LNG facilities..

Justification

Follows on from Amendment 1. See also Amendment 17.

Amendment 109
Recital 16 a (new)

(16) In the interest of security of supply, public service requirements and the environment, the supply/demand balance in individual Member States should be monitored and appropriate action taken if security of supply, public service or the environment are compromised.

Justification

Not only environmental protection but also the needs of the public service should also be mentioned.

Amendment 110
Recital 16 b (new)

(16b) On environmental protection grounds and in order to ensure a stable energy supply situation, Member States shall ensure that biogas and gas from biomass is guaranteed access to the gas network on condition that access to transmission systems and ancillary facilities for these products is fully compatible with security requirements regarding the facilities and consumers.

Justification

While the rapporteur's aim is to be supported, it should be borne in mind that biogas and gas from biomass do not have all the characteristics of natural gas. In fact, they contain impurities (mercury, heavy metals, chloride and organo-fluorine compounds) which may present dangers to natural gas users. Introducing these various gases into the transmission systems connected to storage facilities may lead to risks for consumers and environmental protection.

Amendment 111
Recital 16 c (new)

(16c) Long-term 'take-or-pay' contracts will continue to be necessary for the gas supply of Member States and should be maintained as an option for gas supply undertakings in so far as they do not undermine the objectives of this Directive

Justification

'Take-or-pay' contracts are de facto funding instruments for exploiting gas fields and constructing pipelines. They play an important role from the point of view of security of investments and should be mentioned.

Amendment 112
Recital 17 a (new)

(17) Member States should ensure that all customers enjoy the right to be supplied with electricity and - where connected - gas of a specified quality at affordable, easily and clearly comparable, transparent and reasonable prices. In order to ensure the maintenance of the highest possible standards of public service in the Community, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards

Justification

Electricity and gas customers need to be able to compare prices offered by the different

providers easily and clearly. Tarification also has to be transparent.

Amendment 113
Recital 19 a (new)

(19a) Directive 98/30/EC should therefore be amended accordingly.

Justification

See amendment 1. See also Amendment 21.

Amendment 114
Recital 20 a (new)

(20a) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the creation of a fully operational internal gas market, in which fair competition prevails, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

Justification

See amendment 1. See also Amendment 22.

Amendment 115
Recital 21 a (new)

(21a) To ensure homogeneity in the treatment of access to the gas networks,

also in the case of transit, Directive 91/296/EEC should be repealed.

Justification

Follows on from Amendment 1. See also Amendment 23.

Amendment 116
ARTICLE 2
Title

Amendments to Directive 98/92/EG

Delete

Justification

Follows on from Amendments 1 and 86b

Amendment 117
ARTICLE 2, PARAGRAPH -2
Recital 11 (Dir 98/30/EC)

Recital 11 is amended as follows:
"Whereas, as a general rule, undertakings in the natural gas sector and undertakings producing biogas and gas from biomass should be able to operate without being discriminated against."

Justification

It is a declared objective of the European Union to increase the proportion of renewable sources of energy. However, the framework conditions for non-discriminatory access to networks must also be guaranteed.

Amendment 118
ARTICLE 2, PARAGRAPH -1
Article 1 (Dir 98/30/EG)

Article 1 to read as follows:

This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas, biogas and gas from biomass. It lays down the rules relating to the organisation and functioning of the gas sector, including liquefied natural gas (LNG), access to the market, the operation of systems, and the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas and biogas.

Justification

It is a declared objective of the European Union to increase the proportion of renewable sources of energy. However, the framework conditions for non-discriminatory access to networks must also be guaranteed.

Amendment 119
ARTICLE 2 PARAGRAPH 1 Letter (-a) (new)
Article 2 point 9 (Directive 98/30/EG)

(-a) Point 9 is amended as follows::

9. ‘Storage facility’ means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, excluding the portion used for production operations and any LNG facility;

Justification

The draft Directive lays down different provisions for LNG storage, to which regulated TPA

shall be granted, and other storage, which is subject to either negotiated or regulated TPA. There seems to be no obvious reason why LNG storage should be treated any differently than other forms of storage under the Directive. At the same time, as for LNG importation terminals, a requirement for compulsory regulated access (and tariff determination) may discourage new investment in LNG facilities which will play a major role in ensuring the EU's security of gas supplies. It is therefore proposed to amend the definition of storage to include references to LNG storage whilst omitting other references to the regulation of LNG facilities (redefined to mean importation terminals only). A distinction should be made between gas supply and provision, on the one hand, and network security and safety on the other hand.

Amendment 120
ARTICLE 2 PARAGRAPH 1 LETTER (-aa) (new)
Article 2 Point 11 (Directive 98/30/EG)

(-aa) Point 11 is amended as follows::

11. 'LNG facility' means a terminal which is used for the liquefaction of natural gas or the importation and re-gasification of LNG;

Justification

The draft Directive lays down different provisions for LNG storage, to which regulated TPA shall be granted, and other storage, which is subject to either negotiated or regulated TPA. There seems to be no obvious reason why LNG storage should be treated any differently than other forms of storage under the Directive.

At the same time, as for LNG importation terminals, a requirement for compulsory regulated access (and tariff determination) may discourage new investment in LNG facilities which will play a major role in ensuring the EU's security of gas supplies. It is therefore proposed to amend the definition of storage to include references to LNG storage whilst omitting other references to the regulation of LNG facilities (redefined to mean importation terminals only).

Amendment 121
ARTICLE 2 PARAGRAPH 1 LETTER -a) (new)
Article 2 Point 12 (Directive 98/30/EG)

(-a) Point 12 is replaced by the following::

12. "System" shall include transmission networks, distribution networks, LNG

facilities and ancillary facilities and services including storage facilities and services and equivalent flexibility instruments, load balancing and blending, owned and/or operated by a natural gas undertaking, including facilities supplying ancillary services other than storage and those of related undertakings necessary for providing access to transmission and distribution.

Justification

The combination of two amendments (Nos 121 and 122) makes it possible to include storage services and other ancillary services in the definition of 'system'.

Amendment 122
ARTICLE 2 PARAGRAPH 1 LETTER a
Article 2 Point 12 a (Directive 98/30/EG)

a) the following point 12a is inserted: ***Deleted***

"12a. 'ancillary services' shall mean all services necessary for the operation of transmission and/or distribution networks and/or LNG facilities, including storage facilities and equivalent flexibility instruments, load balancing and blending;"

Justification

The combination of two amendments makes it possible to include storage services and other ancillary services in the definition of 'system'.

Amendment 123
ARTICLE 2 PARAGRAPH 1 LETTER (ba (new))
Article 2 Point 25 (Directive 98/30/EG)
(ba) Point 25 is replaced by the following:

25. 'security of supply' means both security of supply and provision, and technical safety.

Justification

A distinction should be made between gas supply and provision, on the one hand, and network security and safety on the other hand.

Amendment 124

ARTICLE 2 PARAGRAPH 1 LETTER b a (new)

Article 2 Point 25 a (new) (Directive 98/30/EG)

(ba) The following point 25a is inserted:

25a. 'Flexibility instrument' shall mean an instrument which serves to adjust the gas supply to variations in customer requirements such as access to stocks or flexibility in the LNG chain.

Justification

The Commission introduced the term 'flexibility instrument' in its proposal but did not define it.

Amendment 125

ARTICLE 1, PARAGRAPH 2

Article 3, Paragraph 1 and 2 (Dir. 96/92/EC)

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, ***natural gas undertakings*** are operated in accordance with the principles of this Directive, with a view to achieving a competitive market in ***natural gas***. Member States shall not discriminate between these undertakings as regards either rights or obligations.

2. Having regard to the relevant provisions of the Treaty, in particular Article 86, Member States may impose on

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, ***gas undertakings*** are operated in accordance with the principles of this Directive, with a view to achieving a competitive market ***and a secure and environmentally sustainable supply and retail in gas***, and shall not discriminate between these undertakings as regards either rights or obligations

2. Having regard to the relevant provisions of the Treaty, in particular Article 86, Member States may impose on undertakings

undertakings operating in the *natural gas* sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and *to consumer and* environmental protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. As a means of carrying out public service obligations in relation to security of supply, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

operating in the gas sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and to environmental protection (*including climate change*) and *energy efficiency and to research and development* . Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. *Public service obligations should not unduly restrict competition between gas enterprises* . As a means of carrying out public service obligations in relation to security of supply, *energy efficiency in generation, transmission and end use and the promotion and use of renewable energy sources*, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system. *National regulatory authorities shall monitor the evolution of retail tariffs, in particular in relation to national consumer prices, income and the cost of living. Proper consultation of consumer associations and other relevant undertakings shall be conducted in that matter. Member States may, in the light of national conditions, require designated undertakings not to charge domestic consumers above certain price caps. Once a sufficient level of competition have been reached, all price caps should be removed.*

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Justification

See justification to Amendment 41.

Or. en

Amendment 126
ARTICLE 2 PARAGRAPH 2
Article 3 Paragraph 3 (Directive 98/30/EG)

3. Member States shall take appropriate measures to protect *final* customers and to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. ***These measures shall include, in particular, those set out in the Annex.***

3. Member States shall take appropriate measures to protect *domestic* customers and to ensure high levels of consumer protection, particularly with respect to transparency regarding *general* contractual terms and conditions, general information and dispute settlement mechanisms. ***Member States shall ensure that the individual customer is in principle able to switch to a new supplier.***

Justification

The transparency requirement is to be welcomed for consumers in need of protection (domestic customers). However, contracts are in part subject to confidentiality and, therefore, only the general contractual terms and conditions rather than individual aspects of the contract should be taken into account here.

Amendment 127
ARTICLE 2 PARAGRAPH 3
Article 3 a Paragraph 1 (Dir 98/30/EG)

1. Member States shall, every two years, notify the Commission of all measures adopted to fulfil public service obligations, whether or not such measures require a derogation from the provisions of this Directive. This notification shall relate, *inter alia*, to measures regarding environmental protection, security of supply, protection of customers, including final customers, social and regional cohesion, and the maintenance of service standards.

1. Member States shall, every two years, notify the Commission of all measures adopted to fulfil public service obligations, ***and the effects of these measures on national and international competition in gas***, whether or not such measures require a derogation from the provisions of this Directive. This notification shall relate, *inter alia*, to measures regarding environmental protection, security of supply, protection of customers, including final customers, social and regional cohesion, and the maintenance of service standards.

Justification

The obligation to provide public services is a fundamental principle. However, extending this principle must not be a pretext for introducing factors which distort competition.

Amendment 128
ARTICLE 2 PARAGRAPH 3
Article 3 a Paragraph 2 (Dir 98/30/EG)

2. The Commission shall publish, every two years, a report analysing the different measures taken in the Member States to meet high public service standards, together with an examination of the effectiveness of those measures. Where appropriate, the Commission shall make recommendations as to measures to be taken at national level to achieve high public service standards.

2. The Commission shall publish, every two years, a report analysing the different measures taken in the Member States to meet high public service standards, together with an examination of the effectiveness of those measures, ***in particular regarding repercussions for competition in the gas market.*** Where appropriate, the Commission shall make recommendations as to measures to be taken at national level to achieve high public service standards ***or measures intended to prevent market foreclosure.***

Justification

See justification to Amendment 127.

Amendment 129
ARTICLE 2 PARAGRAPH 3
Article 3 a Paragraph 2 a (new) (Directive 98/30/EG)

2a. Consumers shall also be informed about their rights regarding universal services.

Justification

Self-explanatory.

Amendment 130
ARTICLE 1, PARAGRAPH 7
Article 6 a, Paragraph 1, (Dir. 96/92/EG)

1. Member States shall designate a body, which may be the independent regulatory authority referred to in Article 22, to monitor security of supply issues. This body shall monitor, in particular, the supply/demand balance on the national market, the level of expected future demand and envisaged additional capacity under planning or construction, and the ***level of competition on the market***. This body shall publish, by 31 July each year at the latest a report outlining its findings on these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.

1. Member States shall designate a body, which may be the independent regulatory authority referred to in Article 22, to monitor security of supply issues. This body shall monitor, in particular the supply/demand balance on the national market, the level of expected future demand and envisaged additional capacity under planning or construction and the ***extent to which energy networks are in working order and their maintenance and assess the potential transmission capacity***. This body shall publish, by 31 July each year at the latest a report outlining its findings on all these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.

This body shall contribute to the development of the Internal Market for gas and to the promotion of harmonisation and the creation of a level playing field for gas at the European level by co-operating with each other and with the Commission in a transparent manner to ensure the consistent application, in all Member States, of the provisions of this Directive for gas.

To this end, the national or regional regulatory authorities shall, in particular, seek to agree on the types of instruments and remedies best suited to address particular types of situations in the European marketplace for gas.

Where the Commission issues recommendations to Member States on the harmonised application of the provisions in this Directive in order to further the achievement of the objectives set out in this directive, Member States shall ensure that national regulatory authorities take the utmost account of those recommendations

in carrying out their tasks.

Justification

The objective is to complete the internal market for gas in the EU. Each Member State has a body with a supervisory function. In order to achieve a level playing field within Europe, procedures should be established which take account of national market aspects as well as ensuring the completion of the EU internal market. Close cooperation is therefore necessary between the Commission and national supervisory bodies. See also justification to Amendment 53.

Or. en

Amendment 131

ARTICLE 2 PARAGRAPH 4

Article 4 a Paragraph 1 a (new) (Directive 98/30/EG)

(1a) Cooperation will take place, inter alia, in a Committee or in a group comprising European regulators for the gas sector. The Commission shall set up a European Regulators Group for the European gas market which would constitute a suitable mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for gas, and to seek to achieve consistent application, in all Member States

Justification

The secretariat of this Committee or group must be taken care of by the European Commission.

Amendment 132
ARTICLE 2 PARAGRAPH 4
Article 4 a Paragraph 2 (Directive 98/30/EG)

(2) On the basis of the report referred to in paragraph 1, the Commission shall forward a Communication to the European Parliament and the Council each year examining issues relating to security of supply of natural gas in the Community, and in particular the existing and projected balance between demand and supply. Where appropriate, the Commission shall issue recommendations

(2) On the basis of the report referred to in paragraph 1, the Commission shall forward a Communication to the European Parliament and the Council each year examining issues relating to ***system capacity levels and*** security of supply of natural gas in the Community, and in particular the existing and projected balance between demand and supply. Where appropriate, the Commission shall issue recommendations.

Justification

Whilst avoiding prescriptive investment obligations and bureaucratic monitoring provisions, it is essential for security of supply that liberalised markets are set within a framework of clearly defined and mandatory security output standards for the provision of gas infrastructure. It should be left to markets to deliver such standards flexibly and efficiently. The level of interdependence between networks in an integrated European gas market warrants the inclusion, in the gas directive, of an obligation on all Member State governments to establish such security standards..

Amendment 133
ARTICLE 2 PARAGRAPH 5
Article 7, Paragraph 1

1. ***Member States shall designate or shall require undertakings which own transmission, storage or LNG facilities to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more system operators to be responsible for operating, ensuring the maintenance of, and developing the transmission, storage and LNG facilities in a given area and their interconnections with other systems, in order to guarantee security of supply.***

1. ***Each gas undertaking which owns transmission, storage or LNG facilities shall be responsible in its capacity as a system operator for operating, ensuring the maintenance of, and developing its facilities and for its interconnections with other systems, in order to contribute to security of supply.***

Justification

In a market economy undertakings themselves are responsible for carrying out these tasks.

Amendment 134
ARTICLE 2 PARAGRAPH 5
ARTICLE 7 Paragraph 2 (Dir 98/30/EG)

(2) Each transmission, storage and/or LNG system operator:
a) shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment;
b) shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings;
c) shall provide any other transmission undertaking, any other storage undertaking, any other LNG undertaking and/or any distribution undertaking, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system

(2) Each transmission, storage and/or LNG system operator ***shall therefore:***
a) shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment;
b) not discriminate between system users or classes of system users, particularly in favour of its related undertakings,
c) provide any other transmission undertaking, any other storage undertaking, any other LNG undertaking and/or any distribution undertaking, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.

Justification

Follows on from the justification to Amendment 133.

Amendment 135
ARTICLE 2 PARAGRAPH 5
Article 7 Paragraph 3 (Dir 98/30/EG)

(3) Rules for balancing the gas system

(3) Rules for balancing the gas system

adopted by transmission and distribution system operators shall be transparent and non-discriminatory. Tariffs and terms and conditions for the provision of such services by system operators shall be established in a non-discriminatory way reflecting prevailing market prices and **shall be fixed or approved by the national regulatory authority** prior to their entry into force.

adopted by transmission and distribution system operators shall be transparent and non-discriminatory. Tariffs and terms and conditions for the provision of such services by system operators shall be **published** in a non-discriminatory way reflecting prevailing market prices. **These tariffs and terms or the method for fixing them shall be approved by one or more of the authorities referred to in Article 22, paragraph 1, designated by the Member States in accordance with the procedure laid down in Article 22, paragraph 1** prior to their entry into force.

Justification

Follows on from the justification to Amendment to Article 22, Paragraph 1.

Amendment 136
ARTICLE 2 PARAGRAPH 6
Article 7 a Paragraph 1 (Dir 98/30/EG)

(1) Member States may require transmission system operators to meet minimum levels of investment for the maintenance and development of the transmission system, including interconnection capacity.

Deleted

Justification

.Investments imposed on private undertakings by the State are unusual in a market economy and actually impossible in some Member States. Functioning framework conditions are more important.

Amendment 137
ARTICLE 2 PARAGRAPH 6
Article 7 a Paragraph 2 Letter c (Directive 98/30/EG)

(c) The transmission system operator must ***exercise full control over all*** assets necessary to maintain and develop the ***network***;

(c) The transmission system operator must ***be de jure and de facto independent of the gas supply undertaking in regard to access to*** the assets necessary to maintain and develop the ***networks***

Justification

The Commission's wording is too restrictive and excludes innovative forms of transmission system management.

Amendment 138

ARTICLE 2 PARAGRAPH 6

Article 7a Paragraph 2 Letter d (Directive 98/30/EG)

d) the transmission system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer appointed by and reporting to the President/Chief Executive of the integrated natural gas undertaking to which the transmission system operator belongs. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority and published.

Deleted.

Justification

The text already contains provisions to combat discriminatory behaviour.

Amendment 139

ARTICLE 2 PARAGRAPH 7

Article 10 Paragraph 1 (Directive 98/30/EG)

1. In Article 10, paragraph 1 is replaced by the following:

1. Each natural gas undertaking which owns distribution facilities shall be responsible in its capacity as system operator for operating, ensuring the maintenance of, and developing under economic conditions its facilities, with due regard to the environment.

Justification

This amendment is introduced to offset the lack of any proposed amendment by the Commission, which failed to define the role of distribution system operator.

Amendment 140
ARTICLE 2 PARAGRAPH 7
Article 10 Paragraph 3 (Directive 98/30/EG)

7. Article 10, paragraph 3 is replaced by the following:

3. Each distribution undertaking shall provide any other distribution undertaking, and/or any transmission and/or storage undertaking with sufficient information to ensure that the transport of natural gas/biogas may take place in a manner compatible with the secure and efficient operation of the interconnected system:

Justification

With the opening of the markets, biogas must be guaranteed access to the system.

Amendment 141
ARTICLE 2 PARAGRAPH 7
Article 10 Paragraph 4 Letter c (Directive 98/30/EG)

c) the distribution system operator must exercise full control over all assets necessary to maintain and develop the network;;

(Does not affect the English version.)

Justification

The proposed procedure is an unnecessarily cumbersome and bureaucratic way of dealing with the matter. The benefit to be derived from it would not match the costs.

Amendment of the Directive should not serve to limit the forms and ways of financing an operator's business. The operator should be in a position to control the assets that will be needed to maintain and develop a network. On the other hand, ownership of a network should not be deemed to derive solely from the operator's activities. On the contrary, it should also be permissible to raise capital by leasing the network and through transfers to reserves.

Amendment 142

ARTICLE 2 PARAGRAPH 7 b

Article 10 Paragraph 4 Letter d (Directive 98/30/EG)

d)the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer appointed by and reporting to the President/Chief Executive of the integrated natural gas undertaking to which the distribution system operator belongs. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority and published.

Deleted.

Justification

The text already contains provisions to combat discriminatory conduct.

Amendment 143

ARTICLE 14, Paragraph 1 (Dir 98/30/EG)

1. Member States shall ensure the implementation of a system of third party

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access to the transmission and distribution system and LNG facilities based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. These tariffs shall be approved prior to their entry into force by a national regulatory authority established in conformity with Article 22.

access to the transmission and distribution system and LNG facilities based on published tariffs ***or on published general terms and conditions*** applicable to all eligible customers and applied objectively and without discrimination between system users. ***Member States shall ensure that the tariffs or the factors on which they are based and the method for setting tariffs are approved prior to their entry into force by authorities established in conformity with Article 22(1), upon application or ex officio.***

Justification

The obligations contained in the Commission draft must be set out in the Directive. However, the organisational aspect should be left to the Member States. Depending on the structure of the State, these tasks may also be undertaken in a decentralised manner..

Amendment 144

ARTICLE 2 PARAGRAPH 10 a (new)

Article 14 a (new) (Directive 98/30/EG)

Article 14 a

1. The Commission shall undertake to submit to the European Parliament and the Council, by the date of entry into force of this directive, a proposal for a regulation on cross-border exchanges in natural gas.

2. The aim of the regulation shall be to ensure that trade in natural gas across the European Union's interconnected network is carried on under conditions of security, fair rules of access, non-discrimination between network users and transparency both in the assessment of available capacity on the transmission network and in the criteria for allocating such capacity to operators wishing to use it.

3. The objectives referred to in paragraph 2 shall be pursued through the gradual standardisation of the rules laid down in

each Member State on transit and access to national networks

4. To achieve the objective of the regulation, the Member States shall ensure, in cooperation with the Commission, the closest possible coordination between national system operators..

5. By means of verifiable and transparent methods, transmission systems operators shall determine the criteria for defining available capacity. These criteria shall be submitted for approval each year to the regulatory authority or authorities referred to in Article 22.

The regulation shall provide for a tariff system for transit on the interconnected network that avoids the phenomenon of multiple payments for access by various Member States ('pancaking'); the tariffs must be related to the cost of the facilities and services used.

Justification

The Commission considers that cross-border trade in gas is sufficiently well-developed within the Community. Nevertheless, the criterion it uses to arrive at this verdict (trade as a quota of consumption) fails to take account of arrangements for access to transport networks, which are far from being transparent and competitive. Studies show that there are unwarranted differences in the transport tariffs applied in the different countries and difficulties in defining the available capacity which system operators should make available to third parties.

Accordingly, along the lines of what has been done in the electricity market (where the Commission has proposed an appropriate regulation on cross-border exchanges), undertakings should be able to rely on a set of standard, clear and binding rules on international trade in natural gas, particularly as regards the use of transport infrastructures. This amendments is consistent with the general approach adopted by the Commission, which rightly believes that the parallel opening of the gas and electricity markets is of the utmost importance..

Amendment 145
ARTICLE 2 PARAGRAPH 10
Article 15 Paragraph 3a (new) (Directive 98/30/EG)

(3a) Member States shall take the necessary measures to enable natural gas undertakings to make flexibility instruments available to customers and to their supply undertakings provided this is necessary for technical and economic reasons in order to offer efficient access to the network.

Justification

See Amendment 124; otherwise self-explanatory.

Amendment 146

ARTICLE 2 PARAGRAPH 11 a (new)

Article 17 Paragraph 2 a (new) (Directive 98/30/EG)

11a. Article 17, paragraph 2 a (new) should read as follows:

(2a) Access may be refused only in the cases listed in paragraph 1. Member States shall ensure that, within the safety limits of the system, the full available capacity of the networks and, where necessary, of the storage facilities, is made accessible to system users..

For that purpose, the authorities referred to in Article 22 shall request transmission system and storage facility operators to notify them of available capacity on a regular basis and whenever additional capacity becomes available. Information on available capacity shall be published

Justification

This provision will guarantee optimum use of transmission and storage resources and prevent systems and storage facility operators from artificially leaving transmission and storage infrastructures wholly or partially unused.

Amendment 147
ARTICLE 2, PARAGRAPH 12
Article 18, paragraph 2 (Dir. 98/30/EC)

2. Member States shall ensure that all customers are free to purchase gas from the supplier of their choice and shall have the rights of eligible customers for third party access in order to execute such supplies in accordance with Articles 14 and 15 from 1 January 2005 at the latest.

2. Member States shall ensure that all customers are free to purchase gas from the supplier of their choice and shall have the rights of eligible customers for third party access in order to execute such supplies in accordance with Articles 14 and 15 from 1 January 2005 at the latest. ***Member States shall ensure that at least a proportion of domestic customers are free to purchase gas from the supplier of their choice from 1 July 2004.***

Justification

To ensure that the end date for full market opening is met and any technical issues are resolved, all Member States should open at least part of their household market by July 2004.

Amendment 148
ARTICLE 2, PARAGRAPH 12
Article 19 (Dir. 98/30/EC)

1. To avoid imbalance in the opening of gas markets:

Delete

(a) contracts for the supply of gas with an eligible customer in the system of another Member State shall not be prohibited if the customer is considered as eligible in both systems involved;

(b) in cases where transactions as described in subparagraph (a) are refused because the customer is eligible in only one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested gas supply, at the request of the Member State where the eligible customer is located.

Justification

The proposed reciprocity clause could be abused as an instrument of market foreclosure. Instead of this, the aim should be the swiftest possible opening of the market in all Member States.

Amendment 149

Article 22 Paragraph 1 (Dir. 98/30/EC)

1. Member States shall ***establish national regulatory authorities. These authorities shall*** be wholly independent of interests of the electricity industry. They shall at least have the sole responsibility:

(a) to fix or approve terms and conditions for connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities;

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

1. Member States shall ***designate one or more competent bodies as regulatory authorities. They shall in addition have the highest possible degree of independence from the Governments of Member States and they must*** be wholly independent of interests of the gas industry. ***They shall have responsibility to monitor the market continuously, with particular regard to the level of competition and to establish a level playing field in the gas market.*** They shall at least have the sole responsibility:

(a) to fix or approve, ***prior to their application,*** terms and conditions for connection and access to national networks, including transmission and distribution tariffs ***or benchmarking tariffs*** and terms, conditions and tariffs ***or benchmarking tariffs*** for access to LNG facilities;

(a a) to supervise the unbundling of accounts and to take further measures to ensure there are no cross-subsidies between: transmission and distribution activities and transmission, distribution and trading/supply and retail activities ;
(a b) to fix or approve prior to their applications terms and conditions for the provision of balancing services.

(b) to ***ensure that there are non-discriminatory and pro-competition processes for access,*** management and allocation of interconnection capacity, in conjunction with the national regulatory authority or authorities of those Member

(c) to **fix or approve any mechanisms** to deal with congested capacity within the national gas system;

(d) to ensure the respect of the requirements set out in Article 3(3) and (4).

States with which interconnection exists;

(c) to **ensure that there are non-discriminatory and pro-competitive processes** to deal with congested capacity within the national gas system;

(d) to ensure the respect of the requirements set out in Article 3(3) and (4).

(d a) to review the terms and conditions and the availability of the flexibility on offer;

(d b) to approve and establish the binding nature of the procedures for calculating transmission and distribution tariffs, the compensating payments and the rules specified in Article 7(3).

(d c) to observe and report on the market developments in terms of concentration and advise relevant national authorities entrusted with the control of mergers and concentrations of proposed ownership changes in industry.

Justification

The regulation of energy markets must not become the subject of a regulatory dispute. Concrete economic interests are at stake; the content of the regulatory function, its binding nature and the legal claim to enforce compliance are more important than the question of how these rules come about and the nature of the authority which guarantees and monitors compliance. See also the justification to Amendment 75..

Amendment 150
ARTICLE 2 PARAGRAPH 13
Article 22 Paragraph 1 c (new) (Directive 98/30/EG)

1c. Member States shall take measures to ensure that regulatory authorities referred to in paragraph 1 are able to carry out their duties referred to in paragraph 1-4 in an efficient and expeditious manner.

Justification

See justification to the Amendment to Article 22 Paragraph 1.

Amendment 151
ARTICLE 2, PARAGRAPH 13

Article 22 Paragraph 2, 2 a (new) 2 b (new) (Dir. 98/30/EC)

2. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

2. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory *or anti-competitive* behaviour. These mechanisms, *including annual assessments by the regulator* shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

2a. Member States shall authorise the competent authorities to oblige the operators of a transmission or distribution network, where appropriate, to amend the terms and conditions, rules and tariffs specified in paragraph 1 within the context of the framework which has been fixed or approved and are applied in a non-discriminatory manner.

2b. A complaint made against the operator of a transmission or distribution network lodged with the competent authorities and based on the criteria set out in paragraph 1 must be the subject of a binding decision within a period of two months.

Justification

See Justification to Amendment 149 and Amendment 79.

Amendment 152

ARTICLE 2 PARAGRAPH 13

Article 22 Paragraph 3 a (new) (Directive 98/30/EG)

3a. Members States shall ensure that regulatory authorities have the power to require the release of gas or gas transportation capacity from long-term contracts at market prices where in the view of the regulatory authority this is necessary for the development of sustainable competition

Justification

Where energy supplies or transportation are reserved under long-term agreements this might be a barrier to competition.

Amendment 153

ARTICLE 2, PARAGRAPH 14

Article 28, paragraphs 1a + b (new) (Dir. 98/30/EC)

1a. The report shall also assess the progress achieved with regard to bilateral relations with third countries which produce and export natural gas to encourage reciprocity as regards conditions of access to resources, production facilities and natural gas transmission infrastructures, in order to increase competition both within the systems of these countries and within the Community;

1b. Finally, the report shall assess the effects on competition among Community undertakings of changes in the rules governing access to the networks of third countries which produce and export natural gas.

Justification

The Community's dependence on imports from natural gas suppliers is already high and likely to increase (from 40% to 60% over the next 20 years according to the Commission's Green Paper on security of supply). Under these circumstances, it is in the European Union's interests as far as possible to ensure effective and non-discriminatory access to natural gas production markets for all operators in the European energy industry. Extending the principles of the internal energy market (reciprocity, transparency, fair access to networks, competition) as far as possible to countries which possess raw materials, will contribute to developing producer countries and will help achieve the objectives of the internal market. Giving more European companies access to resources will increase competition in the Community.

Energy cooperation with Russia and the partnership policy pursued with the Mediterranean countries are positive examples of efforts to gradually align the legal frameworks of producer and consumer countries. Given the geographical limits on Community legislation, this alignment should be pursued through negotiations, bilateral agreements and treaties, which the Commission should include in an overall strategy, the objectives and results of which should be included in the report.

Amendment 154
Article 3 a (new)

Directive 91/296/EEC is repealed with effect from 1 January 2003.

Justification

Follows on from amendment 1.

Amendment 155
Article 4 a (new)

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Justification

A reasonable delay of implementation is required to allow Member States to transpose the provisions of the directive into national law.

Above all, gas undertakings need stability and legal security. Therefore it is important to foresee a realistic delay instead of having a directive not being transposed in some Member States due to a lack of time..

As follows on from Amendment 1, this recital should be included in both the directive amending Directive 96/92/EC and the directive amending Directive 98/30/EC. See also Amendment 88.

Amendment 156
ARTICLE 5 a (new)

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

Justification

As follows from Amendment 1, this recital should be included in both the directive amending Directive 96/92/EC and the directive amending Directive 98/30/EC. See also Amendment 88..

Amendment 157
ARTICLE 6 a (new)

This Directive is addressed to the Member States..

Justification

As follows from Amendment 1, this recital should be included in both the directive amending Directive 96/92/EC and the directive amending Directive 98/30/EC. See also Amendment 88..

Amendment 158
Annex II, point (a) (Dir. 98/30/EC)

(a) Member States shall ensure that final customers have a right to a contract with their gas service provider that specifies:

- the identity and address of the supplier;
- services provided, the service quality levels offered, as well as the time for the initial connection;
- the types of maintenance service offered;
- the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

(a) Member States shall ensure that final customers have a right to a contract with their gas service provider that specifies:

- the identity and address of the supplier;
- services provided, the service quality levels offered, as well as the time for the initial connection;
- the types of maintenance service offered;
- the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

- the duration of the contract, the conditions for renewal and termination of services and of the contract;
- Any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
- The method of initiating procedures for settlement of disputes in accordance with point (e);

- the duration of the contract, the conditions for renewal and termination of services and of the contract;
- Any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
- The method of initiating procedures for settlement of disputes in accordance with point (e).

Conditions shall be fair and well-known in advance. In any case, this information should be provided prior to the conclusion of the contract.

Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract.

Justification

Consumers have a right to a fair contract in which conditions must be fair and well known in advance. This is a very basic right which needs to be underlined as consumers must be in a position to make an informed choice between alternative suppliers.

Amendment 159

Annex II, point (b) (Dir. 98/30/EC)

(b) ***Final customers*** shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions.

(b) ***Users and household*** consumers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions. ***Consumers shall be informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect.***

Justification

Consumers have a right to a fair contract in which conditions must be fair and well known in advance. That means also that consumers should be promptly informed when relevant contractual conditions are modified. An effective right of withdrawal shall be in place, meaning that consumers are informed about their rights in that matter, but also that notice is given to consumers about the new conditions enough time in advance for them to make a proper decision.

Amendment 160
Annex II Letter e a (new) (Directive 98/30/EG)
Annex II, point (ea) (new) (Dir. 98/30/EC)

(ea) General terms and conditions of contracts shall be fair and transparent. They shall be given in a clear and comprehensible language. Without prejudice to specific provisions of this Directive, Community rules on consumer protection shall apply. Directive 93/13/EC applies, and in particular, contracts of public services shall be subjected to the test of fairness. Consumers shall also be protected against unfair or misleading selling methods.

Justification

Fairness and transparency in contracts and clear and comprehensible language must be ensured. Similarly, the applicability of Community rules on consumer protection must be guaranteed.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas (COM(2001) 125 – C5-0184/2001 – 2001/0077(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 125¹),
- having regard to Article 251(2), Article 47(2), Article 55 and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0184/2001),
- having regard to Rule 67 of its Rules of Procedure,
- having regard to the report of the Committee on Industry, External Trade, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on the Environment, Public Health and Consumer Policy (A5-0077/2002),

1. Approves the Commission proposal as amended;

1a. Calls on the Commission and the Council to consider the amendments to Directive 96/92/EC concerning common rules for the internal market in electricity and Directive 98/30/EC concerning common rules for the internal market in natural gas in two separate directives, and to incorporate the amendments adopted by Parliament correspondingly into each;

2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 240, 2.5.2001, p. 60.