Annex B


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DIRECTIVE 96/92/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 December 1996 concerning common rules for the internal market in electricity

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3),

(1) Whereas it is important to adopt measures to ensure the smooth running of the internal market; whereas the internal market is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

(2) Whereas the completion of a competitive electricity market is an important step towards completion of the internal energy market;

(3) Whereas the provisions of this Directive should not affect the full application of the Treaty, in particular the provisions concerning the internal market and competition;

(4) Whereas establishment of the internal market in electricity is particularly important in order to increase efficiency in the production, transmission and distribution of this product, while reinforcing security of supply and the competitiveness of the European economy and respecting environmental protection;

(5) Whereas the internal market in electricity needs to be established gradually, in order to enable the industry to adjust in a flexible and ordered manner to its new environment and to take account of the different ways in which electricity systems are organized at present;

(6) Whereas the establishment of the internal market in the electricity sector must favour the interconnection and interoperability of systems;


(8) Whereas it is now necessary to take further measures with a view to establishing the internal market in electricity;

(9) Whereas, in the internal market, electricity undertakings must be able to operate, without prejudice to compliance with public service obligations, with a view to achieving a competitive market in electricity;

(10) Whereas Member States, because of the structural differences in the Member States, currently have different systems for regulating the electricity sector;

(11) Whereas, in accordance with the principle of subsidiarity, general principles providing for a framework must be established at Community level, but their detailed implementation should be left to Member States,
thus allowing each Member State to choose the regime which corresponds best to its particular situation;

(12) Whereas, whatever the nature of the prevailing market organization, access to the system must be open in accordance with this Directive and must lead to equivalent economic results in the States and hence to a directly comparable level of opening-up of markets and to a directly comparable degree of access to electricity markets;

(13) Whereas for some Member States the imposition of public service obligations may be necessary to ensure security of supply and consumer and environmental protection, which, in their view, free competition, left to itself, cannot necessarily guarantee;

(14) Whereas long-term planning may be one means of carrying out those public service obligations;

(15) Whereas the Treaty lays down specific rules with regard to restrictions on the free movement of goods and on competition;

(16) Whereas Article 90 (1) of the Treaty, in particular, obliges the Member States to respect these rules with regard to public undertakings and undertakings which have been granted special or exclusive rights;

(17) Whereas Article 90 (2) of the Treaty subjects undertakings entrusted with the operation of services of general economic interest to these rules, under specific conditions;

(18) Whereas the implementation of this Directive will have an impact on the activities of such undertakings;

(19) Whereas the Member States, when imposing public service obligations on the undertakings of the electricity sector, must therefore respect the relevant rules of the Treaty as interpreted by the Court of Justice;

(20) Whereas, in establishing the internal market in electricity, full account should be taken of the Community objective of economic and social cohesion, particularly in sectors such as the infrastructures, national or intra-Community, which are used for the transmission of electricity;

(21) Whereas Decision No 1254/96/EC of the European Parliament and of the Council of 5 June 1996 laying down a series of guidelines for trans-European energy networks (6) has contributed to the development of integrated infrastructures for the transmission of electricity;

(22) Whereas it is therefore necessary to establish common rules for the production of electricity and the operation of electricity transmission and distribution systems;

(23) Whereas there are two systems which may be applied for opening up the production market, an authorization procedure or a tendering procedure, and these must operate in accordance with objective, transparent and non-discriminatory criteria;

(24) Whereas the position of autoproducers and independent producers needs to be taken into consideration within this framework;

(25) Whereas each transmission system must be subject to central management and control in order to ensure the security, reliability and efficiency of the system in the interests of producers and their customers; whereas a transmission system operator should therefore be designated and entrusted with the operation, maintenance, and, if necessary, development of the system; whereas the transmission system operator must behave in an objective, transparent and non-discriminatory manner;

(26) Whereas the technical rules for the operation of transmission systems and direct lines must be transparent and must ensure interoperability;

(27) Whereas objective and non-discriminatory criteria must be established for the dispatching of power stations;

(28) Whereas, for reasons of environmental protection, priority may be given to the production of electricity from renewable sources;

(29) Whereas, at the distribution level, customers located in a given area may be granted supply rights and a manager must be designated to manage, maintain and, if necessary, develop each distribution system;
(30) Whereas, in order to ensure transparency and non-discrimination, the transmission function of vertically integrated undertakings should be operated independently from the other activities;

(31) Whereas a single buyer must operate separately from the generation and distribution activities of vertically integrated undertakings; whereas the flow of information between the single buyer activities and these generation and distribution activities needs to be restricted;

(32) Whereas the accounts of all integrated electricity undertakings should provide for maximum transparency, in particular to identify possible abuses of a dominant position, consisting for example in abnormally high or low tariffs or in discriminatory practices relating to equivalent transactions; whereas, to this end, the accounts must be separate for each activity;

(33) Whereas it is also necessary to provide for access by the competent authorities to the internal accounts of undertakings with due regard for confidentiality;

(34) Whereas, owing to the diversity of structures and the special characteristics of systems in Member States, there should be different options for system access operating in accordance with objective, transparent and non-discriminatory criteria;

(35) Whereas provision should be made for authorizing the construction and use of direct lines;

(36) Whereas provision must be made for safeguards and dispute settlement procedures;

(37) Whereas any abuse of a dominant position or any predatory behaviour should be avoided;

(38) Whereas, as some Member States are liable to experience special difficulties in adjusting their systems, provision should be made for recourse to transitional regimes or derogations, especially for the operation of small isolated systems;

(39) Whereas this Directive constitutes a further phase of liberalization; whereas, once it has been put into effect, some obstacles to trade in electricity between Member States will nevertheless remain in place; whereas, therefore, proposals for improving the operation of the internal market in electricity may be made in the light of experience; whereas the Commission should therefore report to the Council and the European Parliament on the application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope and definitions

Article 1

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

Article 2

For the purposes of this Directive:

1. 'generation' shall mean the production of electricity;
2. 'producer' shall mean a natural or legal person generating electricity;
3. 'autoproducer' shall mean a natural or legal person generating electricity essentially for his own use;
4. 'independent producer' shall mean:
   (a) a producer who does not carry out electricity transmission or distribution functions in the territory covered by the system where he is established;
   (b) in Member States in which vertically integrated undertakings do not exist and where a tendering procedure is used, a producer corresponding to the definition of point (a), who may not be exclusively subject to the
economic precedence of the interconnected system;

5. ‘transmission’ shall mean the transport of electricity on the high-voltage interconnected system with a view to its delivery to final customers or to distributors;

6. ‘distribution’ shall mean the transport of electricity on medium-voltage and low-voltage distribution systems with a view to its delivery to customers;

7. ‘customers’ shall mean wholesale or final customers of electricity and distribution companies;

8. ‘wholesale customers’ shall mean any natural or legal persons, if the Member States recognize 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;

9. ‘final customer’ shall mean a customer buying electricity for his own use;

10. ‘interconnectors’ shall mean equipment used to link electricity systems;

11. ‘interconnected system’ shall mean a number of transmission and distribution systems linked together by means of one or more interconnectors;

12. ‘direct line’ shall mean an electricity line complementary to the interconnected system;

13. ‘economic precedence’ shall mean the ranking of sources of electricity supply in accordance with economic criteria;

14. ‘ancillary services’ shall mean all services necessary for the operation of a transmission or distribution system;

15. ‘system user’ shall mean any natural or legal person supplying to, or being supplied by, a transmission or distribution system;

16. ‘supply’ shall mean the delivery and/or sale of electricity to customers;

17. ‘integrated electricity undertaking’ shall mean a vertically or horizontally integrated undertaking;

18. ‘vertically integrated undertaking’ shall mean an undertaking performing two or more of the functions of generation, transmission and distribution of electricity;

19. ‘horizontally integrated undertaking’ shall mean an undertaking performing at least one of the functions of generation for sale, or transmission or distribution of electricity, and another non-electricity activity;

20. ‘tendering procedure’ shall mean the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;

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

22. ‘single buyer’ shall mean any legal person who, within the system where he is established, is responsible for the unified management of the transmission system and/or for centralized electricity purchasing and selling;

23. ‘small isolated system’ shall mean any system with consumption of less than 2500 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems.

CHAPTER II
General rules for the organization of the sector

Article 3

1. Member States shall ensure, on the basis of their institutional organization 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. The two approaches to
system access referred to in Articles 17 and 18 must lead to equivalent economic results and hence to a directly comparable level of opening-up of markets and to a directly comparable degree of access to electricity markets.

2. Having full regard to the relevant provisions of the Treaty, in particular Article 90, 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 must be clearly defined, transparent, non-discriminatory and verifiable; they, and any revision thereof, shall be published and notified to the Commission by Member States without delay. As a means of carrying out the abovementioned public service obligations, Member States which so wish may introduce the implementation of long-term planning.

3. Member States may decide not to apply the provisions of Articles 5, 6, 17, 18 and 21 insofar as the application of these provisions would obstruct the performance, in law or in fact, of the obligations imposed on electricity undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, inter alia, competition with regard to eligible customers in accordance with this Directive and Article 90 of the Treaty.

CHAPTER III
Generation

Article 4

For the construction of new generating capacity, Member States may choose between an authorization procedure and/or a tendering procedure. Authorization and tendering must be conducted in accordance with objective, transparent and non-discriminatory criteria.

Article 5

1. Where they opt for the authorization procedure, Member States shall lay down the criteria for the grant of authorizations for the construction of generating capacity in their territory. These criteria may relate to:
   (a) the safety and security of the electricity system, installations and associated equipment;
   (b) protection of the environment;
   (c) land use and siting;
   (d) use of public ground;
   (e) energy efficiency;
   (f) the nature of the primary sources;
   (g) characteristics particular to the applicant, such as technical, economic and financial capabilities;
   (h) the provisions of Article 3.

2. The detailed criteria and procedures shall be made public.

3. Applicants shall be informed of the reasons, which must be objective and non-discriminatory, for any refusal to grant an authorization; the reasons must be well founded and duly substantiated; they shall be forwarded to the Commission for information. Appeal procedures must be made available to the applicant.

Article 6

1. Where they opt for the tendering procedure, Member States or any competent body designated by the Member State concerned shall draw up an inventory of new means of production, including replacement capacity, on the basis of the regular estimate referred to in paragraph 2. The inventory shall take account of the need for interconnection of systems. The requisite capacity shall be allocated by means of a tendering procedure in accordance with the procedure laid down in this Article.
2. The transmission system operator or any other competent authority designated by the Member State concerned shall draw up and publish under State supervision, at least every two years, a regular estimate of the generating and transmission capacity which is likely to be connected to the system, of the need for interconnectors with other systems, of potential transmission capacity and of the demand for electricity. The estimate shall cover a period defined by each Member State.

3. Details of the tendering procedure for means of production shall be published in the Official Journal of the European Communities at least six months prior to the closing date for tenders.

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

The tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract. These specifications may also relate to the fields referred to in Articles 5 (1).

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

5. Member States shall designate an authority or a public body or a private body independent of electricity generation, transmission and distribution activities to be responsible for the organization, monitoring and control of the tendering procedure. This authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.

6. However, it must be possible for autoproducers and independent producers to obtain authorization, on the basis of objective, transparent and non-discriminatory criteria as laid down in Articles 4 and 5, in Member States which have opted for the tendering procedure.

CHAPTER IV

Transmission system operation

Article 7

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, a system operator 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 (7).

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

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 transmission system is already independent from generation and distribution activities, the system operator shall be independent at least in management terms from other activities not relating to the
transmission system.

Article 8

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

2. Without prejudice to the supply of electricity on the basis of contractual obligations, including those which derive from the tendering specifications, the dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which may be approved by the Member State and which must be objective, published and applied in a non-discriminatory manner which ensures the proper functioning of the internal market in electricity. They shall take into account the economic precedence of electricity from available generating installations of interconnector transfers and the technical constraints on the system.

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

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

Article 9

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

CHAPTER V

Distribution system operation

Article 10

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

2. Member States shall designate or shall require undertakings which own or are responsible for distribution systems to designate a system operator to be responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in a given area and its interconnectors with other systems.

3. Member States shall ensure that the system operator acts in accordance with Articles 11 and 12.

Article 11

1. The distribution system operator shall maintain a secure, reliable and efficient electricity distribution system in its area, with due regard for the environment.

2. In any event, it must not discriminate between system users or classes of system users, particularly in favour of its subsidiaries or shareholders.

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

Article 12

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

CHAPTER IV
Unbundling and transparency of accounts

Article 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, transmission or distribution undertakings which they need to consult in carrying out their checks.

Article 14

1. Member States shall take the necessary steps to ensure that the accounts of electricity undertakings are kept in accordance with paragraphs 2 to 5.

2. Electricity undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to the fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (8). Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public in their head office.

3. Integrated electricity undertakings shall, in their internal accounting, keep separate accounts for their generation, transmission and distribution 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-subsidization and distortion of competition. They shall include a balance sheet and a profit and loss account for each activity in notes to their accounts.

4. Undertakings shall specify in notes to the annual accounts the rules for the allocation of assets and liabilities and expenditure and income which they follow in drawing up the separate accounts referred to in paragraph 3. These rules may be amended only in exceptional cases. Such amendments must be mentioned in the notes and must be duly substantiated.

5. The annual accounts shall indicate in notes any transaction of a certain size conducted with affiliated undertakings, within the meaning of Article 41 of the seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts (9), or with associated undertakings, within the meaning of Article 33 (1) thereof, or, with undertakings which belong to the same shareholders.

Article 15

1. Member States which designate as a single buyer a vertically integrated electricity undertaking or part of a vertically integrated electricity undertaking shall lay down provisions requiring the single buyer to operate separately from the generation and distribution activities of the integrated undertaking.

2. Member States shall ensure that there is no flow of information between the single buyer activities of vertically integrated electricity undertakings and their generation and distribution activities, except for the information necessary to conduct the single buyer responsibilities.

CHAPTER VII

Organization of access to the system

Article 16

For the organization of access to the system, Member States may choose between the procedures referred to in Article 17 and/or in Article 18. Both sets of procedure shall operate in accordance with objective, transparent and non-discriminatory criteria.

Article 17

1. In the case of negotiated access to the system, Member States shall take the necessary measures for electricity producers and, where Member States authorize their existence, supply undertakings and eligible customers either inside or outside the territory covered by the system to be able to negotiate access to the system
so as to conclude supply contracts with each other on the basis of voluntary commercial agreements.

2. Where an eligible customer is connected to the distribution system, access to the system must be the subject of negotiation with the relevant distribution system operator and, if necessary, with the transmission system operator concerned.

3. To promote transparency and facilitate negotiations for access to the system, system operators must publish, in the first year following implementation of this Directive, an indicative range of prices for use of the transmission and distribution systems. As far as possible, the indicative prices published for subsequent years should be based on the average price agreed in negotiations in the previous 12-month period.

4. Member States may also opt for a regulated system of access procedure, giving eligible customers a right of access, on the basis of published tariffs for the use of transmission and distribution systems, that is at least equivalent, in terms of access to the system, to the other procedures for access referred to in this Chapter.

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

Article 18

1. In the case of the single buyer procedure, Member States shall designate a legal person to be the single buyer within the territory covered by the system operator. Member States shall take the necessary measures for:

   (i) the publication of a non-discriminatory tariff for the use of the transmission and distribution system;

   (ii) eligible customers to be free to conclude supply contracts to cover their own needs with producers and, where Member States authorize their existence, with supply undertakings outside the territory covered by the system;

   (iii) eligible customers to be free to conclude supply contracts to cover their own needs with producers inside the territory covered by the system;

   (iv) independent producers to negotiate access to the system with the transmission and distribution systems operators so as to conclude supply contracts with eligible customers outside the system, on the basis of a voluntary commercial agreement.

2. The single buyer may be obliged to purchase the electricity contracted by an eligible customer from a producer inside or outside the territory covered by the system at a price which is equal to the sale price offered by the single buyer to eligible customers minus the price of the published tariff referred to in paragraph 1 (i).

3. If the purchase obligation under paragraph 2 is not imposed on the single buyer, Member States shall take the necessary measures to ensure that the supply contracts referred to in paragraph 1 (ii) and (iii) are implemented either via access to the system on the basis of the published tariff referred to in paragraph 1 (i) or via negotiated access to the system according to the conditions of Article 17. In the latter case, there would be no obligation for the single buyer to publish a non-discriminatory tariff for the use of the transmission and distribution system.

4. The single buyer may refuse access to the system and may refuse to purchase electricity from eligible customers where he lacks the necessary transmission or distribution capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3.

Article 19

1. Member States shall take the necessary measures to ensure an opening of their electricity markets, so that contracts under the conditions stated in Articles 17 and 18 can be concluded at least up to a significant level, to be notified to the Commission on an annual basis.

   The share of the national market shall be calculated on the basis of the Community share of electricity consumed by final consumers consuming more than 40 GWh per year (on a consumption site basis and including autoproduction).

   The average Community share shall be calculated by the Commission on the basis of information regularly
provided to it by Member States. The Commission shall publish this average Community share defining the degree of market opening in the Official Journal of the European Communities before November each year, with all appropriate information clarifying the calculation.

2. The share of the national market referred to in paragraph 1 will be increased progressively over a period of six years. This increase will be calculated by reducing the Community consumption threshold of 40 GWh, referred to in paragraph 1 from 40 GWh to a level of 20 GWh annual electricity consumption three years after the entry into force of this Directive and to a level of 9 GWh annual electricity consumption six years after the entry into force of this Directive.

3. Member States shall specify those customers inside their territory representing the shares as specified in paragraphs 1 and 2 which have the legal capacity to contract electricity in accordance with Articles 17 and 18, given that all final consumers consuming more than 100 GWh per year (on a consumption site basis and including autoproduction) must be included in the above category.

Distribution companies, if not already specified as eligible customers under this paragraph, shall have the legal capacity to contract under the conditions of Articles 17 and 18 for the volume of electricity being consumed by their customers designated as eligible within their distribution system, in order to supply those customers.

4. Member States shall publish by 31 January each year the criteria for the definition of eligible customers which are able to conclude contracts under the conditions stated in Articles 17 and 18. This information, together with all other appropriate information to justify the fulfilment of market opening under paragraph 1, shall be sent to the Commission to be published in the Official Journal of the European Communities. The Commission may request a Member State to modify its specifications, as mentioned in paragraph 3, if they create obstacles to the correct application of this Directive as regards the smooth functioning of the internal market in electricity. If the Member State concerned does not comply with this request within a period of three months, a final decision shall be taken in accordance with Procedure I of Article 2 of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (10).

5. To avoid imbalance in the opening of electricity markets during the period referred to in Article 26:

(a) contracts for the supply of electricity under the provisions of Articles 17 and 18 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 of the customer being eligible only in one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested electricity supply at the request of the Member State where the eligible customer is located.

In parallel with the procedure and the timetable provided for in Article 26, and not later than after half of the period provided for in that Article, the Commission shall review the application of subparagraph (b) of the first subparagraph on the basis of market developments taking into account the common interest. In the light of experience gained, the Commission shall evaluate this situation and report on possible imbalance in the opening of electricity markets with regard to this paragraph.

Article 20

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

(i) independent producers and autoproducers to negotiate access to the system so as to supply their own premises and subsidiaries in the same Member State or in another Member State by means of the interconnected system;

(ii) producers located outside the territory covered by the system to conclude a supply contract following a call for tender for new generating capacity, and to have access to the system to perform the contract.

2. Member States shall ensure that the parties negotiate in good faith and that none of them abuses its negotiating position by preventing the successful outcome of negotiations.
3. Member States shall designate a competent authority, which must be independent of the parties, to settle disputes relating to the contracts and negotiations in question. In particular, this authority must settle disputes concerning contracts, negotiations and refusal of access or refusal to purchase.

4. In the event of cross-border disputes, the dispute settlement authority shall be the dispute settlement authority covering the system of the single buyer or the system operator which refuses use of, or access to, the system.

5. Recourse to this authority shall be without prejudice to the exercise of rights of appeal under Community law.

Article 21

1. Member States shall take measures under the procedures and rights referred to in Articles 17 and 18 to enable:
   - all electricity producers and electricity supply undertakings, where Member States authorize their existence, established within their territory to supply their own premises, subsidiaries and eligible customers through a direct line;
   - any eligible customer within their territory to be supplied through a direct line by a producer and supply undertakings, where such suppliers are authorized by Member States.

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

3. The possibility of supplying electricity through a direct line as referred to in paragraph 1 shall not affect the possibility of contracting electricity in accordance with Articles 17 and 18.

4. Member States may make authorization to construct a direct line subject either to the refusal of system access on the basis, as appropriate, of Article 17 (5) or Article 18 (4) or to the opening of a dispute settlement procedure under Article 20.

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

Article 22

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 86 thereof.

CHAPTER VIII

Final provisions

Article 23

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

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

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

Article 24

1. Those Member States in which commitments or guarantees of operation given before the entry into force of
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this Directive may not be honoured on account of the provisions of this Directive may apply for a transitional regime which may be granted to them by the Commission, taking into account, amongst other things, the size of the system concerned, the level of interconnection of the system and the structure of its electricity industry. The Commission shall inform the Member States of those applications before it takes a decision, taking into account respect for confidentiality. This decision shall be published in the Official Journal of the European Communities.

2. The transitional regime shall be of limited duration and shall be linked to expiry of the commitments or guarantees referred to in paragraph 1. The transitional regime may cover derogations from Chapter IV, VI and VII of this Directive. Applications for a transitional regime must be notified to the Commission no later than one year after the entry into force of this Directive.

3. Member States which can demonstrate, after the Directive has been brought into force, that there are substantial problems for the operation of their small isolated systems, may apply for derogations from the relevant provisions of Chapter IV, V, VI, VII, which may be granted to them by the Commission. The latter shall inform the Member States of those applications prior to taking a decision, taking into account respect for confidentiality. This decision shall be published in the Official Journal of the European Communities. This paragraph shall also be applicable to Luxembourg.

Article 25

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

2. The Council and the European Parliament shall give their views on such proposals within two years of their submission.

Article 26

The Commission shall review the application of this Directive and submit a report on the experience gained on the functioning of the internal market in electricity and the implementation of the general rules mentioned in Article 3 in order to allow the European Parliament and the Council, in the light of experience gained, to consider, in due time, the possibility of a further opening of the market which would be effective nine years after the entry into force of the Directive taking into account the coexistence of systems referred to in Articles 17 and 18.

Article 27

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 19 February 1999. They shall forthwith inform the Commission thereof.

2. Belgium, Greece and Ireland may, due to the specific technical characteristics of their electricity systems, have an additional period of respectively 1 year, 2 years and 1 year to apply the obligations ensuing from this Directive. These Member States, when making use of this option, shall inform the Commission thereof.

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

Article 28

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

Article 29

This Directive is addressed to the Member States.
Done at Brussels, 19 December 1996.

For the European Parliament
The President
K. HÆNSCH

For the Council
The President
S. BARRETT


(2) OJ No C 73, 15. 3. 1993, p. 31.


(10) OJ No L 197, 18. 7. 1987, p. 33.
DIRECTIVE 2001/77/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 27 September 2001  

on the promotion of electricity produced from renewable energy sources in the internal electricity market

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Having regard to the opinion of the Committee of the Regions (3),

Acting in accordance with the procedure laid down in Article 251 of the Treaty (4),

Whereas:

(1) The potential for the exploitation of renewable energy sources is underestimated in the Community at present. The Community recognises the need to promote renewable energy sources as a priority measure given that their exploitation contributes to environmental protection and sustainable development. In addition this can also create local employment, have a positive impact on social cohesion, contribute to security of supply and make it possible to meet Kyoto targets more quickly, it is therefore necessary to ensure that this potential is better exploited within the framework of the internal electricity market.

(2) The promotion of electricity produced from renewable energy sources is a high Community priority as outlined in the White Paper on Renewable Energy Sources (hereinafter referred to as ‘the White Paper’) for reasons of security and diversification of energy supply, of environmental protection and of social and economic cohesion. That was endorsed by the Council in its resolution of 8 June 1998 on renewable sources of energy (5), and by the European Parliament in its resolution on the White Paper. (6)

(3) The increased use of electricity produced from renewable energy sources constitutes an important part of the package of measures needed to comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and of any policy package to meet further commitments.

(4) The Council in its conclusions of 11 May 1999 and the European Parliament in its resolution of 17 June 1998 on electricity from renewable energy sources (7) have invited the Commission to submit a concrete proposal for a Community framework on access for electricity produced from renewable energy sources to the internal market. Furthermore, the European Parliament in its resolution of 30 March 2000 on electricity from renewable energy sources and the internal electricity market (8) underlined that binding and ambitious renewable energy targets at the national level are essential for obtaining results and achieving the Community targets.

(5) To ensure increased market penetration of electricity produced from renewable energy sources in the medium term, all Member States should be required to set national indicative targets for the consumption of electricity produced from renewable sources.

(6) These national indicative targets should be consistent with any national commitment made as part of the climate change commitments accepted by the Community under the Kyoto Protocol.

(7) The Commission should assess to what extent Member States have made progress towards achieving their national indicative targets, and to what extent the national indicative targets are consistent with the global indicative target of 12% of gross domestic energy consumption by 2010, considering that the White Paper’s indicative target of 12% for the Community as a whole by 2010 provides useful guidance for increased efforts at Community level as well as in Member States, bearing in mind the need to reflect differing national circumstances. If necessary for the achievement of the targets, the Commission should submit proposals to the European Parliament and the Council which may include mandatory targets.

(8) Where they use waste as an energy source, Member States must comply with current Community legislation on waste management. The application of this Directive is without prejudice to the definitions set out in Annex 2a and 2b to Council Directive 75/442/EEC of 15 July 1975 on waste (9). Support for renewable energy sources should be consistent with other Community objectives, in particular respect for the waste treatment hierarchy.

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(2) OJ C 185, 17.7.1998, p. 11.
Therefore, the incineration of non-separated municipal waste should not be promoted under a future support system for renewable energy sources, if such promotion were to undermine the hierarchy.

(9) The definition of biomass used in this Directive does not prejudge the use of a different definition in national legislation, for purposes other than those set out in this Directive.

(10) This Directive does not require Member States to recognise the purchase of a guarantee of origin from other Member States or the corresponding purchase of electricity as a contribution to the fulfilment of a national quota obligation. However, to facilitate trade in electricity produced from renewable energy sources and to increase transparency for the consumer’s choice between electricity produced from non-renewable and electricity produced from renewable energy sources, the guarantee of origin of such electricity is necessary. Schemes for the guarantee of origin do not by themselves imply a right to benefit from national support mechanisms established in different Member States. It is important that all forms of electricity produced from renewable energy sources are covered by such guarantees of origin.

(11) It is important to distinguish guarantees of origin clearly from exchangeable green certificates.

(12) The need for public support in favour of renewable energy sources is recognised in the Community guidelines for State aid for environmental protection (1), which, amongst other options, take account of the need to internalise external costs of electricity generation. However, the rules of the Treaty, and in particular Articles 87 and 88 thereof, will continue to apply to such public support.

(13) A legislative framework for the market in renewable energy sources needs to be established.

(14) Member States operate different mechanisms of support for renewable energy sources at the national level, including green certificates, investment aid, tax exemptions or reductions, tax refunds and direct price support schemes. One important means to achieve the aim of this Directive is to guarantee the proper functioning of these mechanisms until a Community framework is put into operation, in order to maintain investor confidence.

(15) It is too early to decide on a Community-wide framework regarding support schemes, in view of the limited experience with national schemes and the current relatively low share of price supported electricity produced from renewable energy sources in the Community.

(16) It is, however, necessary to adapt, after a sufficient transitional period, support schemes to the developing internal electricity market. It is therefore appropriate that the Commission monitor the situation and present a report on experience gained with the application of national schemes. If necessary, the Commission should, in the light of the conclusions of this report, make a proposal for a Community framework with regard to support schemes for electricity produced from renewable energy sources. That proposal should contribute to the achievement of the national indicative targets, be compatible with the principles of the internal electricity market and take into account the characteristics of the different sources of renewable energy, together with the different technologies and geographical differences. It should also promote the use of renewable energy sources in an effective way, and be simple and at the same time as efficient as possible, particularly in terms of cost, and include sufficient transitional periods of at least seven years, maintain investors’ confidence and avoid stranded costs. This framework would enable electricity from renewable energy sources to compete with electricity produced from non-renewable energy sources and limit the cost to the consumer, while, in the medium term, reduce the need for public support.

(17) Increased market penetration of electricity produced from renewable energy sources will allow for economies of scale, thereby reducing costs.

(18) It is important to utilise the strength of the market forces and the internal market and make electricity produced from renewable energy sources competitive and attractive to European citizens.

(19) When favouring the development of a market for renewable energy sources, it is necessary to take into account the positive impact on regional and local development opportunities, export prospects, social cohesion and employment opportunities, especially as concerns small and medium-sized undertakings as well as independent power producers.

(20) The specific structure of the renewable energy sources sector should be taken into account, especially when reviewing the administrative procedures for obtaining permission to construct plants producing electricity from renewable energy sources.

(21) In certain circumstances it is not possible to ensure fully transmission and distribution of electricity produced from renewable energy sources without affecting the reliability and safety of the grid system and guarantees in this context may therefore include financial compensation.

(22) The costs of connecting new producers of electricity from renewable energy sources should be objective, transparent and non-discriminatory and due account should be taken of the benefit embedded generators bring to the grid.
(23) Since the general objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. Their detailed implementation should, however, be left to the Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

**Article 1**

**Purpose**

The purpose of this Directive is to promote an increase in the contribution of renewable energy sources to electricity production in the internal market for electricity and to create a basis for a future Community framework thereof.

**Article 2**

**Definitions**

For the purposes of this Directive, the following definitions shall apply:

(a) ‘renewable energy sources’ shall mean renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydro-power, biomass, landfill gas, sewage treatment plant gas and biogases);

(b) ‘biomass’ shall mean the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;

(c) ‘electricity produced from renewable energy sources’ shall mean electricity produced by plants using only renewable energy sources, as well as the proportion of electricity produced from renewable energy sources in hybrid plants also using conventional energy sources and including renewable electricity used for filling storage systems, and excluding electricity produced as a result of storage systems;

(d) ‘consumption of electricity’ shall mean national electricity production, including autoproduction, plus imports, minus exports (gross national electricity consumption).

In addition, the definitions in Directive 96/52/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market of electricity (1) shall apply.


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**Annex B**

**Article 3**

**National indicative targets**

1. Member States shall take appropriate steps to encourage greater consumption of electricity produced from renewable energy sources in conformity with the national indicative targets referred to in paragraph 2. These steps must be in proportion to the objective to be attained.

2. Not later than 27 October 2002 and every five years thereafter, Member States shall adopt and publish a report setting national indicative targets for future consumption of electricity produced from renewable energy sources in terms of a percentage of electricity consumption for the next 10 years. The report shall also outline the measures taken or planned, at national level, to achieve these national indicative targets. To set these targets until the year 2010, the Member States shall:
   - take account of the reference values in the Annex,
   - ensure that the targets are compatible with any national commitments accepted in the context of the climate change commitments accepted by the Community pursuant to the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

3. Member States shall publish, for the first time not later than 27 October 2003 and thereafter every two years, a report which includes an analysis of success in meeting the national indicative targets taking account, in particular, of climatic factors likely to affect the achievement of these targets and which indicates to what extent the measures taken are consistent with the national climate change commitment.

4. On the basis of the Member States' reports referred to in paragraphs 2 and 3, the Commission shall assess to what extent:
   - Member States have made progress towards achieving their national indicative targets,
   - the national indicative targets are consistent with the global indicative target of 12 % of gross national energy consumption by 2010 and in particular with the 22 % indicative share of electricity produced from renewable energy sources in total Community electricity consumption by 2010.

The Commission shall publish its conclusions in a report, for the first time not later than 27 October 2004 and thereafter every two years. This report shall be accompanied, as appropriate, by proposals to the European Parliament and to the Council.

If the report referred to in the second subparagraph concludes that the national indicative targets are likely to be inconsistent, for reasons that are unjustified and/or do not relate to new scientific evidence, with the global indicative target, these proposals shall address national targets, including possible mandatory targets, in the appropriate form.
Article 4

Support schemes

1. Without prejudice to Articles 87 and 88 of the Treaty, the Commission shall evaluate the application of mechanisms used in Member States according to which a producer of electricity, on the basis of regulations issued by the public authorities, receives direct or indirect support, and which could have the effect of restricting trade, on the basis that these contribute to the objectives set out in Articles 6 and 174 of the Treaty.

2. The Commission shall, not later than 27 October 2005, present a well-documented report on experience gained with the application and coexistence of the different mechanisms referred to in paragraph 1. The report shall assess the success, including cost-effectiveness, of the support systems referred to in paragraph 1 in promoting the consumption of electricity produced from renewable energy sources in conformity with the national indicative targets referred to in Article 3(2). This report shall, if necessary, be accompanied by a proposal for a Community framework with regard to support schemes for electricity produced from renewable energy sources.

Any proposal for a framework should:

(a) contribute to the achievement of the national indicative targets;

(b) be compatible with the principles of the internal electricity market;

(c) take into account the characteristics of different sources of renewable energy, together with the different technologies, and geographical differences;

(d) promote the use of renewable energy sources in an effective way, and be simple and, at the same time, as efficient as possible, particularly in terms of cost;

(e) include sufficient transitional periods for national support systems of at least seven years and maintain investor confidence.

Article 5

Guarantee of origin of electricity produced from renewable energy sources

1. Member States shall, not later than 27 October 2003, ensure that the origin of electricity produced from renewable energy sources can be guaranteed as such within the meaning of this Directive according to objective, transparent and non-discriminatory criteria laid down by each Member State. They shall ensure that a guarantee of origin is issued to that effect in response to a request.

2. Member States may designate one or more competent bodies, independent of generation and distribution activities, to supervise the issue of such guarantees of origin.

3. A guarantee of origin shall:

— serve to enable producers of electricity from renewable energy sources to demonstrate that the electricity they sell is produced from renewable energy sources within the meaning of this Directive.

4. Such guarantees of origin, issued according to paragraph 2, should be mutually recognised by the Member States, exclusively as proof of the elements referred to in paragraph 3. Any refusal to recognise a guarantee of origin as such proof, in particular for reasons relating to the prevention of fraud, must be based on objective, transparent and non-discriminatory criteria. In the event of refusal to recognise a guarantee of origin, the Commission may compel the refusing party to recognise it, particularly with regard to objective, transparent and non-discriminatory criteria on which such recognition is based.

5. Member States or the competent bodies shall put in place appropriate mechanisms to ensure that guarantees of origin are both accurate and reliable and they shall outline in the report referred to in Article 3(3) the measures taken to ensure the reliability of the guarantee system.

6. After having consulted the Member States, the Commission shall, in the report referred to in Article 8, consider the form and methods that Member States could follow in order to guarantee the origin of electricity produced from renewable energy sources. If necessary, the Commission shall propose to the European Parliament and the Council the adoption of common rules in this respect.

Article 6

Administrative procedures

1. Member States or the competent bodies appointed by the Member States shall evaluate the existing legislative and regulatory framework with regard to authorisation procedures or the other procedures laid down in Article 4 of Directive 96/92/EC, which are applicable to production plants for electricity produced from renewable energy sources, with a view to:

— reducing the regulatory and non-regulatory barriers to the increase in electricity production from renewable energy sources,

— streamlining and expediting procedures at the appropriate administrative level, and

— ensuring that the rules are objective, transparent and non-discriminatory, and take fully into account the particularities of the various renewable energy source technologies.

2. Member States shall publish, not later than 27 October 2003, a report on the evaluation referred to in paragraph 1, indicating, where appropriate, the actions taken. The purpose of this report is to provide, where this is appropriate in the context of national legislation, an indication of the stage reached specifically in:

— coordination between the different administrative bodies as regards deadlines, reception and treatment of applications for authorisations,
— drawing up possible guidelines for the activities referred to in paragraph 1, and the feasibility of a fast-track planning procedure for producers of electricity from renewable energy sources, and
— the designation of authorities to act as mediators in disputes between authorities responsible for issuing authorisations and applicants for authorisations.

3. The Commission shall, in the report referred to in Article 8 and on the basis of the Member States’ reports referred to in paragraph 2 of this Article, assess best practices with a view to achieving the objectives referred to in paragraph 1.

**Article 7**

**Grid system issues**

1. Without prejudice to the maintenance of the reliability and safety of the grid, Member States shall take the necessary measures to ensure that transmission system operators and distribution system operators in their territory guarantee the transmission and distribution of electricity produced from renewable energy sources. They may also provide for priority access to the grid system of electricity produced from renewable energy sources. When dispatching generating installations, transmission system operators shall give priority to generating installations using renewable energy sources insofar as the operation of the national electricity system permits.

2. Member States shall put into place a legal framework or require transmission system operators and distribution system operators to set up and publish their standard rules relating to the hearing of costs of technical adaptations, such as grid connections and grid reinforcements, which are necessary in order to integrate new producers feeding electricity produced from renewable energy sources into the interconnected grid.

These rules shall be based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of these producers to the grid. The rules may provide for different types of connection.

3. Where appropriate, Member States may require transmission system operators and distribution system operators to bear, in full or in part, the costs referred to in paragraph 2.

4. Transmission system operators and distribution system operators shall be required to provide any new producer wishing to be connected with a comprehensive and detailed estimate of the costs associated with the connection. Member States may allow producers of electricity from renewable energy sources wishing to be connected to the grid to issue a call for tender for the connection work.

5. Member States shall put into place a legal framework or require transmission system operators and distribution system operators to set up and publish their standard rules relating to the sharing of costs of system installations, such as grid connections and reinforcements, between all producers benefiting from them.

The sharing shall be enforced by a mechanism based on objective, transparent and non-discriminatory criteria taking into account the benefits which initially and subsequently connected producers as well as transmission system operators and distribution system operators derive from the connections.

6. Member States shall ensure that the charging of transmission and distribution fees does not discriminate against electricity from renewable energy sources, including in particular electricity from renewable energy sources produced in peripheral regions, such as island regions and regions of low population density.

Where appropriate, Member States shall put in place a legal framework or require transmission system operators and distribution system operators to ensure that fees charged for the transmission and distribution of electricity from plants using renewable energy sources reflect realisable cost benefits resulting from the plant’s connection to the network. Such cost benefits could arise from the direct use of the low-voltage grid.

7. Member States shall, in the report referred to in Article 6(2), also consider the measures to be taken to facilitate access to the grid system of electricity produced from renewable energy sources. That report shall examine, inter alia, the feasibility of introducing two-way metering.

**Article 8**

**Summary report**

On the basis of the reports by Member States pursuant to Article 3(3) and Article 6(2), the Commission shall present to the European Parliament and the Council, no later than 31 December 2005 and thereafter every five years, a summary report on the implementation of this Directive.

This report shall:
— consider the progress made in reflecting the external costs of electricity produced from non-renewable energy sources and the impact of public support granted to electricity production,
— take into account the possibility for Member States to meet the national indicative targets established in Article 3(2), the global indicative target referred to in Article 3(4) and the existence of discrimination between different energy sources.

If appropriate, the Commission shall submit with the report further proposals to the European Parliament and the Council.
Annex B

Article 9

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 37 October 2003. They shall forthwith inform the Commission thereof.

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

Article 10

Entry into force

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

Article 11

Addressees

This Directive is addressed to the Member States.


For the European Parliament
The President
N. FONTAINE

For the Council
The President
C. PICQUÉ
Reference values for Member States' national indicative targets for the contribution of electricity produced from renewable energy sources to gross electricity consumption by 2010 (*)

This Annex gives reference values for the fixing of national indicative targets for electricity produced from renewable energy sources (RES-E), as referred to in Article 3(2):

<table>
<thead>
<tr>
<th>Country</th>
<th>RES-E TWh 1997 (**)</th>
<th>RES-E % 1997 (***)</th>
<th>RES-E % 2010 (****)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>0.86</td>
<td>1.1</td>
<td>6.0</td>
</tr>
<tr>
<td>Denmark</td>
<td>3.21</td>
<td>8.7</td>
<td>29.0</td>
</tr>
<tr>
<td>Germany</td>
<td>24.91</td>
<td>4.5</td>
<td>12.5</td>
</tr>
<tr>
<td>Greece</td>
<td>3.94</td>
<td>8.6</td>
<td>20.1</td>
</tr>
<tr>
<td>Spain</td>
<td>37.15</td>
<td>19.9</td>
<td>29.4</td>
</tr>
<tr>
<td>France</td>
<td>66.00</td>
<td>15.0</td>
<td>21.0</td>
</tr>
<tr>
<td>Ireland</td>
<td>0.84</td>
<td>3.6</td>
<td>13.7</td>
</tr>
<tr>
<td>Italy</td>
<td>40.46</td>
<td>16.0</td>
<td>25.0 (1)</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>0.14</td>
<td>2.1</td>
<td>5.7 (2)</td>
</tr>
<tr>
<td>Netherlands</td>
<td>3.45</td>
<td>3.5</td>
<td>9.0</td>
</tr>
<tr>
<td>Austria</td>
<td>39.05</td>
<td>70.0</td>
<td>78.1 (3)</td>
</tr>
<tr>
<td>Portugal</td>
<td>14.30</td>
<td>38.5</td>
<td>39.0 (4)</td>
</tr>
<tr>
<td>Finland</td>
<td>10.03</td>
<td>24.7</td>
<td>31.5 (5)</td>
</tr>
<tr>
<td>Sweden</td>
<td>72.03</td>
<td>49.1</td>
<td>60.0 (6)</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>7.04</td>
<td>1.7</td>
<td>10.0</td>
</tr>
<tr>
<td>Community</td>
<td>338.41</td>
<td>13.9 %</td>
<td>22 % (****)</td>
</tr>
</tbody>
</table>

(*) In taking into account the reference values set out in this Annex, Member States make the necessary assumption that the State aid guidelines for environmental protection allow for the existence of national support schemes for the promotion of electricity produced from renewable energy sources.

(**) Data refer to the national production of RES-E in 1997.

(***). The percentage contributions of RES-E in 1997 and 2010 are based on the national production of RES-E divided by the gross national electricity consumption. In the case of internal trade of RES-E (with recognised certification or origin registered) the calculation of these percentages will influence 2010 figures by Member State but not the Community total.

(****) Rounded figure resulting from the reference values above.

(1) Italy states that 22 % would be a realistic figure, on the assumption that in 2010 gross national electricity consumption will be 340 TWh. When taking into account the reference values set out in this Annex, Italy has assumed that gross national electricity production from renewable energy sources will attain up to 76 TWh in 2010. This figure includes the contribution of the non-biodegradable fraction of municipal and industrial waste used in compliance with Community legislation on waste management, and in this respect, the capability to reach the indicative target as referred to in this Annex, is contingent, inter alia, upon the effective level of the national demand for electric energy in 2010.

(2) Taking into account the indicative reference values set out in this Annex, Luxembourg takes the view that the objective set for 2010 can be achieved only if:

- total electricity consumption in 2010 does not exceed that of 1997;
- wind-generated electricity can be multiplied by a factor of 13.
— biogas-generated electricity can be multiplied by a factor of 208,
— electricity produced from the only municipal waste incinerator in Luxembourg, which in 1997 accounted for half the electricity produced from renewable energy sources, can be taken into account as its entirety,
— photovoltaically generated electricity can be raised to 80 GWh and
in so far as the above points can be achieved from the technical standpoint in the time allowed.
In the absence of natural resources, an additional increase in electricity generated by hydroelectric power stations is ruled out.

(6) Austria states that 7.1% would be a realistic figure, on the assumptions that in 2010 gross national electricity consumption will be
561 TWh. Due to the fact that the production of electricity from renewable sources is highly dependent on hydropower and therefore
on the annual rainfall, the figures for 1997 and 2010 should be calculated on a long-range model based on hydrologic and climatic
conditions.

(7) Portugal, when taken into account the reference values, set out in this Annex, states that to maintain the 1997 share of electricity
produced from renewable sources as an indicative target for 2010 it was assumed that:
— it will be possible to continue the national electricity plan building new hydro capacity higher than 10 MW,
— other renewable capacity, only possible with financial state aid, will increase six times more eight times higher than has occurred
recently.

These assumptions imply that new capacity for producing electricity from renewable sources, excluding large hydro, will increase at a rate
twice as high as the rate of increase of gross national electricity consumption.

(8) In the Finnish action plan for renewable energy sources, objectives are set for the volume of renewable energy sources used in 2010.
Their objective have been set on the basis of extensive background studies. The action plan was approved within the Government in
October 1999.

According to the Finnish action plan, the share of electricity produced from renewable energy sources by 2010 would be 31%. This
indicative target is very ambitious and its realisation would require extensive promotion measures in Finland.

(9) When taking into account the reference values set out in this Annex, Sweden notes that the possibility of reaching the target is highly
dependent upon climatic factors heavily affecting the level of hydropower production, in particular variations in photometry, timing of
rainfall during the year and inflow. The electricity produced from hydropower can vary substantially. During extremely dry years
production may amount to 51 TWh, whereas in wet years it could amount to 78 TWh. The figure for 1997 should thus be calculated
with a long-range model based on scientific facts on hydrology and climatic change.
It is a generally applied method in countries with important shares of hydropower production to use water inflow statistics covering
a time span of 30 to 60 years. Thus, according to the Swedish methodology and based on conditions during the period 1950-1999,
correcting for differences in total hydropower production capacity and inflow over the years, average hydropower production amounts to
54 TWh which corresponds to a figure for 1997 of 49%, and in this context Sweden considers 52% to be a more realistic figure for
2010.

Furthermore, the ability of Sweden to achieve the target is limited by the fact that the remaining unexploited rivers are protected by law.
Moreover, the ability of Sweden to reach the target is heavily contingent upon:
— the expansion of combined heat and power (CHP) depending on population density, demand for heat and technology development,
in particular for black liquor production, and
— authorisation for wood pellet plants in accordance with national laws, public acceptance, technology development and expansion of
grids.
DIRECTIVE 2003/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 26 June 2003

concerning common rules for the internal market in electricity and repealing Directive 96/92/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), Article 55 and Article 95 thereof,

Having regard to the proposals from the Commission (1),

Having regard to the Opinion of the European Economic and Social Committee (2),

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 231 of the Treaty (3),

Whereas:

(1) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (4) has made significant contributions towards the creation of an internal market for electricity.

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

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

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

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

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

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

(8) In order to ensure efficient and non-discriminatory network access it is appropriate that the distribution and transmission systems are operated through legally separate entities where vertically integrated undertakings exist. The Commission should assess measures of equivalent effect, developed by Member States to achieve the aim of this requirement, and, where appropriate, submit proposals to amend this Directive. It is also appropriate that the transmission and distribution system operators have effective decision-making rights with respect to assets necessary to maintain, operate and develop networks when the assets in question are owned and operated by vertically integrated undertakings. It is necessary that the independence of the distribution system operators and the transmission system operators be guaranteed especially with regard to generation and supply interests. Independent management structures must therefore be put in place.

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between the distribution system operators and the transmission system operators and any generation/supply companies.

It is important however to distinguish between such legal separation and ownership unbundling. Legal separation does not imply a change of ownership of assets and nothing prevents similar or identical employment conditions applying throughout the whole of the vertically integrated undertakings. However, a non-discriminatory decision-making process should be ensured through organisational measures regarding the independence of the decision-makers responsible.

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

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

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

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

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

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

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

(16) The Commission has indicated its intention to set up a European Regulators Group for Electricity and Gas which would constitute a suitable advisory mechanism for encouraging cooperation and coordination of national regulatory authorities. In order to promote the development of the internal market for electricity and gas, and to contribute to the consistent application, in all Member States, of the provisions set out in this Directive and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas (1) and in Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (2).

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

(18) National regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operator(s), or on the basis of a proposal agreed between those operator(s) and the users of the network. In carrying out these tasks, national regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the

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(1) See p. 57 of this Official Journal.
(2) See p. 1 of this Official Journal.
long-term, marginal, avoided network costs from distributed generation and demand-side management measures.

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

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

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

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

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

(24) Member States should ensure that household customers and, where Member States deem it appropriate, small enterprises, enjoy the right to be supplied with electricity of a specified quality at clearly comparable, transparent and reasonable prices. In order to ensure the maintenance of the high standards of public service in the Community, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards. Member States should take the necessary measures to protect vulnerable customers in the context of the internal electricity market. Such measures can differ according to the particular circumstances in the Member States in question and may include specific measures relating to the payment of electricity bills, or more general measures taken in the social security system. When universal service is also provided to small enterprises, measures to ensure that this universal service is provided may differ according to households and small enterprises.

(25) The Commission has indicated its intention to take initiatives especially as regards the scope of the labelling provision and notably on the manner in which the information on the environmental impact in terms of at least emissions of CO\textsubscript{2} and the radioactive waste resulting from electricity production from different energy sources, could be made available in a transparent, easily accessible and comparable manner throughout the European Union and on the manner in which the measures taken in the Member States to control the accuracy of the information provided by suppliers could be streamlined.

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

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

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

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

(30) The requirement to notify the Commission of any refusal to grant authorisation to construct new generation capacity has proven to be an unnecessary administrative burden and should therefore be dispensed with.

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

(32) In the light of the experience gained with the operation of Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids (1), measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including cross-border flows of electricity between Member States. To ensure homogeneity in the treatment of access to the electricity networks, also in the case of transit, that Directive should be repealed.

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

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

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

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

Article 2

Definitions

For the purposes of this Directive:

1. ‘generation’ means the production of electricity;

2. ‘producer’ means a natural or legal person generating electricity;

3. ‘transmission’ means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but not including supply;

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

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

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

7. ‘customers’ means wholesale and final customers of electricity;

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

9. ‘final customers’ means customers purchasing electricity for their own use;

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

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

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

13. ‘interconnectors’ means equipment used to link electricity systems;

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

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

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

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

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

19. ‘supply’ means the sale, including resale, of electricity to customers;

20. ‘integrated electricity undertaking’ means a vertically or horizontally integrated undertaking;

21. ‘vertically integrated undertaking’ means an undertaking or a group of undertakings whose mutual relationships are defined in Article 3(3) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (\(^1\)) and where the undertaking/group concerned is performing at least one of the functions of transmission or distribution and at least one of the functions of generation or supply of electricity;

22. ‘related undertaking’ means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 44(2)(g) (\(^2\)) of the Treaty on consolidated accounts (\(^3\)), and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;

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

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

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

26. ‘small isolated system’ means any system with consumption of less than 3,000 GWh in the year 1996, where less than 5% of annual consumption is obtained through interconnection with other systems;

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

28. ‘security’ means both security of supply and provision of electricity, and technical safety;

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

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

31. Distributed generation means generation plants connected to the distribution system.

CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3

Public service obligations and customer protection

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

2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for EU electricity companies to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals, as referred to in this paragraph, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

3. Member States shall ensure that all household customers, and, where Member States deem it appropriate, small enterprises, (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort. Member States shall impose on distribution companies an obligation to connect customers to their grid under terms, conditions and tariffs set in accordance with the procedure laid down in Article 13(2). Nothing in this Directive shall prevent Member States from strengthening the market position of the domestic, small and medium-sized consumers by promoting the possibilities of voluntary aggregation of representation for this class of consumers.

The first subparagraph shall be implemented in a transparent and non-discriminatory way and shall not impede the opening of the market provided for in Article 21.

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

5. Member States shall take appropriate measures to protect final customers. and shall in particular ensure that there are adequate safeguards to protect vulnerable customers, including measures to help them avoid disconnection. In this context, Member States may take measures to protect final customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is in fact able to switch to a new supplier. As regards at least household customers, these measures shall include those set out in Annex A.

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

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

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

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

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

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

8. Member States may decide not to apply the provisions of Articles 6, 7, 20 and 22 insofar as their application would obstruct the performance, in law or in fact, of the obligations imposed on electricity undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, amongst others, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.

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

Article 4

Monitoring of security of supply

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

Article 5

Technical rules

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

CHAPTER III

GENERATION

Article 6

Authorisation procedure for new capacity

1. For the construction of new generating capacity, Member States shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.

2. Member States shall lay down the criteria for the grant of authorisations for the construction of generating capacity in their territory. These criteria may relate to:

(a) the safety and security of the electricity system, installations and associated equipment;

(b) protection of public health and safety;

(c) protection of the environment;

(d) land use and siting;

(e) use of public ground;

(f) energy efficiency;

(g) the nature of the primary sources;

(h) characteristics particular to the applicant, such as technical, economic and financial capabilities;

(i) compliance with measures adopted pursuant to Article 3.

3. Member States shall ensure that authorisation procedures for small and/or distributed generation take into account their limited size and potential impact.

4. The authorisation procedures and criteria shall be made public. Applicants shall be informed of the reasons for any refusal to grant an authorisation. The reasons must be objective, non-discriminatory, well founded and duly substantiated. Appeal procedures shall be made available to the applicant.

Article 7

Tendering for new capacity

1. Member States shall ensure the possibility, in the interests of security of supply, of providing for new capacity or energy efficiency/demand-side management measures through a tendering procedure or any procedure equivalent in terms of transparency and non-discrimination, on the basis of published criteria. These procedures can, however, only be launched if on the basis of the authorisation procedure the generating capacity being built or the energy efficiency/demand-side management measures being taken are not sufficient to ensure security of supply.

2. Member States may ensure the possibility, in the interests of environmental protection and the promotion of infant new technologies, of tendering for new capacity on the basis of published criteria. This tender may relate to new capacity or energy efficiency/demand-side management measures. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the generating capacity being built or the measures being taken are not sufficient to achieve these objectives.

3. Details of the tendering procedure for means of generating capacity and energy efficiency/demand-side management measures shall be published in the Official Journal of the European Union at least six months prior to the closing date for tenders.

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

With a view to ensuring transparency and non-discrimination the tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract, including incentives, such as subsidies, which are covered by the tender. These specifications may also relate to the fields referred to in Article 6(7).

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

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

CHAPTER IV

TRANSMISSION SYSTEM OPERATION

Article 8

Designation of Transmission System Operators

Member States shall designate, or shall require undertakings which own transmission systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more transmission system operators. Member States shall ensure that transmission system operators act in accordance with Articles 9 to 12.

Article 9

Tasks of Transmission System Operators

Each transmission system operator shall be responsible for:

(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;

(b) contributing to security of supply through adequate transmission capacity and system reliability;

(c) managing energy flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services insofar as this availability is independent from any other transmission system with which its system is interconnected;

(d) providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system;

(e) ensuring non-discrimination as between system users or classes of system users, particularly in favour of its related undertakings;
(f) providing system users with the information they need for efficient access to the system.

Article 10
Unbundling of Transmission System Operators

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

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

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

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

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

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

Article 11
Dispatching and balancing

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

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

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

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

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

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

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

Article 12

Confidentiality for Transmission System Operators

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

CHAPTER V

DISTRIBUTION SYSTEM OPERATION

Article 13

Designation of Distribution System Operators

Member States shall designate or shall require undertakings that own or are responsible for distribution systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more distribution system operators. Member States shall ensure that distribution system operators act in accordance with Articles 14 to 16.

Article 14

Tasks of Distribution System Operators

1. The distribution system operator shall maintain a secure, reliable and efficient electricity distribution system in its area with due regard for the environment.

2. In any event, it must not discriminate between system users or classes of system users, particularly in favour of its related undertakings.

3. The distribution system operator shall provide system users with the information they need for efficient access to the system.

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

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

This requirement shall be without prejudice to using electricity acquired under contracts concluded before 1 January 2002.

6. Where distribution system operators are responsible for balancing the electricity distribution system, rules adopted by them for that purpose shall be objective, transparent and non discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by distribution system operators shall be established in accordance with Article 23(2) in a non discriminatory and cost-reflective way and shall be published.

7. When planning the development of the distribution network, energy efficiency/demand-side management measures and/or distributed generation that might supplant the need to upgrade or replace electricity capacity shall be considered by the distribution system operator.

Article 15

Unbundling of Distribution System Operators

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

2. In addition to the requirements of paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:

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

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

(c) the distribution system operator shall have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of
return on assets, regulated indirectly in accordance with Article 23(2), in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, or with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument.

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

Member States may decide not to apply paragraphs 1 and 2 to integrated electricity undertakings serving less than 100,000 connected customers, or serving small isolated systems.

Article 16

Confidentiality for Distribution System Operators

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

Article 17

Combined operator

The rules in Articles 10(1) and 15(1) do not prevent the operation of a combined transmission and distribution system operator, which is independent in terms of its legal form, organisation and decision making from other activities not relating to transmission or distribution system operation and which meets the requirements set out in points (a) to (d). These rules shall not create an obligation to separate the ownership of assets of the combined system from the vertically integrated undertaking.

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

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

(c) the combined system operator shall have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain and develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 23(2), in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the combined system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, or with respect to individual decisions concerning the construction or upgrading of transmission and distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;

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

CHAPTER VI

UNBUNDLING AND TRANSPARENCY OF ACCOUNTS

Article 18

Right of access to accounts

1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article 23, shall, insofar as necessary to carry out their functions, have right of access to the accounts of electricity undertakings as set out in Article 19.
2. Member States and any designated competent authority, including the regulatory authorities referred to in Article 23, shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

Article 19

Unbundling of accounts

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

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

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

3. Electricity undertakings shall, in their internal accounting, keep separate accounts for each of their transmission and distribution activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution. Until 1 July 2007, they shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission/distribution system shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-electricity activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.

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

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


CHAPTER VII

ORGANISATION OF ACCESS TO THE SYSTEM

Article 20

Third party access

1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. Member States shall ensure that these tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 23 and that these tariffs, and the methodologies — where only methodologies are approved — are published prior to their entry into force.

2. The operator of a transmission or distribution system may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3. Member States shall ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charge a reasonable fee reflecting the cost of providing such information.

Article 21

Market opening and reciprocity

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

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

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

(c) from 1 July 2007, all customers.

2. To avoid imbalance in the opening of electricity markets:

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

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

Article 22

Direct lines

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

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

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

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

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

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

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

Article 23

Regulatory authorities

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

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

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

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

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

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

(f) the terms, conditions and tariffs for connecting new producers of electricity to guarantee that these are objective, transparent and non-discriminatory, in particular taking full account of the costs and benefits of the various renewable energy sources technologies, distributed generation and combined heat and power;

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

(h) the level of transparency and competition.

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

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

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

(b) the provision of balancing services.

3. Notwithstanding paragraph 2, Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State the tariffs or at least the methodologies referred to in that paragraph as
Annex B

well as the modifications in paragraph 4. The relevant body shall, in such a case, have the power to either approve or reject a draft decision submitted by the regulatory authority. These tariffs or the methodologies or modifications thereto shall be published together with the decision on formal adoption. Any formal rejection of a draft decision shall also be published, including its justification.

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

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

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

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

7. Member States shall take measures to ensure that regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 5 in an efficient and expeditious manner.

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

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

9. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

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

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

12. National regulatory authorities shall contribute to the development of the internal market and of a level playing field by cooperating with each other and with the Commission in a transparent manner.

CHAPTER VIII

FINAL PROVISIONS

Article 24

Safeguard measures

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

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

The Member State concerned shall without delay notify these measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.
Article 25
Monitoring of imports of electricity

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

Article 26
Derogations

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

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

Article 27
Review Procedure

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

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

Within three months of its receipt of a notification, the Commission shall adopt an opinion with respect to the request by the Member State concerned, and where appropriate, submit proposals to the European Parliament and to the Council to amend the relevant provisions of the Directive. The Commission may propose, in the proposals to amend the Directive, to exempt the Member State concerned from specific requirements, subject to that Member State implementing equally effective measures as appropriate.

Article 28
Reporting

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

(a) the experience gained and progress made in creating a complete and fully operational external market in electricity and the obstacles that remain in this respect, including aspects of market dominance, concentration in the market, predatory or anti-competitive behaviour and the effect of this in terms of market distortion;

(b) the extent to which the unbundling and tariffication requirements contained in this Directive have been successful in ensuring fair and non-discriminatory access to the Community's electricity system and equivalent levels of competition, as well as the economic, environmental and social consequences of the opening of the electricity market for customers;

(c) an examination of issues relating to system capacity levels and security of supply of electricity in the Community, and in particular the existing and projected balance between demand and supply, taking into account the physical capacity for exchanges between areas;

(d) special attention will be given to measures taken in Member States to cover peak demand and to deal with shortfalls of one or more suppliers;

(e) the implementation of the derogation provided under Article 15(2) with a view to a possible revision of the threshold;

(f) a general assessment of the progress achieved with regard to bilateral relations with third countries which produce and export or transport electricity, including progress in market integration, the social and environmental consequences of the trade in electricity and access to the networks of such third countries;

(g) the need for possible harmonisation requirements that are not linked to the provisions of this Directive;
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3. The Commission shall, no later than 1 January 2006, forward to the European Parliament and Council, a detailed report outlining progress in creating the internal electricity market. The report shall, in particular, consider:

— the existence of non-discriminatory network access;

— effective regulation;

— the development of interconnection infrastructure and the security of supply situation in the Community;

— the extent to which the full benefits of the opening of markets are accruing to small enterprises and households, notably with respect to public service and universal service standards;

— the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour;

— the extent to which customers are actually switching suppliers and renegotiating tariffs;

— price developments, including supply prices, in relation to the degree of the opening of markets;

— the experience gained in the application of the Directive so far as the effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.

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

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

Article 29

Repeals

Directive 90/347/EEC shall be repealed with effect from 1 July 2004.

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

Article 30

Implementation

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

2. Member States may postpone the implementation of Article 13(1) until 1 July 2004. This shall be without prejudice to the requirements contained in Article 13(2).
3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 31

Entry into force

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

Article 32

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 26 June 2003.

For the European Parliament

The President

P. COX

For the Council

The President

A. TSOGHATZIPOULOS
Measures on consumer protection

Without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC of the European Parliament and of the Council (1) and Council Directive 91/136/EEC (2), the measures referred to in Article 3 are to ensure that customers:

(a) have a right to a contract with their electricity service provider that specifies:
   — the identity and address of the supplier;
   — the services provided, the service quality levels offered, as well as the time for the initial connection;
   — if offered, the types of maintenance service offered;
   — the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
   — the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;
   — any compensation and the refund arrangements which apply if contracted service quality levels are not met;
   and
   — the method of initiating procedures for settlement of disputes in accordance with point (f).

Conditions shall be fair and well known in advance. In any case, this information should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract;

(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect.

Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their electricity service provider;

(c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services;

(d) are offered a wide choice of payment methods. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. Customers shall be protected against unfair or misleading selling methods;

(e) shall not be charged for changing supplier;

(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Such procedures shall enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC (3);

(g) when having access to universal service under the provisions adopted by Member States pursuant to Article 3(3), are informed about their rights regarding universal service.

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(3) OJ 115, 17.7.1998, p. 11
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DIRECTIVE 2003/89/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 18 January 2006
concerning measures to safeguard security of electricity supply and infrastructure investment
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee (1),

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty (2),

Whereas:

(1) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity (3), has made a very important contribution towards the creation of the internal market for electricity. The guarantee of a high level of security of electricity supply is a key objective for the successful operation of the internal market and that Directive gives the Member States the possibility of imposing public service obligations on electricity undertakings, inter alia, in relation to security of supply. Those public service obligations should be defined as precisely and strictly as possible, and should not result in the creation of generation capacity that goes beyond what is necessary to prevent undue interruption of distribution of electricity to final customers.

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

(3) A competitive single EU electricity market necessitates transparent and non-discriminatory policies on security of electricity supply compatible with the requirements of such a market. The absence of such policies in individual Member States, or significant differences between the policies of the Member States would lead to distortions of competition. The definition of clear roles and responsibilities of the competent authorities, as well as of Member States themselves and all relevant market actors, is therefore crucial in safeguarding security of electricity supply and the proper functioning of the internal market while at the same time avoiding creating obstacles to market entrants, such as companies generating or supplying electricity in a Member State that have recently started their operations in that Member State, and avoiding creating distortions of the internal market for electricity or significant difficulties for market actors, including companies with small market shares, such as generators or suppliers with a very small share in the relevant Community market.


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

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

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

(1) OJ C 120, 20.5.2003, p. 119.
(4) OJ L 176, 15.7.2003, p. 11.
The main intention of the relevant technical rules and recommendations, such as those contained in the Union for the Coordination of Transmission of Electricity (UCTE) Operation handbook, similar rules and recommendations developed by Nordel, the Baltic Grid Code and those for the United Kingdom and Irish systems, is to provide support for the technical operation of the interconnected network, thus contributing to meeting the need for continued operation of the network in the event of system failure at an individual point or points in the network and minimising the costs related to mitigating such supply disruption.

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

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

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

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

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

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

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

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

Member States should ensure the effective implementation of this Directive.

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

The Council of the European Union, having regard to the Treaty on the Functioning of the European Union, and in particular Article 95 thereof,

has adopted this Directive.

**Article 1**

**Scope**

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

(a) an adequate level of generation capacity;

(b) an adequate balance between supply and demand;

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

Article 2
Definitions

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

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

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

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

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

Article 3
General provisions

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

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

(a) the importance of ensuring continuity of electricity supplies;

(b) the importance of a transparent and stable regulatory framework;

(c) the internal market and the possibilities for cross-border cooperation in relation to security of electricity supply;

(d) the need for regular maintenance and, where necessary, renewal of the transmission and distribution networks to maintain the performance of the network;

(e) the importance of ensuring proper implementation of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (1) and Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market (2), insofar as their provisions are related to security of electricity supply;

(f) the need to ensure sufficient transmission and generation reserve capacity for stable operation;

and

(g) the importance of encouraging the establishment of liquid wholesale markets.

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

(a) the degree of diversity in electricity generation at national or relevant regional level;

(b) the importance of reducing the long-term effects of the growth of electricity demand;

(c) the importance of encouraging energy efficiency and the adoption of new technologies, in particular demand management technologies, renewable energy technologies and distributed generation;

and

(d) the importance of removing administrative barriers to investments in infrastructure and generation capacity.

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


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

(a) each Member State’s specific geographical situation;

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

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

Article 4
Operational network security

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

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

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

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

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

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

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

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

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


4. Member States shall ensure that curtailment of supply in emergency situations shall be based on predefined criteria relating to the management of imbalances by transmission system operators. Any safeguard measures shall be taken in close consultation with other relevant transmission system operators, respecting relevant bilateral agreements, including agreements on the exchange of information.

Article 5
Maintaining balance between supply and demand

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

In particular, Member States shall:

(a) without prejudice to the particular requirements of small isolated systems, encourage the establishment of a wholesale market framework that provides suitable price signals for generation and consumption;

(b) require transmission system operators to ensure that an appropriate level of generation reserve capacity is available for balancing purposes and/or to adopt equivalent market based measures.

2. Without prejudice to Articles 87 and 88 of the Treaty, Member States may also take additional measures, including but not limited to the following:

(a) provisions facilitating new generation capacity and the entry of new generation companies to the market;
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(b) removal of barriers that prevent the use of interruptible contracts;

(c) removal of barriers that prevent the conclusion of contracts of varying lengths for both producers and customers;

(d) encouragement of the adoption of real-time demand management technologies such as advanced metering systems;

(e) encouragement of energy conservation measures;

(f) tendering procedures or any procedure equivalent in terms of transparency and non-discrimination in accordance with Article 7(1) of Directive 2003/54/EC.

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

Article 6
Network investment

1. Member States shall establish a regulatory framework that:

(a) provides investment signals for both the transmission and distribution system network operators to develop their networks in order to meet foreseeable demand from the market;

and

(b) facilitates maintenance and, where necessary, renewal of their networks.

2. Without prejudice to Regulation (EC) No 1228/2003, Member States may allow for merchant investments in interconnection. Member States shall ensure that decisions on investments in interconnection are taken in close cooperation between relevant transmission system operators.

Article 7
Reporting

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

(a) operational network security;

(b) the projected balance of supply and demand for the next five-year period;

(c) the prospects for security of electricity supply for the period between five and 15 years from the date of the report;

and

(d) the investment intentions, for the next five or more calendar years, of transmission system operators and those of any other party of which they are aware, as regards the provision of cross-border interconnection capacity.

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

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

(a) the principles of congestion management, as set out in Regulation (EC) No 1228/2003;

(b) existing and planned transmission lines;

(c) expected patterns of generation, supply, cross-border exchanges and consumption, allowing for demand management measures;

and

(d) regional, national and European sustainable development objectives, including those projects forming part of the Axes for priority projects set out in Annex I to Decision No 1229/2003/EC.

Member States shall ensure that transmission system operators provide information on their investment intentions or those of any other party of which they are aware as regards the provision of cross-border interconnection capacity.

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

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

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

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

Article 8
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 February 2008. They shall forthwith inform the Commission thereof.

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

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

Article 9
Reporting

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

Article 10
Entry into force

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

Article 11
Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 18 January 2006.

For the European Parliament
The President
J. BORRELLE FONTELLES

For the Council
The President
H. WINKLER

(1) OJ L 296, 14.11.2003, p. 34.