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

On 23 April 2002, the Working Party on Energy has examined the Articles of the new revised Presidency text, which includes references to relevant EP amendments. The result of this examination is set out at Annex.

While the I delegation has a scrutiny reservation on the whole new text, the D/A/UK delegations question the appropriateness of examining EP amendments before having received the Commission's modified proposal.

Consolidated Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**concerning common rules for the internal market in electricity¹****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 organisation and functioning of the electricity sector, access to the market, the criteria and procedures applicable to calls for tender and the granting of authorisations and the operation of systems.

Article 2²

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, but not including supply;

¹ In line with EP amendment 1

² NL/D: legal and legal-linguist coherence of definitions should be checked throughout the text

- 6) "transmission system operator" shall mean a natural or legal person responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, when applicable, its interconnections with other systems, and to ensure the long-term ability of the system to meet reasonable demands for the transmission of electricity;
- 7) "distribution" shall mean the transport of electricity on medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but not including supply;
- 8) "distribution system operator" shall mean a natural or legal person responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, when applicable, its interconnections with other systems and to ensure the long-term ability of the system to meet reasonable demands for the distribution of electricity.
- 9) "customers" shall mean wholesale and final customers of electricity [...];
- 10) "wholesale customers" shall mean any natural or legal persons who purchase electricity for the purpose of resale inside or outside the system where they are established³;
- 11) "final customer" shall mean a customer purchasing electricity for his own use;
- 12) "household customer" shall mean a customer purchasing electricity for his/her own household consumption, [excluding commercial or professional activities]⁴;
- 13) "non-household customer" shall mean any natural or legal person purchasing electricity which is not for his or her own household use and shall include [...] wholesale customers;
- 14) "eligible customer" shall mean a customer who is free to purchase electricity from the supplier of his or her choice, in the meaning of article 19(1)⁵;
- 15) "interconnectors" shall mean equipment used to link electricity systems;
- 16) "interconnected system" shall mean a number of transmission and distribution systems linked together by means of one or more interconnectors;
- 17) "direct line" shall mean a) an electricity line linking an isolated production site with an isolated customer or b) an electricity line linking an electricity producer [...] and an electricity supply undertaking [...] to supply directly their own premises, subsidiaries and eligible customers⁶;

³ F: wonders whether this definition gives Member States the possibility of regulating wholesale customers activities on their territory.

⁴ GR: delete bracketed words or replace by the following: "including small retail activities"; alternatively GR/P suggest the mentioning of "low voltage tension" for this definition. Cion/A: against these suggestions, as the Directive allows for the necessary flexibility.

⁵ I: scrutiny reservation. In substance equivalent with EP amendment 34

⁶ I: prefers previous wording of this definition

- 18) "economic precedence" shall mean the ranking of sources of electricity supply in accordance with economic criteria;
- 19) "ancillary services" shall mean all services necessary for the operation of a transmission or distribution system;
- 20) "system user" shall mean any natural or legal person supplying to, or being supplied by, a transmission or distribution system;
- 21) "supply" shall mean the sale of electricity to customers;
- 22) "integrated electricity undertaking" shall mean a vertically or horizontally integrated undertaking;
- 23) "vertically integrated undertaking" shall mean an undertaking or a group of undertakings whose mutual relationships are defined in Art. 3(3) of Council Regulation 4064/89 (EEC)⁷ and where companies concerned are performing jointly, at least one of the functions of transmission or distribution⁸ and at least one of the functions of generation or supply of electricity⁹;
- 24) "horizontally integrated undertaking" shall mean 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;
- 25) "tendering procedure" shall mean the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;
- 26) "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;
- 27) "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;
- 28) "energy imbalance" means the difference between the quantity of electricity notified to the transmission/distribution system operator for injection *or* withdrawal at a given location over a given time period and the metered quantity of electricity *injected or* withdrawn at a given location over the same time period;
- 29) "security"- means [...] security of supply [...] of electricity, and technical safety.

⁷ Council Regulation 4064/89 (EEC) of 21.12.89 on the control of concentrations between undertakings, OJ L 257, 21.09.90, p.0013

⁸ UK: scrutiny reservation on the definition especially with respect to the separation of generation and supply.

⁹ Consistent with EP amendment 27
I: scrutiny reservation on this definition

Chapter II

General rules for the organisation of the sector

Article 3

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive market in electricity, and shall not discriminate between these undertakings as regards either rights or obligations.
2. Having *full* regard to the relevant provisions of the Treaty, in particular Article 86, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including climate protection¹⁰. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable¹¹. In relation to security of supply, as referred to above, Member States may introduce the implementation of long-term planning and demand-side management, taking into account the possibility of third parties seeking access to the system.

¹⁰ Partially consistent with EP amendment 4; other elements of amendment 4 are covered in Article 22

¹¹ D: suggests the following wording to be added: "Financial compensation, other forms of compensation and exclusive rights which a Member State grants for the fulfilment of such obligations have to be procured in a non-discriminatory and transparent tendering procedure".

3. Member States shall ensure that [all final]¹² customers enjoy universal service¹³, that is the right to be supplied with electricity of a specified quality within their territory at reasonable prices¹⁴. *Such measures may differ according to households and small and medium enterprises*¹⁵. To that effect, Member States may appoint a supplier of last resort [...]¹⁶. Member States shall impose on distribution companies an obligation to connect customers to their grid at terms, conditions and tariffs set in accordance with the procedure laid down in Article 22.
- 3a. They shall take appropriate measures to protect final customers, in particular vulnerable ones, and to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information¹⁷ and dispute settlement mechanisms. These measures may¹⁸ include, in particular, those set out in the Annex.

¹² NL, supported by D/DK/FIN/I/S/UK: suggests to replace bracketed words by the words "at least households"

¹³ A recital could specify that when considering the notion of universal service, this can be interpreted on a national basis, taking into account national circumstances. I/IRL/ES/S: agree with this suggestion; A: scrutiny reservation

¹⁴ A: reservation on this sentence. The following wording could be added: "To that effect, Member States may impose on transmission and distribution companies an obligation to connect customers to their grid at conditions and tariffs set in accordance with the procedure laid down in Articles 7(2) and 22. To ensure economic, social and territorial cohesion, Member States may, concerning small customers, including SME, set up some or all of the following provisions:

- a) designate, when applicable for each zone, one or more last resort suppliers to supply customers that ask for it, on the basis of regulated tariffs;
- b) set price ceilings for suppliers, when applicable by zone and by category of customers;
- c) require supply companies to treat in a non discriminatory way, especially regarding supply prices, customers who have the same type of consumption, when applicable in each zone and for each category of customers.

Without prejudice to paragraph 6 of this Article, Member States may set up mechanisms to share the overcosts resulting from these provisions amongst the different companies".

D: supports general line subject to specific remarks, E: supports this addition;

B/DK/I/P/UK: scrutiny reservation;

GR: suggests deletion of the words "to ensure economic, social and territorial cohesion";

NL/UK/FIN/D/DK/S: are against the mention of "price ceilings"; D/FIN/S: reservation on "without prejudice to paragraph 6 of this Article, Member States may set up mechanisms to share the overcosts resulting from these provisions amongst the different companies "; Cion: agrees that clarity could be needed on public service obligations, but prefers the text of the provision as it stands.

¹⁵ UK: would prefer deleting the underlined sentence

¹⁶ A: scrutiny reservation with regard to the implications of this deletion

¹⁷ NL: suggests to insert the following words: "and information on the global composition of the fuel mix".

¹⁸ IRL: suggests replacing "may" by "shall"; P is flexible

4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, *notably as concerns the remote areas*, environmental protection, which may include demand-side management and means to combat climate change, and security of supply, notably by providing adequate economic incentives, using, *where appropriate, existing national and Community tools*¹⁹, for the maintenance and construction of the necessary network infrastructure including interconnection capacity.
5. Member States may decide not to apply the provisions of Articles 5, 6, 16 and 21 in so far 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 in so far 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 86 of the Treaty²⁰.
6. Member States shall, upon implementation of this Directive, inform the Commission of all measures adopted to fulfil [universal service and]²¹ public service obligations and their possible effect on competition, whether or not such measures require a derogation from the provisions of this Directive. They shall inform the Commission subsequently every two years of any changes to the measures adopted to fulfil universal service and public service obligations, whether or not such measures require a derogation from the provisions of this Directive²².

Article 3a
deleted

Chapter III

Generation

Article 4
[deleted]

¹⁹ A Recital will specify that this may include liability mechanisms to guarantee the necessary investment; I/S: agree on such a recital; E/GR: could envisage the reference to liability mechanisms either in a recital or in the operative part of the Directive.

²⁰ I: suggests deletion of paragraph 5.

²¹ A: suggests deletion of bracketed words.

²² This paragraph is partially consistent with EP amendment 46

Article 5

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. The authorisation procedures and criteria shall be made public.
4. 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 6

1. Member States shall²³ ensure the possibility, in the interest [...] of security of supply, to tender for new capacity on the basis of published criteria. This tender may relate to new capacity or [demand-side management]²⁴. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the generating capacity being built is not sufficient to ensure security of supply.

²³ D/FIN/NL/UK: suggest replacing "shall" by "may"; B/DK/F/GR/IRL: opposed to this suggestion; E/B/IRL: as a compromise, could accept a wording based on EP amendment 51.

²⁴ D: a definition for bracketed words is needed, this could possibly be based on EP amendment 23.

2. Member States may ensure the possibility, in the interests of environmental protection and the promotion of infant new technologies, to tender for new capacity²⁵, [...], on the basis of published criteria. This tender may relate to new capacity or demand-side management. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the generating capacity being built is not sufficient to achieve these objectives.
3. Details of the tendering procedure for means of generating capacity and demand-side management 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. 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 in the tender. These specifications may also relate to the fields referred to in Article 5(2).

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, distribution and supply activities, which may be the independent regulatory authority referred to in Article 22, to be responsible for the organisation, monitoring and control of the tendering procedure referred to in paragraph 1 to 4. This authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders²⁶.

Article 6a

Member States or the independent regulatory authorities referred to in Article 22 shall ensure the monitoring of security of supply issues. This monitoring shall, in particular, cover the supply[/demand balance on the national market]²⁷, the level of expected future demand and envisaged additional capacity under planning or construction. They shall publish, by 31 July each year 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 forward this report to the Commission forthwith.

²⁵ A recital will indicate that new capacity includes i.a. renewables and combined heat and power.

²⁶ NL: the management of the tendering needs to be independent; will provide a formulation.

²⁷ D: suggests deletion of bracketed words, together with insertion of the words "development of" before the word "supply".

Chapter IV

Transmission system operation

Article 7²⁸

1. Member States shall designate or shall require undertakings which own transmission systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more transmission system operators.
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 98/34/EC of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations ²⁹.
3. For the purposes of this Directive, the transmission system operator shall be responsible for:
 - ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;
 - contributing to security of supply through adequate transmission capacity and system reliability;
 - 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;
 - providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, co-ordinated development and interoperability of the interconnected system;
 - the non-discrimination as between system users or classes of system users, particularly in favour of its subsidiaries or shareholders.

²⁸ Pdcy, in reply to NL, confirms that provisions of Article 7 are coherent with those of Article 12a: where Article 7 applies to vertically integrated undertakings, Article 12a addresses combined transmission and distribution system operators which are not vertically integrated.

²⁹ OJ No L 204, 21.7.1998, p. 37.

4. Where the transmission system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal³⁰ form, organisation and decision making from other activities not relating to transmission³¹.

In order to ensure the independence of the transmission system operator, which is part of a vertically integrated undertaking, the following minimum criteria shall apply:

- (a) those persons responsible for the management of the transmission undertaking 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;
- (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 must have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to maintain or develop the network³²;
- (d) the transmission system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer. An annual report, setting out the measures taken, must be submitted by the compliance officer to the regulatory authority referred to in Article 22(1) and published³³.

Article 7a

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.

³⁰ F/LUX: reservation on the need for the provision of legal unbundling.; D: constitutional concerns on this provision, has requested opinion from Council Legal Service.

³¹ Based on EP amendments 56 and 164, the following sentences could be added as an option: "Member States which wish to derogate from legal unbundling shall notify the Commission to prove that the system they choose guarantees a degree of non-discrimination similar to that guaranteed by legal unbundling. The criteria set out in points a) to d) shall apply. The Commission shall, by 2006, assess the different national systems and the degree of non-discrimination attained in the access to the transmission grids and shall, if necessary, submit new proposals for mandatory legal unbundling". This option could also be considered in relation to Article 10(4).

B/FIN/GR/I/IRL/NL/P/S/UK and Cion: reservation on this option.

³² This point is equivalent to the corresponding part of EP amendments 56 and 164.

³³ D: proposes to replace this paragraph by the following wording: "the transmission system operator shall submit to the regulatory authorities referred to in Art 22(1) an annual report setting out the measures taken to ensure that discriminatory conduct is excluded. This report shall be published by the transmission system operator upon submission".

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 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. *In so doing, the costs of connecting electricity from renewable energy sources and combined heat and power shall be objective, transparent and non-discriminatory*³⁴.
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 meet minimum levels of investment, *using, where appropriate, liability mechanisms to guarantee the necessary investment* for the maintenance and development of the transmission system, including interconnection capacity.
6. 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 tariffs³⁵, for the provision of such services by transmission system operators shall be established in accordance with Article 22(2) in a non-discriminatory *and cost-reflective* way [...] and shall be published *by the transmission system operator*³⁶.

Article 9

The transmission 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.

³⁴ Consistent with EP amendment 57.

E/GR: positive scrutiny reservation; FIN/UK: suggest a separate paragraph for this underlined sentence, which concerns connection rather than dispatching.

³⁵ S/UK: suggest replacing "tariffs" by "prices to be set".

³⁶ GR: publication should also be possible by the Member State.

Chapter V
Distribution system operation

Article 10

1. Member States shall designate or shall require undertakings which own or are responsible for distribution systems to designate one or more distribution system operators.
2. Member States shall ensure that distribution system operators acts in accordance with Articles 11 and 12.
3. Where the distribution system operator is part of a vertically integrated undertaking it shall be independent at least in terms of its legal³⁷ form, organisation and decision making from other activities not relating to distribution. [...] ³⁸.

In order to ensure the independence of the distribution system operator, which is part of a vertically integrated undertaking, the following minimum criteria shall apply:

- (a) those persons responsible for the management of the distribution undertaking 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 and supply;
- (b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the distribution undertaking are taken into account in a manner that ensures that they are capable of acting independently;
- (c) the distribution system operator must have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to maintain or develop the network ³⁹;
- (d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up

³⁷ F/LUX: reservation on the need for the provision of legal unbundling.; D: constitutional concerns on this provision, has requested opinion from Council Legal Service.

³⁸ Wording in line with EP amendment 61.
On legal unbundling, see also footnote 30. F/I: scrutiny reservation on this option; E: the option could be accepted, if transmission and distribution are specified in the chapeau.
P: scrutiny reservation on deletion of bracketed words.

³⁹ Consistent with EP amendment 62.

and its respect monitored by a compliance officer. An annual report, setting out the measures taken, must be submitted by the compliance officer to the regulatory authority referred to in Article 22(1), and published⁴⁰.

The provisions of this paragraph shall apply from [1 January 2003]⁴¹. Member States may decide not to apply this paragraph to integrated electricity undertakings serving less than [100 000]⁴² customers.

Article 10a

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.

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.
4. Rules adopted by distribution system operators for balancing the⁴³ electricity system⁴⁴ 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 22(2) in a non-discriminatory *and cost-reflective* way [...] and shall be published *by the distribution system operator*.

⁴⁰ D: proposes to replace this paragraph by the following wording: "the transmission system operator shall submit to the regulatory authorities referred to in Art 22(1) an annual report setting out the measures taken to ensure that discriminatory conduct is excluded. This report shall be published by the transmission system operator upon submission".

⁴¹ To be adapted in the light of the new date of entry into force.

⁴² DK/E/FIN/I/NL/A/S/UK: would prefer a lower figure (A: 50.000, others: 10.000); E could even agree to deletion of this provision; D, on the contrary agrees to the figure as proposed; LUX/P suggest to increase the figure to 150.000, also in line with EP amendment 170; P: would prefer a reference to consumption values instead of number of customers.

⁴³ I: suggests the insertion of the word "local"

⁴⁴ F/I/S: suggest the addition of the words "for which he is responsible"

Article 12

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 12a⁴⁵

The rules in Articles 7(4) and 10(4)⁴⁶ 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 and distribution system operation and which meets the requirements of Article 7(4) *a) to d)*⁴⁷.

Chapter VI

Unbundling and transparency of accounts

Article 13

Member States or any competent authority they designate, including the independent regulatory authorities referred to in Article 22(1) and the dispute settlement authorities referred to in Article 20(3) shall have right of access to the accounts of generation, transmission, distribution and supply undertakings which they need to consult in carrying out their checks⁴⁸.

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

⁴⁵ I/NL: scrutiny reservation on this Article; F: this Article should be coherent with Barcelona conclusions.

⁴⁶ The reference should read 10(3) instead of 10(4).

⁴⁷ If additional clarity is needed, the criteria set out in Article 7(4) a) to d) could be copied into Article 12 a, referring to the combined system operator

⁴⁸ Pdcy, in reply to P, explains that this provision concerns only vertically integrated undertakings.

the annual accounts of certain types of companies⁴⁹. 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 transmission and distribution activities, and for their generation and supply 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 competition⁵⁰.⁵¹ Revenue from ownership of the transmission network shall be specified in the accounting. 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.⁵²

Member States may decide that companies with an annual production not exceeding xx Twh are not obliged to publish⁵³ the separate accounts [...]⁵⁴, referred to in this paragraph.

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 accounts⁵⁵, or with associated undertakings, within the meaning of Article 33(1) thereof, or, with undertakings which belong to the same shareholders.

Article 15
[deleted]

⁴⁹ OJ No L 222, 14.8.1978, p. 11. Directive as last amended by the 1994 Act of Accession.

⁵⁰ This sentence is partially taking on board EP amendment 67.

E: prefers previous version of this sentence

⁵¹ D suggests the insertion of the following sentence: "Concerning supply activities, separate accounts have to be kept for eligible and non-eligible customers". DK/Cion: can agree to this suggestion.

⁵² I: paragraph 3 should be reviewed with respect to "vertically integrated undertakings".

UK: scrutiny reservation with respect to the possibility of keeping accounts together for generation and supply.

⁵³ FIN: scrutiny reservation on the word "publish"

⁵⁴ DK/FIN: would prefer to re-introduce the words "generation and supply".

⁵⁵ OJ No L 193, 18.7.1983, p. 1. Directive as last amended by the 1994 Act of Accession.

Chapter VII

Organisation of access to the system

Article 16

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.⁵⁶
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.

Articles 17 & 18

[deleted]

Article 19

1. The eligible customers are the customers which are free to purchase electricity from the supplier of their choice within the Community. Member States shall ensure that these eligible customers are:
 - a) until *the date referred to in Article 27*, the eligible customers as specified in article 19(1) to 19(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 *the date referred to in Article 27* at the latest, all non-household⁵⁷ customers⁵⁸;
[...]⁵⁹.

⁵⁶ D: suggests to add the following sentences: "A derogation from published tariffs can only be granted in cases where otherwise a direct line would be constructed. This exemption is not applicable to the benefit of vertically integrated undertakings of the respective system operator".

I/NL/UK and Cion: there is no need for introducing such a provision.

⁵⁷ F: eligibility should be optional for small distribution companies

⁵⁸ P: proposes the following alternative text for indent b): "from 1 January 2004, all non-household customers or all customers linked to very high tension, high tension and medium tension". Alternatively, P suggests deletion of the words "excluding commercial or professional activities" in Article 2, definition 12.

⁵⁹ D/UK: suggest reintroducing sub-paragraph c) as in the previous text.

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 involved⁶⁰;
 - (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.

Article 20

[paragraphs 1 and 2 deleted, paragraphs 3 to 5 moved to Article 22]

Article 21

1. Member States shall take measures to enable:
 - all electricity producers and electricity supply undertakings, 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. [...]
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 16.
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 16 or to the opening of a dispute settlement procedure under Article 20⁶¹.
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.

⁶⁰ A Recital could further clarify the consequences of reciprocity.

I: would prefer reintroducing its wording as in document 7415/02 (footnote 45), with the additional mention that this should be optional, legally acceptable and coherent with the principle of the Internal Market. GR: the reciprocity approach should be carefully examined as long as the market is not open for all customers.

⁶¹ This reference should read: "22(8)"

Article 22

1. Member States shall designate one or several competent bodies as regulatory authorities⁶². These authorities shall be wholly independent of the interests of the electricity industry. They shall at least have the responsibility to [continuously monitor the market]⁶³ to ensure non-discrimination and the efficient functioning of the market, in particular with respect to:
 - (a) the level of competition and the respect of the requirements set out in Article 3, paragraphs 3 and 4 of this Directive;
 - (b) the rules on the management and allocation of interconnection capacity, in consultation with the regulatory authority or authorities⁶⁴ of those Member States with which interconnection exists;
 - (c) any mechanisms to deal with congested capacity within the national electricity system;⁶⁵
 - (d) the unbundling of accounts and further measures with respect to cross-subsidies between transmission and distribution activities and transmission, distribution, generation, supply and non-electricity activities.*
2. The regulatory authorities referred to in paragraph 1 shall have the sole⁶⁶ responsibility to fix or approve prior to their entry into force, at least the methodologies⁶⁷ used to calculate or establish the following:
 - (a) the terms and conditions for connection and access to national networks, including transmission and distribution tariffs;
 - (b) the terms and conditions for the provision of balancing services⁶⁸.
- [...]
3. Regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in paragraph 2, to ensure that those are reasonable and applied in a non-discriminatory manner⁶⁹.

⁶² A recital could clarify that "regulatory authorities act according to criteria and guidelines from the government".

This sentence is consistent with the corresponding part of EP amendment 75.

⁶³ S: suggests to replace bracketed words by "supervise the market and"

⁶⁴ D/GR/P: suggest the insertion of the following words: "and the transmission system operator"

⁶⁵ E/I/A/UK: the provision of indents b) and c) should be moved to para 2; Cion opposed.

⁶⁶ B/D/E/F/GR/NL: suggest deletion of the word "sole"

⁶⁷ F: would prefer introducing its earlier proposed text, which covers the case where the government takes the formal decision on the methodology defined by the regulator.

⁶⁸ Largely consistent with EP amendment 76.

⁶⁹ This paragraph corresponds to EP amendment 77.

4. Any party having a complaint against a transmission or distribution system operator over terms, conditions, tariffs and methodologies⁷⁰ referred to in paragraph 2 may refer the complaint to the regulatory authority which shall issue a decision within two months⁷¹. This period may be extended by two additional months where additional information is sought by the regulatory authorities. This period may be extended further with the agreement of the complainant⁷².
5. Member States shall take measures to ensure that regulatory authorities referred to in paragraph 1 are able to carry out their duties referred to in paragraph 1-4 in an efficient and expeditious manner⁷³.
6. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.
7. 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.
8. Member States shall designate a competent authority, which must be independent of the parties, to settle disputes relating to the contracts. In particular, this authority must settle disputes concerning contracts, and refusal of access [...]⁷⁴.
9. In the event of cross-border disputes, the dispute settlement authority shall be the dispute settlement authority covering the system operator which refuses use of, or access to, the system.
10. Recourse to this authority shall be without prejudice to the exercise of rights of appeal under Community law.⁷⁵

⁷⁰ A Recital could clarify that "when the decision issued by the regulatory authorities does not require amending the terms, conditions, tariffs and methodologies, the methodology does not have to be approved again by the regulatory authorities". D: will provide a proposal for further clarification.

⁷¹ This sentence is consistent with EP amendment 78.

⁷² FIN/NL: the time limit should be increased; S: the time limit for complaints with respect to network access needs to be longer; In this respect, Cion: suggests the following wording: "In relation to access fees for major new generation, this may be extended by the regulator".

⁷³ EP amendment 81 is partially covered by this provision.

⁷⁴ Cion: points out that this paragraph could be deleted, as no longer needed.

⁷⁵ Paragraphs 2 to 5 of Article 20 have been moved to Article 22; coherence with the whole of Article 22 has to be verified.

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 23a

Member States shall inform the Commission by 31 March of each year at the latest of imports of⁷⁶ electricity that have taken place during the previous calendar year from third countries.

Article 24

[...]⁷⁷

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, which may be granted to them by the Commission. Also Luxembourg may apply for such a derogation. The *Commission* 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.

Article 25 *[deleted]*

Article 26

⁷⁶ S: suggests the addition of the words "physical flows of"

⁷⁷ Pdcy, in reply to B/GR: reiterates that the Council Legal Service has confirmed this paragraph is no longer needed if all cases has been closed. Cion: confirms this to be the case.

1. The Commission shall monitor and review the application of this Directive and submit before the end of the first year following the entry into force of this Directive, and thereafter on an annual basis, an overall progress report to the European Parliament and the Council. The report shall at least cover the following:
 - (i) the experience gained and progress made in creating a complete and fully operational internal market in electricity and remaining obstacles in this respect;
 - (ii) the extent to which the unbundling and tarification requirements of this Directive have been successful in ensuring fair and non-discriminatory access to the Community's electricity system, as well as economic and social consequences of the opening of the electricity market on customers;
 - (iii) issues relating to security of supply of electricity in the Community, and in particular the existing and projected balance between demand and supply
 - (iv) possible necessary harmonisation requirements that are not linked to the provisions of this Directive.

Where appropriate, this report [...] may include recommendations.

2. Every two years, the report referred to in paragraph 1, shall also cover the different measures taken in the Member States to fulfil universal service and public service obligations, together with an examination of the effectiveness of those measures and their effects on competition⁷⁸. Where appropriate, this report may include recommendations as to measures to be taken at national level to achieve high public service standards.

Article 27

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*date to be inserted*] at the latest. They shall forthwith inform the Commission thereof.
2. When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The method of making such reference shall be laid down by Member States.

⁷⁸ In line with EP amendment 47.

Article xx

Directive 90/547/EEC is herewith repealed.

Directive 96/92/EC is herewith repealed⁷⁹ without prejudice to the obligations of Member States concerning the deadlines for transposition and application of the said Directive. References to Directive 96/92/EC shall be construed as references to this Directive.

Article 28

This Directive shall enter into force on the twentieth 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,

For the European Parliament
The President

For the Council
The President

⁷⁹ Pdcy, replying to UK, confirms that this consolidated text "de facto" replaces the [amended] Directive

ANNEX to Annex¹

Without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC of the European Parliament and of the Council² and Council Directive 93/13/EC³, the measures referred to in Article 3 are:

- I. to ensure that household customers
 - (a) have a right to a contract with their electricity service provider that specifies:
 - the identity and address of the supplier;
 - services provided, the service quality levels offered, as well as the time for the initial connection;
 - the types of [maintenance service]⁴ 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 (*I**b***).
 - (b) shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions.
 - (c) shall receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services [...].

¹ As stated in Article 3(3a), these measures are optional.

² OJ L 144, 4.6.1997, p. 19

³ OJ L 95, 21.4.1993, p. 29

⁴ Cion, in reply to UK, explains that bracketed words refer to the network

II.⁵ to ensure that final customers

- (a)⁶ shall be informed of the global composition of the fuel mix used, on an annual basis, to generate the electricity that is consumed through adequate specification by electricity suppliers in the bills sent to each of the final customers they supply. [The relative costs of the different fuels used to generate a unit of electricity supplied to the final customers shall be specified and the relative importance of each energy source with respect to the production of greenhouse gases]⁷.
- (b) shall benefit from transparent, simple and inexpensive procedures being/made available for dealing with final customer complaints. Such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC⁸
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⁵ FIN: scrutiny reservation on this point II.

⁶ F/UK: reservation on this paragraph; S: reservation, if mandatory; Furthermore, S suggests the consideration of the following wording to be introduced, which could help solving their specific situation: "The quantities of electricity which companies obtain via the spot market, the fuel mix which the electricity exchange is required to publish every six months shall be used as a basis for the information provided for the electricity". This proposal is coherent with the corresponding part of EP amendment 89.

⁷ LUX: suggests deletion of the bracketed sentence.

⁸ Official Journal L 115, 17.4.1998, p. 31