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Internal market in electricity ***I

P6_TA(2008)0294

European Parliament legislative resolution of 18 June 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity (COM(2007)0528 — C6-0316/2007 — 2007/0195(COD))

(Text with EEA relevance)

(2009/C 286 E/43)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0528),
 - having regard to Article 251(2), Article 47(2) and Articles 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0316/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0191/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2007)0195

Position of the European Parliament adopted at first reading on 18 June 2008 with a view to the adoption of Directive 2008/.../EC of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity

(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 47(2), and Articles 55 and 95 thereof,

Having regard to the proposal from the Commission,

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

⁽¹⁾ OJ C 211, 19.8.2008, p. 23.

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Having regard to the opinion of the Committee of the Regions ⁽¹⁾,

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

Whereas:

- (1) The internal market for electricity, which has been progressively implemented throughout the Community since 1999, aims at delivering real choice for all || consumers in the European Union, whether citizens or business, new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices, and higher standards of service, and to contribute to security of supply and sustainability.
- (2) 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 significant contribution towards the creation of || an internal market for electricity.
- (3) The right to sell electricity in any Member State on equal terms and without discrimination or disadvantages cannot, however, currently be guaranteed to all the companies in all the Member States. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist, since the || legal framework is insufficient.
- (4) **A secure supply of electricity is of vital importance for the development of European society, the implementation of a sustainable climate change policy, and the fostering competitiveness within the internal market. To this end, cross-border interconnections should be further developed in order to secure the supply of all energy sources at the lowest possible prices to consumers and industry within the European Union.**
- (5) **A well-functioning internal market for electricity should provide producers with the appropriate incentives for investing in new power generations and consumers with adequate measures to promote more efficient use of energy for which a secure supply of energy is a precondition.**
- (6) **Given that renewable energy sources are continuous, it is essential to develop electricity interconnection capacity at Community level, paying special attention to the most isolated countries and regions in the Community's energy market in order to provide the Member States with the means to achieve the objective of 20 % renewable energy by 2020.**
- (7) **Trade within and the flow of electricity across borders should increase in the internal market in order to secure the best use of available power generation at the lowest possible prices. This should not, however, be an excuse for Member States or producers to refrain from investing in new and modern technology for the electricity generation.**
- (8) The Communication of the Commission of 10 January 2007 entitled 'An Energy Policy for Europe' || highlighted the importance of completing the internal market in electricity and of creating a level playing field for all electricity undertakings established in the Community. The Communications of the Commission, of the same date, on prospects for the internal gas and electricity market and in relation to its final Report on inquiry pursuant to Article 17 of the Regulation (EC) No 1/2003 into the European gas and electricity sectors showed that the present rules and measures do not provide the necessary framework for achieving the objective of a well-functioning internal market.

⁽¹⁾ OJ C 172, 5.7.2008, p. 55.

⁽²⁾ Position of the European Parliament of 18 June 2008.

⁽³⁾ OJ L 176, 15.7.2003, p. 37.

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- (9) ***In order to secure competition and the supply of electricity at the lowest possible price, while at the same time avoiding market dominance by large actors, Member States and national regulatory authorities should facilitate cross-border access for new providers of different energy sources as well as for new providers of power generation.***
- (10) Without effective separation of networks from *the* activities of generation and supply, there is an inherent risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated companies to invest adequately in their networks.
- (11) The rules on legal and functional unbundling currently in place have not led to effective unbundling of the transmission system operators. At its meeting in Brussels on 8 and 9 March 2007, the European Council invited the Commission to develop legislative proposals for the effective separation of supply and generation activities from network operations.
- (12) Only the removal of the inherent incentive for vertically integrated *undertakings* to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the *appointment of the* network owner || as the network operator and *the network operator's independence* from any supply and production interests, is clearly the most effective and stable way to solve the inherent conflict of interest and to ensure security of supply. For this reason, the European Parliament, in its *resolution of 10 July 2007 on prospects for the internal gas and electricity market* ||, referred to ownership unbundling at transmission level as the most effective tool *by which to promote non-discriminatory investments in infrastructures* ||, fair access to the grid for new entrants and transparency in the market. Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control, including through minority blocking rights on decisions of strategic importance such as investments, over a production or supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or a transmission system. Conversely, control over a transmission system operator should preclude the possibility of holding any interest in or exercising any right over a supply undertaking.
- (13) ***Any system for unbundling should be effective in removing any conflict of interests between generators and transmission system operators and should not create an onerous or cumbersome regulatory regime for national regulatory authorities that would be difficult or expensive to implement.***
- (14) Since ownership unbundling requires, in some instances, || restructuring of undertakings, Member States should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should, *moreover*, apply || across *both* sectors.
- (15) To ensure full independence of network operation from supply and generation interests and to prevent exchange of any confidential information, the same person should not be a member of the managing boards of both a transmission system operator and an undertaking performing any of the functions of generation or supply. For the same reason, the same person should not be entitled to appoint members of the managing boards of a transmission system operator and to hold any interest in a supply undertaking. ■
- (16) Where the undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should || be given a choice between ownership unbundling and, as a derogation, setting up system operators which are independent from supply and generation interests. The full effectiveness of the independent system operator solution needs to be assured by way of specific additional rules. To preserve fully the interests of the shareholders of vertically integrated *undertakings*, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated company into shares of the network company and shares of the remaining supply and generation business, provided that the requirements resulting from ownership unbundling are complied with.

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- (17) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To this end, the same person should not be able to exercise any influence, solely or jointly, over the composition, voting or decision of the bodies of both transmission system operators and supply undertakings. Provided that the Member State in question can demonstrate that this requirement is respected, two distinct public bodies *should be able to control* || generation and supply activities *on the one hand* and || transmission activities *on the other*.
- (18) Full separation of network and supply activities should apply throughout the Community, so that any network operator in the Community or its affiliated companies should be prevented from having any supply or generation activities in any Member State. This should apply equally to *the undertakings established within the European Union and third-country undertakings*. To ensure that network and supply activities throughout the Community are kept separate, *national* regulatory authorities should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure || consistent application across the Community and the respect of the international obligations of the Community, **the Agency for the Cooperation of Energy Regulators ('the Agency') established by Regulation (EC) No .../2008 of the European Parliament and of the Council ⁽¹⁾** should have the right to review the decisions on certification taken by the *national* regulatory authorities.
- (19) The safeguarding of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the *European Union's* electricity market **and the elimination of the market's geographical isolation**. Electricity can || reach || citizens *of the Union only* through the network. Functioning electricity markets and, in particular, the networks and other assets associated with electricity supply, are essential for public security, for the competitiveness of the economy and for the well-being of the citizens *of the Union*. Without prejudice to its international obligations ||, the Community considers that the electricity transmission system sector is of high importance to the Community and therefore additional safeguards are necessary regarding the influence of third countries in order to avoid any threats to Community public order and public security and the welfare of the citizens *of the Union*. Such measures are also necessary for ensuring compliance with the rules on effective unbundling.
- (20) *Non-discriminatory* access to the distribution network determines downstream access to customers at retail level. The scope for discrimination as regards *third-party* access and investment is, however, less significant at distribution level than at transmission level because at distribution level congestion and the influence of generation interests are generally less important than at transmission level. Moreover, functional unbundling of distribution system operators became, *in accordance with* Directive 2003/54/EC, compulsory only as of 1 July 2007 and its effects on the internal market still need to be evaluated. The rules on legal and functional unbundling currently in place can lead to effective unbundling provided they are more clearly defined, properly implemented and closely monitored. To create a level playing field at retail level, the activities of distribution system operators should therefore be monitored so that they are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to small *household* and *non-household* customers.
- (21) **In order to develop competition in the internal market for electricity, non-household customers should be able to choose their suppliers as well as enter into contracts to secure their electricity requirements with several suppliers. Such customers should be protected against exclusivity clauses, the effect of which is to exclude competing and/or complementary offers.**
- (22) Directive 2003/54/EC introduced a requirement for Member States to establish *regulatory authorities* with specific competences. However, experience shows that the effectiveness of regulation is frequently hampered through a lack of independence of *regulatory authorities* from government, and insufficient powers and discretion. For this reason, at its *above-mentioned* meeting in Brussels ||, the European Council invited the Commission to develop legislative proposals providing for further harmonisation of the powers and strengthening of the independence of national *regulatory authorities*.

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- (23) **Any harmonisation of the powers of national regulatory authorities should include incentives that can be offered and sanctions that can be imposed on electricity undertakings. The Agency should be given the appropriate powers to take the lead in ensuring there is parity in the incentives and sanctions across all Member States, and provide guidelines on such measures.**
- (24) National regulatory authorities need to be able to take decisions on all relevant regulatory issues if the internal market is to function properly, and to be fully independent from any other public or private interests.
- (25) National regulatory authorities should have the power to issue binding decisions on electricity undertakings and to impose effective, appropriate and dissuasive sanctions on electricity undertakings which fail to comply with their obligations. They should also be granted the powers to decide, irrespective of the application of competition rules, on any appropriate measures **ensuring customer benefits through the promotion of** effective competition necessary for the proper functioning of the market; as well as to ensure high standards of universal and public service in compliance with market opening, the protection of vulnerable customers, and **the full effectiveness of** consumer protection measures ¶. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a Community dimension, and the rules on the internal market such as the free movement of capital.
- (26) The internal electricity market is suffering from a lack of liquidity and transparency hindering the efficient allocation of resources, risk hedging and new entry. Trust in the market, its liquidity and the number of market participants need to increase ¶.
- (27) **Energy and financial market regulatory authorities should cooperate in order to allow each other an overview of their respective markets. They should have the power to obtain relevant information from electricity undertakings, make appropriate and sufficient investigations, settle disputes and impose effective sanctions.**
- (28) Prior to the adoption by the Commission of guidelines defining further the record keeping requirements, the Agency ¶ and the Committee of European Securities Regulators (CESR) should cooperate to investigate and advise the Commission on the content of the guidelines. The Agency and the CESR should also cooperate further to ¶ investigate and advise on the question whether transactions in electricity supply contracts and electricity derivatives should be subject to pre and/or post-trade transparency requirements and, if so, what the content of such requirements should be.
- (29) **In order to prevent dominant incumbent suppliers from impeding the opening of the market, it is important to enable the development of new business models, for instance the ability to contract simultaneously with several suppliers.**
- (30) The **universal and** public service requirements and the common minimum standards that follow therefrom need to be further strengthened to make sure that all consumers, **in particular those who are vulnerable**, can benefit from competition **and fairer prices. The public service requirements should be defined at national level, taking into account national circumstances. Community law and the common minimum standards should, however, be respected by the Member States. citizens of the Union and small and medium-sized enterprises should be able to enjoy public service guarantees, in particular with regard to security of supply and reasonable tariffs.** A key aspect to supplying consumers is access to **objective and transparent** consumption data; consumers should have access to their **consumption data and associated prices and service costs** so that they can invite competitors to make offers based on those data. Consumers ¶ should also have the right to be properly informed about their energy consumption, **and prepayments should be adequate and reflect actual consumption of electricity.** ¶ Information about energy costs **provided to consumers at least on a quarterly basis and based on common criteria** will create incentives for energy savings because it will give customers direct feedback on the effects of investment in energy efficiency and change of behaviour.

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- (31) *Consumer interests should be at the heart of this Directive. Existing rights of consumers need to be strengthened and guaranteed, and should include greater transparency and representation. Consumer protection must ensure that all consumers benefit from a competitive market. Consumer rights should be enforced by national regulatory authorities by creating incentives and imposing sanctions on companies which do not comply with consumer protection and competition rules.*
- (32) *Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. Following the Commission's communication of 5 July 2007 entitled 'Towards a European Charter on the Rights of Energy Consumers', the Commission should put forward, after consulting relevant stakeholders, including national regulatory authorities, consumer organisations and social partners, an accessible, user-friendly charter listing the rights of energy consumers that already exist in Community law, including this Directive. Energy suppliers should ensure that all consumers receive a copy of that charter and that it is publicly available.*
- (33) *Energy poverty is a growing problem in the European Union. Member States should therefore develop national action plans to tackle the problem and ensure the necessary energy supply for vulnerable consumers. In doing so, an integrated approach is needed and measures should include social policies, tariff policies and energy efficiency improvements for housing. At the very least, this Directive should allow national policies in favour of, in terms of pricing models, vulnerable consumers.*
- (34) *Greater consumer protection is guaranteed by the availability of effective means of redress for all. Member States should introduce speedy and effective arbitration procedures.*
- (35) *Market prices should give the right incentives for the development of the grid and for investing in new electricity generation.*
- (36) *Promoting fair competition and easy access for different suppliers as well as granting capacity for new electricity generation should be of the utmost importance for Member States in order to allow consumers fully to grasp the opportunities of a liberalised internal market for electricity. At the same time, Member States should be responsible for developing national actions plans and social policies.*
- (37) *In the creation of an internal market for electricity, regional energy markets can constitute a first step. Member States should therefore foster at Community and, where possible, at regional level, the integration of their national markets and the cooperation of network operators at Community and national level. Regional integration initiatives are an essential intermediate step in achieving the integration of Community energy markets, which remains the final objective. The regional level contributes towards accelerating the integration process by making it possible for the actors concerned, particularly the Member States, the national regulatory authorities and the transmission system operators, to cooperate in regard to specific issues.*
- (38) *The development of a truly pan-Community grid should be one of the main goals of this Directive and regulatory issues on cross-border interconnections and regional markets should, therefore, be the responsibility of the Agency.*
- (39) *The Commission, in consultation with the stakeholders, and in particular, the transmission system operators and the Agency, should assess the feasibility of creating a single European transmission system operator and analyse the costs and benefits with respect to market integration as well as the effective and secure operation of the transmission network.*

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- (40) *To secure common rules for a properly functioning internal market and a broad supply of energy accessible to all should also be among the main goals of this Directive. To this end, undistorted market prices would provide the best incentive for cross-border interconnections and for investments in new power generation while leading, in the long term, to price convergence.*
- (41) *Increased regional cooperation should be the first step in the development of a fully integrated European electricity grid, ultimately incorporating the electricity islands that persist in the European Union.*
- (42) Regulatory authorities should provide information to the market in order also to permit the Commission to exercise its role of observing and monitoring the European electricity market and its short, medium and long-term evolution, including aspects such as generation capacity, different sources of electricity generation, transmission and distribution infrastructures, **quality of service and supply**, cross-border trade, **congestion management**, the investments, wholesale and consumers prices, market liquidity, environmental and efficiency improvements.
- (43) Since the *objective* of this Directive, namely 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 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*.
- (44) 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⁽¹⁾ provides the Commission with the possibility of adopting guidelines to achieve the necessary degree of harmonisation. Such guidelines, which are || binding implementing measures, are a useful tool which can be adapted quickly where necessary.

■

- (45) Directive 2003/54/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2003/54/EC

Directive 2003/54/EC is amended as follows:

- (1) *Article 1 shall be replaced by the following:*

'This Directive establishes common rules for the generation, transmission, distribution and supply of electricity, together with consumer protection provisions, with a view to improving and integrating competitive energy markets, connected by a common grid, in the European Union. It lays down the rules relating to the organisation and functioning of the electricity sector, open access to the market, the criteria and procedures applicable to calls for tenders and the granting of authorisations and the operation of systems. It also lays down universal service obligations and the rights of electricity consumers and clarifies competition requirements.'

⁽¹⁾ OJ L 176, 15.7.2003, p. 1.

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(2) Article 2 shall be amended as follows:

(a) point 12 shall be replaced by the following:

'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 as well as to contract simultaneously with several suppliers;

(b) point 21 shall be replaced by the following:

'21. "vertically integrated undertaking" means an electricity undertaking, or a group of electricity undertakings where the same person or || persons are entitled, directly or indirectly, to exercise control within the meaning of Article 3(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (*), and where the undertaking or group of undertakings perform at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply of electricity; ||

(*) OJ L 24, 29.1.2004, p. 1.'

(c) the following points shall be added:

'32. "electricity supply contract" means a contract for the supply of electricity, but does not include an electricity derivative;

33. "electricity derivative" means a financial instrument specified in one of Sections C5, C6, or C7 of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (*), where that instrument relates to electricity;

34. "control" means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

(a) ownership or the right to use all or part of the assets of an undertaking;

(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking;

35. "industrial site" means a privately owned geographical area with a power grid which is primarily designed to supply industrial consumers in that area;

36. "fair and undistorted competition in an open market" means common opportunities and equal access for all providers within the European Union, for which the Member States, the national regulatory authorities and the Agency for the Cooperation of Energy Regulators ("the Agency") established by Regulation (EC) No .../2008 of the European Parliament and of the Council () shall be responsible;**

37. "electricity undertaking" means any natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply or purchase of electricity; and responsible for the commercial, technical and/or maintenance tasks related to those functions; it shall not include final customers;

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38. “energy poverty” means the situation where the members of a household cannot afford to heat their home to an acceptable standard based on the levels recommended by the World Health Organisation;
39. “virtual power plant” means an electricity release programme whereby an undertaking generating electricity is obliged either to sell or make available a certain volume of electricity or to grant access to part of its generation capacity to interested suppliers for a certain period of time.

(*) OJ L 145, 30.4.2004, p. 1.

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(3) Article 3 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

‘2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on electricity undertakings, 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, renewable energy and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for EU electricity undertakings to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental and renewable energy targets, 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.’

(b) in paragraph 3, the first subparagraph shall be replaced by the following:

‘3. Member States shall ensure that all household customers and small enterprises as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (*) (enterprises which employ fewer than 50 persons and whose annual turnover and/or balance sheet does not exceed EUR 10 million), enjoy universal service, that is, the right to be supplied with electricity of a specified quality within their territory at cost-based and easily and clearly comparable, transparent and non-discriminatory prices. These customers shall have access to choice, fairness, representation and redress. Quality of service shall be a central responsibility of electricity undertakings. 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 23(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.

(*) OJ L 124, 20.5.2003, p. 36.’

(c) the following paragraphs shall be inserted after paragraph 3:

‘3a. Member States shall ensure that all customers are entitled to have their electricity provided by a supplier, subject to the supplier’s agreement, regardless of the Member State in which the supplier is registered. In this regard, Member States shall take all measures necessary to ensure that undertakings registered in their territories can supply customers without having to fulfil any further conditions.

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3b. Member States shall ensure that:

(a) where a customer wishes to change supplier, the change is effected by the operator(s) concerned within two weeks, and

(b) customers are entitled to receive all relevant consumption data.

Member States shall ensure that the rights referred to in points (a) and (b) are granted to all customers in a non-discriminatory way as regards cost, effort or time.'

(d) paragraph 5 shall be replaced by the following:

'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 prohibiting the disconnection of pensioners and disabled people in winter. In this context, Member States shall recognise energy poverty as defined in Article 2(38) and shall provide definitions of vulnerable customers. Member State shall ensure that rights and obligations linked to vulnerable customers are applied and, in particular, shall 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 easily able to switch to a new supplier. As regards at least household customers, these measures shall include those set out in Annex A.'

(e) the following paragraph shall be inserted after paragraph 5:

'5a. Member States shall take appropriate measures to address energy poverty in national energy action plans in order to ensure that the number of people suffering energy poverty decreases in real terms and shall communicate such measures to the Commission. Each Member State shall be responsible for providing, in accordance with the principle of subsidiarity, a definition of energy poverty at national level, in consultation with national regulatory authorities and stakeholders with reference to Article 2(38). Such measures may include benefits in social security systems, support for energy efficiency improvements and energy production at the lowest possible prices. Such measures shall not impede the opening of the market set out in Article 21. The Commission shall provide indicators to monitor the impact of such measures on energy poverty, and on the functioning of the market.'

(f) paragraph 6 shall be amended as follows:

(i) in the first subparagraph, point (a) shall be replaced by the following:

'(a) the contribution of each energy source to the overall fuel mix of the supplier over the preceding year in a harmonised and comprehensible manner within Member States so as to allow for easy comparison;

(ii) in the first subparagraph, the following point shall be added:

'(ba) information concerning their rights and the means of redress available to them in the event of a dispute.'

(iii) the third subparagraph shall be replaced by the following:

'National regulatory authorities shall take the necessary steps to ensure that the information provided by suppliers to their customers pursuant to this Article is reliable. Rules relating to the provision of information shall be harmonised within Member States and relevant markets.'

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(g) paragraph 7 shall be replaced by the following:

'7. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion with a view to reducing the cost of energy to low income households and guaranteeing the same conditions for those living in remote areas, and the objectives of the environmental protection. Such measures shall include energy efficiency/demand-side management measures and means to combat climate change, and security of supply, and may also 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.'

(h) the following paragraphs shall be inserted after paragraph 7:

'7a. In order to promote energy efficiency, national regulatory authorities shall mandate electricity undertakings to introduce pricing formulas which increase in the case of greater levels of consumption and shall ensure the active participation of customers and distribution system operators in system operations by supporting the introduction of measures to optimise the use of energy, particularly during peak hours. Such pricing formulas, combined with the introduction of smart metres and grids, shall promote energy efficiency behaviour and the lowest possible costs for household customers, in particular household customers suffering energy poverty.'

'7b. Member States shall ensure the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of redress available to them in the event of a dispute.'

(i) the following paragraphs shall be added:

'9a. The Commission shall establish, in consultation with relevant stakeholders including the national regulatory authorities, consumer organisations and social partners, a charter listing the rights of energy consumers set out in Community law including in this Directive. Member States shall ensure that energy suppliers take the necessary steps to communicate to all their consumers a copy of that charter and ensure that it is publicly available. National regulatory authorities shall ensure that energy suppliers fulfil those obligations and comply with the consumer rights set out in the charter.'

'9b. In order to help consumers to reduce their energy costs, Member States may require that electricity revenues from household customers be spent to fund energy efficiency and demand-side measurement programmes for household customers.'

(4) Article 4 shall be replaced by the following:

'Member States shall ensure the monitoring of security of supply issues. Where Member States consider it appropriate, they may delegate this task to the national regulatory authorities referred to in Article 23(1). This monitoring shall, in particular, cover the supply/demand balance on the national market, including detailed forecast of future demand and available supplies, envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the networks, the access of distributed and micro generation, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers. The competent authorities 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 shall forward this report to the Commission forthwith.'

(5) In Article 5, the following paragraph shall be inserted before the existing paragraph:

'National regulatory authorities shall ensure that technical operational criteria are defined and that technical rules establishing adequate reliability and security levels and operational requirements for the operation of generating installations, distribution systems, directly connected consumer equipment, interconnector circuits and direct lines are developed and made public. Those technical

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rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. Where the Agency considers that harmonisation of these rules is required, it shall make appropriate recommendations to the respective national regulatory authorities.'

- (6) The following article shall be inserted:

'Article 5a

Promotion of Regional Cooperation

1. National regulatory authorities shall cooperate among themselves for the purpose of **harmonising the market design and** integrating their national markets at least at **one or more regional levels, as a first step towards a fully liberalised internal market for electricity**. In particular, **they** shall promote the cooperation of network operators at a regional level and **facilitate their integration at that level with the aim of creating a competitive European market, facilitating the harmonisation** of their legal, regulatory **and technical** framework **and, above all, integrating the electricity islands that persist in the European Union. Member States shall therefore promote cross-border and regional cooperation among national regulatory authorities.**

2. The Agency shall cooperate with national regulatory authorities and transmission system operators in accordance with Chapter IV to ensure the convergence of regulatory frameworks between the regions with the aim of creating a competitive European market. Where the Agency considers that binding rules on such cooperation are required, it shall make appropriate recommendations. In regional markets the Agency shall be deemed to become the competent authority in the areas specified in Article 22d.'

- (7) Article 6(2) shall be amended as follows:

(a) the introductory part shall be replaced by the following:

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

(b) the following points shall be added:

'(ia) the Member States' contribution to meeting a target of 20 % for renewables by 2020;

'(ib) the need for electricity generators to take account of the EU emission trading scheme.'

- (8) Article 6(3) shall be replaced by the following:

'3. Member States shall ensure that small decentralised and/or distributed generators shall benefit from simplified authorisation procedures. Those simplified procedures should apply to all facilities generating less than 50 MW and to all embedded generators.'

- (9) Article 7(5) shall be replaced by the following:

'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 national regulatory authority referred to in Article 22a(1), to be responsible for the organisation, monitoring and control of the tendering procedure referred to in paragraphs 1 to 4. This authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.'

10. Article 8 shall be replaced by the following:

'Article 8

Unbundling of transmission systems and transmission system operators

1. Member States shall ensure that as from [date of transposition plus one year]:

(a) each undertaking which owns a transmission system acts as a transmission system operator;

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- (b) the same person or || persons are not entitled, ***either individually or jointly***:
- (i) || directly or indirectly to exercise control over an undertaking performing any of the functions of generation or supply, and directly or indirectly to exercise control or hold any interest in or exercise any right over a transmission system operator, ■
- or
- (ii) || directly or indirectly to exercise control over a transmission system operator ■, and || directly or indirectly to exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of generation or supply;
- (c) the same person or || persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator ■, and || directly or indirectly to exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of generation or supply;
- (d) the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of generation or supply and a transmission system operator or a transmission system;
- (e) the same person or persons are not entitled to operate the transmission system via a management contract or exercise influence in any other way of non-ownership, or to directly or indirectly exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of generation or supply.***
2. The interests and rights referred to in paragraph 1(b) shall include, in particular:
- (a) the ownership of part of the capital or of the business assets; ||
- (b) the power to exercise voting rights; ||
- (c) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking; or
- (d) the right to obtain dividends or other shares of the benefits.
3. For the purpose of paragraph 1(b), the term “undertaking performing any of the functions of generation or supply” shall cover “undertaking performing any of the functions of production or supply” within the meaning of Directive 2003/55/EC ||, and the terms “transmission system operator” and “transmission system” shall cover “transmission system operator” and “transmission system” within the meaning of Directive 2003/55/EC.
- 4. sMember States shall monitor the process of unbundling vertically integrated undertakings and shall submit a report to the Commission on the progress achieved.**
5. Member States may allow for derogations from paragraphs 1(b) and 1(c) until [date of transposition plus two years], provided that transmission system operators are not part of a vertically integrated undertaking.
6. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned. ■

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7. **Where a person referred to in paragraph 1(b) to (e) is a Member State or a public body, two separate public bodies exercising control over either a transmission system operator or a transmission system on the one hand and an undertaking performing any of the functions of generation or supply on the other, shall be deemed not to be the same person or persons.**

8. Member States shall ensure that commercially sensitive information referred to in Article 12 held by a transmission system operator which was part of a vertically integrated undertaking, and the staff of such a transmission system operator, are not transferred to undertakings performing any of the functions of generation and supply.'

(11) The following articles *shall be* inserted:

'Article 8a

Control over transmission system owners and transmission system operators

1. Without prejudice to the international obligations of the Community, transmission systems or transmission system operators shall not be controlled by a person or persons from third countries.
2. An agreement concluded with one or several third countries to which the Community is a party may allow for a derogation from paragraph 1.

Article 8b

Designation and certification of transmission system operators

1. Undertakings which own a transmission system and which have been certified by the national regulatory authority as having complied with the requirements of Article 8(1) and Article 8a, pursuant to the certification procedure *set out in this Article*, shall be approved and designated as transmission system operators by Member States. The designation of transmission system operators shall be notified to the Commission and published in the Official Journal of the European Union.
2. Without prejudice to the international obligations of the Community, where certification is requested by a transmission system owner or transmission system operator controlled by a person or persons from third countries in compliance with Article 8a, it shall be *refused* unless the transmission system owner or transmission system operator demonstrate that there is no possibility for the entity concerned to be influenced, in *breach* of Article 8(1), directly or indirectly by any operator active in the production or supply of gas or electricity or by a third country.
3. Transmission system operators shall notify \parallel the *national* regulatory authority of any planned transaction which may require a reassessment of their compliance with Article 8(1) or Article 8a.
4. *National regulatory* authorities shall monitor the continuing compliance of transmission system operators with Article 8(1) and Article 8a. They shall open a certification procedure to ensure such compliance:

- (a) upon notification by the transmission system operator pursuant to paragraph 3;
- (b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Article 8(1) or Article 8a, or where they have reason to believe that such an infringement may have occurred; or
- (c) upon reasoned request from the Commission.

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5. The *national* regulatory authorities shall adopt a decision on the certification of a transmission system operator within four months from the date of the notification by the transmission system operator or from the date of the Commission request. After expiry of this period, the certification is deemed to be granted. The explicit or tacit decision of the *national* regulatory authority may become effective only after the conclusion of the procedure set out in paragraphs 6 to 9 and only if the Commission fails to raise objections against it.

6. The explicit or tacit decision on the certification of a transmission system operator shall be notified without delay to the Commission by the *national* regulatory authority, together with all the relevant information with respect to the decision.

7. The Commission shall examine the notification as soon as it is received. Within two months after receiving a notification, where the Commission finds that the decision of the *national* regulatory authority raises serious doubts as to its compatibility with Article 8(1), Article 8a or Article 8b(2), it shall decide to initiate proceedings. In such a case, it shall invite the *national* regulatory authority and the transmission system operator concerned to submit comments. Where additional information is sought by the Commission, the two-month-period may be extended by two additional months starting from the receipt of the complete information.

8. Where the Commission has decided to initiate proceedings, it shall, within ¶ four months of the date of *that* decision, issue a final decision:

(a) not to raise objections against the decision of the *national* regulatory authority;

or

(b) requiring the *national* regulatory authority concerned to amend or withdraw its decision if it considers that Article 8(1), Article 8a or Article 8b(2) have not been complied with.

9. Where the Commission has not taken a decision to initiate proceedings or a final decision within the time-limits set in paragraphs 7 and 8 respectively, it shall be deemed not to have raised objections against the decision of the *national* regulatory authority.

10. The *national* regulatory authority shall comply with the Commission decision to amend or withdraw the certification decision within a period of four weeks and shall inform the Commission accordingly.

11. *National regulatory* authorities and the Commission may request from transmission system operators and undertakings performing any of the functions of generation or supply any information relevant for the fulfillment of their tasks under this Article.

12. *National regulatory* authorities and the Commission shall preserve the confidentiality of commercially sensitive information.'

¶

(12) Article 9 ¶ shall be *amended* as follows:

(a) *point (a) shall be replaced by the following:*

(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems with due regard to the environment, ¶ with respect to **integrating** renewables, **embedded generation** and low carbon technology **in the grid system, and promotion of energy efficiency and research and innovation;**

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(b) point (c) shall be replaced by the following:

'(c) managing energy flows on the system, taking into account exchanges with other interconnected systems and common standards coordinated at European level. 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, including those provided by demand response based on common standards insofar as this availability is independent from any other transmission system with which its system is interconnected;

(c) point (d) shall be replaced by the following:

'(d) providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation and the interoperability of the interconnected system, making common use of this information;

(d) point (f) shall be replaced by the following:

'(f) providing system users with the information they need for efficient access to the system, on the basis of common standards;

(e) the following point shall be added:

'(fa) collecting congestion rents and payments under the inter-transmission system operator compensation mechanism, in compliance with Article 3 of Regulation (EC) No 1228/2003, granting and managing third-party access and giving reasoned explanations when it denies such access, which shall be monitored by the national regulatory authorities; in carrying out their tasks under this Article transmission system operators shall primarily facilitate market integration and optimise socio-economic welfare gains.'

(13) Article 10 shall be deleted.

■

(14) Article 11 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

'2. The dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which shall be approved by national regulatory authorities 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.'

(b) paragraph 3 shall be replaced by the following:

'3. A national regulatory authority shall 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 except when technical balancing requirements or the safety and reliability of the grid would be compromised.'

(c) paragraph 5 shall be replaced by the following:

'5. Member States shall, through the national regulatory authorities, require transmission system operators to comply with minimum standards for the operation, maintenance and development of the transmission system, including interconnection capacity. National regulatory authorities should be given broader powers for the purpose of ensuring consumer protection within the European Union.'

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(d) the following paragraphs shall be added:

'7a. Transmission system operators shall facilitate participation of large final customers and final customers' aggregators in reserve and balancing markets. Whenever generation and demand bids have the same price, priority shall be given to demand.

7b. National regulatory authorities shall ensure that balancing rules and tariffs are appropriately harmonised throughout all Member States by ... (). In particular, they shall ensure that large final customers, final customers' aggregators and distributed generators are able to effectively contribute to balancing and other relevant ancillary services.*

() Two years after the entry into force of Directive .../.../EC [amending Directive 2003/54/EC concerning common rules for the internal market in electricity].'*

(15) Article 12 shall be replaced by the following:

'Article 12

Confidentiality for transmission system operators and transmission system owners

1. Without prejudice to Article 18 or any other legal duty to disclose information, each transmission system operator and transmission system owners shall 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 from being disclosed in a discriminatory manner, and in particular shall not disclose any commercially sensitive information to the remaining parts of the company, unless this is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information unbundling it must also be ensured that the transmission system owner and the remaining part of the company do not use joint services, apart from purely administrative or IT functions (e.g. no joint legal service).

2. Transmission system operators shall not, in the context of sales or purchases of electricity by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

3. Commercial information of essential importance to competition in the market, and in particular information enabling the point of delivery to be identified, information on installed capacity and information on subscribed capacity, shall be accessible to all electricity suppliers on the market. Where necessary, the national regulatory authority shall require incumbents to supply such information to the persons concerned.'

(16) Article 14 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. The distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity, for operating, maintaining and developing under economic conditions of a secure, reliable and efficient electricity distribution system in its area with due regard for the environment, and for promoting energy efficiency.'

(b) paragraph 3 shall be replaced by the following:

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

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(c) *the following paragraphs shall be inserted after paragraph 3:*

3a. The distribution system operator shall submit to the relevant national regulatory authority, by ... () a proposal describing the appropriate information and communication systems to be implemented in order to provide the information referred to in paragraph 3. That proposal shall facilitate, inter alia, the use of bi-directional electronic meters, which shall be rolled out to all consumers by ... (**), the active participation of final customers and distributed generators in system operation and the flow of real-time information between distribution and transmission system operators with the aim of optimising the use of all available generation, network and demand resources.*

*3b. By ... (***) national regulatory authorities shall approve or reject the proposals referred to in paragraph 3a. National regulatory authorities shall ensure the full interoperability of the information and communication systems to be implemented. For this purpose, they may issue guidelines and call for the amendment of the proposals referred to in paragraph 3a.*

3c. Prior to notification to the distribution system operator of its decision concerning the proposal referred to in paragraph 3a, the national regulatory authority shall inform the Agency or, if it is not yet in operation, the Commission. The Agency or the Commission shall ensure that the information and communication systems to be implemented facilitate the development of the internal electricity market and do not introduce any new technical barriers.

() One year after the entry into force of Directive .../.../EC [amending Directive 2003/54/EC concerning common rules for the internal market in electricity].*

*(**) Ten years of the entry into force of Directive .../.../EC [amending Directive 2003/54/EC concerning common rules for the internal market in electricity].*

*(***) Two years of the entry into force of Directive .../.../EC [amending Directive 2003/54/EC concerning common rules for the internal market in electricity].*

(d) *the following paragraph shall be inserted after paragraph 4:*

4a. Member States shall encourage the modernisation of distribution networks which shall be built in a way that encourages decentralised generation and ensures energy efficiency.'

(17) Article 15 shall be amended as follows:

(a) in paragraph 2(c), the following sentence shall be added after the first sentence:

'In order to fulfill these tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical.'

(b) paragraph 2(d) shall be amended as follows:

(i) the last sentence shall be amended as follows:

'An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, hereinafter referred to as "compliance officer", to the national regulatory authority referred to in Article 22a(1) and shall be published.'

(ii) the following sentence shall be added:

'The compliance officer shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated companies to fulfill his task.'

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(c) the following *paragraph shall be added*:

'3. Where the distribution system operator is part of a vertically integrated undertaking, **national regulatory authorities** shall ensure that the activities of the distribution system operator is monitored so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.'

(18) Article 17 shall be replaced by the following:

'This directive shall not prevent the operation of a combined transmission and distribution system operator provided it complies, for each of its activities, with the applicable provisions of Article 8, Article 10b and Article 15(1).'

(19) Article 19(3) shall be replaced by the following:

'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 each electricity activity 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.'

(20) Article 20(2) shall be replaced by the following:

'2. The operator of a transmission or distribution system may refuse access where it lacks the necessary physically available capacity. Reasons based on objective, technically and economically justified criteria shall be given for such refusal of access. The national regulatory authority shall ensure that those criteria are consistently applied and that the system user who has been refused access has a right of appeal. The national regulatory authority 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 charged a reasonable fee reflecting the cost of providing such information.'

(21) In Article 21, the following paragraphs shall be added:

'2a. Eligible customers shall have the right to contract simultaneously with several suppliers.'

2b. The Agency shall perform real-time monitoring of all organised wholesale electricity markets established in the European Union, the European Economic Area and neighbouring countries in order to detect abuses of market power or market-design flaws and to promote the efficient functioning of the internal market.'

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(22) The following chapter *shall be* inserted after Article 22:

‘CHAPTER VIIa

NATIONAL REGULATORY AUTHORITIES

Article 22a

Designation and independence of *national* regulatory authorities

1. Each Member State shall designate a single national regulatory authority.
2. Member States shall guarantee the independence of the *national* regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive **and other relevant legislation**, the *national* regulatory authority:
 - (a) is legally distinct and functionally independent from any other public or private entity; and
 - (b) ||its staff and the persons responsible for its management act independently from any market interest, and
 - (c) **does not seek or take direct instructions from any government or other public or private entity when carrying out regulatory tasks.**
3. In order to protect the independence of the *national* regulatory authority, Member States shall, in particular, ensure that:
 - (a) the *national* regulatory authority has legal personality, **financial** autonomy and adequate human and financial resources to carry out its duties;
 - (b) **the members of the board of the national regulatory authority are** appointed for a non-renewable fixed term of at least five **but no more than seven** years **and that for the first mandate, that term shall be two-and-a-half years for half of the members. The members shall** be relieved from office during **their** term **only if they** no longer **fulfil** the conditions set out in this Article or **have** been guilty of serious misconduct **under national law; and**
 - (c) **the budgetary needs of the national regulatory authority are met by direct revenues from energy market operations.**

Article 22b

Policy objectives of the *national* regulatory authority

In carrying out the regulatory tasks specified in this Directive, the *national* regulatory authority shall take all reasonable measures to achieve the following objectives:

- (a) the promotion, in close cooperation with the *Commission, the Agency, and the national* regulatory authorities of other Member States || of a competitive, secure and environmentally sustainable internal electricity market within the Community, effective market opening for all consumers and suppliers in the Community, **and ensuring that energy supply networks operate in an effective, reliable way, taking into account long-term objectives;**
- (b) the development of competitive and properly functioning ■ markets within the Community in view of the achievement of the objective mentioned in point (a);

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- (c) the suppression of **any** restrictions to electricity trade between Member States, including the development of appropriate *cross-border* transmission capacities to meet demand **and** enhance **the** integration of national markets **so as to facilitate** unrestrained electricity flows across the Community;
- (d) *the development, in the most cost-effective way, || of consumer oriented, secure, reliable and efficient grid systems, promoting || system adequacy, while ensuring energy efficiency and the integration of large and small-scale renewable energy and ensuring distributed generation in both transmission and distribution grids;*
- (e) *facilitating access to the grid for new generation capacity, in particular removing barriers that could prevent access for new market entrants and renewable energies;*
- (f) ensuring that network operators are granted adequate incentives, in both the short and the long term, to increase efficiencies in network performance and foster market integration;
- (g) ensuring **that customers benefit through** the efficient functioning of their national market, **ensuring consumer protection and promoting** effective competition in cooperation with competition authorities;
- (h) *helping to achieve high standards of universal and public service in electricity supply, contributing to the protection of vulnerable customers, and helping to ensure that the consumer protection measures set out in Annex A are effective; and*
- (i) *harmonising necessary data exchange processes.*

Article 22c

Duties and powers of the *national* regulatory authority

1. The *national* regulatory authority shall have the following duties, **which it shall carry out, where appropriate, in close consultation with other relevant Community or national bodies, transmission system operators and market stakeholders, without prejudice to their specific competencies:**

- (a) **establishing or approving, independently and in accordance with transparent criteria, regulated network tariffs and network tariff components;**
- (b) ensuring compliance of transmission and distribution system operators, and, where relevant, system owners, as well as || any electricity undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards *cross-border* issues;
- (c) cooperating on cross-border issues with the *national* regulatory authority or authorities of other Member States **and with the Agency, including ensuring that there is sufficient interconnection capacity between transmission infrastructures to satisfy an efficient overall market assessment and security-of-supply criterion, without discriminating between supply undertakings in different Member States;**
- (d) complying with, and implementing, **any relevant binding** decisions of the *Commission and the Agency* ||;
- (e) reporting *annually* on its activities and the fulfilment of its duties to the *Commission, the relevant authorities of the Member States and the Agency* ||. *Such reports* shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;

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- (f) **monitoring compliance with unbundling requirements under this Directive and other relevant Community legislation and** ensuring that there are no cross subsidies between transmission, distribution, and supply activities **as well as ensuring that distribution and transmission tariffs are set well in advance of the periods during which they are to apply;**
- (g) reviewing the investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plan of the transmission system operators as regards its consistency with the European-wide 10-year network **investment** plan mentioned in Article 2c(1) of Regulation (EC) No 1228/2003; **the 10-year investment plan shall create incentives for the promotion of investments, and ensure that the quality and size of the workforce are sufficient to meet service obligations; failure by the relevant operator to honour the 10-year investment plan shall result in the imposition of proportionate sanctions by the national regulatory authority on the operator in accordance with recommendations issued by the Agency;**
- (h) **approving the annual investment plans of the transmission system operators;**
- (i) monitoring **compliance with** network security and reliability **requirements, setting or approving standards and requirements for quality of service and supply** and reviewing **past performance in terms of quality of service and supply and** network security and reliability rules;
- (j) monitoring the level of transparency, ensuring compliance of electricity undertakings with transparency obligations;
- (k) **encouraging the development of European interruptible supply contracts;**
- (l) monitoring the level of **effective** market opening and competition at wholesale and retail levels, including on electricity exchanges, household prices, switching rates, **adequate prepayment conditions reflecting actual consumption, connection and** disconnection rates, **maintenance charges** and household complaints in an agreed format, as well as any distortion or restriction of competition in cooperation with competition authorities, including providing any relevant information, bringing any relevant cases to the attention of the relevant competition authorities;
- (m) **monitoring the occurrence of restrictive contractual practices, including exclusivity clauses, which may prevent non-household customers from contracting simultaneously with more than one supplier or restrict their choice to do so and, where appropriate, informing the national competition authorities of such practices;**
- (n) **with full regard to the provisions of the Treaty, promoting agreements on a long-term basis between energy consumers and suppliers that contribute to the improvement of the energy production and distribution and, at the same time, allow consumers to share the resulting benefits, provided that such agreement can also contribute to an optimal level of investment in the energy sector;**
- (o) **recognising contractual freedom with regard to long-term contracts and the possibility to conclude asset based contracts provided that they are compatible with Community law;**
- (p) monitoring the time taken by transmission and distribution undertakings to make connections and repairs **and imposing sanctions in accordance with the guidelines provided by the Agency if such connections and repairs are prolonged without due cause;**
- (q) without prejudice to the competence of other national regulatory authorities, **monitoring** high standards of universal and public service for electricity **and** the protection of vulnerable customers
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- (r) *ensuring that the consumer protection measures set out in Annex A are effective and enforced;*
- (s) *publishing recommendations, at least on a yearly basis, on compliance of supply tariffs with Article 3, paying due attention in those recommendations to the impact on the functioning of the market of regulated prices, namely wholesale and final customer prices;*
- (t) *reporting to the national competition authorities and the Commission those Member States in which regulated tariffs are lower than the market price;*
- (u) *establishing standardised rules governing relationships between final customers and suppliers, distributors and metering system operators, which cover at least access to customer consumption data, including prices and any related expenditure, the application of an easily understandable harmonised format for such data, adequate prepayment that reflects actual consumption and prompt access for all customers to such data under paragraph (h) of Annex A;*
- (v) *monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Regulation (EC) 1228/2003;*
- (w) *monitoring investment in generation capacities in relation to security of supply;*
- (x) *exercising, where appropriate, a right of veto over decisions to appoint or dismiss persons responsible for the general management of a transmission system operator;*
- (y) *fixing or approving network access tariffs and publishing the methodology used to set such tariffs;*
- (z) *establishing or approving standards for quality of service, monitoring their implementation and imposing sanctions for non-compliance therewith;*
- (aa) *monitoring the implementation of safeguard measures referred to in Article 24;*
- (ab) *harmonising data exchange processes for the most important market processes at regional level;*
- (ac) *imposing price caps in uncompetitive markets for a defined, limited period in order to protect customers against market abuses, fixing such caps at a sufficiently high level so as not to discourage new market entrants or the growth of existing competitors;*
- (ad) *auditing the maintenance policies of transmission system operators;*
- (ae) *developing, in conjunction with relevant planning authorities, guidelines regarding a time limited licensing procedure in order to encourage new entrants to engage in electricity generation and trading; and*
- (af) *ensuring that wholesale fluctuations in prices are transparent.*

2. *If a Member State so provides, the monitoring duties referred to in paragraph 1 may be carried out by an authority other than the national regulatory authority. In such a case, the information resulting from such monitoring shall be made available to the national regulatory authority as soon as possible.*

In accordance with the principles of better regulation, the national regulatory authority shall, as appropriate, consult transmission system operators and closely cooperate with other relevant national authorities when carrying out the duties referred to in paragraph 1, while preserving their independence and without prejudice to their own specific competencies.

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3. In addition to the tasks conferred upon it under paragraph 1, when an independent system operator has been designated under Article 10, the *national* regulatory authority shall:

- (a) monitor the *compliance of the transmission system owner* and the independent system operator with their obligations under this Article, and issue penalties for *non-compliance* in accordance with *paragraph 5(d)*;
- (b) monitor the relations and communications between the independent system operator and the transmission system owner so as to ensure compliance of the independent system operator with its obligations, and, in particular, approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner in respect of any complaint submitted by either party pursuant to *paragraph 10*;
- (c) without prejudice to the procedure under *Article 10(2c)*, for the first *10-year* network development plan, approve the investments planning and the multi-annual network development plan presented on an *annual* basis by the independent system operator;
- (d) ensure that network access tariffs collected by independent system operators include a remuneration for the network owner or network owners that provide for an adequate remuneration of the network assets and of any new investments therein;
- (e) have the powers to carry out inspections at the transmission system owner and independent system operator's premises; *and*
- (f) monitor the use of congestion rents collected by the independent system operator in accordance with Article 6(6) of Regulation (EC) No 1228/2003 ¶.

4. When monitoring national electricity markets in accordance with paragraph 1(l), including the monitoring of wholesale and retail prices, national regulatory authorities shall adopt harmonised methodologies agreed and approved by the Agency.

5. Member States shall ensure that *national* regulatory authorities are granted the powers enabling them to carry out the duties referred to in *paragraphs 1 and 2* in an efficient and expeditious manner. For this purpose, the *national* regulatory authority shall, *inter alia*, have ¶ the ¶ power to:

- (a) ¶ issue binding decisions on electricity undertakings;
- (b) ¶ carry out in cooperation with the national competition authority investigations of the functioning of electricity markets, and to decide **on** any appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market ¶;
- (c) ¶ **obtain** any information from electricity undertakings relevant for the fulfilment of its tasks, **including the justification for any refusal to grant third-party access, and any information on measures necessary to reinforce the network, and to cooperate with financial market regulatory authorities where necessary**;
- (d) ¶ impose effective, appropriate and dissuasive sanctions to electricity undertakings not complying with their obligations under this Directive or any decisions of the regulatory authority or of the Agency;
- (e) *undertake* appropriate ¶ investigations with relevant powers to *conduct* dispute settlements under *paragraphs 10 and 11*;
- (f) ¶ approve safeguards measures as referred to in Article 24.

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6. The *national* regulatory authorities shall be responsible for *establishing* or approving prior to their entry into force the terms and conditions for:

- (a) connection and access to national networks, including transmission and distribution tariffs **and their methodologies or, alternatively, the methodologies and their monitoring for setting or approving the transmission and distribution tariffs**. Those tariffs shall reflect the actual costs incurred, insofar as such costs correspond to those of an efficient operator, and shall be transparent. They shall enable the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks. **The tariffs shall not discriminate against new market entrants;**
- (b) the provision of balancing services, **which shall reflect real costs and be revenue-neutral as far as possible, whilst providing appropriate incentives for network users to balance their input and offtakes; they shall be fair and non-discriminatory and based on objective criteria;**
- (c) **access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.**

The national regulatory authorities shall have power to require transmission system operators to modify those terms and conditions.

7. In fixing or approving **the terms and conditions or methodologies of the tariffs, and the balancing services**, the *national* regulatory authorities shall ensure that network operators are granted adequate incentive, over both the short and long term, to increase efficiencies, foster market integration, **ensure security of supply**, and support the related research activities.

8. **The national regulatory authorities shall monitor congestion management within national electricity systems and interconnectors.**

Transmission system operators shall submit their congestion management procedures, including capacity allocation, to the national regulatory authorities for approval. National regulatory authorities may request amendments to those procedures before approving them.

9. *National* regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner. **In the event of delay in the establishment of transmission and distribution tariffs, national regulatory authorities shall have the power to set provisional transmission and distribution tariffs and to decide on the appropriate compensatory measures if the final tariffs deviate from those provisional tariffs.**

10. Any party having a complaint against a transmission or distribution system operator **in relation to that operator's obligations under this Directive** may refer the complaint to the *national* regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the *national* regulatory authority. The period may also be extended with the agreement of the complainant. **The national regulatory authority's decision shall have binding effect unless and until overruled on appeal.**

11. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the *national* regulatory authority has a duty to consult, concerning the proposed **tariffs or 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.

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12. 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. *Those mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.*

13. *The national regulatory authority shall put in place an independent complaints service or alternative redress scheme, such as an independent energy ombudsman or a consumer body. That service or scheme shall be responsible for the efficient treatment of complaints and shall comply with best practice criteria. The national regulatory authority shall set standards and guidelines on how complaints will be handled by producers and network operators.*

14. 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.

15. Complaints referred to in *paragraphs 10 and 11* shall be without prejudice to the exercise of rights of appeal under Community and national law.

16. Decisions taken by *a national regulatory authority* shall be ***fully reasoned and available to the public to allow for legal scrutiny.***

17. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a ***national judicial body or other independent national authority*** independent of *both* the parties involved ***and any government.***

I

Article 22d

Regulatory regime for cross border issues

1. *National regulatory authorities* shall closely cooperate and consult with each other, and shall provide each other and the Agency with any information necessary for the fulfilment of their tasks under this Directive. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.

2. ***In order to ensure that, where regional electricity markets occur, their integration is mirrored by adequate regulatory structures, the relevant national regulatory authorities shall ensure, in close cooperation with and under the guidance of the Agency, that at least the following regulatory tasks are performed in relation to their regional markets:***

(a) ***cooperation*** at least at a regional level to foster the creation of operational arrangements in order to ensure an optimal management of the network, develop joint electricity exchanges and the allocation of cross-border capacity, and to ensure ***an adequate*** level of interconnection capacity ***including through new interconnection***, within the region ***and between regions*** to allow for ***the development of*** effective competition ***and the improvement of security of supply***;

(b) ***harmonisation at least at the relevant regional level of all technical and market codes for the relevant transmission system operators and other market actors***;

(c) ***harmonisation of the rules governing the management of congestion and the fair redistribution of revenues and/or costs of congestion management among all market actors***;

(d) ***adoption of rules to ensure that the owners and/or managers of power exchange(s) which operate the relevant regional pool market are fully independent of the owners and/or managers of generation assets.***

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3. National regulatory authorities shall have the right to enter into agreements with each other to foster regulatory cooperation, and the actions referred to in paragraphs 1 and 2 shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competencies.

4. The Agency shall decide upon the regulatory regime for infrastructure connecting at least two Member States:

(a) upon a joint request from the competent national regulatory authorities, or,

(b) where the competent national regulatory authorities have not been able to reach an agreement on the appropriate regulatory regime within six months from the date the file was brought before the last of these regulatory authorities.

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Article 22e

Compliance with *guidelines*

1. The Commission or any national regulatory authority ¶ may request the opinion of the Agency on the compliance of a decision taken by a regulatory authority with guidelines referred to in this Directive or in Regulation (EC) No 1228/2003.

2. The Agency shall provide its opinion to the Commission or the national regulatory authority which has requested it ¶, respectively, and to the national regulatory authority which has taken the decision in question, within four months of the date of the request.

3. Where the national regulatory authority which has taken the *disputed decision fails to comply with the Agency's opinion within four months from the date of its receipt, the Agency shall inform the Commission accordingly.*

4. Any national regulatory authority may inform the Commission where it considers that a decision taken by a national regulatory authority does not comply with guidelines referred to in this Directive or in Regulation (EC) No 1228/2003 within two months from the date of that decision.

5. Where the Commission ¶ finds that the decision of a national regulatory authority raises serious doubts as to its compatibility with guidelines referred to in this Directive or in Regulation (EC) No 1228/2003, either within two months of being informed of the failure to comply with the Agency's opinion in accordance with paragraph 3 or of the failure to comply with guidelines in accordance with paragraph 4, or, on its own initiative, within three months from the date of the disputed decision, the Commission may decide to initiate proceedings. In such a case, the Commission shall invite the national regulatory authority and the parties to the proceedings before the national regulatory authority to submit comments.

6. Where the Commission has decided to initiate proceedings, it shall, within no more than four months of the date of such decision, issue a final decision:

(a) not to raise objections against the decision of the national regulatory authority; or

(b) requiring the national regulatory authority concerned to amend or withdraw its decision if it considers that guidelines have not been complied with.

7. Where the Commission has not taken a decision to initiate proceedings or a final decision within the time-limits set in paragraphs 5 and 6 respectively, it shall be deemed not to have raised objections against the decision of the national regulatory authority.

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8. The *national* regulatory authority shall comply with the Commission decision to amend or withdraw their decision within a period of two months and shall inform the Commission accordingly.

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Article 22f

Record keeping

1. Member States shall require supply undertakings to keep at the disposal of the national regulatory authority, the national competition authority and the Commission, for at least five years, the relevant data relating to all transactions in electricity supply contracts and electricity derivatives with wholesale customers and transmission system operators.

2. The data shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled electricity supply contracts and electricity derivatives.

3. The *national* regulatory authority **shall report on the outcome of its investigations or its request** to market participants **whilst ensuring** that commercially sensitive information on individual market players or individual transactions is not released. ■

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4. || This Article shall not create additional obligations vis-à-vis the authorities mentioned in paragraph 1 for entities falling within the scope of Directive 2004/39/EC.

5. In *the event that* the authorities referred to in paragraph 1 need access to data kept by entities falling within the scope of Directive 2004/39/EC, the authorities responsible under that Directive shall provide *those* authorities || with the required data.'

(23) Article 23 shall be deleted.

(24) Article 26 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

'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 12 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).;'

(b) the following paragraph shall be added:

'2a. The Member States may exempt industrial sites from the provisions of Chapters III, IV, V, VI, and VII. The principle of third-party access shall not be affected by such exemptions. The exemptions shall, moreover, not interfere with the task of public distribution systems.'

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(25) Annex A shall be amended as follows:

(a) point (a) shall be replaced by the following:

'(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;*

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- 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 without charge;
- any compensation and the refund arrangements which apply if contracted service quality levels are not met including inaccurate and delayed billing;
- the method of initiating procedures for settlement of disputes in accordance with point (f);
- information on consumer rights, including all of the above, clearly communicated through billing and electricity undertakings' web sites; and
- details concerning the competent appeals authority and of the procedure to be followed by consumers in the event of a dispute.

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

(b) point (b) shall be replaced by the following:

'(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 will 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 in a transparent and comprehensible manner. Member States will 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) point (d) shall be replaced by the following:

'(d) are offered a wide choice of payment methods, which will not discriminate against customers. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions will be fair and transparent. They will be given in clear and comprehensible language. Customers will be protected against unfair or misleading selling methods including non-contractual barriers imposed by the trader, for example excessive contractual documentation;

(d) point (f) shall be replaced by the following:

'(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. In particular, all consumers will have the right to service delivery and complaint handling by their electricity service provider. Such procedures will enable disputes to be settled fairly and promptly, and within three months, with provision, where warranted, for a system of reimbursement and/or compensation. They will follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC (*);

(*) OJ L 115, 17.4.1998, p. 31.'

(e) || the following points shall be added:

'(h) are easily able to switch to a new supplier and have at their disposal their consumption data and will be able to, by explicit agreement and free of charge, give any **authorised supplier** access to its metering data. The party responsible for data management is obliged to give **that** data to the undertaking. Member States will define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs may be charged to the consumer for this service;

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- (i) are properly informed **at least quarterly** of actual electricity consumption and costs. No additional costs *may* be charged to the consumer for this service. **The Member States will ensure that the roll-out of smart meters is completed with minimum disruption to consumers within ... (*) and shall be the responsibility of the electricity distribution or supply companies. National regulatory authorities will be responsible for monitoring the process of such development and for laying down common standards for that purpose. Member States will ensure that standards establishing the minimum technical design and operational requirements for meters address interoperability issues so as to provide maximum benefit at minimum cost to consumers;**
- (j) **receive a final closure account following any change of electricity supplier no later than one month after informing the relevant supplier.**

(*) 10 years after the entry into force of Directive .../.../EC [amending Directive 2003/54/EC concerning common rules for the internal market in electricity].'

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (*) ¶. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply these provisions from ... (*) ¶.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

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

Article 4

This Directive is addressed to the Member States.

Done at ¶

For the European Parliament
The President

For the Council
The President

(*) 18 months after the entry into force of this Directive.