

4.12.1 Firstly, from the broad legislative policy point of view, once the proposed legislation has been adopted, budget allocations should be provided in line with the provisions of Commission Communication COM(2006) 129 in order to facilitate, where appropriate, the creation of the necessary infrastructure in Member States lacking a suitable network of base stations. This must, however, be without prejudice to the special care that should be taken to protect the environment, so that such steps do not entail environmental impact costs.

4.12.2 Secondly, current Community legislation on public procurement and concessions must be adjusted in order to guarantee that any concessions granted by Member States for the use of radio spectrum meet conditions of transparency, non-discrimination and protection of the general interest.

4.12.3 Thirdly, the comitology decisions supplementing the legal aspect of pan-European radio spectrum must include

specific provisions to ensure that current Community law on electronic accessibility is applied across the board. More specifically, such decisions will have to be concerned with the full exercise of the rights of the disabled, the elderly and citizens with little or no digital training, if progress in the digital field is to be properly harnessed, according to the provisions of Commission Communication COM(2007) 694.

4.12.4 To this end, a range of incentives — to be determined at the appropriate time — could be devised to encourage the telecommunications industrial sector and the Member State authorities, especially at regional and local level, in order to contribute to general access for citizens to every technological progress.

4.13 It is likely that the new technical conditions will have been produced without any further unnecessary financial or administrative burden at Community, national or regional level.

Brussels, 16 January 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the Communication from the Commission: Towards a European Charter on the Rights of Energy Consumers

COM(2007) 386 final

(2008/C 151/09)

On 5 July 2007, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission — Towards a European Charter on the Rights of Energy Consumers

On 25 September 2007, the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Iozia as rapporteur-general at its 441st plenary session, held on 17 January 2008, and adopted the following opinion by 127 votes to 1 with 3 abstentions.

1. Summary of the EESC's comments and recommendations

1.1 The European Economic and Social Committee welcomes the Commission's initiative to establish a European charter on the rights of energy consumers.

1.2 The EESC considers the charter to be a first step to make the rights of consumers stronger and more effective. As the Commission rightly points out, these are not protected if they are left to market forces alone.

1.3 The EESC believes that, where possible, the enactment of non-binding legislation should be avoided. The EESC concurs with the European Parliament resolution and believes that binding legal measures are needed to protect the rights of citizens, and that soft law measures do not fully achieve their aims. In the case of passenger rights, the Commission considered it necessary to enact a regulation, 261/2004 EC of 11 February 2004. It is not therefore clear why the rights of energy customers should be relegated to a non-binding document.

1.4 The EESC calls on the Commission, aside from the proposed changes to the directive currently undergoing

approval, to look immediately into transforming the charter into a regulation on rights for European energy consumers.

1.5 The EESC believes that the rights enshrined in the directive should apply to all end users, in particular households and small and medium-sized enterprises. The electricity directive (2003/54) leaves it up to Member States whether or not to guarantee universal service, i.e. the right to an electricity supply of a specified quality at prices that are reasonable, easily and clearly comparable, and transparent, to small enterprises (with fewer than 50 employees and a total turnover of not more than 10 million euro).

1.6 The EESC believes that this unequal treatment is in no way justified, and that the right to universal service should apply at least to small and medium-sized enterprises throughout the EU. To achieve this, given that the third energy package, which is currently under consideration by the EESC, amends electricity directive 2003/54, the Committee strongly recommends that the Commission amend Article 2 to this effect, or broaden the scope of the Charter of Rights to include non-domestic customers.

1.7 The EESC considers it essential that 'consumer' should mean the final consumer, i.e. the customer of the energy supplier. The change in terminology between the Communication entitled *An energy policy for Europe*, which talks about an Energy Customers' Charter, and the proposal under discussion for a charter on the rights of energy consumers, creates uncertainty and confusion. Given the importance of a reliable and sufficient energy supply for the commercial operations of small and medium-sized enterprises, this deserves appropriate attention, especially in convergence and cohesion regions.

1.8 The universal service guarantee, extended to small and medium-sized enterprises, fulfilment of public service obligations, the protection of economically disadvantaged groups at risk of 'fuel poverty', economic, social and territorial cohesion, contractual freedom, the right to information, the right to be connected without delay, to have clear contracts and prices that are reasonable, easily comparable between different suppliers and transparent, the guarantee of a continuous supply, and awareness of the energy sources used, are all matters of the utmost importance. The Commission is absolutely right to point out that the market, left to its own devices, cannot muster the required level of social, environmental and economic awareness. The EESC wholeheartedly supports any initiative that goes in this direction simply and effectively, and calls on the Commission to use all of the most appropriate instruments.

1.9 The EESC recommends that consideration be given to whether it would be appropriate to bring within the scope of the third energy package further amendments to Annex A of the electricity directive, other than the three already planned.

1.10 At the end of 2001, the EESC suggested turning the 'European Regulators Group for Electricity and Gas' (ERGEG) into an Agency. It is pleased that the Commission has now implemented this proposal within the framework of the third

energy package, and hopes that verifying the proper application of consumer rights, in particular the protection of vulnerable consumers, will be part of the future Agency's remit. The EESC supports the involvement of consumers' associations, small and medium sized enterprises, the industry and trade unions, thus emphasising cooperation and shared responsibility, as has already happened in the transport sector. A European round table, giving the Agency powers to intervene in and regulate the relationship between producers and end users, could be of considerable help in achieving the objectives. National regulators, for their part, should supervise markets in accordance with their remit.

1.11 The EESC welcomes the Commission's proposals set out in the annex to the Communication. If implemented effectively, these would strengthen the rights of consumers. In particular, it notes that the rights of public service and universal service will be effectively guaranteed, by identifying the supplier of last resort, which can step in if problems arise with the production of energy by a trustworthy supplier.

1.12 Uniform rules for the single market as regards contracts: transparency, implementing provisions, clear and non-burdensome handling of disputes, and compensation must be uniform to promote the cross-border mobility of consumers and open the European market to end consumers as well.

1.13 Reasonable, transparent and comparable prices. Understandable, detailed invoices containing useful information for consumers on the energy sources used for electricity production, on emissions of CO₂ and other greenhouse gases, suggestions for saving energy, in line with Community policies.

1.14 Freedom to choose a supplier and to change supplier without undue delay or red tape, imposition of a limit on the minimum duration of contracts, are rights that go hand in hand with the completion of the market.

1.15 Information. Truthful, complete, with easily-understandable conditions of access and use, on charges, prices, and changes thereto.

1.16 In the area of complaints, it would be appropriate to make a firm choice in favour of extra-judicial conflict resolution, implementing Commission recommendations 98/257 and 2001/310.

1.17 The right to representation, via consumers' associations, must be made stronger and more effective. An open round table hosted by the new agency could be a forum for bringing together all the relevant stakeholders and to find the most ideal solutions to make consumer rights effective.

1.18 Fuel poverty means exclusion from a dignified life. It would be helpful to harmonise the definition of vulnerable consumers and the measures adopted to support them, avoiding the interruption of supply through a minimum service guarantee but also through the free provision of energy. The principle of responsibility should always be preserved.

1.19 Effective measures must be taken against unfair commercial practices, by updating the provisions relating to these in Annex 1 of Directive 2005/29/EC of 11 May 2005. Other unfair practices could be identified via the regulatory route, rather than amending the directive.

1.20 The EESC suggests that, as well as the new areas proposed by the Commission, consideration be given to those covered by some charters already signed by suppliers and consumers' associations, as has happened, for example, in some EU countries: the consumer's right to time, the right to participation and representation, the right to quality and safety, the right to the best price, the right to compensation and a rapid and effective conciliation procedure.

2. Introduction: The Commission document

2.1 In its Communication of 10 January 2007 ⁽¹⁾ ⁽²⁾, the Commission announced its intention to publish a charter on the rights of 'customers' of gas and electricity suppliers. This was endorsed by the Spring Council of 8-9 March, which requested 'Better consumer protection, e.g. through the development of an Energy Customers' Charter'.

2.2 Recognising that market mechanisms alone cannot guarantee respect for the interests of consumers, the Commission points out that the existing directives already provide for public service obligations and guarantee consumer rights. Action on monitoring implementation and 'effective' enforcement of consumer rights and on reinforcing and extending those rights is announced.

2.3 The completion of the liberalisation of energy and gas markets on 1 July 2007 is the right time to launch an appropriate public information campaign, involving consumer organisations, on the advantages that should flow from the ability to choose a supplier and to continue enjoying the same rights.

2.4 **Energy is essential for every European.** The improved safeguard and reinforcement of consumer interests on a par with corporate interests is a prerequisite for a well functioning internal market.

2.5 **Existing European legislation already requires compliance with public service obligations**, which are a fundamental requirement of energy legislation. The priorities of sustainable development, of protecting the environment, consumers, and the most vulnerable sections of society, mean that public service obligations are a necessary addition to competition. 'Well targeted universal and public service obligations for energy consumers must remain at the heart of the market-opening process.'

⁽¹⁾ An energy policy for Europe. COM(2007) 1.

⁽²⁾ Prospects for the internal gas and electricity market COM(2006) 841.

2.6 **The European Union needs to go further in tackling 'energy poverty'**. The rising prices of fuels on the international markets are impacting on energy prices, creating growing problems for the weakest sections of European society. The Member States have not done enough about this: only five of them have tariffs for economically disadvantaged users. The future Charter will have to set out suitable ways of protecting the most vulnerable consumers.

2.7 **The key goals.** The four goals already proposed by the Commission are repeated ⁽³⁾:

- assist in establishing schemes to help the most vulnerable citizens deal with increases in energy price;
- improve the minimum level of information available to citizens to help them choose between different suppliers and supply options;
- reduce paperwork when consumers change supplier;
- protect consumers from unfair practices.

2.8 The future European Charter on the Rights of Energy Consumers will not be a legal document. It is to include:

- a) existing Community legislation granting consumer rights and obligations of energy providers;
- b) possible elements that should be taken into account by Member States authorities (governments or regulatory authorities) in implementing and applying that legislation;
- c) possible elements which might supplement existing rights and which fall within the responsibility of Member States;
- d) possible elements which might supplement existing rights and which could be achieved through self-regulation by private stakeholders, i.e. the industry and consumer representatives.

2.9 New key points to be covered by the Charter are identified:

- Connections
- Contracts
- Prices, tariffs, and monitoring
- Free choice of supplier
- Information
- Complaints
- Representation
- Social measures
- Unfair commercial practices.

2.10 According to the principle of shared responsibility, all the interested parties: the Community, the Member States, the energy industry, representatives of all the social partners and consumers associations need to help secure a successful, consumer-oriented energy policy.

⁽³⁾ An energy policy for Europe. COM(2007) 1, p. 10.

2.11 For each key point, the annex sets out the rules currently in force and the initiatives that could be taken by the Commission, the Member States, or through agreements between the interested parties or self-regulatory codes of practice.

3. General comments

3.1 The EESC proposes to consider the following aspects: the legal framework; who is covered by the Charter; the efficacy and proportionality of the Commission proposal and the appropriateness of other possible instruments; the role of the Agency and of national regulators; other proposals or initiatives of a general or specific nature.

The legal framework

3.2 Article 38 of the European Union Charter of Fundamental Rights, which covers consumer protection, states that 'Union policies shall ensure a high level of consumer protection'. This article is based on Treaty Article 153, which tasks the Community with ensuring a high level of consumer protection, and promoting consumers' right to information and to organise themselves in order to safeguard their interests. In addition, consumer protection requirements must be taken into account in defining and implementing other Community policies and activities.

3.2.1 The Treaty of Amsterdam, which reworded the former Article 129 A of the treaties into the current Article 153, firmly established the Community's competence in the area of consumer protection ⁽⁴⁾.

3.2.2 The EESC welcomes the Commission's decision to strengthen the rights of consumers and to collate both the measures currently provided for under Community legislation ⁽⁵⁾ and the proposals for future initiatives that might be taken at various levels in a Charter on the Rights of Consumers.

⁽⁴⁾ The Treaty of Amsterdam, dated 4 October 1997, revises the previous text, which had given the Commission only a coordinating role subordinate to that of the Member States in the area of consumer protection.

⁽⁵⁾ Annex A of the Electricity Directive and the Gas Directive Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts
Articles 3(3), 3(5) and 3(6) of the Electricity Directive
Article 3(3) of the Gas Directive
Articles 13(1) and 13(2) of Directive 2006/32/EC of 4 April 2006 on energy efficiency
Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes
Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes
Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests
Directive 2005/29/EC of 11 May 2005 on unfair business-to-consumer commercial practices.

3.2.2.1 However, it points out that the various forms of consumer protection adopted in the individual Member States cannot yet be said to guarantee the provisions of the directives currently in force as universally recognised rights. The so-called non-binding nature of the Charter, which brings together requirements on some issues with options for self-regulation and moral persuasion of Member States and suppliers, risks creating confusion.

3.2.2.2 The European Parliament Resolution of 4 September 2007 on the institutional and legal implications of the use of 'soft law' instruments states, in recital X: 'where the Community has legislative competence, but there seems to be a lack of political will to introduce legislation, the use of soft law is liable to circumvent the properly competent legislative bodies, may flout the principles of democracy and the rule of law under Article 6 of the EU Treaty, and also those of subsidiarity and proportionality under Article 5 of the EC Treaty, and may result in the Commission's acting *ultra vires*.'

3.2.2.3 In point 1 of the resolution, tabled by Manuel Medina Ortega MEP ⁽⁶⁾, the Parliament 'considers that, in the context of the Community, soft law all too often constitutes an ambiguous and ineffective instrument which is liable to have a detrimental effect on Community legislation and institutional balance and should be used with caution, even where it is provided for in the Treaty' and, in point 8, specifically 'calls on the Commission to give special consideration to the effect of soft law on consumers and their possible means of redress before proposing any measure involving soft-law instruments'.

3.2.3 The EESC suggests that a distinction be made between enforceable 'rights' and other forms of protection, with the future Charter clearly distinguishing existing rights from the other proposals for initiatives that will or might be taken at various levels, which are considered desirable but not binding.

3.2.3.1 The EESC wonders, in the light of experience to date, which the Commission itself describes as unsatisfactory, and in the light of the powers conferred on the Commission by the Treaties, whether it might not be more appropriate to look at introducing a few new, clear rules to strengthen consumer protection, in particular as regards the most vulnerable consumers. The subsidiarity principle set out in Treaty Article 5, so often mistakenly quoted to oppose Community initiatives, should in this instance apply in support of decisions that benefit consumers, in the absence of effective national legislation.

Who are consumers?

3.3 The EESC highlights the uncertainty of the legal frame of reference as regards identifying those to whom the Charter and the associated rights apply within the scope of the various European legislation. The Communication 'An energy policy for Europe' ⁽⁷⁾ states: 'The Commission will develop an Energy Customers' Charter'.

⁽⁶⁾ Resolution P6_TA(2007)0366, 4 September 2007.

⁽⁷⁾ Point 3.1.7, *op. cit.*

3.3.1 Article 2(7) of Directive 2003/54/EC of 26 June 2003 defines 'customers': wholesale and final customers of electricity; 'final customers': customers purchasing electricity for their own use; 'household customers': customers purchasing electricity for their own household consumption; and 'non-household customers': any natural or legal persons purchasing electricity which is not for their own household use, [including] producers and wholesale customers.

3.3.2 Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market is cited by the Commission as a legal reference source for the part of the Charter relating to the right of consumers to have fair and transparent relations with their suppliers. Article 2 (a) of the Directive defines a 'consumer' as any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession.

3.3.3 The EESC believes that the rights enshrined in the directive should apply to all end users, in particular households and small and medium-sized enterprises. The electricity directive leaves it up to Member States whether or not to guarantee universal service, i.e. the right to an electricity supply of a specified quality at prices that are reasonable, easily and clearly comparable, and transparent, to small enterprises (with fewer than 50 employees and a total turnover of not more than 10 million euro).

3.3.4 The EESC believes that this unequal treatment is in no way justified, and that the right to universal service should apply at least to small and medium-sized enterprises throughout the EU. To achieve this, given that the third energy package, which is currently under consideration by the EESC, amends the electricity directive 2003/54, the Committee strongly recommends that the Commission amend Article 2 to this effect, or to broaden the scope of the Charter of Rights to include non-domestic customers.

3.3.5 The EESC considers it essential that 'consumer' should mean the final consumer, i.e. the customer of the energy supplier. The change in terminology between the Communication entitled *An energy policy for Europe*, which talks about an Energy Customers' Charter, and the proposal under discussion for a charter on the rights of energy consumers, creates uncertainty and confusion. Given the importance of a reliable and sufficient energy supply for the commercial operations of small and medium-sized enterprises, this deserves appropriate attention, especially in convergence and cohesion regions.

The efficacy and proportionality of the proposal

3.4 The EESC considers the proposal to publish a Charter on the Rights of Energy Consumers to be important because of the impact it may have on public opinion, opening up the debate immediately after the opening of the internal market, and

increasing users' awareness of the energy market. However, this instrument appears weak in that, unlike the case of transport, where the Passenger Rights' Charter contains clear references to rights and equally clear references to compensation due, the Charter in the Commission proposal would not be binding in nature, except for those parts that are already covered by previous directives. It would be a directory, rather than a strengthening, of rights. The expectations raised by Commissioners Piebalgs' and Kuneva's statements at the presentation of the document under consideration may be disappointed.

3.4.1 'EU consumers expect us to shape a common European response to energy and climate change challenges', said EU Energy Commissioner Andris Piebalgs. 'And as well as providing them with a sustainable, secure and competitive energy supply, they expect the EU to work to protect consumers' rights as energy markets are opened up to greater consumer choice. This is where the proposed Energy Consumers' Charter comes in.'

3.4.2 'The opening of these markets represent both a challenge and an opportunity for European consumers', said EU Consumer Commissioner Meglena Kuneva. 'Only when we have succeeded in creating a transparent and efficient market where consumers' rights are fully safeguarded and informed consumers use their knowledge to take advantage of the offers available, can we conclude that we've reached our goal.'

3.4.3 The EESC concurs with the European Parliament resolution and believes that binding legal measures are needed to protect the rights of citizens, and that soft law measures do not fully achieve their aims. In the case of passenger rights, the Commission considered it necessary to enact a regulation, 261/2004 EC of 11 February 2004. It is not therefore clear why the rights of energy customers should be relegated to a non-binding document. A Charter is being published because the rights that currently exist are not properly respected. Apart from a few praiseworthy exceptions, transposition into national law has been deficient. The Commission has the power and the responsibility to intervene, but prefers a non-binding instrument, even though it knows full well that the market alone is not in a position to provide appropriate and adequate solutions.

3.4.4 It should reflect the Commission report⁽⁸⁾ on the operation of the regulation on passenger rights, which states 'After more than two years of application of...Regulation [(EC) 261/2004], progress has been made but substantial improvement is necessary if more consistent application of the rules by airlines and more consistent enforcement of the rules by the Member States are to be achieved. In contrast with the past, stranded passengers now have specific rights, but too often they are in a weak position compared to the airlines.' It is clear that, even though its requirements are binding, the airlines are not complying with the provisions of the directive. Why should gas and electricity suppliers be expected to do so when faced with a non-binding Charter?

⁽⁸⁾ 4.4.2007 COM(2007) 168 final.

3.4.5 Drawing on past experience gained in this and other economic sectors, the EESC considers it appropriate to recommend the adoption of legal measures that fully guarantee the rights of consumers. The proportionality of a proposal is based on the extent to which it achieves the desired objectives and on the need for legislative acts. In this case, despite having the powers to propose legislation, the Commission prefers a different approach. The EESC believes that the choice of instrument is objectively inadequate to achieve the stated objectives. The Charter can at best be a first step, but the European legislator needs to move towards strengthening rights in an effective manner.

3.4.6 The universal service guarantee, extended to small and medium-sized enterprises, fulfilment of public service obligations, the protection of economically disadvantaged groups at risk of 'fuel poverty', economic, social and territorial cohesion, contractual freedom, the right to information, the right to be connected without delay, to have clear contracts and prices that are reasonable, easily comparable between different suppliers and transparent, the guarantee of a continuous supply, and awareness of the energy sources used, are all matters of the utmost importance. The Commission is absolutely right to point out that the market, left to its own devices, cannot muster the required level of social, environmental and economic awareness. The EESC wholeheartedly supports any initiative that goes in this direction simply and effectively, and calls on the Commission to use all of the most appropriate instruments.

The role of the Agency and of the national regulators

3.5 The EESC welcomes the proposed regulation, contained within the third energy package, establishing an Agency for the Cooperation of Energy Regulators⁽⁹⁾. In its opinion of 17 October 2001 on the second energy package⁽¹⁰⁾, the Committee called on the Commission 'after an assessment of its operation, to consider transforming this Council [ERGEG] at some future date into a European Agency or similar body, with responsibility for matters relating to international transport in electricity and natural gas'. The Committee is pleased at having proposed the creation of the Agency so far ahead.

3.5.1 The Commission Communication on *Prospects for the internal gas and electricity market*⁽¹¹⁾ announces a strengthening of the directives that relate to the powers of national regulators. In point 2.2.1, the Commission 'considers that regulators need strong ex-ante powers over the following areas: [...] vii) consumer protection including any end-user price controls'. Sadly, there is no trace of that 'strengthening' in the documents relating to the third energy package. Some powers of regulatory authorities are indeed strengthened in the new chapter VII a of the new Energy Directive: regulators are asked to ensure 'high standards of universal and public service for electricity [and gas], the protection of vulnerable customers, and that consumer protection measures set out in Annex A are effective', but these

powers have already been given to almost all regulatory authorities.

3.5.2 In the new Energy Directive, the Commission also proposes an amendment to Annex A, adding three paragraphs. One relates to the right to access to consumption data, the second to the right to be properly informed every month of actual electricity consumption and costs, and the third to the right to change supplier at any time. The EESC welcomes the proposal, but wonders why, given that it could have taken more weighty initiatives, the Commission did not use the main instrument, i.e. the revision of the directive, to achieve its stated aim of strengthening the rights of consumers.

3.5.2.1 The Commission proposal to amend Article 3 by adding a new paragraph 10, which assigns some parts of the regulation to the comitology procedure, could be the ideal instrument for strengthening the rights of consumers, since Committee decisions relating to matters assigned to them enter into effect immediately. The EESC recommends that the European institutions adopt this point of the Commission proposal.

3.5.2.2 The annex to the Communication *Towards a European Charter on the Rights of Energy Consumers* sets out, in addition to existing rights (which are difficult to enforce), a few ideas for new rights in the future. Including these proposals in Annex A would be a first step towards making them binding and would then prepare the ground for the adoption of a specific regulation protecting the rights of final consumers.

3.5.3 The EESC believes that the future tasks of the European Agency should also include monitoring respect for consumer rights. In relation to this, provision should be made for the involvement of consumers' associations, small and medium sized enterprises, the energy industry and trade unions, thus emphasising cooperation and shared responsibility, as has already happened in the transport sector. In other words, a European round table, giving the Agency powers to intervene in and regulate the relationship between producers and end users.

3.5.3.1 In the institutional order, the agency will need to have binding powers within the limits of its remit. It will be made up of representatives of the national regulatory authorities and will set up technical committees involving all the national regulators. The EESC hopes that its remit will also cover consumer protection, in consultation with the round table. This would make it possible to act more effectively to achieve the objectives set by the Commission in the Charter of Rights. As long ago as 2001, the EESC highlighted 'the need for these authorities to operate in a more transparent and democratic way by allowing the various agents involved in the electricity and natural gas markets (i.e. consumers, workers and companies) to participate in the decision-making process'⁽¹²⁾.

3.5.3.2 National regulators, for their part, will be able to participate actively in setting a generalised protection strategy and will have more power to ensure compliance with the law.

⁽⁹⁾ 19.9.2007 COM(2007) 530 final.

⁽¹⁰⁾ OJ C 36, 8.2.2002, p. 10 (rapp. Mr Hernández Bataller).

⁽¹¹⁾ 10.1.2007 COM(2006) 841 final.

⁽¹²⁾ Point 6.7.4. op. cit.

4. Specific comments

4.1 In its opinion on the 2001 Energy directive ⁽¹³⁾, the Committee welcomed the fact that the Commission considered meeting public service objectives as one of its fundamental objectives and that this should involve adopting measures to ensure a high level of consumer protection, with special provision for the most vulnerable members of society, such as social measures to provide certain groups with energy supplies at a fair price. Unfortunately, experience in this area has not been positive.

4.2 'Cross-border electricity flows in Europe have increased modestly year on year since market opening. However, on average, only 10 % of electricity consumed in the EU crosses Member States' borders ⁽¹⁴⁾.'

4.3 'The blackout in Italy in 2003 and in the UCTE ⁽¹⁵⁾ in 2006 showed how costly any incident in the European-wide transmission network can be. Therefore it is important for increase in trade to be accompanied with more co-ordinated network operation and the building of new infrastructure, including upgrading existing lines, building new lines and investing in other network components, where needed. (...) The European market is increasingly based on a regional concept. This first developed naturally, following the physical realities of the network. With the establishing of the regions in the amended congestion management guidelines and with the development of the Electricity Regional Initiatives by ERGEG, the regional approach has received an official status. ⁽¹⁶⁾'

4.4 End-consumers have a specific interest in having a guaranteed energy supply. The growing role of the regions in the field of energy should bear fruit for distribution and the development of closer ties, especially between cross-border regions, which should generate a significant increase in traffic and flows, reducing the risk of congestion.

4.5 Protective measures for end-consumers should include the right to be informed periodically on the quantity of energy exchanged, its geographical origin and source, greenhouse gas emissions in kWh, and Community and extra-European cooperation agreements. It is well known, for instance, that countries that have decided not to use nuclear energy buy energy produced by nuclear power stations. This information should be given to consumers, who might decide to change suppliers if they do not agree on the energy mix. Currently users are certainly in the dark when it comes to these choices.

4.6 **Connections.** A guaranteed universal service, continuity of supply and definite user connection times are all existing rights that prove difficult to uphold. Provision should be made for a 'last resort supplier' to be identified, to guarantee service provision should a supplier be unable to deliver.

4.7 **Contracts.** Transparency, implementation procedures, obligations, compensation, fairness, the absence of misleading

or unfair clauses, and clear, straightforward dispute management: in theory these are all rights that every Member State recognises and should have transposed from directives into national legislation. The reality is very different. The Commission has included changes to Annex A in the third package, increasing the obligations for companies, but there is a danger that these will prove meaningless, as apart from in a few rare cases there is no efficient system for imposing sanctions, either at European or national level. On this subject in particular there is a need for common rules throughout the EU, governed by a regulation alone, as in the case of passenger rights.

4.8 **Prices, tariffs, and monitoring.** There is a need for transparency, logic, comparability, multiple payment methods, the dissemination of smart meters, and clear and comprehensible invoices relating to actual consumption. It is very important that fuel bills give a clear breakdown of the cost of energy production (purchase of fuel, distribution, maintenance, amortisation, taxes, and personal and general duties), sources (fossil, hydroelectric, renewable, nuclear, combined cycle), CO₂ emissions, energy savings made, comparisons with previous consumption and the average consumption of other users with the same profile. An informative tool of this kind can enable consumers to consider the need to act in order to save energy. Bills enable suppliers to communicate with consumers (and according to the Commission's recent proposal should be monthly); they can also be the vehicle for a series of 'positive messages' to promote European policies.

4.9 **Free choice of supplier.** It should be possible to change supplier at any time of year, free of charge, without prejudice to one's rights. There should be a guarantee that the change will be made within a set time. Sometimes contracts stipulate a minimum duration. The EESC believes that in such cases there should be a ceiling on the minimum duration of contracts, so as not to undermine the right to choose a supplier by imposing exaggeratedly long durations and large penalties.

4.10 **Information.** Information must be truthful, complete, and easy to understand when it comes to conditions of access and use, charges, prices and changes thereto. Consumers must be made aware of their rights with regard to public service charges and the procedures according to which the universal service is secured, in particular regarding the quality and continuity of the electricity or gas supply, compensation for failure to uphold those rights, and free or low-cost access to dispute settlement arrangements, so as to ensure all enjoy the same rights. All suppliers should provide a list of all operators active in the region annually or whenever a new supplier enters the market. Suppliers should also inform their customers of the financial, tax and legal measures designed to support initiatives to improve energy efficiency and should offer practical suggestions on ways to save electricity or gas.

⁽¹³⁾ Paragraphs 6.4.2. and 6.4.3. op. cit.

⁽¹⁴⁾ Commission Communication of 15.5.2007, COM(2007) 250 final — Report on the experience gained in the application of Regulation (EC) No 1228/2003 "Regulation on cross-border exchanges in electricity".

⁽¹⁵⁾ "Union for the Co-ordination of Transmission of Electricity" (UCTE).

⁽¹⁶⁾ 15.5.2007, COM(2007) 250 final.

4.11 **Complaints.** In 1998, Commissioner Bonino was very active in support of consumer rights and the Commission issued a recommendation ⁽¹⁷⁾ on bodies responsible for the out-of-court settlement of consumer disputes; this was then in 2001 ⁽¹⁸⁾ incorporated within a further recommendation so as to broaden its scope. In the context of energy consumers' rights, attempts should be made to resolve disputes primarily in out of court settlements, as an effective and low-cost way of offering consumers protection promptly, providing the bodies responsible are impartial and the procedure is efficient, public and transparent. Given the scope of contentious jurisdiction in the realm of energy supplies, it would be inappropriate to devote time and resources to court cases.

4.12 **Representation.** Despite recognition in European legislation, it has proved difficult to implement the right of consumer associations to representation. The absence of a Community legal framework on class actions, even in the realm of cross-border services or economic activities, further restricts this right to take out court injunctions. The establishment of the European Agency might be the time to make this right a reality and carry through the option of setting up a permanent round table for all the stakeholders, as is the case for instance in the application of the 'Cars' directive, in the transport sector, with representatives of both sides of industry and consumers called upon to assist Community bodies in analysing the proposals. Similarly, a permanent round table should meanwhile be set up in the Member States, to be consulted by national regulators.

4.13 **Social measures.** The Committee is very aware of the issues involved in fuel poverty. Cutting off supplies in the case of arrears should be outlawed. In a recent opinion, the EESC stated that: 'A European energy policy must be sustainable by all social groups, so that all are treated equally as regards access to the services provided by energy suppliers' ⁽¹⁹⁾. The EESC is not in favour of free energy supplies, as this would not encourage good energy saving behaviour; it does argue however that the issue should be addressed through general taxation. Public service contracts should provide for the provision of a reserve of electricity and gas at cost price, in order to meet the needs of the most vulnerable consumers, to be sold to them in sufficient quantities at affordable prices. The principle of responsibility should always be preserved. In any case, the definition of a vulnerable consumer and the measures to be adopted to assist them should be the same throughout the Union, so as not to

discriminate against anyone, and so as to avoid distorting competition.

4.14 **Unfair commercial practices.** Consumers are protected from misleading sales practices where false information is provided and the relevant information necessary to make an informed decision is omitted, creating obstacles and applying unjustifiable costs to discourage consumers from changing supplier. The EESC believes that consumers' rights must be strengthened against such practices. Article 5, paragraph 5 of Directive 2005/29/EC of 11 May 2005 refers to Annex 1 which contains a list of those practices which shall in all circumstances be regarded as unfair, but adds that the list may only be amended by revision of the directive. As the time necessary to update the list seems inordinately long, the regulation that should contain measures for protecting energy consumers might be the ideal place to include specific energy consumer rights against unfair sales practices.

5. Exchange of good practice.

5.1 The EESC recommends that the Commission examine a number of consumer rights charters already agreed in the Member States between consumer organisations and energy suppliers, in which the rights granted to customers have more substance than those planned for in the EU charter. For instance, in Italy, a consumer rights charter in the area of social responsibility has been in place for years between the ADOC, a consumer organisation, and La220 s.p.a., an electricity market wholesaler. It goes beyond what the Commission is suggesting. For instance, this charter provides for respect for consumers' time, the right to participation and representation, the right to quality and safety, the right to the best price, the right to compensation and a rapid and effective conciliation procedure. There are ongoing six-monthly checks that the charter is being properly applied; this is binding for companies as it is written into their contracts with clients.

5.2 Some national regulators intervene to manage disagreements, establishing a system of obligations, controls and penalties to regulate the continuity of the energy distribution service ⁽²⁰⁾. In the event of sudden power surges, electricity cuts or blackouts, there is no doubt that having failed to fulfil its supply contract obligations the supplier must pay damages, unless it can prove that it is not to blame for the cut ⁽²¹⁾.

Brussels, 17 January 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽¹⁷⁾ 98/257/EC of 30 March 1998.

⁽¹⁸⁾ 2001/310/EC of 4 April 2001.

⁽¹⁹⁾ CESE 1243/2007 Action plan for energy efficiency, rapporteur: Mr Iozia (unpublished).

⁽²⁰⁾ Energy and Gas Authority, Decision 202/99.

⁽²¹⁾ *Summa* 188/ April 2003, Giulio Disegni p. 22.