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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending 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**

for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas**

for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing an Agency for the Cooperation of Energy Regulators**

for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 1228/2003**

and for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 1775/2005**

## EXPLANATORY MEMORANDUM

The Communication of the Commission of 10 January 2007 entitled "An Energy Policy for Europe" highlighted the importance to complete the internal market in electricity and natural gas. This Communication was substantiated by a comprehensive internal market report and a competition sector enquiry performed by the Commission and benefited from a large consultation of all stakeholders based on the 2006 Green Paper<sup>2</sup>. This broad consultation also benefited from the input of the Madrid forum and Florence forum gathering all regulatory and market actors to discuss issues of common interest for the internal market.

The 2007 Spring European Council invited the Commission to propose further measures, in particular as regards effective separation of supply and production activities from network operation, the further harmonisation of the powers and strengthening of the independence of the national energy regulators, the establishment of an independent mechanism for national regulators to cooperate, the creation of a mechanism for transmission system operators to improve coordination of networks operation and grid security, cross-border trade and grid operation, and increased transparency in energy market operations. The European Council also underlined the need to strengthen security of supply in a spirit of solidarity between Member States.

The European Parliament, in its Resolution on Prospects for the internal gas and electricity market adopted on 10 July 2007, expressed a strong political support in favour of a common energy policy. As regards the internal market, the European Parliament considered in particular that "transmission ownership unbundling is the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market". It underlined however that other measures are also necessary and that the differences between the electricity and gas markets may call for a partially different implementation. The European Parliament also called for enhancing "cooperation between national regulators at EU level, through a EU entity, as a way to promote a more European approach to regulation on cross-border issues". Finally, the European Parliament report entails a series of indications on the functioning of the internal market of electricity and gas. These elements were fully taken into consideration during the preparation of the present proposals.

### **1. AN EFFICIENT COOPERATION BETWEEN TRANSMISSION SYSTEM OPERATORS**

#### **1.1. A strong cooperation between transmission system operators is necessary to integrate the electricity and gas markets**

For gas and electricity to be able to flow freely across the European Union, national markets need to be integrated. This requires network access rules and operational rules to be compatible, effective exchange of information between transmission system operators and a high degree of coordination of necessary new investments to increase interconnection capacities. A precondition for meeting these requirements is the effective cooperation of transmission system operators as well as the establishment of a clear and stable regulatory framework which includes regulatory coordination.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> A European Strategy for Sustainable, Competitive and Secure Energy - COM(2006) 105, 8.3.2006; Commission Staff Working document, Summary report on the analysis of the debate on the green paper "A European Strategy for Sustainable, Competitive and Secure Energy" - SEC(2006) 1500.

Transmission system operators in gas and electricity voluntarily cooperate in existing structures such as ETSO and GTE. They cooperate on operational issues at regional level and participate in technical bodies such as UCTE and EASEE-Gas. These multi-layer cooperation initiatives have provided a significant contribution to the internal market and have contributed to improve the efficiency and the safety of the networks.

However, a lot remains to be done to ensure the integration of the European electricity and gas markets. Therefore, it is proposed to mandate the transmission operators with the task to strengthen their cooperation in a number of key areas. This cooperation at European level should concern the following three main issues.

- *The development of market and technical codes:* This involves making operational standards or codes including for network security, so that gas and electricity can flow across the European Union in accordance with compatible technical and market rules. This would for example include codes ensuring consistent access conditions (e.g. congestion management and capacity allocation) and codes ensuring consistent technical or operational requirements. In total, the present proposal defines nine main areas of cooperation. The annual work programmes of the European Network of transmission system operators (see chapter 1.2), prepared in consultation with all stakeholders and the new Agency for the Cooperation of Energy Regulators (see chapter 3), will set priorities and specify in more details the technical and market codes to be elaborated. The cooperation between transmission system operators should also include the monitoring of the implementation of the technical and market codes.
- *Coordination of grid operation:* TSO cooperation should include the common operation of the networks according to the agreed market and technical codes. It should also include the exchange of operational information necessary for the efficient operation of the networks and the coordination of consistent publication of information necessary to gain access to the network, for example through a common transparency platform.
- *Investment planning.* So as to make sufficient transmission capacity available to meet demand and integrate national markets, network operators would need coordinated long-term planning of system development to plan network investments, and monitor the developments of transmission network capacities. It is envisaged that the European Networks of transmission system operators publish network development plans, which includes the modelling of the integrated network, scenario development and the assessment of the resilience and deliverability of the integrated system. These development plans should be sufficiently forward looking (e.g. at least 10 years) so as to allow for the early identification of investment gaps, notably with respect to cross border capacities.

In particular for the last two of these tasks, regional initiatives positively contribute to market integration. The cooperation of transmission system operators at European level should indeed be complemented at regional level, in order to ensure real practical progress, notably to ensure an optimal management of the network<sup>3</sup> and adequate investment planning and realisation. The regulatory framework shall strongly promote the development of regional initiatives in a concerted manner between transmission system operator and regulatory authorities, as it is the case for instance with the Pentilateral forum and as recommended by major stakeholders like Eurelectric.

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<sup>3</sup> For example, in electricity, it is clear that the setting of technical codes needs to be determined for each synchronous area for some issues.

## **1.2. A result oriented cooperation mechanism**

It is important that the cooperation structures of the transmission system operators are fully recognized at European level. For that purpose, the Commission will formally designate the European Networks of (gas and electricity) transmission system operators in charge of realising the tasks mentioned above.

As companies, transmission system operators shall decide on the form and modalities of their cooperation in a transparent manner. They may build on existing structures such as GTE and ETSO. It is likely however that the tasks and responsibilities put on the transmission system operators with respect to their cooperation structure require central and permanent facilities.

This cooperation will be placed under the supervision of the Agency for the Cooperation of Energy Regulators (see 4).

Involvement and upstream consultation of stakeholders, such as supply companies, distribution companies and technical bodies shall be developed as standard practice by the transmission system operators from the beginning of their work on a specific subject. For that purpose, stakeholders will be able to comment on the annual work programme of the transmission system operators and will be informed and consulted in the course of the preparation of the draft joint measures prepared by the transmission system operators.

## **2. STRENGTHENING OF THE POWERS AND INDEPENDENCE OF NATIONAL REGULATORS**

### **2.1. Strong national regulators shall safeguard well-functioning electricity and gas markets**

Directive 2003/55/EC concerning common rules for the internal market in natural gas and Directive 2003/54/EC concerning common rules for the internal market in electricity required Member States to establish Regulatory authorities. In several Member states, Regulatory authorities are well-established bodies with important powers and resources, allowing them to ensure proper market regulation. In other Member states, Regulatory authorities were only recently established and their powers vary. The comprehensive country review carried out by the Commission has revealed this heterogeneity and in many cases the weakness of the Regulatory authority.

The experience of those Member States where markets are open for several years as well as the example of most utility sectors open to competition clearly indicate that strong regulators are necessary to ensure a proper functioning market, in particular as regards the use of network infrastructures.

For these reasons, the present proposal aims at reinforcing the powers of the Regulatory authorities. First, they shall be given a clear mandate to cooperate at European level, in close cooperation with the Agency for the Cooperation of Energy Regulators, and the Commission, to ensure a competitive, secure and environmentally sustainable internal electricity market within the European Union, and effective market opening for all consumers and suppliers.

Second, it is proposed to strengthen their market regulation powers in particular in the following areas:

- monitoring compliance of transmission and distribution system operators with third party access rules, unbundling obligations, balancing mechanisms, congestion and interconnection management;
- 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 development plan;
- monitoring network security and reliability, and reviewing network security and reliability rules;
- monitoring transparency obligations;
- monitoring the level of market opening and competition, and promoting effective competition, in cooperation with competition authorities;
- ensuring that consumer protection measures are effective.

In order to be able to perform their duties, Regulatory authorities shall be given the power to investigate, to request all necessary information and to impose dissuasive sanctions. They will also be requested to fully take into account the energy efficiency objective while performing their regulatory functions.

## **2.2. Demonstrable independence of the regulators brings market confidence**

The independence of Regulatory authorities is a key principle of good governance and a fundamental condition to ensure market confidence. Existing legislation requests that Regulatory authorities shall be wholly independent of the interests of the gas and electricity industry. However, it does not specify how independence shall demonstrably be ensured and it does not guarantee independence from political interests.

As underlined by the 2007 Spring European Council conclusions and by the European Parliament, the strengthening of the independence of national energy regulators is therefore a priority.

It is proposed that the regulatory authority is legally distinct and functionally independent from any other public or private entity, and that its staff and any member of its decision-making body act independently from any market interest and shall not seek or take instructions from any government or other public or private entity. For that purpose, it is proposed that regulatory authorities have legal personality, budgetary autonomy, adequate human and financial resources and independent management.

## **3. AN INDEPENDENT MECHANISM FOR NATIONAL REGULATORS TO COOPERATE AND TAKE DECISIONS: THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS**

### **3.1. The positive experience of ERGEG needs to develop into a formal cooperation structure**

An independent advisory group on electricity and gas, called the "European Regulators Group for Electricity and Gas" (ERGEG) was established by the Commission in 2003 to facilitate consultation, coordination and cooperation between the regulatory bodies in Member States,

and between these bodies and the Commission, with a view to consolidating the internal market in electricity and natural gas. This group is composed of representatives of the national regulatory authorities.

ERGEG activities in the last years very positively contributed to the completion of the internal market in gas and electricity by issuing non-binding guidelines and addressing recommendations and opinions to the Commission.

However, most stakeholders, as well as the regulators themselves, consider that the development of the internal markets calls for a formal mechanism for national regulators to cooperate and take decisions on important cross-border issues. In particular, it is widely recognised that regulators should be in a position to take a more European approach.

The nature of the tasks to be devolved to such a mechanism leads to the conclusion that it can only take the form of a regulatory agency. This analysis reflects the principles defined by the Commission in the Draft inter-institutional agreement on the operating framework for the European regulatory agencies<sup>4</sup>, in particular as regards the possibility to adopt individual decisions which are legally binding on third parties.

The following proposal draws on the "ERGEG+" option mentioned in the Communication of the Commission of 10 January 2007 "An Energy Policy for Europe"<sup>5</sup>. It does not create a full-fledged European regulator replacing national competences, but provides for an effective mechanism for national regulatory authorities to cooperate and, where necessary, take collective decisions.

### **3.2. Main tasks of the proposed Agency for the Cooperation of Energy Regulators**

The proposed tasks of the Agency for the Cooperation of Energy Regulators would complement at European level the regulatory tasks performed at national level by the regulatory authorities.

- *Providing a framework for national regulators to cooperate.* It is proposed to improve the handling of cross-border situations. The Agency shall set procedures for the cooperation between national regulators, in particular as regards the exchange of information and the apportionment of competence in cases affecting several Member states. In that role, the Agency shall also have to power to settle disputes between national regulatory authorities. This framework will also promote regional cooperation between national regulators.
- *Regulatory oversight of the cooperation between transmission system operators.* The Agency will have the responsibility to monitor and review the activities of the European Network of Transmission System Operators for Electricity and the activities of the European Network of Transmission System Operators for Gas. In particular, it will be involved in the setting of priorities through the work programme of these entities, in the review of their 10-year investment plan, and in the preparation of technical and market codes. As regards these technical and market codes, it is important to underline that the Agency will have the possibility to ask transmission system operators to modify their drafts or to tackle more specific issues in detail. It will also have the possibility to recommend to the Commission to make these codes legally binding where a voluntary implementation by transmission system operators proves to be insufficient or not suited for

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<sup>4</sup> COM(2005)59 final

<sup>5</sup> OJ C [...], [...], p. [...].

certain issues. By doing so, the Agency may recommend to modify the draft elaborated by the transmission operators or recommend additional provisions to the Commission. In practice, this mechanism shall take the form of a constructive and continuous dialogue between the Agency, transmission system operators and the Commission. The involvement of the Agency in these areas will be key to ensure that the cooperation of transmission system operators proceed in an efficient and transparent way for the benefit of the internal market.

- *Individual decision powers.* In order to efficiently handle specific cross-border issues, it is proposed to entrust the Agency with individual decision powers. It would decide on exemption<sup>6</sup> requests concerning infrastructure assets of European interest. It would decide on disputes between national regulators concerning a cross-border case. On a case-by-case basis, it would also have the power to review, at the light of the implementing measures adopted by the Commission in application of the Community legislation in the gas and electricity sector, the decisions taken by a national regulatory authority that are directly impacting the internal market.
- *General advisory role.* The Agency would also have an advisory role towards the Commission as regards market regulation issues and could issue non-binding guidelines to disseminate good practices among the national regulators.

Even though its powers cannot be extended to cover normative decisions (such as the formal adoption of obligatory guidelines) the new Agency will overall be in a crucial role for the development and implementation of the European gas and electricity market rules.

### **3.3. Governance of the proposed Agency for the Cooperation of Energy Regulators**

The institutional setting and governance principle of the Agency for the Cooperation of Energy Regulators is based on standard rules and practices for Community regulatory agencies. However, the necessary independence of regulatory functions needs to be taken into account. For that purpose, beside the administrative board responsible for all administrative and budgetary matters, it is proposed to create a board of regulators, responsible for all regulatory matters and decisions.

## **4. EFFECTIVE SEPARATION OF SUPPLY AND PRODUCTION ACTIVITIES FROM NETWORK OPERATIONS**

### **4.1. Existing unbundling provisions are not sufficient to ensure a well-functioning market**

Existing legislation requires that network operations are legally and functionally separated from supply and generation or production activities. Member States have complied with this requirement by applying different organisational structures. Several Member States have created a totally separated company for network operation, others have created a legal entity within an integrated company. The requirements of legal and functional unbundling have indeed positively contributed to the emergence of competitive electricity and gas markets in several Member States.

However, experience has shown that where the transmission system operator is a legal entity within an integrated company, three types of problems arise.

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<sup>6</sup> As defined in Article 22 of Directive 2003/55/EC and in article 7 of Regulation (EC) No 1228/2003

Firstly, the transmission system operator may treat its affiliated companies better than competing third parties. In fact, integrated companies may use network assets to make entry of competitors more difficult. The underlying reason is that legal and functional unbundling do not solve the fundamental conflict of interest within integrated companies whereby the supply and production interests aim to maximise their sales and market share while the network operator is obliged to offer non-discriminatory access to competitors. This inherent conflict of interest is almost impossible to control by regulatory means as the independence of the transmission system operator within an integrated company is impossible to monitor without an excessively burdensome and intrusive regulation.

Secondly, under the current unbundling rules, non discriminatory access to information cannot be guaranteed as it cannot be effectively prevented that transmission system operators do not release market sensitive information to the generation or supply business of the integrated company.

Thirdly, investment incentives within an integrated company are distorted. The vertically integrated network operators have no incentive to develop the network in the overall interest of the market with the consequence of facilitating new entry at generation or supply levels. Instead, the investment decisions of vertically integrated companies tend to be biased to the needs of supply affiliates. Such companies seem particularly disinclined to increase interconnection or gas import capacity which allow for more competition in the incumbent's home market to the detriment of the internal market.

#### **4.2. More effective unbundling of transmission system operators**

The Commission's proposals for more effective unbundling include two options to overcome the fundamental problems of the current unbundling regime described above. Both options have in common that a company operating a transmission system cannot at the same time be involved in supply or production activities.

According to the first option, Member States shall ensure that the same person or persons are not entitled to exercise control over a supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. This provision also applies *vice versa* that is control over a transmission system operator excludes the possibility of holding any interest in or exercising any right over a supply undertaking.

This option allows for a situation in which the same person, for example a pension fund, holds non-controlling minority interests in both a transmission system operator and a supply undertaking. However, such a minority shareholder cannot have blocking rights in both undertakings, nor can it appoint members of their boards, nor can any person be member of the boards of both undertakings. This option is the clearest way to achieve effective unbundling of the transmission network by achieving a clear ownership separation between transmission system operators and any supply undertakings.

In order to implement this option, Member States may choose the following modality which may help to fully preserve the interests of the shareholders of vertically integrated companies. The shares of the vertically integrated company may be divided into shares of the company owning the transmission system on the one hand and shares of the supply company on the other hand. Subsequently, these shares may be attributed to the shareholders of the previously vertically integrated company.

Where the transmission system belongs to a vertically integrated undertaking on entry into force of the Directives, Member States may, according to the second option, allow for derogations from the first option mentioned above and provide that an independent system operator is designated by the regulatory authority upon proposal from the transmission system owner. This option enables vertically integrated companies to retain the ownership of their network assets. To ensure effective unbundling this option however requires that the independent system operator performs all the functions of a network operator and that detailed regulation and permanent regulatory monitoring are put in place.

Both options appear necessary and proportionate because experience has shown that the current regime of functional and legal unbundling is insufficient to ensure the full independence of the transmission system operators, seriously impeding the creation of a competitive internal market for gas and electricity. The overriding objectives of sustainability, competitiveness and security of supply of the EU economy as a whole justify that, in some instances, vertically integrated energy companies may be forced to dispose of some of their assets, notably their transmission networks, or to hand over the operation of such assets to a third party, in order to comply with the proposed requirements of effective unbundling.

The two options apply in the same manner to the electricity and gas sector. The Commission has not found a convincing argument which would justify a different treatment of the two sectors. In particular, the fundamental conflict of interest between the supply and production activities on the one hand and the network operation and development on the other hand applies equally to both sectors. Moreover, the key to conclude long-term supply agreements with upstream gas producers is not the ownership of the network but the existence of a strong customer basis. The EU remains therefore undoubtedly a highly attractive gas supply market irrespective of the ownership structure of the purchasing companies which, once effectively unbundled, will be able to compete for gas at equal footing.

However, with the view to encourage investments in new energy infrastructures also by supply and production companies, the present proposal includes the possibility of a temporary derogation to ownership unbundling rules for the construction of new infrastructure. This exemption will be applied on case by case basis, taking into account in the economics of the new investment, the internal market objectives as well as the security of supply objective.

The implementation of effective unbundling applies in an equal manner to publicly and privately owned companies. This means that irrespective of its public or private nature, no person or group of persons shall alone or jointly be able to influence the composition, voting or decision making of the organs of both the transmission system operators and the supply or production companies. This requirement ensures that where supply or production activities are in public ownership the independence of a publicly owned transmission system operator is still guaranteed.

The present proposal requires the effective unbundling of transmission system operators and supply and production activities not only at national level but throughout the entire EU. This means in particular that no supply or production company active anywhere in the EU can own or operate a transmission system in any Member State of the EU. This requirement applies equally to EU and non-EU companies.

The regulatory authorities of the Member States designate the transmission system operators after having verified their independence. The designation of transmission system operators is notified to the Commission which may open a certification procedure to review the

compliance with the unbundling requirements. Where transmission system operators are ultimately controlled or influenced by companies of countries which grant exclusive or special rights in the gas and electricity sector, certification is denied unless the transmission system operator can demonstrate its independence. The present proposals for effective unbundling are a necessary and decisive step to achieve EU-wide market integration. It may ultimately contribute to the creation of supra-national transmission system operators as the operators are no longer held back by distrust in each other resulting from affiliated supply or production interests. In contrast, if supra-national transmission operators were created without ensuring their full independence, competition between affiliated supply and production companies would risk being weakened. Notably, the present proposals include several additional measures to promote EU market integration relating in particular to a better cooperation of transmission system operators.

Effective unbundling removes distorted investment incentives typical of vertically integrated transmission system operators. It thus promotes security of supply. The Commission observed that when effective unbundling of transmission system operators took place considerable increases of TSO investment activities followed. Moreover, the Member States concerned have subsequently attracted new infrastructure investors, for example, investing in LNG terminals.

Finally, it is reminded that, in Member States where there are no gas or electricity transmission networks (and only a distribution network), the provisions on the ownership unbundling of transmission networks do not apply.

## **5. IMPROVING THE FUNCTIONING OF THE MARKET**

The present proposal also aims at improving the legislative framework to facilitate third party access to key infrastructures and to increase transparency on the market.

### **5.1. Exemption regime**

The current legislation contains the possibility to exempt major new infrastructure from regulated third party access rules, for a pre-determined period. This possibility has been used several times now, for both new gas and electricity interconnectors and LNG facilities and this has helped take projects forward which benefit security of supply and competition. At the same time, the experience so far suggests that project developers, regulators and commission could benefit from a streamlining of the procedure for applying and granting of exemptions as well as a clarification of some of the conditions. Therefore, the Commission proposes to develop guidelines to assist applicants and regulators in applying the conditions needed to qualify for an exemption and to set minimum requirements with respect to the allocation of capacity and congestion management provisions for the new infrastructure.

### **5.2. Transparency**

Current requirements on transparency focus on publication of capacity of the network, so that market parties are able to see if capacity is available and if all available capacity is offered to the market. However, market parties also need to have equal access to information that determines wholesale price movements.

Currently incumbents who are responsible for the largest part of the gas and electricity flows, and who own the majority of the assets in the market have more and better access to

information than new entrants. In electricity requirements exist in the form of guidelines attached to the regulation that define transparency requirements on the generation of electricity, but in gas no such requirements exist at the moment. Therefore it is proposed to extend the transparency requirements as regards gas stocks, forecasts of demand and supply, costs for balancing the network and trading.

Trading in commodities is not covered by other legal instruments like the Markets in Financial Derivatives Directive, except for a limited scope related to the type of traders (e.g. banks). Moreover, electricity and gas differ fundamentally from other commodities because they are network-based products that are impossible or costly to store. It therefore appears useful and justified to develop transparency rules for trading in gas and electricity to take account of the specificity of these sectors.

The correct and full application of these requirements need to be controlled and monitored by the national regulatory authorities, therefore their powers need to be strengthened accordingly.

### **5.3. Access to storage**

The Directive on the internal gas market defines when, and if so, how, storage operators have to give access to third parties. The requirements in the Directive are limited to the principles, but body was given to these principles through the Madrid Forum, where all stakeholders agreed to voluntary 'Guidelines for Good Third Party Access Practice for Storage System Operators' (GGPSSO). ERGEG has followed the implementation of these guidelines and has concluded, that overall implementation of these guidelines is poor. For these guidelines to be effectively applied, the Commission proposes three measures:

- Make the guidelines legally binding to the extend necessary ;
- Establish legal and functional unbundling of storage system operators that are part of supply undertakings;
- Enhance the powers of national regulatory authorities.

To make the guidelines legally binding, the Regulation will be extended to define how storage system operators shall offer third party access services, how they shall allocate capacity and manage congestion. It shall also define the transparency requirements and how to enable a secondary market in storage capacity to develop. These rules should ensure that all storage that is available to third parties is offered to the market in a non-discriminatory and transparent manner, and that capacity-hoarding is strongly discouraged.

By requiring legal and functional unbundling of storage system operators, effective access to storage will greatly be enhanced. One major problem identified by ERGEG concerning application of the guidelines was that separation of information between the storage system operator and the supply branch cannot be guaranteed. Unbundled storage operators will ensure that all available storage capacity is offered to the market, and the unbundling will increase market confidence and facilitate regulatory oversight.

Additionally, the Commission proposes to enhance transparency on the part of the physical EU storage capacity that is offered to the market. Member States need to define when and how third party access to storage applies and this has to be made public. Again the regulator shall be required to monitor the application of these rules.

#### **5.4. Access to LNG terminals**

The role of LNG in the supply of gas to the European Union is becoming ever-more important, and a lot of investment in LNG terminals is planned or under way. For that reason, transparent access rules to LNG terminals are needed.

Although LNG terminals can be exempted from third party access and ex-ante and ex-post regulatory intervention under Article 22 of the Directive, there are also LNG terminals for which no requirements are defined concerning third party access apart from a general principle. An exemption under Article 22 is always temporary, and when the exempted period has passed LNG terminals will become regulated. Therefore the Commission proposes to impose more precisely defined third party access rules to LNG terminals. These rules will also be useful as a common reference when setting conditions for exemption requests. To create a common legal basis, the Regulation will be extended to define how LNG terminal operators shall offer third party access services, how they shall allocate capacity and manage congestion. It shall also define the transparency requirements and how to enable a secondary market in terminal-capacity to develop.

#### **5.5. A framework for gradual establishment of a European retail market**

Neither the electricity nor the gas market extend yet directly to the retail market (households and small enterprises), as the customers are still obliged to use suppliers established in the same country. Establishing a true European end-user market is the ultimate goal of the internal electricity and gas markets, it is necessary for achieving competitive markets and for reaching maximum efficiency. Liberalisation in the retail market is important to ensure that all EU citizens are able to benefit from competition. When liberalisation is only applied to large customers, then European households could end up subsidising their industry. From the 1st of July 2007, all retail markets in the EU have opened up to competition, but in practice many consumers are tied to their historic suppliers because an adequate legal framework had not been put in place as required.

A European retail market can only be created gradually. To stimulate this process the Commission considers setting up a retail forum in analogy with the positive experience in the Florence and Madrid Forums. It is proposed that the Member States and the Regulatory authorities establish clear rules that define competition in the retail market, and that will gradually harmonise the market rules to allow cross-border retail markets.

It is also very important to increase the awareness on domestic energy consumption and costs of energy, as all measures to reduce CO<sub>2</sub>-emissions and increase energy efficiency require a contribution from households. Competition over supply to households will enhance their energy-awareness. However, current practices in which consumers only receive the final bill for their consumption after one year does not create such awareness, neither does it create the possibility for suppliers to supply end-users according to their needs. Therefore measures are needed to guarantee that customers are informed on their energy consumption and costs more frequently.

Finally the Commission has come to the conclusion that for Distribution System Operators the current legal and functional unbundling rules are sufficient. It does therefore not propose to extend the ownership unbundling rules outlined in chapter 4 above, also on DSOs.

## 6. A FRAMEWORK FOR SOLIDARITY AGREEMENTS TO REINFORCE SECURITY OF SUPPLY

EU legislation addresses gas security of supply with two instruments. First, Directive 2003/55/EC introduced general monitoring obligations for the Member States. Second, a Directive 2004/67/EC specifically concerns measures to safeguard security of gas supply. This later directive establishes the Gas Coordination Group and defines a "Community mechanism" in case of supply disruption.

These instruments provide for a coordination platform. They do not define quantitative objectives as regards security of supply nor provide any obligation as regards gas stocks. Finally, they do not foresee any binding solidarity agreement, nor do they establish a framework for such agreements.

Directive 2004/67/EC was only recently transposed by the Member States. Its Article 10 provides for that the Commission shall report by 19 May 2008 on its implementation and in particular on the effectiveness of its instruments and may issue further proposals concerning security of supply. In particular, this report will address security of supply measures in relation with gas stocks.

For that reason, as a first step, the present proposals do not modify Directive 2004/67/EC and only address two issues:

- *Increased transparency obligations on the level of commercial stocks.* Each storage operator would have the obligation to publish on a daily basis the amount of working gas it has in its facilities. This obligation would considerably increase mutual confidence, in particular in the context of solidarity agreements.
- *Solidarity agreements.* It is proposed that Member States establish regional solidarity agreements covering at least three Member States or EEA members, whereby a Member State could participate to several regional solidarity agreements. Regional solidarity agreements would cover situations resulting or likely to result at short term in a severe disruption of supply affecting a Member State. They would need to be notified to the European Commission. The Commission could adopt guidelines for regional solidarity agreements to provide a framework for such agreements.