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## INTERNATIONAL FEDERATION OF INDUSTRIAL ENERGY CONSUMERS

## EUROPE



Head Office: 119 Chaussée de Charleroi B- 1060 Brussels

Tel: 32 2 542 06 87 Fax: 32 2 542 06 92

### IFIEC Europe

#### Documents- Other documents

Brussels: 15/10/2001

Commission proposal “Completing the Internal Energy Market”:

#### **Proposal for a Directive amending the Electricity Directive 96/92/EC and Gas Directive 98/30/EC**

##### **The view of the European industrial energy consumers**

IFIEC Europe reflects the views of the industrial energy consumers, with membership that constitutes more than 75 % of industrial consumption throughout Europe.

#### **Introduction**

IFIEC Europe welcomes the initiatives taken by the European Commission, since the European Council of Lisbon in March, 2000, to accelerate completion of the internal energy market for electricity and gas. Effective opening in these markets is vital for the economic growth of the European economy and the competitiveness of its industrial energy consumers.

Following the European Council of Stockholm in March of 2001, the proposals for amended Directives have been issued for consultation and decision within the EU legislative process.

Although the respective legal frameworks to transpose the original Directives are in place in most Member States, in practice, the implementation of market liberalisation is not yet widely effective. For this reason, IFIEC Europe is supportive of the proposed amendments to the Directives which emphasize the primary issues for the effective completion of the internal energy markets :

- **Unbundling** : true separation of transmission infrastructures for both gas and electricity from all other commercial activities with the final objective of establishing an independent legal entity operating the network (TSO).
- **Access to network infrastructures** : impartiality and transparency in the conduct of transmission system operations and access to information, on an equal, non-discriminatory basis, to all network infrastructure users (for example, access methodology must ensure total transparency of information concerning transmission capacity utilisation or rules for the removal of structural capacity bottlenecks).
- **Regulatory and control mechanisms** : consistency of independent regulatory and control mechanisms put into place at national level, with enhanced co-ordination at EU-

level; comprehensive coverage of total market activities, including specifically the transmission infrastructures.

It is imperative that this new legislation be adopted in order to ensure that real market opening is achieved with minimum delay so as to ensure a level-playing field for all network infrastructure users and provide the benefits of competition to all suppliers and customers.

IFIEC Europe offers its comments on the proposed amended Directives as follows :

### **Unbundling of transmission network infrastructures**

The proposals suggest measures to clearly ring-fence all monopolistic activities and to ensure that infrastructure services are made available to all market participants on equal terms and on a non-discriminatory basis. Unbundling is a pre-requisite for effective competition in electricity and gas markets, because otherwise discrimination between activities of the incumbent undertaking and new entrants would be inevitable. Therefore, IFIEC Europe welcomes the suggested Art 7.6 of the Electricity Directive and Article 7a of the Gas Directive calling for independence of the transmission system operator in legal terms. Our views on the subject of unbundling are the same concerning the proposed amendments to the Gas Directive and we therefore welcome the suggested Art 7 a and 7 b.

IFIEC Europe welcomes, under Art 10.4 of the Electricity Directive, the additional unbundling obligations for electricity distribution.

As concerns the integrated undertakings, IFIEC Europe supports the proposals for electricity (Art 14.3) and gas (Art 13).

IFIEC Europe notes, under Art 7.6 of the Electricity Directive, the insertion of a code of conduct. It is strongly urged that such code of conduct should also include confidentiality of information the network operator receives. This requirement should also be applicable to Art 10.4.

### **Access to network infrastructure**

Network services comprise three primary elements : connection, use of system and ancillary services.

As concerns ancillary services, such as : (for electricity) frequency and voltage control, primary and secondary reserve, balancing power, reactive power, balancing; (for gas) balancing, load factor conversion, quality conversion, access to storage and LNG terminals; (for both) billing and measurement services, if not otherwise available on the market. These services are **essential** and must be offered and procured at reasonable cost on a non-discriminatory, efficient and transparent basis.

The proposed new Art 7 a of the Electricity Directive calls for energy procurement by the network operator according to market-based procedures.

IFIEC Europe proposes that addition amendments to the Electricity and Gas Directives be made in order to ensure that the network operators offer ancillary services to all network users on an equal and non-discriminatory basis.

### **Regulatory and Control mechanisms**

The proposed new Art 16 and the deletion of Art 17 and Art 18 of the current Electricity Directive as well as the new Art 14 of the Gas Directive are considered main elements of the proposal. IFIEC Europe welcomes the safeguarding of third party access on the basis of objectively applied published details.

IFIEC Europe totally supports the establishment of an independent control (by a regulatory body), as well as prompt reconciliation (within days) of third party access requests which must be guaranteed at all times. IFIEC Europe therefore requests the following amendment with respect to Art 16.1 of the Electricity Directive:

“Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. These tariffs must be approved **or controlled** by a national regulatory authority established in conformity with Article 22.”

IFIEC Europe is convinced that in the framework of the new Art 16 of the amended Electricity Directive details concerning regulatory mechanisms should be implemented by Member States. This also applies to Art 14 of the proposal concerning the Gas Directive.

Accordingly, IFIEC Europe further suggests to amend Art 22 of both Directives (Art 22.1a and Art 22.1e for electricity and Art 22.1b and Art 22.1d for gas) to allow for the relevant authority :

“to fix, approve or control terms and conditions for connection and access to national networks, including transmission and distribution tariffs.”

### **Extension of Public Service Obligations**

The proposed amendments extend the scope of public service obligations defined under the current Electricity and Gas Directives.

IFIEC Europe considers that existing provisions are sufficient to safeguard the defined objectives relating to security, quality and price of supplies and environmental protection.

Therefore, with the advent of increased market opening, IFIEC Europe sees no justification for the proposed extensions.

In any case, public service obligations and security of supply provisions should not be misused to constrain effective market-opening and access to the network infrastructures.

### **Conclusions**

IFIEC Europe totally supports the proposed amended Directives which are a major step forward in the process of achieving effective market opening. The current proposals constitute a minimum requirement and it is imperative that they are not further diluted, all the more as there are other important issues which have not been addressed, such as :

- **Tarification principles** : Tariffs should be published; they must be fair and be determined on the basis of depreciated historical investment expenditures at utility-type, reasonable rates of return. The preferred tarification method should be based on entry/exit and/or “postage stamp”; distance-related and point-to-point tariffs are not

acceptable.

- **Transportation capacity rights (for gas)** : In case reserved capacity is not needed, the owner of the capacity rights must be able to trade them with other market participants.
- **Supply-side competition (for gas)** : To address the actual lack of gas offer, it is necessary to resolve the problem of the existing long-term take-or-pay agreements, in particular by making a transparent inventory of the existing contracts with the duration and exclusivity clauses, if any. In order to kick-start competition, IFIEC Europe urges that gas release programmes be considered.