TEN/079
Internal energy market/
gas-electricity

Brussels, 17 October 2001

OPINION
of the
Economic and Social Committee
on the
Proposal for a Directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas

Proposal for a Regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity
COM(2001) 125 final - 2001/0077 (COD) - 2001/0078 (COD)

On 22 May 2001, the Council decided to consult the Economic and Social Committee, under Articles 47(2), 55 and 95 of the Treaty establishing the European Community, on the

> *Proposal for a Directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas*
> *Proposal for a Regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity*
> COM(2001) 125 final - 2001/0077 (COD) - 2001/0078 (COD).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 September 2001. The rapporteur was **Mr Hernández Bataller**.

At its 385th plenary session of 17 and 18 October 2001 (meeting of 17 October 2001), the Economic and Social Committee adopted the following opinion by 84 votes in favour, with nine abstentions.

1. Background

1.1 In terms of legislation, the first steps towards an internal electricity and gas market in the European Union were through the Directives on the transit of gas and electricity through grids, adopted in 1990 and 1991[1]. The Economic and Social Committee issued its opinions on these Directives and welcomed their various provisions, particularly those relating to long-term security of supply.

1.2 The next step was the approval of the Directives concerning common rules for the internal market in electricity and natural gas, which were adopted following a complex process that began with the first Commission drafts. The objective of these Directives was to open up the electricity and gas markets by gradually introducing competition with a view to making the energy sector more efficient and the European economy as a whole more competitive.

1.3 In its opinion adopted in January 1993[2], the Committee again welcomed the Directives but expressed a number of far-reaching reservations. To be precise, this opinion criticised the proposed Directive in a number of key areas such as the plan and deadlines for introducing third party access to the grid, security of supply, capacity of interconnection grids, harmonised energy policy in the Member States, and public service obligations.

---

1 OJ C 75 of 26.03.1990

2 ESC opinion on the proposal for a Directive concerning common rules for the internal market in electricity and the proposal for a Directive concerning common rules for the internal market in natural gas of 27 January 1993, OJ C 73, 15.03.1993 and ESC opinion on the amended proposal for a Directive concerning common rules for the internal market in electricity and the amended proposal for a Directive concerning common rules for the internal market in natural gas of 28 April 1994. OJ C 195, 18.07.1994.

1.4 The Directives concerning common rules for the internal market in electricity and natural gas were finally adopted in 1996 and 1998 respectively and since then have been incorporated, not without some difficulties, into the national legislation of Member States.

2. Grounds for the Commission proposals

2.1 According to the information provided by the Commission, since the implementation of Directives 96/92/EC and 98/30/EC, the degree of opening of the gas and electricity markets in the Member States has improved considerably and, by the end of 2000, the targets laid down in the Directives had already been far exceeded. However, the degree of market opening varies considerably from Member State to Member State (ranging from 30% to 100% for electricity and from 20% to 100% for natural gas) and, unless corrective measures are taken, such differences are likely to increase in the future. The Commission believes that these discrepancies between Member States hinders the construction of a true single market in Europe.

2.2 Since the liberalisation process began in the Member States, electricity prices for large consumers have fallen considerably (between 15% and 35%, according to statistics provided by the Commission), with prices falling furthest in those countries with the highest degree of market opening. Domestic consumers and SMEs, however, have not benefited from such significant improvements in electricity prices since these reductions go hand in hand with the ability to change supplier, which - until the market opening process is completed - is a very limited possibility for them.

2.3 Natural gas prices have not evolved so favourably, mainly due to fluctuating oil barrel prices which determine natural gas prices. However, even here the Commission links differences in average price between the various countries to the degree of opening of the respective markets.

2.4 The implementation of the Directives has had a considerable impact on establishing public service obligations which in the past were met largely through public utilities or a system of public concessions. Market opening, together with the privatisation of many of these companies, has forced the Member States to stipulate certain minimum levels of public service and ensure that these levels are met. However, the Commission believes that additional measures must be adopted to reinforce existing legislation in this area.

2.5 Most Member States have also opted to regulate the system of third party access to the grid, draw up authorisation procedures for the construction of new power generating plants, fully unbundle the activities of transmission system operators and even create independent regulatory authorities. The Commission therefore believes that some of the procedures that were initially proposed but have not been properly developed by the different Member States can be dropped and that greater guarantees are needed that grid operators operate independently.

2.6 Another effect of market opening, which in itself is a key indicator of the degree of internal market consolidation, is trade between countries. According to Commission statistics, trade in

electricity currently accounts for 8% of all the electricity generated in the European Union. This percentage is lower than that recorded in other sectors and much lower than what could be expected of an integrated European market. In a bid to increase international trade in electricity, the Commission proposes regulating at European level specific areas which have a negative impact on such trade.

2.7 The Lisbon European Council of March 2000 asked the Commission to draw up proposals to speed up liberalisation in order to achieve a fully operational internal market as soon as possible.

2.8 In its statement on services of general economic interest, the Nice European Council of December 2000 stressed that such services should be "carried out in such a way as to meet the legitimate expectations of consumers and citizens looking for affordable prices in a transparent pricing system, and anxious for access on equal terms to quality services essential to their economic, territorial and social integration".

2.9 The European Council of Stockholm, held on 23 and 24 March 2001, reiterated the need to open up the electricity and natural gas markets, *"taking into account the requirement to satisfy user needs and the need for transparency in the market through appropriate regulatory instruments"*.

3. The proposal for a Directive

3.1 The document submitted identifies the specific amendments to each Directive. The amendments to Directives 96/92/EC and 98/30/EC, however, are very similar and can be divided, as pointed out in the preamble to the document, into quantitative proposals and qualitative proposals.

3.2 The quantitative proposals include a timetable for all electricity and natural gas customers, regardless of their size, to be able to choose their suppliers freely. In the electricity sector, all non-domestic clients will therefore be able to choose freely as of 1 January 2003, with full market opening two years later. In the natural gas sector, the deadline for market opening for non-domestic users is likely to be delayed until 1 January 2004, but the target for all customers to be able to choose their supplier freely will continue to be 1 January 2005.

3.2.1 The qualitative proposals focus on two main areas: the procedure for third party access to gas and electricity grids and the unbundling of the activities of companies in these sectors.

3.2.2 The proposed procedure for third party access to grids is based on a system of published and regulated tariffs which would apply in a non-discriminatory manner to all users of transmission and distribution grids. This system replaces alternative procedures defined in the current Directives based on negotiated access between the supplier and eligible customers or on the concept of the single buyer.

3.2.3 The measures relating to the unbundling of activities are intended to establish a framework within which each grid operator can operate independently of the commercial interests of

the group to which it belongs. The document therefore extends the principle of unbundling activities which from now on would apply to all grid operators, whether gas or electricity distribution or transmission networks. Specific criteria are also drawn up governing operators' activities to ensure they operate independently of the group to which they belong. The proposed Directive fixes January 2003 as the deadline for the effective unbundling of activities in electricity distribution networks, and one year later for natural gas.

3.3 The document defines in greater detail public service obligations and regulatory bodies for the electricity and gas sectors. It also proposes amending certain procedures, such as the procedure for the construction of new power generating plants.

3.3.1 The article on public service obligations includes a detailed list of the aspects covered by this concept. These obligations clearly include the universal service for electricity (i.e. high-quality supply for all customers) and other aspects relating to the supply of natural gas and electricity, such as the protection of domestic consumers, economic and social cohesion, environmental protection and security of supply.

3.3.2 The new Directive proposes appointing independent national regulatory authorities who will be responsible for fixing tariffs and conditions for access to the grid, and for drawing up mechanisms to prevent distortions of competition. It also proposes setting up a body to monitor security of supply of electricity and natural gas.

3.3.3 With regard to the construction of new electricity generating capacity, the new document only provides for the authorisation procedure (as currently adopted by all Member States) and reserves the tendering procedure as a safeguard in the event that the capacity envisaged through authorisation is not sufficient to ensure supply.

3.4 The draft Directive proposes repealing the Gas and Electricity Transit Directives[3] so that different procedures do not continue to be in force, as this could lead to confusion among the various market parties.

4. The proposal for a Regulation

4.1 The document drafted by the Commission proposes three different types of measures:

– establishing compensation mechanisms for flows of electricity;
– defining harmonised principles for cross-border transmission tariffs; and
– allocating available interconnection capacity between national transmission networks.

4.2 The document accepts that the reality in these sectors is constantly changing and that the rules of the game must therefore adapt to this reality as swiftly as possible to prevent delays in

[3] Directives 90/547/EEC and 91/286/EEC.

approving changes to the established framework giving rise to future distortions in the market. The proposal for a Regulation therefore provides for a series of guidelines that could be adopted and amended without the need for changes to the Regulation itself. These guidelines, which must be in compliance with the principles laid down in the Regulation, would be amended by the Commission following consultation of a regulatory committee made up of representatives from the Member States and chaired by a representative from the Commission. This Committee would be created under Article 5 (Regulatory Procedure) of Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission.

4.3 In accordance with this procedure, the Commission will be responsible for drawing up the fundamental aspects of the Regulation, such as: the allocation of powers and the corresponding procedure for paying compensations for electricity transit; the methodology for determining the quantities of electricity concerned and the costs of transit; the criteria for harmonising charges applied by national grid operators; the methods for allocating available interconnection capacity; and common rules on network security and operation.

4.4 The Commission also reserves the right to decide how much compensation will be paid for transit flows of electricity via trans-national grids. For this it will rely on the support of an advisory committee in accordance with the procedure defined in Article 3 (Advisory Procedure) of Decision 1999/468/EC. This committee will also be made up of representatives from the Member States and chaired by the Commission representative.

4.5 The proposal for a Regulation establishes the basic principles governing international trade in electricity and includes an annex setting out guidelines on the management and allocation of interconnection capacity between national systems. This annex lays down criteria for congestion management and surplus transmission capacity, long-term contracts, information exchange between grid operators and the procedure for explicit auctions of available capacity. These guidelines are in line with free market and non-discriminatory criteria and also seek to achieve the optimum use of existing infrastructures.

5. General comments

5.1 The Economic and Social Committee wishes to point out that the proposed initiatives are part of the strategy to construct the European single market. The ESC has repeatedly expressed its support for this strategy as it contributes towards achieving the Treaty principles, e.g. promoting economic development, employment, competition, quality of life, and economic and social cohesion.

5.2 The Committee therefore welcomes these proposals since it shares the Commission's interest in moving towards a genuine internal market in electricity and natural gas within the European Union as this will result in greater competition between companies, lower energy prices for companies and domestic consumers, a more competitive European economy as a whole, and a better quality of life for the whole population.

5.3 However, past experience in other States, both within and outside the European Union, shows that the market opening process and the very existence of an internal market in electricity and natural gas give rise to a number of uncertainties and have an indirect social and/or geographical impact. This requires special comment. All the institutions involved in this process must cooperate to achieve the objective of a single market and limit the negative consequences. Drawbacks should therefore be pointed out as and when they are encountered and solutions proposed to allow them to be resolved as swiftly as possible. The ESC hopes that all the aspects discussed in this opinion will be included in the next assessment report on the internal market in electricity and gas.

5.4 The ESC also asks the Commission to ensure that the market opening process genuinely benefits domestic consumers, does not create distortions of competition and, in particular, does not allow suppliers which previously had a "de facto" or "de iure" monopoly on their national markets to benefit unduly from the situation, or abuse their individual or collective dominant positions.

5.5 Furthermore, the ESC is concerned by a number of inconsistencies in the proposed Directive, as it still includes systems and procedures that are to be replaced, does not develop premises set out in the preamble, mentions reports that should have been issued when the Directives were adopted and refers to terms - and articles - that do not appear in the new draft. Concrete objections to these shortcomings will be discussed under the specific comments.

6. Specific comments

6.1 Full market opening

6.1.1 The ESC fully endorses the Commission's proposal to set as short a deadline as possible, so that all consumers will have the freedom to choose an electricity and gas supplier by 1 January 2005 at the latest.

6.1.2 Full electricity and gas market opening will help to put an end to the co-existence of different regulations in the Member States, which is currently causing distortions of competition and hindering the completion of the internal market.

6.1.3 This measure will also help reduce the drawbacks suffered by SMEs, which often have to pay more for gas and electricity supplies than larger companies due to the fact that it is easier for large companies to change gas and electricity supplier during the current phase of partial market opening.

6.1.4 Measures must therefore be adopted so that this acceleration in the market opening process does not create even greater job losses in companies in the sectors concerned.

6.2 Safeguards to ensure security of supply

6.2.1 The Committee wishes to express its concern regarding problems experienced in other areas of the world, such as California, where a badly planned liberalisation process has led to a considerable fall in the quality of services offered to users and a dramatic rise in final prices. Although the two situations are very different, when opening up European markets we must learn from the mistakes made in foreign markets and adopt all the measures necessary to prevent shortages and artificially high prices.

6.2.2 The Committee therefore welcomes the measures proposed by the Commission to establish safeguards reducing the risk of such problems. Most of these measures are mentioned in the Green Paper on security of energy supply, which was welcomed by the ESC[4]. The proposed Directive therefore also includes specific measures, such as giving independent regulatory authorities responsibility for monitoring the supply/demand balance, maintaining the tendering procedure for power generation plants in the event that sufficient generation capacity has not been built, and giving grid operators responsibility for maintaining and developing networks.

6.2.3 The existence of sufficient reserve capacity is vital if the electricity system is to function properly. However, the cost of this surplus capacity must be met by the whole system, either at national level or through a Community-wide system. The completion of a true internal market in which international trade in electricity reaches the appropriate volume will help create sufficient reserve capacity at European level.

6.3 **Unbundling of activities**

6.3.1 The ESC welcomes the fact that the proposal aims to further unbundle the activities of companies in the electricity and gas sectors by incorporating the requirement that distribution grid operators must operate independently of the other activities of the parent group to which they belong and by specifying the conditions that grid operators must meet to ensure that they are genuinely independent.

6.3.2 However, these measures must be in proportion to their objective and must not place unreasonable administrative burdens on economic agents.

6.4 **Public service obligations**

6.4.1 The ESC is pleased that the Commission understands that moving further towards an internal market is compatible with achieving public service objectives, as it has stressed since its opinion of 1993[5].

---

4 OJ C 221 of 7.08.2001, p.45

5 See footnote 1.

6.4.2 It therefore welcomes the fact that the Commission's proposal considers meeting public service objectives to be one of its fundamental objectives in this area and provides specific safeguards associated with these objectives, such as user satisfaction, environmental protection, economic and social cohesion, and the obligation of universal supply of electricity. However, the Committee would like one of the Directive's stated objectives to be to ensure the supply of high-quality electricity and natural gas at competitive prices, and therefore help improve health, security of supply, and the economic well-being of European citizens.

6.4.3 The Committee considers that provisions are needed to ensure that essential public service objectives are met, such as a high level of protection for domestic consumers, with special measures for the most vulnerable. Social measures should be put in place to ensure that vulnerable groups can benefit from electricity and gas supply at a fair price.

6.4.4 Minimum conditions for contracts, transparency of information, and low-cost and transparent dispute settlement mechanisms must also be adopted. The ESC therefore reiterates that dispute settlement bodies must meet the criteria set out in Recommendation 98/257/EC[6] and, if possible, use the European claims form drawn up by the Commission. In order to improve the quality of life of domestic consumers, the Commission should also look into introducing the concept of standardised load profiles at European level[7].

6.4.5 The proposal also respects changes that had already been made to the original Directives. Exemptions designed to promote the incorporation into the electricity grid of energy from renewables and waste and from cogeneration plants are therefore maintained. However, as provided for in the current Directive on the promotion of electricity from renewable energy sources, systems of state aid that help renewables compete in a liberalised market must be maintained, as suggested by the Committee in its Opinion[8].

6.4.6 Proper network maintenance is vital to ensuring an ongoing high-quality service and also helps reduce the amount of energy lost during transmission and distribution. The ESC believes that the basic principle found in the proposal for a Directive, i.e. that grid operators are responsible for network maintenance, should be clearly specified when the Directive is transposed into national legislation. To this end, a level of investment must be reached that enables grid operators to meet all the economic requirements of users in order to provide the necessary infrastructure and thereby achieve the agreed levels of security of supply at competitive levels.

6.4.7 **Territorial and social cohesion**

---

6 Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, OJ L 115, 17.4.1998, p.31-34.

7 According to the Commission, under a standardised load profile, an assumption on the consumption of electricity of a type of small consumer is made, in volume and timing of demand. Any discrepancies with the profile are settled after periodic readings of the existing meter, eliminating the need for expensive minute-to-minute reading of the consumer's actual consumption and offsetting that against his/her contracted volume.

8 OJ C 367 of 20.12.2000, p.5

6.4.7.1 Territorial cohesion is vital to the very existence of the Union. Consideration should therefore be given to the fact that less-favoured, isolated, island and outermost regions may suffer as a result of the creation of the internal market.

6.4.7.2 Because of their size, some of these regions are unlikely to reap the benefits of competition for domestic consumers and could therefore be forced to maintain considerably higher energy prices than those found in the regions of central Europe, where population density is higher and infrastructure costs per unit of energy supplied therefore lower. This would create extremely unfavourable competition conditions and cause resentment among final consumers used to practically identical tariffs within each Member State since electricity and gas were first supplied.

6.4.7.3 To prevent such an imbalance, compensation mechanisms based on objective criteria that are stable in time and compatible with the Community system of state aid must be established at national level. As the ESC stated in its 1994 opinion on Community Energy Policy, funds intended for structural purposes could also be used to compensate the higher cost of developing these infrastructures initially. This would considerably reduce the need for compensation during the lifecycle of these installations.

6.4.7.4 Directive 96/92/EC also provides for a procedure for small isolated electricity systems which allows Member States to apply for derogations from the Directive, providing they can demonstrate that these systems have experienced substantial problems. The ESC believes that Member States should be granted derogations before unfair situations arise, providing they have informed the Commission, which will continue to ensure this complies with Community law.

6.4.7.5 Directive 98/30/EC also provides for derogations for natural gas, though here the procedure is targeted at emerging markets. This definition applies only to States in which gas was first supplied less than ten years ago, but must be extended to include isolated regions in which gas was supplied before this period.

6.4.7.6 The ESC believes that the construction of the single electricity and gas market must not block progress to date in achieving the objectives of economic and social cohesion in the less-favoured regions of the EU.

6.4.8 Legislation in the various Member States differs considerably when it comes to what can be included under the concept of public service in the electricity and natural gas sectors. These discrepancies may lead to distortions of competition and must therefore be removed. The Commission should therefore consider drawing up specific legislation to harmonise the rights of users (in particular, companies) and the obligations of energy distribution companies, with a view to ensuring the proper functioning of the internal market.

6.4.9 **Effects on the environment**

6.4.9.1 The **environment** would seem to be one of the areas most affected by this market opening process, even though the European Union and the Member States have adopted measures to limit the environmental impact of energy production and consumption, most importantly measures to counteract climate change by promoting the use of renewables and energy efficiency.

6.4.9.2 If the internal market causes electricity and gas prices to fall, this in turn would probably lead to an increase in consumption. Improved efficiency in the system as a result of competition in the sector is unlikely to compensate for increases in energy consumption. The upshot could be an increase in primary energy consumption, causing an increase in pollutant emissions and hindering attempts to honour commitments made in Kyoto.

6.4.9.3 In the same vein as the measures currently being adopted by the Commission with its Directive on the energy performance of buildings and its SAVE programme, urgent measures are needed at European and national level to encourage efficient energy use and thereby compensate for possible increases in demand. One possible solution would be to reinvest some of the money saved as a result of the liberalisation process in the SAVE programme or in new programmes concerned with demand management, education and training for domestic consumers, and reduction of energy processes; another would be to provide extra funding for the SAVE programme or create new programmes.

6.4.9.4 Increasing transmission capacity so as to increase international trade in electricity and gas will have an impact on the environment. This impact must be kept to a minimum in order to overcome growing public opposition, especially in environmentally sensitive areas.

6.5 The effects on employment in the gas and electricity sectors

6.5.1 The ESC is concerned by current job losses in the electricity and natural gas sectors following the liberalisation of the markets, and the current trend for companies to subcontract and externalise certain costs.

6.5.2 This would seem to suggest that the costs of introducing competition are being met largely by employees of companies in these sectors. However, the direct creation of employment in new activities related to market opening does not seem to have compensated for all job losses in traditional companies. A social security system that adopts innovative measures is needed to help workers in the sector accept the deregulation process. Even workers who have lost their jobs should be able to enjoy a stable economic situation. Ongoing training systems should also be introduced in the sector, along with efficient policies for labour market databases.

6.5.3 The potential problem of job losses in these sectors is very serious and should be considered when drafting the various national employment plans so that steps can be taken to limit their impact. This is vital given that many job losses involve highly-trained and highly-qualified people whose experience could be useful in other fields.

6.5.4 At all events, liberalisation must be managed with a view to prevention and, in particular, best practice must be followed with regard to information, consultation, and the participation and training of workers, so that surplus labour can be properly redeployed.

6.5.5 The ESC calls on the Commission to make a real effort to alleviate this situation and, within its sphere of competence, to develop a strategy to promote the adoption of Community measures during the market opening process which in turn will lead to a coordinated strategy to achieve a high level of employment.

6.6 **Effects on applicant countries**

6.6.1 The Committee also has many reservations concerning the repercussions of the liberalisation of energy markets on countries which are soon to join the European Union.

6.6.2 In general terms, the electricity and natural gas sectors in the applicant countries enjoy a high degree of support and public intervention, and maintain uncompetitive infrastructures and management methods.

6.6.2.1 The immediate consequence of this could be considerable job losses in companies in these sectors, which in turn would cause unbearable social tensions in the applicant countries, particularly for those countries which do not have the same kind of social security system as found in the Member States.

6.6.2.2 The European Union must share with these countries the experience that has been gained from the liberalisation processes currently underway in Europe, and provide funding to help them modernise their companies. Opening up these new markets is not enough; their energy sectors must also be restructured so that companies in the applicant countries can compete under the same conditions.

6.7 **National regulatory authorities**

6.7.1 It is anticipated that the creation in all the Member States of national regulatory authorities that are responsible for fixing or approving tariffs for third party access to the grid will ensure a transparent and non-discriminatory process. The Committee therefore welcomes these authorities, but nonetheless eagerly awaits the findings of the report to be presented to the European Council in Barcelona.

6.7.2 The usefulness of such bodies is demonstrated by the fact that practically all the countries of the European Union have created national regulatory authorities. These authorities allow them to act "ex ante" and, in some cases, on their own initiative, unlike other bodies which only act once the infringement has been committed.

6.7.3 The proposal for a Directive entrusts a number of tasks to the national regulatory authorities, including fixing or approving tariffs for access to the grid, ensuring companies meet their public service obligations and congestion management at national level.

6.7.4 However, consideration should be given to 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.

6.7.5 The ESC welcomes the creation of the Council of European Energy Regulators and calls on the Commission, after an assessment of its operation, to consider transforming this Council at some future date into a European Agency or similar body, with responsibility for matters relating to international transport in electricity and natural gas.

6.8 **Effects on consumers and SMEs**

6.8.1 The creation of an internal energy market has been less beneficial to domestic consumers and SMEs than to large companies. As mentioned above, this is particularly significant during the transitional period when the freedom to choose a supplier is gradually introduced, as the competitiveness of SMEs suffers.

6.8.2 The ESC believes that, to compensate for these discrepancies, the creation of joint purchasing-management organisations for SMEs and domestic consumers needs to be encouraged. These organisations can negotiate, on behalf of a group of customers, a framework contract with various suppliers. As a result suppliers would not have to negotiate individually with each customer and customers would be offered better supply conditions.

6.8.3 In the same vein, flexible and transparent mechanisms must be drawn up for settling disputes between suppliers and customers.

6.9 **Systems for access to the grid**

6.9.1 Each Member State has different procedures for access to the grid. This may give rise to imbalances with regard to the reciprocal access of companies from different countries to national grids.

6.9.2 Most Member States have adopted the system of regulated access based on published tariffs as they believe this system is the best guarantee of free access and also prevents distortions of competition and/or potential abuses of dominant position. Considering these tariffs as maximum prices may help the remaining Member States overcome their misgivings in this area. However, until now no assessment has been made of the operating capacity of existing systems or actual competition in the various Member States. The Commission has therefore been asked to present a comparative assessment report at the Barcelona summit.

6.9.3 The ESC believes the Commission's proposal to establish a single system for access to the grid based on published tariffs is a step towards harmonising the sector, but supports any third party access system providing it is neutral, transparent, fair and non-discriminatory.

6.9.4 However, specific measures are needed to effectively guarantee non-discriminatory access, such as, setting a deadline for replying to access requests and drawing up flexible dispute settlement mechanisms.

6.10 **Aspects relating to competition**

6.10.1 The process of completing the internal market will, in many cases, result in the disappearance of national monopolies and sector deregulation, thus making way for a market in which companies can compete under equal conditions.

6.10.2 However, the search for new markets and economies of scale in companies may lead to a process of concentration in which small companies - many of them local authority-owned - will gradually disappear. The European electricity and gas market may therefore end up being controlled by a limited number of large companies which, in practice, operate in their various areas of influence, distorting competition and abusing their individual or collective market power.

6.10.3 Even if the market is open and deregulated, such situations - which are equivalent to a monopoly - could allow companies to maximise profits at the expense of lower quality services and higher prices, and to the detriment of the European market's competitiveness and consumers in general.

6.10.4 To prevent such a situation arising, competition authorities at both national and Community level must make a special effort to prevent concentrations and abuses of individual and/or collective dominant positions undermining the principles of an open market economy and competition.

6.11 **Specific comments on the proposal for a Regulation**

6.11.1 The draft Regulation presented by the Commission aims to encourage international trade in electricity and draw up the necessary framework for regulating such trade.

6.11.2 The ESC accepts the need for measures to increase international trade in electricity and believes that the proposed Regulation is a good instrument for achieving this. The principles defined in the proposal are well-grounded and cover aspects of the issue that are fundamental if we are to see a considerable increase in the volume of international trade in electricity, providing they enter into force at the same time as amendments to the Directive. If not, serious distortions of competition could arise owing to different degrees of market opening.

6.11.3 However, applying Articles 3 and 5 of Decision 1999/468/EC so extensively means granting the Commission far greater powers in this area. Delegating so much responsibility could, however, be justified by the technical complexity of the decisions to be adopted and by the need to properly adapt rules to possible changes in the market.

6.11.4 The Committee accepts the need to delegate these responsibilities to the Commission, but believes that the Commission should be given the power only to amend guidelines and rules already mentioned and approved in the Regulation and not to draw them up without going through the full legislative procedure.

6.11.5 The ESC therefore calls on the Commission to ensure that this proposal for a Regulation takes account of the principle of subsidiarity and verify, in particular, that:

– the issue under consideration has trans-national aspects that cannot be regulated satisfactorily through actions by the Member States;

– the actions of Member States alone, or lack of Community action, would clash with the requirements of the Treaty (e.g. the need to correct distortions of competition, prevent disguised restrictions on trade and strengthen economic and social cohesion) and seriously damage the interests of the Member States;

– Community action would offer clear benefits over and above action at Member State level.

6.11.6 The Commission should also bear in mind that:

– the type of Community action chosen must be the simplest possible and help achieve satisfactorily the objective of the measure;

– Community measures must leave as wide a margin as possible for decisions to be made at national level, in line with the dual objective that measures fulfil their purpose and the requirements of the Treaty are respected.

6.11.7 Nevertheless, the ESC endorses the part of the proposed Regulation that relates to the setting up of an Advisory Committee and Regulatory Committee, inasmuch as this will help complete the internal market. Regular reports should, however, be submitted to the Council, Parliament and Economic and Social Committee.

7. Specific comments on the amendments to Directive 96/92/EC

7.1 As mentioned above, the proposal for a Directive establishes a system for third party access to the grid based on published tariffs, which must be fixed or approved by the national regulatory authority. However, throughout the document doubts are raised concerning the exclusivity of this system and its possible co-existence with a system of "negotiated access", as discussed in

Art. 20(1). This article, which has not been amended in the proposal presented by the Commission, establishes the possibility of "negotiated access" for autoproducers and independent producers. The second paragraph of this article also includes a new general reference to negotiation. The new text therefore needs to clarify whether the intention is to maintain this system of negotiated access and, if so, what repercussions this could have in terms of discrimination between grid users.

7.2 The wording of Article 21, which is not amended in the proposed new text, also leads to confusion as on several occasions it refers to Articles 17 and 18 of Directive 96/92/EC. These articles, which have both been deleted in the new draft, refer precisely to systems based on negotiated access to the grid or on the concept of the single buyer. The wording of Article 21 therefore needs to be changed to include the changes proposed by the Commission to the system of third party access to the grid.

7.3 Several references are found throughout the document to the term "eligible customer", namely in Articles 3, 16, 19 and 21. In some of these articles the original wording has been kept, while in others it has been changed. According to Directive 96/92/EC Article 19(3), the Member States are responsible for publishing each year the criteria for the definition of eligible customers. However, this article is not included in the new draft of the Directive and no definition is therefore given for the concept of "eligible customer".

7.4 The text presented by the Commission states that Member States need to ensure that transmission and distribution system operators reply to access requests within a reasonable period of time. However, the Directive should specify a period of time to prevent discrepancies arising.

8. Specific comments on amendments to Directive 98/30/EC

8.1 Natural gas storage undertakings are the only exception to the access system laid down in both Directives as in this case both regulated access and negotiated access are allowed (Article 15). However, it is unclear whether liquid natural gas (LNG) storage undertakings can be subject to negotiated access or not, as under Article 14 only regulated access is allowed for LNG undertakings.

8.2 As in Directive 96/92/EC, no definition is provided for the concept of eligible customer" as Article 18 has been amended in the new version. This article established a number of minimum requirements and called on Member States to establish the final scope of the concept.

8.3 The Directive does not give Member States responsibility for appointing natural gas distribution system operators, even though it does so for natural gas transmission systems and, in Directive 96/92/EC, for electricity transmission and distribution systems. This criterion would seem to suggest that the Commission aims to equate the natural gas distribution system operator with the company that owns the grid. However, Article 10(4) and (5) specifically mention distribution system operators, suggesting they are separate entities to distribution companies. References to system operators must be consistent.

8.4 There are a number of cross-references throughout the text which are based on the original wording of the Directive but are no longer valid or should be amended. The references made to Article 18 in Articles 20(1) and 23(1), for example, make no sense in the new draft as again they refer to the scope of the concept of "eligible customer". In the same way, Article 26(1), (2) and (3) include references to Article 18(3), (4) and (6), even though they do not appear in the new version. Article 25 also refers to Article 16, which has been deleted in the proposed text.

8.5 The Directive concerning the internal market in electricity lays down a safeguard to ensure security of supply in the form of a tendering procedure for building new electricity generation capacity in the event that capacity built on the basis of the authorisation procedure may not meet demand. A similar procedure should be considered for LNG plants.

Brussels, 17 October 2001.

The President of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Göke Frerichs	**Patrick Venturini**