DIRECTIVE 96/92/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 December 1996

concerning common rules for the internal market in electricity

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 57 (2), Article 66 and Article 100a thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

(1) Whereas it is important to adopt measures to ensure the smooth running of the internal market; whereas the internal market is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

(2) Whereas the completion of a competitive electricity market is an important step towards completion of the internal energy market;

(3) Whereas the provisions of this Directive should not affect the full application of the Treaty, in particular the provisions concerning the internal market and competition;

(4) Whereas establishment of the internal market in electricity is particularly important in order to increase efficiency in the production, transmission and distribution of this product, while reinforcing security of supply and the competitiveness of the European economy and respecting environmental protection;

(5) Whereas the internal market in electricity needs to be established gradually, in order to enable the industry to adjust in a flexible and ordered manner to its new environment and to take account of the different ways in which electricity systems are organized at present;

(6) Whereas the establishment of the internal market in the electricity sector must favour the interconnection and interoperability of systems;

(7) Whereas Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids [4] and Council Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users [5], provide for a first phase for the completion of the internal market in electricity;

(8) Whereas it is now necessary to take further measures with a view to establishing the internal market in electricity;

(9) Whereas, in the internal market, electricity undertakings must be able to operate, without prejudice to compliance with public service obligations, with a view to achieving a competitive market in electricity;

(10) Whereas Member States, because of the structural differences in the Member States, currently have different systems for regulating the electricity sector;

(11) Whereas, in accordance with the principle of subsidiarity, general principles providing for a framework must be established at Community level, but their detailed implementation should be left to Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation;

(12) Whereas, whatever the nature of the prevailing market organization, access to the system must be open in accordance with this Directive and must lead to equivalent economic results in the States and hence to a directly comparable level of opening-up of markets and to a directly comparable degree of access to electricity markets;

(13) Whereas for some Member States the imposition of public service obligations may be necessary to ensure security of supply and consumer and environmental protection, which, in their view, free competition, left to itself, cannot necessarily guarantee;

[1] OJ No C 65, 14. 3. 1992, p. 4 and OJ No C 123, 4. 5. 1994, p. 1.
[2] OJ No C 73, 15. 3. 1993, p. 31.
[3] Opinion of the European Parliament of 17 November 1993 (OJ No C 329, 6. 12. 1993, p. 150). Council common position of 25 July 1996 (OJ No C 315, 24. 10. 1996, p. 18) and Decision of the European Parliament of 11 December 1996 (not yet published in the Official Journal). Council Decision of 19 December 1996.
[4] OJ No L 313, 13. 11. 1990, p. 30. Directive as last amended by Commission Decision 95/162/EC (OJ No L 107, 12. 5. 1995, p. 53).
[5] OJ No L 185, 17. 7. 1990, p. 16. Directive as last amended by Commission Directive 93/87/EEC (OJ No L 277, 10. 11. 1993, p. 32).

(14) Whereas long-term planning may be one means of carrying out those public service obligations;

(15) Whereas the Treaty lays down specific rules with regard to restrictions on the free movement of goods and on competition;

(16) Whereas Article 90 (1) of the Treaty, in particular, obliges the Member States to respect these rules with regard to public undertakings and undertakings which have been granted special or exclusive rights;

(17) Whereas Article 90 (2) of the Treaty subjects undertakings entrusted with the operation of services of general economic interest to these rules, under specific conditions;

(18) Whereas the implementation of this Directive will have an impact on the activities of such undertakings;

(19) Whereas the Member States, when imposing public service obligations on the undertakings of the electricity sector, must therefore respect the relevant rules of the Treaty as interpreted by the Court of Justice;

(20) Whereas, in establishing the internal market in electricity, full account should be taken of the Community objective of economic and social cohesion, particularly in sectors such as the infrastructures, national or intra-Community, which are used for the transmission of electricity;

(21) Whereas Decision No 1254/96/EC of the European Parliament and of the Council of 5 June 1996 laying down a series of guidelines for trans-European energy networks [1] has contributed to the development of integrated infrastructures for the transmission of electricity;

(22) Whereas it is therefore necessary to establish common rules for the production of electricity and the operation of electricity transmission and distribution systems;

(23) Whereas there are two systems which may be applied for opening up the production market, an authorization procedure or a tendering procedure, and these must operate in accordance with objective, transparent and non-discriminatory criteria;

(24) Whereas the position of autoproducers and independent producers needs to be taken into consideration within this framework;

(25) Whereas each transmission system must be subject to central management and control in order to ensure the security, reliability and efficiency of the system in the interests of producers and their customers; whereas a transmission system operator should therefore be designated and entrusted with the operation, maintenance, and, if necessary, development of the system; whereas the transmission system operator must behave in an objective, transparent and non-discriminatory manner;

(26) Whereas the technical rules for the operation of transmission systems and direct lines must be transparent and must ensure interoperability;

(27) Whereas objective and non-discriminatory criteria must be established for the dispatching of power stations;

(28) Whereas, for reasons of environmental protection, priority may be given to the production of electricity from renewable sources;

(29) Whereas, at the distribution level, customers located in a given area may be granted supply rights and a manager must be designated to manage, maintain and, if necessary, develop each distribution system;

(30) Whereas, in order to ensure transparency and non-discrimination, the transmission function of vertically integrated undertakings should be operated independently from the other activities;

(31) Whereas a single buyer must operate separately from the generation and distribution activities of vertically integrated undertakings; whereas the flow of information between the single buyer activities and these generation and distribution activities needs to be restricted;

(32) Whereas the accounts of all integrated electricity undertakings should provide for maximum transparency, in particular to identify possible abuses of a dominant position, consisting for example in abnormally high or low tariffs or in discriminatory practices relating to equivalent transactions; whereas, to this end, the accounts must be separate for each activity;

(33) Whereas it is also necessary to provide for access by the competent authorities to the internal accounts of undertakings with due regard for confidentiality;

(34) Whereas, owing to the diversity of structures and the special characteristics of systems in Member States, there should be different options for system access operating in accordance with objective, transparent and non-discriminatory criteria;

(35) Whereas provision should be made for authorizing the construction and use of direct lines;

[1] OJ No L 161, 29. 6. 1996, p. 147.

(36) Whereas provision must be made for safeguards and dispute settlement procedures;

(37) Whereas any abuse of a dominant position or any predatory behaviour should be avoided;

(38) Whereas, as some Member States are liable to experience special difficulties in adjusting their systems, provision should be made for recourse to transitional regimes or derogations, especially for the operation of small isolated systems;

(39) Whereas this Directive constitutes a further phase of liberalization; whereas, once it has been put into effect, some obstacles to trade in electricity between Member States will nevertheless remain in place; whereas, therefore, proposals for improving the operation of the internal market in electricity may be made in the light of experience; whereas the Commission should therefore report to the Council and the European Parliament on the application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope and definitions

Article 1

This Directive establishes common rules for the generation, transmission and distribution of electricity. It lays down the rules relating to the organization and functioning of the electricity sector, access to the market, the criteria and procedures applicable to calls for tender and the granting of authorizations and the operation of systems.

Article 2

For the purposes of this Directive:

1. 'generation' shall mean the production of electricity;

2. 'producer' shall mean a natural or legal person generating electricity;

3. 'autoproducer' shall mean a natural or legal person generating electricity essentially for his own use;

4. 'independent producer' shall mean:

   (a) a producer who does not carry out electricity transmission or distribution functions in the territory covered by the system where he is established;

   (b) in Member States in which vertically integrated undertakings do not exist and where a tendering procedure is used, a producer corresponding to the definition of point (a), who may not be exclusively subject to the economic precedence of the interconnected system;

5. 'transmission' shall mean the transport of electricity on the high-voltage interconnected system with a view to its delivery to final customers or to distributors;

6. 'distribution' shall mean the transport of electricity on medium-voltage and low-voltage distribution systems with a view to its delivery to customers;

7. 'customers' shall mean wholesale or final customers of electricity and distribution companies;

8. 'wholesale customers' shall mean any natural or legal persons, if the Member States recognize their existence, who purchase or sell electricity and who do not carry out transmission, generation or distribution functions inside or outside the system where they are established;

9. 'final customer' shall mean a customer buying electricity for his own use;

10. 'interconnectors' shall mean equipment used to link electricity systems;

11. 'interconnected system' shall mean a number of transmission and distribution systems linked together by means of one or more interconnectors;

12. 'direct line' shall mean an electricity line complementary to the interconnected system;

13. 'economic precedence' shall mean the ranking of sources of electricity supply in accordance with economic criteria;

14. 'ancillary services' shall mean all services necessary for the operation of a transmission or distribution system;

15. 'system user' shall mean any natural or legal person supplying to, or being supplied by, a transmission or distribution system;

16. 'supply' shall mean the delivery and/or sale of electricity to customers;

17. 'integrated electricity undertaking' shall mean a vertically or horizontally integrated undertaking;

18. 'vertically integrated undertaking' shall mean an undertaking performing two or more of the functions of generation, transmission and distribution of electricity;

19. 'horizontally integrated undertaking' shall mean an undertaking performing at least one of the functions of generation for sale, or transmission or distribution of electricity, and another non-electricity activity;

20. 'tendering procedure' shall mean the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;

21. 'long-term planning' shall mean the planning of the need for investment in generation and transmission capacity on a long-term basis, with a view to meeting the demand for electricity of the system and securing supplies to customers;

22. 'single buyer' shall mean any legal person who, within the system where he is established, is responsible for the unified management of the transmission system and/or for centralized electricity purchasing and selling;

23. 'small isolated system' shall mean any system with consumption of less than 2500 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems.

CHAPTER II

General rules for the organization of the sector

Article 3

1. Member States shall ensure, on the basis of their institutional organization and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive market in electricity, and shall not discriminate between these undertakings as regards either rights or obligations. The two approaches to system access referred to in Articles 17 and 18 must lead to equivalent economic results and hence to a directly comparable level of opening-up of markets and to a directly comparable degree of access to electricity markets.

2. Having full regard to the relevant provisions of the Treaty, in particular Article 90, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and to environmental protection. Such obligations must be clearly defined, transparent, non-discriminatory and verifiable; they, and any revision thereof, shall be published and notified to the Commission by Member States without delay. As a means of carrying out the abovementioned public service obligations, Member States which so wish may introduce the implementation of long-term planning.

3. Member States may decide not to apply the provisions of Articles 5, 6, 17, 18 and 21 insofar as the application of these provisions would obstruct the performance, in law or in fact, of the obligations imposed on electricity undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, *inter alia,* competition with regard to eligible customers in accordance with this Directive and Article 90 of the Treaty.

CHAPTER III

Generation

Article 4

For the construction of new generating capacity, Member States may choose between an authorization procedure and/or a tendering procedure. Authorization and tendering must be conducted in accordance with objective, transparent and non-discriminatory criteria.

Article 5

1. Where they opt for the authorization procedure, Member States shall lay down the criteria for the grant of authorizations for the construction of generating capacity in their territory. These criteria may relate to:

(a) the safety and security of the electricity system, installations and associated equipment;

(b) protection of the environment;

(c) land use and siting;

(d) use of public ground;

(e) energy efficiency;

(f) the nature of the primary sources;

(g) characteristics particular to the applicant, such as technical, economic and financial capabilities;

(h) the provisions of Article 3.

2. The detailed criteria and procedures shall be made public.

3. Applicants shall be informed of the reasons, which must be objective and non-discriminatory, for any refusal to grant an authorization; the reasons must be well founded and duly substantiated; they shall be forwarded to the Commission for information. Appeal procedures must be made available to the applicant.

Article 6

1. Where they opt for the tendering procedure, Member States or any competent body designated by the Member State concerned shall draw up an inventory of new means of production, including replacement capacity, on the basis of the regular estimate referred to in paragraph 2. The inventory shall take account of the need for interconnection of systems. The requisite capacity shall be allocated by means of a tendering procedure in accordance with the procedure laid down in this Article.

2. The transmission system operator or any other competent authority designated by the Member State concerned shall draw up and publish under State supervision, at least every two years, a regular estimate of the generating and transmission capacity which is likely to be connected to the system, of the need for interconnectors with other systems, of potential transmission capacity and of the demand for electricity. The estimate shall cover a period defined by each Member State.

3. Details of the tendering procedure for means of production shall be published in the *Official Journal of the European Communities* at least six months prior to the closing date for tenders.

The tender specifications shall be made available to any interested undertaking established in the territory of a Member State so that it has sufficient time in which to submit a tender.

The tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract. These specifications may also relate to the fields referred to in Articles 5 (1).

4. In invitations to tender for the requisite generating capacity, consideration must also be given to electricity supply offers with long-term guarantees from existing generating units, provided that additional requirements can be met in this way.

5. Member States shall designate an authority or a public body or a private body independent of electricity generation, transmission and distribution activities to be responsible for the organization, monitoring and control of the tendering procedure. This authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.

6. However, it must be possible for autoproducers and independent producers to obtain authorization, on the basis of objective, transparent and non-discriminatory criteria as laid down in Articles 4 and 5, in Member States which have opted for the tendering procedure.

CHAPTER IV

Transmission system operation

Article 7

1. Member States shall designate or shall require undertakings which own transmission systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, a system operator to be responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and its interconnectors with other systems, in order to guarantee security of supply.

2. Member States shall ensure that technical rules establishing the minimum technical design and operational requirements for the connection to the system of generating installations, distribution systems, directly connected consumers' equipment, interconnector circuits and direct lines are developed and published. These requirements shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [1].

3. The system operator shall be responsible for managing energy flows on the system, taking into account exchanges with other interconnected systems. To that end, the system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services.

4. The system operator shall provide to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system.

5. The system operator shall not discriminate between system users or classes of system users, particularly in favour of its subsidiaries or shareholders.

6. Unless the transmission system is already independent from generation and distribution activities, the system operator shall be independent at least in management terms from other activities not relating to the transmission system.

Article 8

1. The transmission system operator shall be responsible for dispatching the generating installations in its area and for determining the use of interconnectors with other systems.

2. Without prejudice to the supply of electricity on the basis of contractual obligations, including those which derive from the tendering specifications, the dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which may be approved by the Member State and which must be objective, published and applied in a non-discriminatory manner which ensures the proper functioning of the internal market in electricity. They shall take into account the economic precedence of electricity from available generating installations of interconnector transfers and the technical constraints on the system.

[1] OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by the 1994 Act of Accession.