

State of implementation of the EU Gas Directive (98/30/EC).

An Overview

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State of play by the end of May 2000.

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An overview of the state of implementation of the EU Gas Directive (98/30/EC).

1. Overall summary:

General progress towards implementation:

The EU Gas Directive (98/30/EC) was adopted on 22 June 1998 and entered into force on 10 August 1998. According to article 29 of the Directive, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Gas Directive no later than two years following the entry into force of the Directive i.e. no later than 10 August 2000. Member States shall forthwith inform the Commission thereof.

The objective of the implementation process is not merely to have legislation passed by 10 August 2000 but also to have other necessary and relevant administrative and other procedures in place in order to allow market opening to take real effect as from 10 August 2000.

Less than three months remain for Member States to ensure compliance of national laws and administrative procedures with the Gas Directive. This remaining period of implementation will clearly be demanding and will require close co-operation between Member States, national regulators, the gas industry, the Commission and other interested parties to ensure the transition towards and the functioning of the internal market for gas. In this context, the Commission will be at the full disposal of Member States with a view to ensure compliance with the Directive.

The aim and the ambition must be to ensure the operation of open markets as from 10 August 2000.

Some Member States have already fully or nearly fully implemented the Gas Directive while others are in the final phase of passing legislation through national governments and parliaments.

The UK, Belgium, Finland, Ireland, Italy and Spain have already passed legislation which to a large extent implements the EU Gas Directive. However, in some of these countries, minor elements of the Gas Directive (such as rules for access to up-stream pipelines in the UK) are still in the process of being implemented while in others, primary legislation already adopted is in the process of being followed-up by secondary legislation and commercial procedures such as Decrees, Codes of Practice and Grid Codes.

Another group of Member States including Austria, Denmark, France, Germany, Luxembourg, Sweden and The Netherlands is well advanced in the implementation process and these Member States are all at different stages of passing legislation through the national political decision-making system.

Greece and Portugal - the emergent gas markets - are less advanced in their implementation process. However, both these Member States have obligations to implement at least parts of the Gas Directive by 10 August 2000 while they may apply for derogation from other parts. Such derogation shall, however, be notified to the Commission.

Choices of access system:

According to the Gas Directive, Member States may, for the organisation of access to the system choose either negotiated access (based on publication of at least the main commercial conditions applicable) or regulated access based on published tariffs. Member States may also choose a combination of both systems.

Based on the current state of play and latest information available, it may be expected that eight Member States (A, E, FIN, I, IRL, L, S and UK) will choose regulated TPA based on published tariffs. Three Member States (DK, F and NL) may choose a hybrid or a combination of negotiated and regulated access. Denmark and The Netherlands are expected to choose regulated access for the distribution network while choosing negotiated access for the transmission network and storage. The draft French law foresees a system of access based on published standard tariffs approved by the regulator requiring only negotiation in exceptional circumstances when specific conditions justify an individual contract. Even in these cases of individual negotiation, the regulator will have insight in agreements and the possibility of intervening.

Only two Member States (B and D) seem to be choosing negotiated access. But even in these Member States (and in DK and NL for transmission), the tariffs applicable for access will not be subject only to negotiation between individual parties but either subject to prior regulatory approval or agreements between associations. Hence a purely negotiated access regime should not be envisaged.

Level of market opening and eligible customers:

According to the Gas Directive, at least all gas-fired power generators irrespective of their annual consumption and other final customers consuming more than 25 million cubic metres per year shall be eligible as from the initial market opening. The latter threshold shall gradually be lowered to 15 and 5 million cubic metres by 2003 and 2008 respectively. The absolute minimum market opening required by the Gas Directive is 20% as from 10 August 2000 increasing to 33% by 2008. Member States may limit market opening “in a balanced manner” to a level of initially 30% increasing up to 43% by 2008.

Despite these possible restrictions in market opening, most Member States seem to be going both further and faster in their market opening than required by the Directive. Based on the latest information from Member States, two Member States are likely to choose a full market opening as from 10 August 2000 (The UK gas market which has been fully liberalised since May 1998 and Germany, which in principle intends to open its market to 100% subject to progress in liberalisation in other Member States). By 2004, an additional three Member States (A, I and NL) are expected to have opened their markets to 100% and by 2008 a total of seven Member States – including some of the largest gas markets – will be fully open to competition (A, D, E, I, NL, S and UK). Belgium recently decided to speed up liberalisation and may have 100% market opening earlier than by 2010 as already decided.

On average (on a weighted volume basis), it is expected that approx. 78% of the total EU gas demand will be eligible on 10 August 2000. This level of market opening is expected to increase to 90% by 2008 based upon present assumptions. While these assumptions may even be conservative, it is also clear that a distinction should be made between eligible markets and real competitive markets i.e. markets in which all eligible customers have a real choice of supplier. This will not only depend on eligibility but market characteristics in general including supply-side competition and

non-discriminatory access to available transportation capacity and ancillary facilities including, where necessary, storage as well as the general removal of obstacles to the free movement of gas and interoperability of networks in its broadest sense.

However, eligibility is the first precondition of a customer to exercise a right of choice and to participate in a new dynamic market context.

The expected levels of market opening of the Member States are illustrated in the attached table.

Unbundling:

According to the Gas Directive, Member States shall at least ensure that integrated companies unbundle their internal accounts and do not abuse commercially sensitive information (“Chinese Walls”).

Several Member States (A, E, I, IRL, NL and UK) are either pursuing or considering a separation of transportation and commercial trading activities of integrated companies which goes beyond the requirements of the Gas Directive. However, other Member States (B, DK, D, FIN and F) do not seem to intend to go beyond these minimum requirements.

Lack of full legal unbundling between transportation (including system operation) and supply is often quoted as a main potential obstacle to non-discriminatory access to the network and as a source for abuse of dominant positions. In the absence of full unbundling and structural changes within the gas industry, the regulatory regime will need to provide strong conduct regulation in order to ensure non-discrimination.

Publication of access conditions:

As a majority of Member States are opting for regulated access or a combination of regulated and negotiated access systems, the publication of access conditions envisaged in most Member States includes publication of standard conditions and tariffs. Standard conditions for access to the network may be laid down in different types of network codes or technical rules to be published. In Member States choosing negotiated access, publication includes at least main commercial conditions in the form of agreed indicative or maximum tariffs.

Regulatory systems envisaged:

According to the Gas Directive (article 21), Member States shall designate a “*competent authority, which must be independent of the parties, to settle expeditiously disputes*”. Member States shall also (article 22) “*create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid abuse of a dominant position*”.

Member States are choosing different regulatory approaches to fulfil these obligations. While few Member States (possibly Portugal) plan to establish independent regulators for gas and Germany no sectorial regulators for energy as such (but general competition authorities), the majority of Member States are likely to leave the gas sector regulatory responsibilities including dispute settlement in the hands of general energy or common gas/electricity regulators (B, DK, E, F, FIN, I, IRL, L, NL, S, UK). In some Member States (A, DK, E and S), the Ministry responsible for energy matters will play an important role in the regulatory system.

In any case, it is important to avoid lengthy dispute settlement procedures which could be abused in delaying access to the network.

Public Service Obligations:

While a few Member States (D and S) do not foresee specific public service obligations, most other Member States envisage some kind of public service obligations. In the UK, such obligations are laid down in licences. The Gas Directive requires that public service obligations shall be clearly defined, non-discriminatory, verifiable, published and notified to the Commission. Most PSOs envisaged in national laws have so far only been presented in general terms. These obligations relate to connection and supply of connected (captive) customers; gas quality; safety; security and diversification of gas supply; interconnections and new gas infrastructure; development and operation of underground gas storage; gas balancing; marketing of gas; price equalisation; sustainability; energy saving; research and development in the gas sector and the “small fields policy” in NL.

The Commission considers high standards in public service in the gas sector to be a Community priority and to promote such high standards, the Commission will undertake benchmarking of best practices and prepare, for the end of this year, a Communication on public services in the gas and other sectors.

The Commission has set out in a separate Discussion Note¹, the application and proportionality tests it will apply in case of an application for refusal of access necessary on the grounds of a public service obligation. The imposition of public service obligations does in no way provide a *carte blanche* for refusal of access. Nor does it follow from the right of Member States to impose a public service obligation that any such will require derogation from the Gas Directive.

Upstream pipeline networks:

Upstream pipelines are not equally relevant in all Member States. Rules for access to these pipelines are obviously particularly important in the most significant gas producing countries such as the UK; NL; DK; I; D and A. In accordance with article 23 of the Gas Directive, Member States may implement a specific access regime to upstream pipeline networks taking into account the technical characteristics in this part of the gas chain. The overall principles of fair and open access and non-discrimination are, however, the same as those which shall apply for access to the other parts of the gas system.

The UK has outlined to the Commission the differences between the current UK legislation and article 23 of the Gas Directive as well as its intended implementation and amendment plans to ensure compatibility.

Also Germany intends to apply article 23 for access to its up-stream pipelines.

The draft Dutch law includes specific provisions for access to upstream networks, which in principle, however, are closely related to those applying to down-stream facilities. According to the draft law, the Dutch Competition Law applies directly to

¹ Discussion Note on Public Service Obligations prepared for the 2nd meeting of the Follow-up Group on the Gas Directive, 29 April 1999.

transportation of gas in upstream pipelines by which upstream network operators are obliged to negotiate access to such networks and not to abuse their economic power.

In Denmark, secondary legislation is being prepared providing for third party access to the Danish off-shore pipeline system.

In Italy, a specific regime will be applied for access to upstream pipelines under which owners of upstream facilities are obliged to provide access to pipelines and related services on the basis of objective criteria. The recent Decree has established the criteria for authorisation and the technical and safety conditions for such access.

It is not yet clear how exactly Austria will implement access to upstream networks.

Norway has indicated its intention of implementing the EU Gas Directive under the EEA agreement subject to a five year transitional period.

Access to storage:

Access to storage and associated flexibility services is essential for an efficient, non-discriminatory and cost-effective access to the network, for ensuring a level-playing field and full application of the Gas Directive. The Gas Directive provides for access to storage when this is technically necessary for an efficient access to the system.

Member States have chosen different approaches and are at different stages with regard to providing non-discriminatory access to the necessary flexibility instruments. In the UK, for example, access capacity for storage is sold under regular auctions while “virtual” storage i.e. other flexibility facilities and instruments are available at the spot market.

In Italy, there will be regulated access to storage.

Most other Member States also envisage some form of access to storage (albeit in some cases, such as D and DK, limited not only to when capacity is available but potentially also to when such access is “technically necessary for an efficient access to the system”). In France, access to storage will be subject to competition law and certain priorities (storage needs of PSO/non-eligible market and storage needs for system operation).

The Commission will, in liaison with Member States and regulators, closely follow the implementation regarding access to storage or similar flexibility services as well as other ancillary facilities.

Derogation:

No Member State has yet notified any derogation from the Gas Directive to the European Commission. However, derogation may be expected and notified for publication in the Official Journal e.g. regarding emergent markets, Member States not interconnected with the interconnected EU gas system and possibly “emergent regions”.

Other issues:

Several Member States are considering or have already introduced a reciprocity clause (including A, B, D, DK, E, I, L, NL and S (as an option)) while others are not.

2. Country-by-country overview:

Austria:

State of legislative preparation:

Following discussions and consultations of interested parties on the basis of earlier drafts in 1999, a revised draft law was adopted by the new Austrian government in March 2000 and submitted to Parliament. Adoption by the competent parliamentary bodies is foreseen for July 2000.

Market opening:

Until 1 October 2002 eligible customers are electricity producers and other final consumers with an annual consumption above 25 million m³ per year. In practice, this would lead to a degree of market opening of around 50% (49%).

From 1 October 2002 there will be full market opening.

System of access to the gas system and related publication requirements:

Regulated access based on general conditions and pricing structures. Access charges based on a cost-plus approach (including a reasonable profit) and subject to European benchmarking.

Unbundling:

Unbundling of internal accounts required by draft law.

Regulatory system:

The Minister of Economic Affairs is in principle regulatory authority. However, by 1 October 2002 - the date complete market opening will be introduced - an independent regulatory authority will be in place.

PSOs:

Obligation to connect customers or to supply, in case access to the network is denied.

Access to storage:

Access to and authorisations for building underground gas storage is not covered by the draft gas law but will be implemented in the Mining Act.

Other issues:

- Establishment of an independent grid operator under discussion;

Belgium:

State of legislative preparation:

Law adopted on 29 April 1999. Secondary legislation is currently under preparation regarding distribution and authorisations, grid code, PSOs and publication of main commercial conditions.

Market opening:

All gas-fired power producers are eligible as are all other final consumers using more than 25 million m³/y are eligible (total market opening of 47%). This threshold will be reduced to 15 million m³/y on 10 August 2003 (49% market opening) and to 5 million m³/y on 1 October 2006 (66% market opening). Distribution shall be eligible to purchase gas for their own eligible customers but irrespective of that, one third of their needs as from 1 October 2006 and as from 1 October 2010 all customers and distributors will be eligible. The Belgian government recently decided to accelerate this programme for market opening.

System of access to the gas system and related publication requirements:

Negotiated access based on published main commercial conditions.

A Code of Practice (Code de bonne conduite) shall be established outlining details regarding procedures for demanding access to the network; requirements for exchange of information; procedures to ensure confidentiality; deadlines for response to demands for access to the network; measures to ensure non-discrimination; minimum requirements regarding administrative and operational separation of transport and supply activities within integrated companies; basic rights and obligations of gas companies and customers negotiating access as well as for using the network; basic principles regarding tariffication and invoicing.

Unbundling:

Unbundling of internal accounts.

Regulatory system:

Regulatory Commission for Gas and Electricity "CREG" with two new Directorates (one for technical questions and one for price and accounting control). Will have both an advisory, monitoring and controlling role. Shall approve main commercial conditions and control the application of rules regarding refusal of access.

PSOs:

PSOs may be imposed for investments to ensure supply of non-eligible clients where such investments are economical and in relation to guarantee regularity and quality in gas supply to distribution companies and non-eligible customers.

Access to storage:

Distrigaz' exclusive right to construct and operate underground storage facilities will be abandoned (separate law of 18.7.1975 amended). Access to storage appears to be included in access to transport.

Denmark:

State of legislative preparation:

Draft law presented to Parliament on 29 March 2000. Expected to enter into force by 1 July 2000. Secondary legislation under preparation regarding definition of eligible customers; dispute settlement procedures; access to upstream pipeline networks; procedures regarding application for possible derogation related to take-or-pay contracts.

Market opening:

Denmark wishes to make use of the “ceiling” on market opening to limit it to 30% in 2000 increasing to 43% by 2008. This would require a threshold of around 35 million cubic metres per year including for CHP.

System of access to the gas system and related publication requirements:

Regulated access (postage stamp) for the distribution network and negotiated access to the transmission network based upon published main commercial conditions.

Unbundling:

Unbundling of internal accounts and a documented system of administrative procedures to ensure that commercially sensitive information is not abused.

Regulatory system:

An Energy Inspection Council (Energitilsynet) - an energy sector specific regulator - will monitor and regulate non-competitive activities carried out under monopoly-like conditions. The Council is an autonomous body appointed by the Minister and assisted by the Energy and Competition Agencies. Decisions can be referred to an Energy Complaints Board (Energiklageankenævnet).

PSOs:

A number of PSOs are envisaged including research and development (aimed at energy efficiency, environmental improvements and safety in the use of gas); storage for security of supply; network balancing and gas safety. The marketing activities of supply obligation companies are also envisaged as a PSO.

Access to storage:

Negotiated access to storage when such access is technically necessary for an efficient access to the system. Publication of main commercial conditions for access to storage.

Finland:

State of legislative preparation:

The Finnish Parliament adopted the Natural Gas Market Act on 3 May 2000. The Act will enter into legal force on 1 August 2000.

Market opening:

“Secondary market opening” or “after markets” opening. This means that eligible customers are not free to import gas from Russia (currently only source) but that retailers and large customers ($2000 \geq 5$ million m³/year) may trade with each other within their rights vis-à-vis Gasum, the transmission and gas importing company, in contracts signed or renewed after 1 August 2000. These customers represent 90% of the market. However, the trading flexibility is unknown.

System of access to the gas system and related publication requirements:

Regulated access based on published tariffs by Gasum and other smaller transporters.

Unbundling:

Unbundling of internal accounts.

Regulatory system:

The Electricity Market Regulator will be transformed into a new Energy Market Authority which will also be regulator for gas..

PSOs:

Obligation to supply connected customers.

Access to storage:

No storage available in Finland.

France:

State of legislative preparation:

Following broad consultation on the basis of a White Book “Towards the future French organisation for gas” published in June 1999 and a first draft law (“avant-projet de loi”) published by the French Ministry of Industry on 19 November 1999, the French government adopted a draft law on 17 May 2000 for submission to the Parliament.

Market opening:

Eligible customers as from 10 August shall represent at least 20% of the market and the threshold can not be higher than 25 million m³/year. Detailed eligibility criteria will be established by Decree and the Minister for Energy will publish a list of eligible customers. Distributors and electricity producers also eligible. Possible limitations for cogenerators benefiting from purchase obligation of the electricity network operator.

System of access to the gas system and related publication requirements:

The draft French law foresees a system of access based on published tariffs approved by the regulator requiring only negotiation in exceptional circumstances when specific conditions justify an individual contract. Regulator will have full insight in all TPA agreements and may intervene in all access cases.

Unbundling:

Unbundling of accounts plus Chinese Walls procedures to guarantee confidentiality.

Regulatory system:

A common Regulatory Authority for gas and electricity is foreseen. With regard to gas, the competencies of the regulator will include approval of access charges, dispute settlement, decisions on specific derogation, advice to the Ministry on tariffs for captive customers and preparation of regulations by the Ministry.

PSOs:

Gas supply is considered a public service with regard to prices (equalised tariffs for captive customers); supply security and diversity; developing and operating underground storage; developing transport infrastructure including interconnectors and LNG facilities.

Access to storage:

Access to storage subject to competition law and certain priorities (storage needs of PSO/non-eligible market and storage needs for system operation).

Germany:

State of legislative preparation:

The Energy Industry Act of 29 April 1998 and amendments of the competition law (article 19.4.4 of GWB) have already, in principle, implemented large parts of the Gas Directive. However, the Ministry is currently preparing an amendment of the Energy Industry Act which may include separate provisions and rights regarding TPA to the gas system; definition of the gas system; rules regarding unbundling; a reciprocity clause; an obligation for gas companies to publish main commercial conditions for access to their network; criteria for possible refusal of access to the network for operational or other reasons and possibly rules regarding some obligations regarding enhancement of capacity in case of refusal of access on grounds of lack of capacity and providing customers is willing to pay for such an enhancement.

Market opening:

100% market opening subject to progress in liberalisation in other Member States.

System of access to the gas system and related publication requirements:

Negotiated access based on published main commercial conditions currently being negotiated by the associations (“Verbändevereinbarung”). A draft set of main principles (“Eckpunkte”) for a future agreement on the Verbändevereinbarung was signed on 17 March 2000.

The amendments of the Energy Industry Act may include powers to change the system from negotiated access to regulated TPA in case the former will not operate in a satisfactory manner.

Unbundling:

Unbundling of internal accounts.

Regulatory system/dispute settlement:

The Kartellamt (general competition authority) will be dispute settlement authority.

PSOs:

No PSOs foreseen.

Access to storage:

Storage may be considered to be part of the gas network. In a revised Energy Industry Act, it may be that access to storage, and other ancillary facilities such as blending stations, shall be granted when this is necessary for efficient access (“effektiven marktzutrit”).

Other issues:

- The scope and content of the final Verbändevereinbarung is expected before August this year.

Greece:

State of legislative preparation:

Greece is an emergent market and also not directly connected to the interconnected system of any other Member State and has only one main (with a market share of more than 75%) external supplier and may therefore derogate from certain articles of the Gas Directive. However, certain provisions of the Gas Directive will require implementation by 10 August 2000.

Market opening:

Due to the characteristics of the Greek gas market, Greece may derogate from the market opening provisions (including most of article 18) until the criteria for derogation are no longer fulfilled. Any such derogation shall be notified to the Commission.

Market opening:

Greece may derogate from market opening according to article 26 of the Gas Directive.

System of access to the gas system and related publication requirements:

Not yet decided.

Unbundling:

Distribution will be privatised i.e. separated from DEPA, the transmission company.

Regulatory system:

An Energy Regulatory Authority (for gas and electricity and possibly other sectors) has been established by Law 2773/99.

PSOs:

Not yet decided.

Access to storage:

Not yet decided. Greece has an LNG terminal which may serve as storage. No underground gas storage yet in operation in Greece.

Ireland:

State of legislative preparation:

The 1995 Energy Act introduced TPA. Tariffs have been published, with a review currently underway in consultation with all the parties. Structural anomalies vis-à-vis pipeline authorisation and land rights are being resolved, with supplementary issues addressed using secondary legislation and administrative arrangements by 10 August deadline. Overall policy review currently underway, aiming to publish consolidated draft legislation for restructuring the gas sector before the end of the year.

Market opening:

Market opening follows the Gas Directive i.e. initially gas-fired power generators and other large customers using more than 25 million cubic metres per year. On this basis, the initial market opening will be 75% (albeit only 6-8 customers).

System of access to the gas system and related publication requirements:

Regulated access based on published tariffs. Revised tariff model should be ready by mid-2000. Code of Operations adopted. Existing supply capacity will be full by 2003/4. Uncertain future supply structure (possible domestic gas production vs. second Interconnector). Legislation is currently before parliament to allocate scarce capacity in the UK-Ireland Interconnector to new power stations to facilitate the opening of the electricity market pending construction of new supply infrastructure.

Unbundling:

Unbundling of accounts. Bord Gais Eireann Transmission operates at arms length from supply. Further separation of transportation and supply under consideration. Draft legislation for Bord Gais Eireann to be transformed into a public limited company has been prepared.

Regulatory system:

It is likely that the functions of the Commission for Electricity will be enlarged to encompass gas.

PSOs:

Not yet decided.

Access to storage:

Currently no storage facilities in Ireland. Flexibility to be provided as part of the transportation service.

Other issues:

- Authorisations for constructing new pipelines a complex matter;
- Considerations regarding possible nomination of a system operator.

Italy:

State of legislative preparation:

The EU Gas Directive is being implemented by a Government Decree approved by the Council of Ministers on 19 May 2000.

Market opening:

Initially, all power generators and distributors and final customers consuming more than 200,000 m³/y, and associations of enterprises consuming more than 200,000 m³/y (and each more than 50,000 m³/y) will be eligible (i.e. 96% of the total market). As from 1.1. 2003, all customers will be eligible (100% opening). Reciprocity clause.

Access to the gas system and related publication requirements:

Regulated TPA to all facilities (transport, distribution, storage and LNG plants) based on published tariffs established by an independent Authority, on the basis of criteria indicated in the Government Decree.

Unbundling:

The following obligations for unbundling shall be complied with by 1.1. 2002:

- legal unbundling for transport, distribution and storage activities among themselves and from other gas sector activities (a company performing both transport and storage may unbundle these only for accounts and management) ;
- selling gas can be performed only by companies which do not perform other activities within the gas sector, except exploitation, import, export, and wholesale customer activities;
- distribution companies selling gas to less than 100,000 final customers shall comply with legal unbundling requirements by 1.1. 2003

Regulatory system:

The existing independent regulatory Authority for electricity and gas will be the competent authority for tariffs for transport, distribution and storage, for dispute settlement and in case of access refusal. The existing Antitrust Authority will be competent for the competition measures.

PSOs:

Obligation to connect to the distribution grid and to supply modulation and storage.

Access to storage:

Regulated access to existing underground storage. The holders of a licence for storage must offer storage services for strategic and modulation requests and for production related activities. Possibility to have access to existing almost depleted fields for storage activities, on the basis of a competition system open to all companies.

Other issues:

- As from 1.1. 2002, no single gas undertaking can represent more than 75% of total gas supply (production and imports) for Italy; the percentage will decrease by 2% each year until it reaches 61% by 2009. As from 1.1.2003, no single gas undertaking can represent more than 50% of total sales to end-consumers;
- Authorisation for gas imports outside EU. Obligation of availability of a strategic storage for gas imports outside EU countries (10% of annual volume imported).

Luxembourg:

State of legislative preparation:

Draft law expected in June for entry into force no later than 10 August 2000.

Market opening:

A threshold for industry of 15 million m³/year is considered as from August 2000, which in itself would lead to a market opening of 51%. A possible threshold for large CHP and eligibility of distributors are currently being discussed. Reciprocity clause.

System of access to the gas system and related publication requirements:

A system of regulated access is envisaged.

Unbundling:

Unbundling of accounts.

Regulatory system:

One single, independent regulator for telecom, gas and electricity.

PSOs:

PSO for security of supply and protection of the environment envisaged.

Access to storage:

Underground gas storage not available in Luxembourg.

Other issues:

- Issues remaining to be decided:
 - Exact level of market opening and eligibility;
 - Unbundling accounts for distribution.

Portugal:

State of legislative preparation:

Portugal is an emergent market. However, relevant provisions of the Gas Directive will be implemented by 10 August 2000.

Market opening:

Portugal is an emergent market and may, according to article 26.2, derogate from market opening provisions (including most of article 18) for up to 10 years after the first commercial supply of its first long-term supply contract was made. Any such derogation shall be notified to the Commission.

System of access to the gas system and related publication requirements:

Not yet decided.

Unbundling:

Not yet decided.

Regulatory system:

Possibly an independent regulator for gas.

PSOs:

Not yet decided.

Access to storage:

Currently, no gas storage facilities available in Portugal.

Spain:

State of legislative preparation:

The Spanish Hydrocarbons Law (Law 34/1998 of 3 October 1998 published 8 October 1998). Notification to the Commission expected shortly. A Royal Decree 6/1999 of 16 April 1999 established new eligibility criteria. Additional measures (in the form of Decrees or Orders) have been prepared or are under preparation including in relation to minimum security standards; marketing of gas (including authorisation of traders); TPA tariffs; grid code etc.

Market opening:

As from January 2000, all power generators competing in the electricity market and all other large customers using more than 5 million m³/year are eligible (67% of the market). This threshold will be lowered to 3 million m³/year as from 1 January 2003 (73% of the market). As from 1 January 2008, all customers will be eligible.

System of access to the gas system and related publication requirements:

Regulated access based on published maximum tariffs. An Order was published on 10 March 2000 on payments for third party access to the gas grid. For reasons of security of supply, it may be possible to refuse access to the network if such access would result in a level of dependency on a single source of more than 60%.

Unbundling:

Legal unbundling of gas trading activities. Unbundling of accounts of transport, regasification, storage and distribution activities within integrated companies.

Regulatory system/dispute settlement:

The National Energy Commission (Comisión Nacional de Energía – CNE) will be the dispute settlement authority and will have responsibilities in relation to the regulation of the gas, oil and electricity sectors (in co-operation with authorities responsible for fair trading and general competition law). However, the Ministry of Economy will have an important role in overall gas market regulation including in relation to approval of tariffs and granting of authorisations for new installations.

PSOs:

Gas is considered an activity in the general economic interest. An obligation is imposed on suppliers and eligible customers to maintain back-up reserves for at least 35 days of consumption/supply (excluding alternative supply possibilities). Obligations to connect and supply; obligations to maintain quality levels set by the law; obligations to maintain and where necessary enhance capacity within exclusive supply areas in order to enable connection of customers requesting supply.

Access to storage:

Access to storage allowed for by the law.

Sweden:

State of legislative preparation:

Draft Bill presented to Parliament on 30 March 2000. It is expected, that the draft Bill will be adopted before the summer holidays and that it will enter into force as from 1 August 2000. Secondary legislation is under preparation.

Market opening:

From August 2000, all gas-fired power generators regardless of their consumption level as well as all end-consumers using more than 25 million cubic metres per year shall be eligible. The eligible end-consumers represent around 47% of the market. By 2003, the threshold will be lowered to 15 million cubic metres per year or less. In addition, all pipeline operators transporting or supplying gas shall be eligible for third party access.

As from 1 January 2006, all end-consumers will be eligible.

System of access to the gas system and related publication requirements:

Regulated access based on published tariffs.

Unbundling:

Unbundling of accounts.

Regulatory system:

The network authority, which is a part of Statens Energimyndighet (Swedish National Energy Administration) is the regulator for electricity and will also be regulator for gas.

PSOs:

No PSOs foreseen, however, development to be monitored.

Access to storage:

No gas storage currently available in Sweden.

Other issues:

- Sweden may apply for derogation from article 26.3 of the Gas Directive (supply of a “geographically limited area of a Member State”).

The Netherlands:

State of legislative preparation:

Draft law submitted to Parliament in March 1999 and agreed by Second Chamber. Is now in First Chamber. Gas Bill expected to enter into force in August 2000.

Market opening:

The Dutch authorities have opted for a gradual opening of the market. Consumers using more than 10 million m³/year/site are already eligible to choose their supplier today. From 1 January 2002, consumers using more than 1 million m³/year will be eligible while all Dutch gas consumers will be eligible to choose their supplier as from 1 January 2004. The same thresholds are proposed for CHP as for the other gas consumers. In percentages this will result in the following market opening: 2000: 45%; 2002: 51%; 2004: 100%.

System of access to the gas system and related publication requirements:

The draft law is based on negotiated TPA for transmission. However, access will be subject to regulatory control and the publication of indicative tariffs and terms for transport and necessary ancillary services related to gas transport. Access at distribution level (for captive customers until 2004 and afterwards optional for consumers using less than 170,000 m³/year) will be regulated TPA. For upstream pipelines, negotiated TPA applies under competition law.

Unbundling:

Unbundling of the accounts of the vertically integrated company (Gasunie) for its transmission, distribution, storage and non-gas activities. Chinese Walls. Legal unbundling between supply and transportation at distribution level. Review in 2 years time.

Regulatory system:

The electricity regulator will become energy regulator (gas and electricity) subject to Competition Authority/law.

PSOs:

PSOs for supply of captive and small customers (< 170,000 m³/year); energy saving; sustainability and the so-called "small fields policy".

Access to storage:

The TPA regime for gas transportation will, according to the draft law, include "services necessarily associated with this". This will include load factor conversion i.e. flexibility and services related to gas quality and pressure. However, in addition there will be third party access to storage of the three dominant companies on Dutch territory.

United Kingdom:

State of legislative preparation:

The 1995 Gas Act paved the way for opening the gas market to full competition. Full competition was achieved in May 1998 since when all gas consumers can freely choose their gas supplier.

The regulatory agenda now focuses on the introduction of competition in ancillary services (e.g. storage and metering); new gas capacity, balancing and trading arrangements including the On-The-Day-Commodity Market (OCM since October 1999) and auctioning of entry (since October 1999) and possibly exit capacity as well as storage capacity (conventional storage since May 1999, LNG storage since May 2000). Line-pack and LNG storage to be reviewed in 2000.

Market opening:

Already 100% market opening.

System of access to the gas system and related publication requirements:

Regulated access based on published tariffs.

Unbundling:

Full separation (legal unbundling) of gas transportation and gas supply business.

Regulatory system:

OFGEM (Office of Gas and Electricity Markets) is independent regulator.

PSOs:

Certain social obligations and public services are laid down in licences.

Access to storage:

Storage and other forms of flexibility is subject to competition. Storage capacity is being auctioned while “virtual” storage i.e. other flexibility facilities and instruments can be traded at the spot market.

Other issues:

- Northern Ireland possibly an “emergent region”;
- Rules implementing article 23 of the Gas Directive for upstream pipelines are under preparation;
- Rules filling gaps in the downstream regime are under preparation.

EU GAS MARKET OPENING

	2000 (%)	2008 (%)	"LATER" (%)
Austria	49,0	100,0	100,0
Belgium	47,0	66,0	100,0
Denmark	30,0	43,0	43,0
France	20,0	33,0	33,0
Finland	90,0	90,0	90,0
Germany	100,0	100,0	100,0
Greece	0,0	33,0	33,0
Ireland	75,0	81,0	81,0
Italy	96,0	100,0	100,0
Luxembourg	51,1	75,0	75,0
Netherlands	45,0	100,0	100,0
Portugal	0,0	33,0	33,0
Spain	67,0	100,0	100,0
Sweden	47,0	100,0	100,0
United Kingdom	100,0	100,0	100,0
EU-15 (1)	77,9	90,0	91,4

1) Weighted average based on EUROSTAT figures for total gas consumption in 1998. Market opening figures based on latest information available from Member States. The option of Member States to lower market opening to a "ceiling" has been taken into account in one case. For Greece and Portugal, a minimum opening of 33% is assumed for 2008 and "later". The 100% market opening for Germany is subject to progress in liberalisation in other Member States.