

**UNBUNDLING OF ELECTRICITY AND GAS TRANSMISSION AND
DISTRIBUTION SYSTEM OPERATORS**

FINAL REPORT

1 December 2005

Prepared by

Gómez-Acebo & Pombo Abogados, S.L.

Avenue Louise, 267

1050 Brussels

Tel. +32 2 231 12 20

Fax. +32 2 230 80 35

Charles Russell LLP

8 - 10 New Fetter Lane

EC4A 1RS London

Tel. +44 20 7203 5000

Fax. +44 20 7203 0200



FOREWORD

This Report is based on the Country Reports elaborated by the following Law Firms:

Austria	Dr. F. Schwank Law Firm
Belgium	Lafili, van Crombrugghe & Partners
Czech Republic and Slovakia	Konecna & Safar
Denmark	Mazanti-Andersen Korso Jensen & Partenere
Finland	Hannes Snellman Attorneys at Law Ltd,
France and Poland	Salans
Germany and Hungary	Nörr Stiefenhofer Lutz
Ireland	Arthur Cox
Italy	Macchi di Cellere Gangemi
Portugal	Rui Peixoto Duarte & Associados
Slovenia	Odvetniki Šelih & partnerji
Spain	Gómez-Acebo & Pombo Abogados, S.L.
Sweden	Advokatfirman Glimstedt
The Netherlands	Houthoff Buruma
United Kingdom	Charles Russell LLP

GLOSSARY

- **DSO:** Distribution System Operator
- **The Electricity Directive:** Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC
- **Functional unbundling:** of the TSO and DSO, to ensure its independence within the VIU. Transmission and distribution must be independent in terms of organisation and decision-making from other activities not related to the networks. The following minimum criteria apply:
 - Those responsible for the management of the TSO/ DSO may not participate in company structures of the integrated undertaking responsible directly or indirectly for the day to day operation of the other interests;
 - Appropriate measures must be taken to ensure that the management of the TSO/ DSO is capable of acting independently;
 - The TSO/ DSO shall have effective decision-making rights, independent from the VIU, with respect to assets necessary to operate, maintain or develop the network;
 - The TSO/ DSO shall establish a compliance programme with measures to ensure that a discriminatory conduct is excluded and to ensure its respect is adequately monitored;
 - Additional measures to re-enforce functional unbundling may be taken.
- **The Gas Directive:** Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC
- **Legal unbundling:** of the TSO and DSO from other activities not related to transmission and distribution. Transmission and distribution have to be done by a *separate "network" company*
- **LLC:** Limited Liability Company
- **Ownership unbundling:** separate ownership of the TSO / the DSO from other activities not related to transmission or distribution. Transmission and distribution networks are operated under different ownership than generation/production and supply
- **PLC:** Public Limited Company
- **Possibility of exemptions:** from the requirement of legal and functional unbundling of DSOs serving less than 100.000 customers. Member States may differ in the implementation of these requirements. Some may not adopt it, and some may adopt it in a modified way, e.g. with thresholds lower than 100.000 customers; or for certain requirements relating to functional unbundling only. This possibility of an exemption is not limited in time
- **Postponement to 2007:** Member States may *postpone* the requirement of *legal* unbundling of the DSOs until 1 July 2007, i.e. the date of full market opening
- **TSO:** Transmission System Operator
- **VIU:** Vertically Integrated Undertaking. An undertaking or a group of undertakings performing *at least one* of the functions of transmission or distribution *and at least one* of the functions of generation/production or supply

EXECUTIVE SUMMARY

This Report presents a comparative outline of the current state of play of the implementation of the legal and functional unbundling requirements contained in the Electricity and Gas Directives concerning common rules for the internal market in electricity and natural gas.¹ The study covers the implementation of the Directive's provisions by way of both legal instruments passed by Member States ("legal implementation"), and measures adopted by a sample of representative companies ("practical implementation"). Only Vertically Integrated Undertakings were selected for this study.

The following Member States were analysed: Austria, Belgium, Czech Republic, Denmark, Finland (electricity only), France, Germany, Hungary, Ireland, Italy, Poland, Portugal (electricity only), Slovakia, Slovenia, Spain, Sweden, The Netherlands and the United Kingdom².

➤ **Legal Implementation of the Unbundling provisions of the Electricity and Gas Directives**

- Electricity

Full transposition - Our study found that seven out of the eighteen Member States analysed have fully transposed into national law the unbundling provisions of the Electricity Directive: **Belgium, Denmark, France, Great Britain, Germany, Sweden and the Netherlands**.

Amongst, the above mentioned countries **Germany** and **France** have adopted the possibility of postponement to 2007 (to postpone the implementation of legal unbundling for DSOs to 2007).

The possibility to exempt DSOs with less than 100.000 customers from unbundling obligations has been adopted by **Germany** and **France**. **Denmark** and **Sweden** have included the 100.000 customer exemption in their legislation in a modified way, narrowing the scope for exemption left by the Directive.

In **the Netherlands**, the sole Electricity TSO has been ownership unbundled since October 2001. The Dutch Minister of Economic Affairs has proposed an Act of Parliament providing for ownership unbundling of the DSOs. If this bill is enacted, all DSOs will have to be ownership unbundled as of 1 January 2008. In **Belgium**, pursuant to an Order adopted by the Flemish government in 2001, the DSOs will be completely owned by the municipalities as of 2018. The same provision has been enacted in region Brussels-Capital where the DSOs shall be under the sole control of the municipalities in 2012.

Partial transposition of the Electricity Directive is found in ten countries: **Austria, Czech Republic, Finland, Hungary, Ireland, Italy, Poland, Slovakia, Slovenia and Spain**.

The incomplete transposition is due to either to: (a) late transposition; and/or, (b) the adoption of implementing measures that do not fully reflect the requirements of the Electricity Directive. Regarding the latter, the shortcomings identified concern either *the content* of the domestic legal and functional unbundling provisions itself, or *the scope* of the postponement adopted, which exceeds what is permissible under Article 30(2) of the Electricity Directive.

¹ The report is based on information received up until 1 December 2005.

² In this report, we refer to Great Britain rather than the UK, as Northern Ireland has a different regime. Details are provided in Annex 18.

More precisely, in **Austria** and **Poland** the provisions of the Electricity Directive have been already transposed but enabling legislation is still to be enacted. In **Italy**, pursuant to domestic pre-existing legislation, until 2004 the DSOs with more than 300.000 customers were subject to legal unbundling obligations. As from this date, legal unbundling for large DSOs became voluntary. TSOs are subject only to legal unbundling obligations. The main TSO, however, will be ownership unbundled shortly as a result of the merger between the network operator and the owner of the network assets, currently under investigation. In **Spain**, accounting and “partial legal” unbundling obligations were already in force before the Electricity Directive, under the terms of pre-existing legislation. The transposition of the provisions regarding functional unbundling, however, is still pending.

The **Czech Republic** and **Finland** have postponed until 2007 the implementation of both legal *and functional* unbundling obligations for major DSOs, thereby going beyond what is permissible under Art 30(2) of the Electricity Directive. **Slovenia** has also postponed until 2007 the implementation of legal *and functional* unbundling obligations for all DSOs,. **Hungary** has also postponed the implementation of legal *and functional* unbundling, not only for DSOs (until July 2007) but also for TSOs (until January 2006). The same applies to **Slovakia** (legal and functional unbundling postponed until July 2007 for DSOs , the TSO being ownership unbundled). In **Ireland** the legal and functional unbundling requirements of the Directive have been transposed in respect of the TSO, with functional unbundling having occurred but legal unbundling yet to take place. In the case of the DSOs, however, only the functional unbundling requirement has been transposed.

No transposition can be found in **Portugal**. The new Government is expected to approve the legislation package aimed at transposing the Directive at the beginning of 2006.

- Gas

Full transposition is found in seven countries: **Belgium, Denmark, France, Great Britain, Germany, Sweden and the Netherlands**.

As it was the case for electricity, **Germany** and **France** have endorsed the possibility to postpone the implementation of legal unbundling for DSOs to 2007. **France** and **Germany** have also exempted DSOs with less than 100.000 customers from the unbundling obligations.

In **the Netherlands**, the sole Gas TSO has been ownership unbundled since July 2005. The Dutch Minister of Economic Affairs has proposed an Act of Parliament regarding ownership unbundling of the DSOs. If this Act is adopted, all DSOs will have to be ownership unbundled by 1 January 2008.

Sweden has not transposed the functional unbundling requirement for DSOs but this is due to the fact that currently the Swedish gas market has only 55.000 customers.

Partial transposition is found in the remaining countries: **Austria, Czech Republic, Hungary, Ireland, Italy, Poland, Slovakia, Slovenia and Spain**. As in the field of electricity, we found that the incomplete transposition is due either to: (a) late transposition; and/or, (ii) the adoption of implementing measures that do not fully reflect the requirements of the Gas Directive.

In particular, **Austria** and **Poland** have not yet completed the transposition process currently underway. More precisely, in **Austria** Article 13.2 (c) of the Gas Directive has not yet been transposed at federal level. The 100.000 customers exemption has been transposed in a modified way (DSOs holding more

than 50.000 customers will have to be unbundled). In **Poland**, secondary legislation is still to be adopted. The 100.000 customer exemption has been adopted.

In **Ireland, Italy and Spain** the unbundling obligations provided for by the national implementing measures do not comply with the requirements of the Gas Directive. In **Ireland** no transposition of the legal unbundling obligations has been made. In **Italy**, energy operators are required to create administrative units to be managed autonomously but this requirement is not sufficient to comply with Article 13 (2) of the Gas Directive. In **Spain**, legal unbundling obligations can be considered transposed but only in a partial way since the rules in force permit one single company to operate the network and to supply gas at regulated prices and the transposition of functional unbundling obligations is still pending. In the **Czech Republic and Hungary** the postponement option has been endorsed in an unsatisfactory way by postponing not only legal but also *functional* unbundling for both DSOs and TSOs. In **Slovakia**, the unbundling obligations have been postponed until 2007 for DSOs. The 100.000 customer exemption, has been adopted by the **Czech Republic** (DSOs with less than 90.000 customers) and **Slovakia**. **Slovenia** has postponed until 2007 the implementation of legal *and functional* unbundling obligations for all DSOs. **Slovenia** has also included the 100.000 customer exemption in the legislation.

➤ **Practical Implementation of the Unbundling provisions of the Electricity and Gas Directives**

- Electricity

Electricity TSOs: the analysis of the sample of TSOs shows that:

Legal unbundling seems to be effective in practice in **Belgium, France, Germany, Italy, Poland, Slovenia and Austria**. The sample companies examined are complying with the Electricity Directive's requirements, the transmission business being carried out through a company separate from the companies of the Group active in the supply and/or generation business.

In the majority of cases, the legal form chosen by the network company is the Public Limited Company although in some cases a General Partnership has been opted for and in **Germany** the network company is a Limited Liability Company. As for the regime governing the relationship between the network undertaking and the holding company in most cases is general Company law or the Articles of Association. In one case (**Belgium**) specific rules enacted by the Regulator apply.

In **Hungary and Ireland** TSOs are not yet legally unbundled in practice.

Functional unbundling seems to be effective in **Austria, Belgium, Denmark, France, Germany, Ireland and Poland** as suggested by the analyses of the sample companies. In **Italy** some unbundling measures have been adopted by the selected companies but these are neither in line with the "administrative unbundling" required by the national legislation in force, nor with the Directive's requirements.

Ownership unbundling is not required by the Electricity Directive but in some cases TSOs have already been ownership unbundled. In this case, they fall outside the sample selected because they are not a vertically integrated company (they do not simultaneously perform the functions of electricity transmission and generation or supply). This is the case for the electricity TSOs in the **Czech Republic, Denmark** (main TSO only, not regional TSOs), **Finland, Great Britain, Portugal, Slovakia, Spain and the**

Netherlands. In **Sweden** the TSO is an independent public service company. **Italy**, foresees that the main TSO will be ownership unbundled in 2007.

Electricity DSOs - Our analysis of the sample of DSOs shows that

Legal unbundling seems to be effective in **Belgium, Denmark, Great Britain, Sweden and the Netherlands** since all the companies examined comply with the requirements of the Electricity Directive and are separate subsidiaries in the form of Public Limited Companies (except in **Great Britain and Sweden** where the legal form chosen by the network company is a Limited Liability Company). Company law and the Articles of Association govern the relationship between the companies.

In **Spain and Italy**, the companies analysed comply only with domestic legal unbundling provisions which, as indicated above, are not in line with the Directive's.

In **Germany** two out of three DSOs examined are legally unbundled and the third is expected to be legally unbundled as of 1 January 2006. These DSOs are in the form of Limited Liability Companies,

In **Austria, the Czech Republic, France, Hungary, Ireland, Poland, Slovakia and Slovenia** none of the DSOs examined are legally unbundled. In **Finland** only one of the DSOs in the sample is legally unbundled.

Austria, Germany, Poland and Slovakia have adopted the 100.000 customer exemption. Around 122 DSOs will be excluded from the legal unbundling requirements in **Austria**. About 780 DSOs will be exempted in **Germany**, where, however, this only amounts to around 10% of the total number of DSOs. In **Poland**, the exemption will not be effective at present, as none of the DSOs serves less than 100.000 customers. In **Slovakia**, the Regulator has confirmed that, as of today, no exact information is available on the precise number of DSOs holding less than 100.000 customers.

In the **Czech Republic and Slovenia**, the exemption has been adopted in a modified way so that DSOs serving less than 90.000 and 1.000 customers respectively, do not need to be legally unbundled. As a result, in the **Czech Republic** 307 companies have been excluded. On the contrary, in Slovenia the exemption does not apply to any DSOs, as all DSOs serve more than 1.000 customers.

Functional unbundling appears to be effective (on the basis of the sample companies examined) in **Austria, Belgium, Denmark, France, Germany, Great Britain, Ireland, Sweden and the Netherlands**. **Austria, Denmark, France, Germany and Sweden** have endorsed the 100.000 customer exemption. **Austria, France and Germany** have adopted it as it is. As a result, approximately 122 DSOs will be excluded from the functional unbundling requirements of the Directive in Austria, 155 in France and 780 in Germany. **Denmark** has adopted a modified exemption so that 107 DSOs are exempted in relation to the management separation requirement (though not the compliance and confidentiality requirements). In **Sweden**, 169 DSOs are excluded from the functional unbundling requirements, though not from the requirement that they adopt a compliance programme.

With reference to **Belgium**, DSOs are functionally unbundled by law. However the former monopolist still manages some IT operations and customer databases of the DSOs. In the **Czech Republic, in Italy, Poland, Portugal and Slovakia** some practical measures have been adopted by the companies examined in order to grant a certain degree of management independence. The **Czech Republic, Poland and Slovakia** have endorsed the 100.000 customer exemption.

In **Finland** (postponement), **Hungary** (postponement) and **Spain** (no transposition) functional unbundling is not yet compulsory and the companies analysed have only enacted minor practical measures to grant management independence of vertically integrated DSOs.

- Gas

Gas TSOs – Our analysis of the sample companies shows that:

Legal unbundling has occurred in **Austria, Belgium, France, Germany, Hungary, Italy, Poland, Slovenia** and **Sweden**. No legal unbundling has yet occurred in the **Czech Republic** (postponement), **Slovakia** (postponement) and **Ireland** (no transposition).

Functional unbundling is effective in **Austria, Belgium, France, Germany, Hungary, Ireland, Italy** (partially), **Slovenia, Sweden** and **Poland**: the companies examined comply with the unbundling requirements of the Gas Directive, except for the **Italian** TSO analysed which does not completely fulfil these obligations.

In the **Czech Republic** functional unbundling is not yet compulsory but the TSO has undertaken partial functional unbundling. In **Slovakia** the TSO examined has not enacted any practical measures seeking to grant management independence.

Ownership unbundling has occurred in **Denmark, Great Britain, Spain** (main TSO only), **Sweden** (main TSO only) and **the Netherlands**.

Gas DSOs – Our analysis of the sample companies shows that

Legal unbundling seems to be effective as suggested by the sample of companies examined in **Belgium, Denmark, Italy** (with the notable exception of gas storage), **Sweden, Great Britain** and the **Netherlands**.

Although **Austrian** federal legislation impose a requirement for legal unbundling, one Austrian DSO analysed is not legally unbundled. In **Germany**, as of January 2006, all three DSOs studied will be legally unbundled.

In the **Czech Republic, France, Hungary, Poland, Slovenia** and **Slovakia** legal unbundling is not yet compulsory and the companies of the sample have not yet enacted practical measures to comply with legal unbundling requirements. **Ireland** does not require DSOs to be legally unbundled.

Functional unbundling has occurred in **Austria, Denmark, France, Great Britain, Germany, Ireland** and **the Netherlands**. Only **Germany** amongst these countries has endorsed the 100.000 customer exemption, as a result of which around 630 DSOs are excluded from the unbundling requirement. This amounts to around 20% of the market, with the remaining DSOs being subject to the unbundling requirements.

In **Italy, Poland** and in the **Czech Republic** a few measures have been enacted by the sample companies in order to grant management independence but these do not fully satisfy the Directive's requirements.

In **Slovenia** while the requirement for functional unbundling is not effective yet, all DSOs are exempted due to the adoption of the 100.000 customer exemption. The three DSO that were part of the sample confirmed that there has been no unbundling in functional terms. In **Belgium**, functional unbundling requirements have been practically implemented by DSOs. However, in certain cases some interference from related production/supply companies has been found.

In **Hungary** functional unbundling is already partly required; the remaining functional unbundling requirements become binding as of January 2006. The sample DSOs examined, however, do not seem to have implemented any functional unbundling measures to date.

In **Slovakia** (postponement), **Spain** (no transposition) and **Sweden** (no transposition but no more than 55.000 gas consumers in the whole country) the DSOs examined have not enacted functional unbundling measures.

In conclusion, in terms of practical implementation of the Electricity Directive, we have found that, in most cases, full transposition is coupled with complete implementation on the part of the companies. A significant number of TSOs have gone further than the Electricity Directive, and are unbundled in ownership terms. In those cases where the Directives are not yet fully transposed (be it because the country has adopted the postponement option, or because of partial implementation or non implementation), unsurprisingly the companies examined have put in place fewer, if any, steps to comply with the unbundling requirements. The endorsement of the possibility to postpone the implementation to 2007 as well as partial transposition has led, therefore, to incomplete practical implementation in many countries particularly as far as DSOs are concerned.

In the field of gas very similar conclusions have been reached although the correlation between full transposition and complete implementation is less strong than in the case of electricity and less TSOs are ownership unbundled.

MAIN REPORT

TABLE OF CONTENTS

I. Introduction	12
II. The Legal Implementation Of The Unbundling Provisions Of The Electricity And Gas Directives	13
1. Electricity	13
2. Gas	18
III. Practical Implementation (What Are Companies Doing)	22
1. Electricity	22
2. Gas	29
IV. Summary Tables	35
1. Legal implementation	36
1.1. Electricity	36
Table 1: Legal Implementation of the Unbundling Provisions of the Electricity Directive	36
Table 2: A quick check list on the transposition of the unbundling provisions of the Electricity Directive	39
Table 3: A quick check list on electricity TSO/DSO unbundling regime provided for in the Electricity Directive	40
1. 2. Gas	42
Table 4: Legal Implementation of the Unbundling Provisions of the Gas Directive	42
Table 5: A quick check list on the transposition of the unbundling provisions of the Gas Directive	44
Table 6: A quick check list on gas TSO/DSO unbundling regime provided for in the Gas Directive	45
2. Practical implementation (Electricity and Gas)	47
Table 7: Overview of the situation: the practical implementation of the Electricity and Gas Directives	47

ANNEXES: COUNTRY OVERVIEW

1. Austria
2. Belgium
3. Czech Republic
4. Denmark
5. Finland
6. France
7. Germany
8. Hungary
9. Ireland
10. Italy
11. Poland
12. Portugal
13. Slovakia
14. Slovenia
15. Spain
16. Sweden
17. The Netherlands
18. United Kingdom

I. INTRODUCTION

Directives 2003/54/EC and 2003/55/EC concerning common rules for the internal market in electricity and natural gas (“the Electricity and gas Directives”) require that:

- Distribution System Operators (“DSOs”) and Transmission System Operators (“TSOs”) that are vertically integrated (“VI”) be independent in legal form (“legal unbundling”) and in terms of organisation and decision-making from other activities not related to distribution or transmission respectively (“functional unbundling”)³.
- Member States have discretion to exempt DSOs from the legal and functional unbundling requirements in circumstances where they serve less than 100.000 customers⁴ (“the 100.000 customers exemption”).
- Member States may also postpone the implementation of the obligation on Distribution System Operators to be legally unbundled until 1 July 2007⁵ (“postponement option”).

The purpose of this Report is to ascertain the extent to which Member States have transposed the unbundling obligations provided for in the Electricity and Gas Directives and to establish which measures have been adopted by vertically integrated companies in order to ensure the effective independence of network operation.

The study provides a comparative overview of the legal implementation in the Member States analysed (II), as well as of the measures adopted by a sample of representative companies, for the practical implementation of the unbundling requirements (III). The main conclusions reached are summarised in tables (IV). The situation in each Member State is described in more detail in the Annexes.

The basis of this Report are the Country Reports elaborated by the following Law Firms: Dr. F. Schwank law Firm (Austria), Lafili, van Crombrughe & Partners (Belgium), Konecna & Safar (Czech Republic and Slovakia), Mazanti-Andersen Korso Jensen & Partenere (Denmark), Hannes Snellman Attorneys at Law Ltd (Finland), Salans (for both France and Poland), Noerr Stiefenhofer Lutz (for both Germany and Hungary), Charles Russell LLP (Great Britain), Arthur Cox (Ireland), Macchi di Cellere Gangemi (Italy), Houthoff Buruma (The Netherlands), Rui Peixoto Duarte & Associados (Portugal), Odvetniki Šelih & partnerji (Slovenia), Gómez-Acebo & Pombo Abogados, S.L. (Spain) and Advokatfirman Glimstedt (Sweden).

The sources of information used for the elaboration of the Country Reports included the following:

- National legislation (primary, secondary, decisions of the Regulator)
- Legal / economic literature on unbundling practice in the country concerned
- Company reports, such as annual reports
- Charter of the company
- Internet
- Contacts with national regulatory authorities
- Direct contacts with the companies concerned, where possible

³ Articles 15 (DSOs) and 10 (TSOs) of the Electricity Directive and Articles 13 (DSOs) and 9 (TSOs) of the Gas Directive.

⁴ Article 15, last sentence of the Electricity Directive and Article 13, last sentence of the Gas Directive.

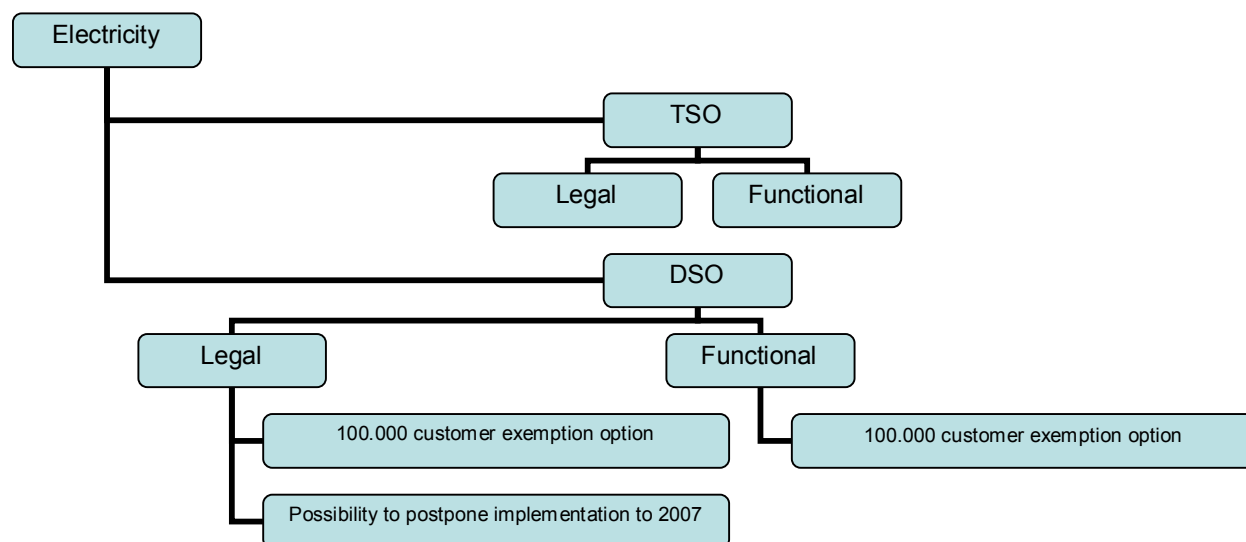
⁵ Article 30 (2) of the Electricity Directive and Article 33 (2) of the Gas Directive.

II. THE LEGAL IMPLEMENTATION OF THE UNBUNDLING PROVISIONS OF THE ELECTRICITY AND GAS DIRECTIVES

1. Electricity

1.1. Introduction

The chart below summarizes in a snapshot the legal and functional unbundling requirements of the Electricity Directive.



Our study found that requirements on legal and functional unbundling contained in the Electricity Directive have been transposed into national law with the provisions being adopted in a very similar and consistent way in seven of the eighteen countries analysed⁶. In addition, some of these countries have adopted measures requiring the ownership unbundling of TSOs or aimed at guaranteeing in the near future the ownership unbundling of DSOs (see Belgium and the Netherlands). In the remaining countries the transposition has, so far, only been partial. In most of these cases, however, it is anticipated that the requirements contained in the Directive will be transposed into national law in 2007. In the case of Portugal there has not yet been any transposition of the Electricity Directive.

In relation to the possibility under the Electricity Directive to:

- (a) exempt DSOs having less than 100.000 customers from both legal and functional unbundling obligations; and
- (b) postpone the implementation of legal unbundling obligations concerning DSOs till July 2007.

⁶ Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Netherlands, United Kingdom.

Five Member States have endorsed the exemption option as foreseen in the Directive. A few countries, however, have applied the 100.000 customer exception in a modified way, always narrowing the scope for exception left by the Directive. Five of the Member States examined made provisions in their legislation for the postponement of the implementation of not only legal but also functional unbundling obligations. Postponement applies in a few cases to TSOs as well as DSOs.

A detailed description of the situation in each Member State analysed is included in the annexes.

The main conclusions reached with reference to the legal implementation of the unbundling requirements foreseen in the Electricity Directive are summarised below.

1.2. Full transposition

The following countries have fully transposed the Electricity Directive: **Belgium, Denmark, France, Great Britain⁷, Germany, Sweden and the Netherlands.**

In **Belgium, Denmark, France, Germany, Sweden and the Netherlands** the unbundling requirements framework has been transposed into national law in the form of legislation whilst in **Great Britain** the framework has been transposed mostly by virtue of the licence conditions.

Neither **Belgium, Denmark, Great Britain, Sweden nor the Netherlands** have adopted the postponement of implementation to 2007 and so the unbundling requirements are already fully operational.

Germany has fully transposed the Electricity Directive and the unbundling regime is already operative and effective except for the requirement of legal unbundling for DSOs that has been postponed to 2007, as provided for in Article 30 (2) of the Electricity Directive. Likewise, **France** has adopted the postponement of legal unbundling for DSOs. Although the deadline of July 2007 is not specifically provided for in France, it is expected that it will be specified in the near future.

The 100.000 customer exemption has been endorsed by **Germany and France** in accordance with the Directive.

Denmark and Sweden have included the 100.000 customer exemption in their legislation in a modified way. Under **Danish law**, management personnel of the DSOs serving less than 100.000 customers are exempted from the obligation of not participating in the operations of the generation or supply companies within the same Group. The 100.000 customer exemption does not, however, apply to the other requirements foreseen in the Directive in relation to legal unbundling, the obligation to have a compliance program and the requirements in relation to undertaking confidentiality. In **Sweden**, the 100.000 customer exemption has been enacted as regards functional unbundling. The exemption has been implemented into the Electricity Act and came into force on 1 July 2005.

As regards **Belgium**, although the companies operating the distribution networks are currently required to comply with the legal and functional unbundling obligations (in most cases DSOs are mixed companies, private vertically integrated groups of undertakings and municipalities holding shares thereof), pursuant to an Executive Order adopted by the Flemish government in 2001, the DSOs should be completely owned by the municipalities by 2018 at the latest. The same provision has been enacted in region Brussels-Capital where the DSOs shall be under the sole control of the municipalities in 2012.

⁷ We only refer to Great Britain, as Northern Ireland has a completely different regime. Information on the situation in Northern Ireland, can be found in the UK Country Overview included in annex 18.

In the **Netherlands**, the sole Electricity TSO has been ownership unbundled since October 2001 and electricity DSOs were already legally unbundled before the Electricity Directive entered into force. The Dutch lawmaker implemented the rest of the provisions relating to functional unbundling by means of amending acts applied to the national legislation. Further, the Dutch Minister of Economic Affairs has proposed an Act of Parliament providing for ownership unbundling of the DSOs. If this bill is enacted, all DSOs will have to be ownership unbundled as of 1 January 2008.

1.3. Partial transposition

Partial transposition is found in the following countries: **Austria, Czech Republic, Finland, Hungary, Ireland, Italy, Poland, Slovakia, Slovenia and Spain.**

The incomplete transposition is due to either to:

- (a) late transposition; and/or
- (b) the adoption of implementing measures not fully reflecting the requirements of the Electricity Directive.

Regarding the latter, the shortcomings identified concern either the content of the legal and functional unbundling provisions itself, or the scope of the postponement option in comparison with Article 30 (2) of the Electricity Directive.

1.3.1. Late transposition

While the unbundling requirements of the Electricity Directive have been incorporated into the existing **Austrian** Federal Electricity Act (*Elektrizitätswirtschafts -- und - organisationsgesetz or EIWOG*), whose last amendment came into force on 21 June 2004, the EIWOG only provides for basic provisions to be "transposed" at the regional level by the *Länder* and do not contain direct obligations upon operators active in the electricity market. In essence, these basic provisions must be determined at the regional level by way of enabling laws of the *Länder*. With the exception of the *Länder* of Styria and Vienna, the enabling laws have not been enacted. The EIWOG, however, requires legal and functional unbundling requirements to be proved by 1 January 2006 at the latest as a precondition for the granting of licences to DSOs. In this sense, it is expected that the enabling laws of the *Länder* - which hold exclusive competence for granting such licences - will be adopted by this date. In addition, Austria has endorsed the 100.000 customer exemption.

The provisions of the Electricity Directive have been transposed almost in full in **Polish** legislation. Nevertheless new executive regulations amending the existing ones must still be adopted in order to fully comply with the unbundling requirements of the Directive. The 100.000 customer exception and the option to postpone the implementation of legal unbundling obligations till July 2007 have been endorsed. It should be noted that in Poland the State controls most of the DSOs and TSOs through shares held by the State Treasury.

1.3.2. Unbundling obligations provided for by the national implementing measures do not comply with the Electricity Directive

The **Italian** Parliament has recently delegated to the Government the transposition of the Electricity Directive (May 2006). Currently TSOs are legally unbundled but not functionally unbundled. The main TSO will be ownership unbundled by July 2007 as a result of the merger between GRTN (operator of the network) and TERNA (owner of the network assets) which is currently under the review of the merger control authorities. Such

merger was imposed by a legislative measure enacted in 2003. As for DSOs, they are not functionally unbundled, and only those having less than 300.000 customers are legally unbundled.

In **Spain**, the TSO is ownership unbundled. Concerning DSOs, legal unbundling obligations can be considered transposed by means of pre-existing legislation but only in a partial way since the rules in force foresee the possibility for one single company to operate the distribution network and to supply electricity at regulated prices. The endorsement of the obligations regarding functional unbundling is still pending.

1.3.3. The postponement option does not satisfy the Electricity Directive's prerequisites

The unbundling requirements of the Electricity Directive have been partially transposed in the **Czech Republic**. The implementation of the obligations on legal *and also functional* unbundling has been postponed for major DSOs until 1 January 2007. The Czech Republic has also adopted the customer exemption in a modified way, whereby unbundling obligations only apply to DSOs providing services to more than 90.000 final customers.

Finland has also postponed the implementation of both legal *and functional* unbundling of DSOs to 2007. If a network operator has executed legal unbundling before January 2007, it is subject to the functional unbundling obligations. If not, then legal and functional unbundling must take effect by 2007. Finland has endorsed the 100.000 customers' exemption in a modified way, so that companies with less than 50.000 customers will not have to be functionally unbundled.

Hungary has also exercised the postponement option in the Directive, but has postponed the implementation of legal and *functional* unbundling for TSOs to January 2006, and for DSOs to July 2007 (except for some functional unbundling requirements as of January 2006). For most companies, (whether DSOs or TSOs) this is an interim period. In January 2006, however, it is anticipated that Hungary will comply with most of the requirements of the Electricity Directive. Hungary has not adopted the 100.000 customer exemption as none of the DSOs has less than 100.000 customers.

The legal and functional unbundling requirements of the Directive have been transposed into **Irish** law in respect of the TSO, with functional unbundling having occurred but legal unbundling yet to take place. In the case of the DSOs, however, only the functional unbundling requirement has been transposed. There is currently no legal unbundling requirement in Irish law which calls for a separate network company to be set up as a DSO, although it is expected that legal unbundling will occur within the July 2007 deadline set by Article 30(2) of the Electricity Directive. The 100.000 customer exemption has not been endorsed in Ireland.

In **Slovakia**, while the Electricity Directive has been transposed, the implementation of the obligations regarding legal *and functional* unbundling has been postponed for TSOs and DSOs until the end of July 2007. The 100.000 customer exemption has been adopted.

Slovenia has postponed until 2007 the implementation of legal *and functional* unbundling obligations for all DSOs. **Slovenia** has included the 100.000 customer exemption in the legislation in a modified way, narrowing the scope for exemption left by the Directive.

1.4. No transposition

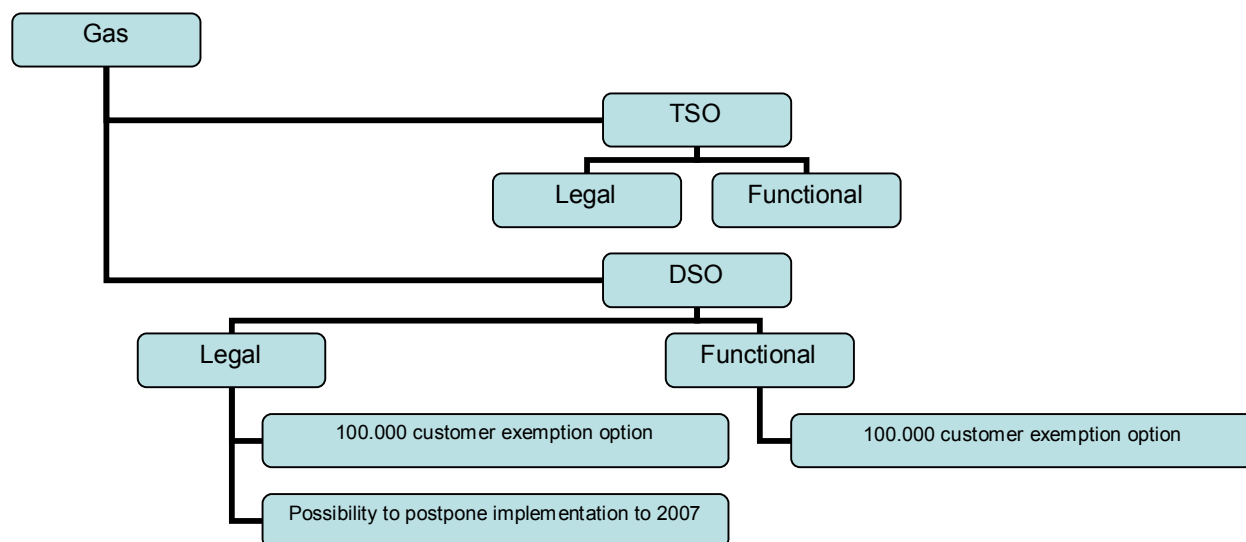
No transposition can be found in **Portugal**. The legal and functional unbundling provisions contained in the Electricity Directive have not been transposed into the Portuguese legal order. The new Government is expected

to approve the legislation package aimed at transposing the Directive at the beginning of 2006. In the interim period, rules endorsed by the Regulator require that DSOs publish separate accounts.

2. Gas

2.1. Introduction

The chart below summarizes in a snapshot the legal and functional unbundling requirements of the Gas Directive.



Our study has found that, in seven out of sixteen countries examined⁸, the unbundling provisions of the Gas Directive have been transposed into national law with the provisions being adopted in a very similar and consistent way. In the remaining countries examined the transposition has so far only been partial. In most cases, however, it is anticipated that the requirements will be transposed into the national legal order by 2007.

In relation to the possibility to:

- (a) exempt DSOs having less than 100.000 customer from both legal and functional unbundling obligations; and
- (b) postpone the implementation of legal unbundling obligations concerning DSO till July 2007.

A few countries have endorsed these options as foreseen in the Directive. Three of the Member States analysed have applied the 100.000 customer exemption in a modified way, always narrowing the scope for exception left by the Directive. In four cases the postponement of the implementation not only of legal but also of functional unbundling obligations applies not only to DSOs but also to TSOs.

A detailed summary of the position in each State analysed is included in the Annexes.

The main conclusions reached with reference to the legal implementation of the unbundling requirements foreseen in the Gas Directive are summarised below.

⁸ Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Ireland, Italy, Poland, Slovakia, Slovenia, Spain, Sweden, Netherlands, United Kingdom.

2.2. Full transposition

Full transposition is found in **Belgium, Denmark, France, Great Britain⁹, Germany, Sweden and the Netherlands**.

In **Belgium, Denmark, France, Germany, Sweden and the Netherlands** the unbundling provisions of the Gas Directive have been fully transposed into national law by way of primary legislation, whereas in Great Britain this has been done mostly by virtue of licence conditions.

In **Germany**, the unbundling provisions of the Gas Directive have been fully transposed into national law which provides in turn for the possibility of postponing legal unbundling for DSOs to 2007 as envisaged in the Directive. Likewise, **France** has adopted the postponement of legal unbundling for DSOs, and although it does not refer to the deadline of July 2007 specifically, it is expected that this deadline will be established in the near future. In addition, France has endorsed the 100.000 customers exception, whereby DSOs serving less than 100.000 customers are not subject to unbundling obligations.

In the **Netherlands**, the Dutch Minister of Economic Affairs has proposed an Act of Parliament regarding ownership unbundling of the DSO's (*Wijziging van de Elektriciteitswet 1998 en van de Gaswet in verband met nadere regels omtrent een onafhankelijk netbeheer*, Kamerstuk nr. 30 212). If this Act is adopted, all DSO's will have to be ownership unbundled by 1 January 2008.

Sweden has transposed the TSO legal and functional unbundling requirements and the legal unbundling requirement for DSOs. Sweden has not, however, transposed the *functional* unbundling requirement for DSOs. Nevertheless, the unbundling regime might be considered to be fully effective and operational, as the Swedish Gas market at present only has around 55.000 customers. While the 100.000 customer exemption has not been adopted, Sweden has not implemented the DSO unbundling requirements in view of the low number of customers below the threshold provided in the Directive.

2.3. Partial transposition

Partial transposition is found in: **Austria, Czech Republic, Hungary, Ireland, Italy, Poland, Slovakia, Slovenia and Spain**. The incomplete transposition is due to:

- (a) late transposition; and/or
- (b) the adoption of implementing measures not complying with the terms of the Gas Directive.

Regarding the latter, the shortcomings identified concern either the content of the legal and functional unbundling provisions itself, or the scope of the postponement option in comparison with Article 33(2) of the Gas Directive.

2.3.1. Late transposition

⁹ As far as the UK is concerned, we only refer to Great Britain and not Northern Ireland. Information on Northern Ireland can be found in the UK Country Overview included in Annex 18.

In **Austria**, despite the fact that the Gas Directive has not yet been transposed in full, most of the requirements regarding legal and functional unbundling are set out in the *Gaswirtschaftsgesetz* (in force since September 2003). In contrast to the electricity sector, the unbundling provisions of the Directive can be transposed at a federal level, without requiring the enactment of enabling law at regional level. As a result of the structure of the Austrian gas market, the rules requiring legal and functional unbundling are applicable to DSOs holding more than 50.000 customers. Nevertheless, Article 13.2 (c) of the Gas Directive has not yet been transposed, changes to bring this into full compliance with this provision are expected to be passed in 2006.

The provisions of the Gas Directive have been transposed almost in full in **Polish** legislation. Nevertheless, in the same way as in the electricity sector, new executive regulations amending the existing ones in order to fully comply with the unbundling requirements of the Directive must still be adopted. Furthermore, the provisions on legal unbundling have been postponed for DSOs until July 2007. The 100.000 customer exception has been endorsed.

2.3.2. Unbundling obligations provided for by the national implementing measures do not comply with the Gas Directive

Ireland has transposed the Directive requirements as regards *functional* unbundling of TSOs and DSOs, but no transposition of the *legal* unbundling requirement has been made.

In **Italy**, some of the obligations provided for in the unbundling provisions of the Gas Directive have been enacted by way of Decrees and Resolutions of the Regulator. TSOs and DSOs have thus been required to submit to legal unbundling since 1 January 2002. As for the requirements related to functional unbundling, the Italian Regulator has introduced “administrative unbundling” which requires energy operators to create administrative units to be managed autonomously, but, nevertheless, these do not comply with Article 15(2) of the Gas Directive.

In **Spain**, the main TSO is ownership unbundled and the remaining TSOs are unbundled in legal terms. Legal unbundling obligations for DSOs can be considered transposed but only in a partial way since the rules in force permit one single company to operate the network and to supply gas at regulated prices. The endorsement of the obligations relating to functional unbundling, however, is still pending.

2.3.3. The postponement option does not satisfy the Gas Directive’s prerequisites

The unbundling requirements have been partially implemented in the **Czech Republic**. A decree implementing the accounting unbundling obligations is still to be issued. Moreover, DSOs are not obliged to undertake legal and functional unbundling until January 2007, and TSOs until 1 January 2006. As in the electricity sector, unbundling obligations only apply in the Czech Republic to major DSOs providing services to more than 90.000 final customers.

While substantively the unbundling provisions have been adopted, **Hungary** has provided the possibility to postpone implementation to a different date than that provided in the Gas Directive, implementation of functional unbundling both for DSOs and TSOs being postponed to January 2006. For most companies, whether DSOs or TSOs, this is, therefore, an interim period where implementation can only be considered effective in terms of the legal unbundling of TSOs.

As regards **Slovakia**, the unbundling provisions of the Gas Directive have been fully transposed. The effectiveness, however, of both legal and functional unbundling for TSOs and DSOs have been postponed to the end of July 2007. Slovakia has endorsed the 100.000 customers exemption.

Slovenia has postponed until 2007 the implementation of legal *and functional* unbundling obligations for all DSOs. **Slovenia** has also included the 100.000 customer exemption in the legislation.

III. PRACTICAL IMPLEMENTATION (WHAT ARE COMPANIES DOING)

1. Electricity

1.1. Introduction

This section provides an overview on the measures adopted by a sample of representative companies for the implementation in practice of the unbundling obligations foreseen in the Electricity Directive. The selection of the sample companies in each country has been carried out taking into account the principles outlined in the interpretative note on unbundling published by DG TREN¹⁰.

In terms of practical implementation, we have found that, in most cases, full transposition is coupled with complete implementation on the part of the companies. In nine of the countries examined, TSOs have gone further than the Electricity Directive, and are unbundled in ownership terms. The endorsement of the possibility to postpone the implementation to 2007 as well as partial transposition has led, however, to incomplete practical implementation in many countries.

A detailed outline of the position in each State analysed is included in the annexes.

The main conclusions reached, with reference to the practical implementation of the unbundling requirements foreseen in the Electricity Directive, are summarised below.

1.2. Ownership unbundling

In many cases the TSO is not a vertically integrated company but rather it is ownership unbundled. i.e. the TSO does not simultaneously perform the functions of electricity transmission and generation or supply and, therefore, it is not subject to the unbundling obligations contained in the Electricity Directive.

This is the case for the electricity TSOs in **Czech Republic, Denmark** (main TSO only, not regional TSOs), **Finland, Great Britain, Portugal, Slovakia, Spain¹¹ and the Netherlands**. In **Sweden** the main TSO is an independent public service company. It should be mentioned that **Italian** legislation foresees that the main TSO will be ownership unbundled in 2007.

As for the electricity DSOs, our analysis evidences that ownership unbundling is unusual. Nevertheless, in the **Netherlands**, the Minister of Economic Affairs has tabled a bill on ownership unbundling of the DSOs. If this bill is enacted, all DSOs will have to be ownership unbundled after 1 January 2008. At present, two electricity DSOs are about to be unbundled in ownership terms. In **Belgium**, pursuant to an Executive Order adopted by the Flemish government in 2001, the DSOs will be completely owned by the municipalities as of 2018. The same provision has been enacted in region Brussels-Capital where the DSOs shall be under the sole control of the municipalities in 2012.

¹⁰ Note of the DG Energy & Transport on Directives 2003/54/EC and 2003/55/EC on the internal market in electricity and natural gas. The unbundling regime. 16.01.2004. The conclusions of this Section are based on an analysis of a limited sample of companies in each case. For more details, see Annexes 1-18 (Country Overview).

¹¹ The Spanish TSO (REE), however, still buys electricity from EDF on the basis of a long term contract and sells on the Spanish market.

1.3. Legal unbundling

1.3.1. TSOs

a. Countries requiring legal unbundling today

The countries that currently require legal unbundling of the electricity TSOs are: **Belgium; Denmark; Finland¹²; France; Great Britain; Germany; Ireland; Italy; Poland; Slovenia; and Sweden**. With reference to **Belgium, France, Germany, Italy, Poland and Slovenia**, our analysis suggests that companies are complying with the requirements, thus the transmission network business is being carried out through a separate company (in **Denmark, Finland, Great Britain and Sweden** TSOs are ownership unbundled).

Most of the time the legal form chosen is the Public Limited Company (PLC). In some cases, a General Partnership has been opted for. In **Germany** the subsidiary is a Limited Liability Company (LLC).

The regime governing the relationship between the transmission network undertaking and the holding company in most cases is Company law, the Articles of Association or even specific rules enacted by the Regulator (**Belgium**).

In **Ireland**, the legislative framework to facilitate legal unbundling has been transposed but has not been implemented yet. The TSO is a “ring-fenced” division within the state owned Electricity Supply Board (“ESB”). There is a State-owned designated TSO and sole TSO licensee, EirGrid. This is a PLC and is expected to be vested with TSO functions in the near future.

b. Countries requiring legal unbundling at a later date (by 2007 or before)

The countries that have postponed the implementation of legal unbundling of the TSOs to a later date are: **Austria, Czech Republic, Hungary and Slovakia**. The TSOs in the **Czech Republic and Slovakia**, however, are ownership unbundled.

In **Austria**, even if transposition of legal unbundling obligations into national law has not been completed (because regional laws imposing direct obligations on operators have not yet been enacted), TSOs already comply with legal unbundling requirements.

Hungary is due to implement the legal unbundling obligations into national law by amendments made to the existing legislation which will come into effect as of 1 January 2006.

c. Countries not requiring legal unbundling

Portugal has not transposed the provisions on legal unbundling of TSOs. The **Portuguese** electricity TSO, however, is unbundled in ownership terms.

¹² More accurately, however, should the Finnish TSO be vertically integrated, the transition period provision regarding legal unbundling would apply also to it.

1.3.2. DSOs

a. Countries requiring legal unbundling today

The countries where legal unbundling is required today are: **Belgium; Denmark; Great Britain; Italy** (partially); **Spain** (partially); **and the Netherlands**.

All DSOs examined are a separate subsidiary company, in the form of a PLC (**Belgium, Denmark, Great Britain, Italy**, one DSOs analysed in **Spain** and the **Netherlands**) or a LLC (**Great Britain** and the second case considered in **Spain**). Company law and the Articles of Association govern the relationship between the companies. None of these countries has adopted the 100.000 customer exemption from legal unbundling.

The **Italian and Spanish** DSOs examined, however, only comply with the legal unbundling obligations foreseen by the national legislation which are not fully in line with the Directive's.

b. Countries requiring legal unbundling at a later date (by 2007 or before)

In **Austria, Czech Republic, Finland, France, Germany, Hungary, Poland, Slovakia and Slovenia** legal unbundling of DSOs is only required at a later date, either by 2007 or earlier.

In the **Czech Republic, Finland, France, Germany, Hungary, Poland, Slovakia and Slovenia**, the implementation of the DSOs' legal unbundling obligations is postponed to 2007 (in France, although legislation does not provide for a precise deadline, it is expected that legal unbundling will be compulsory for DSOs in July 2007). In practice, most of the companies examined are not unbundled in legal terms as of this date. In **Austria**, although the unbundling provisions contained in the Electricity Directive have not yet been transposed by all regional authorities (only Styria and Vienna have passed them), January 2006 is set to be the date when the DSOs must comply with all the legal unbundling requirements. None of the DSOs examined are legally unbundled at present.

In the **Czech Republic**, while the implementation of legal unbundling provisions is postponed to 2007, the companies examined are expected to be legally unbundled at an earlier date, probably as of January 2006. The DSOs examined are not legally unbundled yet.

In **Germany**, two out of three DSOs examined are legally unbundled and the third is expected to be unbundled in January 2006. These DSOs are in the form of LLCs, and are subsidiary companies governed by Company Law and the Articles of Association.

In **France, Hungary, Slovenia and Slovakia** none of the DSOs are currently legally unbundled. In **Slovenia**, DSOs are parent companies within the integrated undertaking whose relationship is governed by Company law and the Articles of Association.

Austria, Germany, Poland and Slovakia have adopted the 100.000 customer exemption; thus, around 122 DSOs and 780 DSOs will be excluded from the legal unbundling requirements in **Austria and Germany**, respectively. However, that only amounts to around 10% of DSOs in **Germany**. In **Poland**, since none of the DSOs serves less than 100.000 customers, the exemption will not be effective. In **Slovakia**, the Regulator has confirmed that, as of today, no exact information is available on the exact number of DSOs holding less than 100.000 customers.

In the **Czech Republic and Slovenia**, the exemption has been adopted in a modified way so that DSOs serving less than 90.000 and 1.000 customers respectively, do not need to be legally unbundled. As a result, in the **Czech Republic** 307 companies have been excluded. However, in **Slovenia** the exemption does not apply to any DSO, considering that all DSOs serve more than 1.000 customers.

c. Countries not requiring legal unbundling

In **Ireland** there is no legal unbundling requirement as yet and as a result the DSO is not unbundled. Rather, the DSO operates as a “ring-fenced” division within ESB. **Ireland** is expected to implement the legal unbundling requirement soon. In **Portugal**, the sole vertically integrated DSO is legally unbundled as regards generation, but operates both distribution and supply activities.

1.4. Functional unbundling

1.4.1. TSOs

a. Countries requiring functional unbundling today

The countries requiring functional unbundling today are: **Belgium; Denmark; Finland¹³; France; Great Britain; Germany; Ireland; Italy; Poland; Slovenia; and Sweden.**

In **Belgium, Denmark** (regional TSOs are not ownership unbundled), **France, Germany, Poland, and Slovenia** TSOs are required to be functionally unbundled already. The sample companies examined in **Denmark, France, Germany, Ireland and Poland** suggest that TSOs are complying with the functional unbundling requirements in accordance with the Electricity Directive. In **Italy**, although the so-called “administrative unbundling” is required, the TSO analysed had not taken all necessary measures in this sense.

Management, Shares and Board: In accordance with available information, in **Belgium, France, Germany, Ireland, Italy and Slovenia**, those responsible for the management of the TSO examined are not directly or indirectly involved in the day to day management of other operations. The management personnel do not hold shares of the related companies active in generation or supply, and although partly based on Group performance, the salary of the management is largely independent (except in **Italy**). The executive director for the TSO does not sit on the Board of the vertically integrated company, though in **Belgium** some members of the Board of Directors are also responsible for activities in the supply and/ or generation. Likewise, in **Ireland** the members of the TSO Board Committee responsible for ESBNG (the TSO) are non-executive directors of ESB.

The TSOs examined do not hold shares of the Group, and other operations within the Group are not involved in the day to day business of the company. The TSOs have effective decision-making rights in respect of the assets necessary to operate, maintain and develop the network.

Common Services: In **Germany, Ireland and Italy**, there are certain common services among the network undertaking and the Group of companies. In **Germany** these are: accounting, auditing, facility management, IT services and personnel. In Ireland premises are shared but with restricted access to the TSO offices. In addition, TSO shares with the Group services on payroll administration, catering, cleaning and security. As for **Italy**, common services are provided for finance, legal, technical and communication.

¹³ Should the Finnish TSO be vertically integrated, however, the functional unbundling provisions would apply after the TSO would be legally unbundled.

Compliance programmes: In **Belgium, France, Germany, Italy and Ireland** the TSOs have a compliance programme which requires that the TSO be located in a separate building. The programme is regularly monitored and breaches are punished by penalties.

b. Countries requiring functional unbundling at a later date (by 2007 or before)

Austria, Hungary and Slovakia only require functional unbundling by 2007 or before.

Hungary requires TSOs to be functionally unbundled by 1 January 2006. No TSO was part of the sample.

In **Austria**, even if transposition of unbundling provisions into national legal order has not been completed, the TSOs already comply with the requirements of functional unbundling. Common services comprise of: financing, legal, technical and communication services. Neither a compliance programme nor separate locations have been set up for the TSOs.

1.4.2. DSOs

a. Countries requiring functional unbundling today

Functional unbundling is required in the following countries: **Belgium, Denmark, France, Great Britain, Germany, Italy** (partially), **Ireland, Poland, Sweden and the Netherlands**.

Except for Italy and Poland, most of the sample companies examined in the abovementioned countries seem to have complied with functional unbundling obligations.

In **Italy**, although the so-called “administrative unbundling” (which requires the creation of separated administrative units with autonomous management) is required, the DSOs analysed have not taken all necessary measures in this sense. In **Poland**, while the provisions related to functional unbundling have been duly transposed into national law, Polish DSOs have not yet reached full functional independence.

With reference to **Belgium**, DSOs are functionally unbundled by means of the law of 29 April 1999. It should, however, be noted that former monopolist still manages some IT operations and customer databases of the DSOs; retail suppliers, thereby, claim to be facing significant difficulties in obtaining customer data from the DSOs (such as metering and other customer data from the DSOs during customer enrolment, switching and billing).

Management, Shares and Board: Those responsible for the management of the DSO are not directly or indirectly involved in the day to day operation of other operations, and, except for some cases, the management personnel does not hold shares of the DSO. In **Great Britain** in one DSO there is the opportunity to participate in a share purchase scheme in the quoted PLC. In **Ireland**, 5% of the DSO is held in an employee share ownership trust. In **Italy**, management personnel in the DSOs examined hold shares of the related supply/generation activities of the Group.

In some cases the salary of the management is based on the Group companies’ performance (see **France, Great Britain, Italy, Sweden and the Netherlands**), but the executive director for the DSOs does not sit on the Board of the vertically integrated undertaking (except for one DSO in **Denmark and in Italy**). Board members are not, generally, responsible for activities in the supply and/or generation parts of the market (see, however, **Belgium, Denmark, Ireland and Italy**). In one case examined in **Belgium**, the removal of the executive director is based on a decision of the General Meeting upon recommendation of the shareholders of the VIU.

It has been found that in most cases, the DSO does not hold shares in other companies in the Group (but see **Denmark and Italy**), and there is no involvement in the day to day business of the company by other operations. The DSOs examined have effective decision-making rights in respect of the assets necessary to operate, maintain or develop the network.

Common Services: Common services were found in most DSOs examined. Typically common services include: communication, IT, organisational development, personnel and accounting, legal, financial, and insurance.

Compliance programmes: Compliance programmes are in place and regularly monitored in **Belgium, France, Germany, Great Britain, Ireland, Italy and the Netherlands**, and there are also provisions for remedies to ensure compliance. In **Sweden** compliance programs are under preparation, and in **Denmark** DSOs do not have a compliance programme yet, though, in most cases there are rules governing access for personnel to premises and penalties for violation of these rules. In many of the companies examined, DSOs are in a separate location to the rest of the businesses.

b. Countries requiring functional unbundling at a later date (by 2007 or before)

In **Austria, Czech Republic, Finland, Hungary, Slovakia and Slovenia** functional unbundling is only required at a later date, either 2007 or before.

Austria, Finland and Hungary do not at present require DSOs to be functionally unbundled, though in **Finland** functional unbundling is required from DSOs that are currently legally unbundled and exceed the given thresholds. Functional unbundling is anticipated to occur in **Austria** and **Hungary** by 1 January 2006. In **Finland**, DSOs must be unbundled by July 2007, in accordance with national law implementing the Electricity Directive.¹⁴ Hence, implementation today, if any, is limited: there are no compliance systems (except for one DSO in **Austria**), there are common services (see **Finland** and **Austria**) and there are no measures to monitor compliance (except in one case in **Austria**), restrict access of personnel or separate the location of businesses. Nonetheless, in **Finland and Austria** (only in one case), the DSOs examined have effective decision-making rights in respect of the assets necessary to operate, maintain or develop the network, there is no involvement in the day to day business of the DSO by other operations and the DSOs do not hold shares of the Group. Finally, those responsible for the management of the company are not directly nor indirectly involved in the day to day operation of other operations. In the **Czech Republic** and **Slovakia**, the analysis of three DSOs shows that some measures have been adopted in order to ensure management independence. Compliance programmes have either been adopted (in one case) or are in the process of being adopted (in two cases). In all cases, the executive director is not sitting on the Board of the Directors of related supply/ generation companies.

In **Slovenia** the implementation of functional unbundling provisions is postponed to 2007 and the companies analysed have not adopted in practice any measures to grant the management independence of the network company.

c. Countries not requiring functional unbundling

Although functional unbundling is not required under **Spanish** law, the analysis of the two of the main DSOs shows that the DSOs do not hold shares of companies of the Group active in the generation or supply sectors. No compliance programmes have been adopted, regulatory measures apply nonetheless. Indeed, Spanish DSOs shall give access to the distribution network on a non-discriminatory, objective and transparent basis. The location

¹⁴ In Finland, the DSOs shall be legally (and thus the largest of them also functionally) unbundled at the latest 1 January 2007.

of distribution business is separated. In **Portugal**, some practical measures have been adopted by the DSO examined in order to ensure a certain degree of management independence; In particular, employees of the network department work exclusively in the network department. Measures aimed at guaranteeing the confidential character of privileged information have also been adopted.

2. Gas

2.1. Introduction

This section provides an overview on the measures adopted by a sample of representative companies for the practical implementation of the unbundling obligations foreseen in the Gas Directive. The selection of the sample companies in each country has been carried out taking into account the principles outlined in the interpretative note on unbundling published by DG TREN¹⁵.

Although the correlation is perhaps less strong than in the case of electricity, we have found that in numerous cases full transposition of the Gas Directive is coupled with complete implementation on the part of the companies. In a few cases, TSOs have gone further than the Electricity Directive, and are unbundled in ownership terms. The endorsement of the possibility to postpone the implementation to 2007 as well as partial transposition has led, however, to incomplete practical implementation in many countries.

A detailed outline of the position in each Member State analysed is included in the annexes.

The main conclusions reached with reference to the practical implementation of the unbundling requirements foreseen in the Gas Directive are summarised below.

2.2. Ownership unbundling

In a few cases the TSO is not a vertically integrated company but rather it is ownership unbundled: **Denmark, Great Britain, Spain (main TSO only¹⁶), Sweden (main TSO only) and The Netherlands**. In these cases, the unbundling provisions contained in the Directive do not apply to companies unbundled in ownership terms.

2.3. Legal unbundling

2.3.1. TSOs

a. Countries requiring legal unbundling today

Legal unbundling of the Gas TSOs is already compulsory in **Austria, Belgium, Denmark, France, Great Britain, Germany, Hungary, Italy, Poland, Slovakia, Slovenia, Spain and Sweden**.

Our analysis of the sample companies shows that legal unbundling has occurred in **Austria, Belgium, France, Germany, Hungary, Italy, Poland and Sweden** (the TSOs examined in the remaining countries being ownership unbundled) with the TSO being a separate subsidiary company in most cases.

In **Austria, Belgium, Hungary and Italy** the TSO examined is a PLC, whose relation within the Group is governed by Company Law (and by internal policies of the Group in the case of the Hungarian TSO). In **Germany** and **Poland** the TSO is a LLC, whose relationship within the Group is governed by Company Law, the Memorandum and the Articles of Association. In **France** it is a stock company with a supervisory board and management committee.

¹⁵ Note of the DG Energy & Transport on Directives 2003/54/EC and 2003/55/EC on the internal market in electricity and natural gas. The unbundling regime. 16.01.2004. The conclusions of this Section are based on an analysis of a limited sample of companies.

¹⁶ Enagas, however, supplies gas to final consumers at prices fixed by the Government.

In **Slovakia**, no implementing measures have been adopted by the only TSO.

b. Countries requiring legal unbundling at a later date (by 2007 or before)

In the **Czech Republic**, the sole TSO is not required to be legally unbundled until January 2006. No measures have been adopted at a practical level in order to meet the Gas Directive's requirements.

c. Countries not requiring legal unbundling

Ireland does not require TSOs to be legally unbundled, and so BGE is a combined operator (TSO/DSO) vertically integrated into supply, but a "ring-fenced" division within the Group. The TSO is therefore not legally unbundled.

2.3.2. DSOs

a. Countries requiring legal unbundling today

Legal unbundling of Gas DSOs is already compulsory in **Austria, Belgium, Denmark, Great Britain, Italy, Spain, Sweden and the Netherlands**.

The legal unbundling of the DSOs has effectively occurred in **Belgium, Denmark, Italy** (with the exception of storage), **Sweden, Great Britain and the Netherlands**, through the creation of a subsidiary separate company in the form either of a PLC (in most cases), or of a LLC. Company Law is the governing regime in almost all cases. In **Belgium and Denmark** the Articles of Association are also relevant, and for **Belgium** certain rules enacted by the Regulator are applicable additionally.

In **Spain**, the legal unbundling requirements allow DSOs to operate not only the distribution network but also to carry out sales at regulated prices. In addition, the main Spanish Gas DSO, which is also the holding company of a Group holding interests in gas transmission and electricity generation activities, has only undertaken the necessary measures to comply with the domestic legal unbundling provisions in November 2005. The Spanish Regulator authorised the incorporation of different companies within this Group, which will be active in gas distribution and transmission separately.

One **Austrian** DSO has not been legally unbundled although Austrian federal legislation so requires. **Austria** is the only country which has adopted the 100.000 customer exemption in a modified form (reduced to 50.000 customers).

b. Countries requiring legal unbundling at a later date (by 2007 or before)

The **Czech Republic, France, Germany, Hungary, Poland, Slovakia and Slovenia** do not require legal unbundling until 1 July 2007. In the **Czech Republic, France, Hungary, Poland and Slovakia**, none of the DSOs examined is legally unbundled yet. In **Slovenia** DSOs are affiliate companies governed by Company Law and the Articles of Association. In **Germany**, two of the three DSOs examined are legally unbundled in the form of a subsidiary LLC governed by Company Law, the Memorandum and the Articles of Association. The remaining DSO is expected to be legally unbundled in January 2006.

c. Countries not requiring legal unbundling

Ireland does not require DSOs to be legally unbundled. BGE is a combined operator (TSO/DSO) vertically integrated into supply but being a ring-fenced division within the Group. The DSO is therefore not legally unbundled.

2.4. Functional unbundling

2.4.1. TSOs

a. Countries requiring functional unbundling today

Gas TSOs are required to be functionally unbundled in **Austria, Belgium, Denmark, France, Great Britain, Germany, Ireland, Poland, Slovakia, Slovenia and Sweden** and in most cases companies comply with this requirement. In **Italy**, although the “administrative unbundling” applies, the main Gas TSO (owning and operating more than 90% of the NTG) does not effectively fulfil this obligation.

In **Slovakia**, the TSO examined is not unbundled in functional terms.

Management, Shares and Board: Those responsible for the management of the TSO are not, in most cases, directly or indirectly involved in the day to day operation of the other operations (though see **Sweden**), and the management personnel does not hold shares of the company, except in **Italy**. The salary of the personnel is based on the Group’s performance only on a minor scale (**France and Germany**) or there may be a bonus programme in place linking the amount of the bonus to the performance of the Group (**Ireland and Sweden**). The executive director of the TSO does not sit on the Board of the vertically integrated undertaking in **Austria, Belgium, France, Germany, Ireland, Poland and Sweden**. In **Sweden and Germany** the Board members are not responsible for activities in supply and/or generation, whereas in **Ireland** the members of the Board Committee on Infrastructure Investment are part of the board of BGE. The TSO does not hold shares of the related supply, production or holding company in any of the TSOs examined. There is no involvement in the day to day operations of the TSO by the other operations, though in **Ireland** there is ultimate supervision by the Group Board. Effective decision-making rights were found in most cases (no information available in **Belgium**).

Common Services: The TSOs and the Group and/or related competitive businesses share certain common services. In **Ireland** the premises are shared (with restricted access), as are IT, legal, financial and human resources services. In **Sweden** legal, IT and premises are common services. In **Germany** the common services include accounting and finance, auditing, data protection, environmental conservation, industrial safety, IT services, maintenance services, materials management, personnel and taxation. No common services are present as regards the **Belgian** TSO. In **Italy**, finance, legal, technical, communication, administrative and logistics are common services.

Compliance programmes: While in **Germany and Sweden** compliance programme is currently under preparation/ in draft version, in **Belgium, France and Poland** it already exists and is monitored by the Regulator. In **Ireland**, there is a compliance programme, currently in the form of training modules. It is currently being formalised into a Code for Regulator approval. In this case there are rules on access and monitoring of compliance through a compliance officer. In **Italy** a regulatory network code issued by the company and approved by the regulator seeks to grant non-discriminatory access to the network, by regulating the management of information and establishing confidentiality rules. A code of practice has also been established by the parent company of the TSO.

Additional measures: In terms of location, the TSOs in **Belgium, Italy, Poland and Sweden** are in a separate location from the competitive businesses. In **Germany** it is in the same building but on a separate floor. In **Ireland and France** it may be in the same building (not always) but there are restrictions to access.

b. Countries requiring functional unbundling at a later date (by 2007 or before)

Functional unbundling is not yet compulsory in the **Czech Republic and Hungary**. The enabling legislation is, however, due to be adopted by 2007 or earlier.

In **Hungary** some of the TSO functional unbundling provisions are already in force and some enter into force on 1 January 2006. The TSO examined is functionally unbundled. The management personnel do not hold shares of the company, but a part of the bonus of the management is based on the performance of the Group. There is separation between the Board, and the company does not hold shares of the Group. While the business plans are approved by the parent company, and the regulator has an influence on approving the long term development concept, the TSO has effective decision-making rights. These companies share the following common services: legal and financial services, human resources, project implementation, IT, road transport and cleaning. There is no compliance system yet, but it is expected that there will soon be one. In addition, there are rules governing access for personnel on the premises, and the TSO is in a separate location to the competitive businesses.

When it comes to the **Czech Republic**, in which functional unbundling has been postponed until January 2006, the sole TSO in the country has undertaken partial functional unbundling, especially in respect of treatment of confidential information and compliance programme.

2.4.2. DSOs

a. Countries requiring functional unbundling today

The countries where the functional unbundling of DSOs is already compulsory are **Austria, Belgium, Denmark, France, Great Britain, Germany, Ireland, Italy, Poland and the Netherlands**. **Italy** requires compliance with the so-called “administrative unbundling”, similar, but not exactly equivalent, to unbundling obligations provided for in the Gas Directive.

In **Poland**, although the provisions related to functional unbundling have been duly transposed into national law, Polish DSOs have not reached full functional independence yet.

In **Austria, Denmark, France, Great Britain, Germany, Ireland and the Netherlands**, functional unbundling has occurred. Only **Germany** amongst these countries has endorsed the 100.000 customer exemption, as a result of which around 630 DSOs are excluded from the unbundling requirement. This amounts to only around 20% of the market, with the remaining DSOs being subject to the unbundling requirements.

In **Belgium**, functional unbundling requirements have been practically implemented by DSOs. However, in certain cases some interference from related production/supply companies is identified.

Management, Shares and Board: Based on our sample in **Belgium** (one of the cases analysed) and in **Denmark** those responsible for the day to day management of the DSOs seem to also be involved in the day to day operation of other operations (such as supply). In **France, Great Britain, Germany, Ireland, Poland and the Netherlands**, however, that is not the case. The management personnel does not hold shares of the company in any of the sample companies, though the salary of the management is in some instances based partly on the

performance of the Group (see **Denmark, Germany, Ireland and Great Britain**). With the exception of the DSOs examined in **Germany**, in the rest of the DSOs it seems that senior personnel of the DSO may sit on the Board of the vertically integrated company. In **Belgium, Ireland and Denmark**, Board members may also be responsible for activities in the supply operations.

In **Great Britain, Germany, France, Ireland Poland and the Netherlands**, the company does not hold shares of the Group (though in **Belgium** and in **Denmark** it seems that DSOs do). DSOs in these countries (except one case in the **Netherlands**) and in **Italy** have effective decision-making rights in respect of the assets necessary to operate and maintain or develop the network and there is no involvement in the day to day operations of the company by the other operations.

Common Services: In **Great Britain and Austria** the DSOs examined do not share common services with other companies in the Group. Common services, however, were found in DSOs in **Belgium, Denmark, France, Germany, Ireland, Italy, Poland and the Netherlands** and including: IT, legal, financial, human resources, accounting and finance, auditing, data protection, taxation, maintenance services and others.

Compliance programmes: Compliance programmes (which include penalties for violation of the rules and for the monitoring of compliance) are already developed in some cases (**Belgium, France, Great Britain, Italy, the Netherlands**, two DSOs examined in **Germany** and three DSOs analysed in **Austria**), and are underway in the rest of the cases (**Germany, Ireland, Poland and Denmark**). There are rules governing access to personnel in **Belgium, France, Great Britain, Ireland and the Netherlands** and in some DSOs in **Denmark and Germany**.

Additional measures: Location seems to be different between the DSO and the competitive businesses in most cases (except in one case in **Belgium** and in two cases in **the Netherlands**), either because they are in different buildings or because they are on separate floors with strict access rules (**Germany, Ireland**). **Ireland** has also been developing training programmes aimed at increasing the awareness of the responsibilities laid out by the regulator in the TSO and DSO licences.

b. Countries requiring functional unbundling at a later date (by 2007 or before)

This category includes **Czech Republic, Hungary, Slovakia and Slovenia**.

In the **Czech Republic** functional unbundling is not required until January 2007. Nevertheless, some DSOs have already implemented some measures in this respect (e.g. compliance programmes regularly monitored and effective decision-making rights to operate the network) and they are therefore partially functionally unbundled.

In **Hungary** functional unbundling is already partly required; the remaining functional unbundling requirements become binding as of January 2006. The sample DSOs examined, however, do not seem to have implemented any functional unbundling measures. Six DSOs will be exempted from the functional unbundling requirements (out of the 12).

In **Slovakia** functional unbundling is not yet required and the companies examined have not enacted any implementation measures. In **Slovenia** the exemption adopted means that in practice all DSOs will be excluded from the functional unbundling requirements.

c. Countries not requiring functional unbundling

Spain and Sweden have not transposed the provisions on functional unbundling for the Gas DSOs.

In **Sweden**, however, there is no functional unbundling requirement in the first place. The reason for this is that the overall market for gas has less than 55.000 customers. As a result, the functional unbundling requirements have not been transposed. The DSOs therefore have not taken any measures to implement the unbundling provisions.

In **Spain**, there are no specific reasons justifying the lack of transposition. The DSOs examined do not comply with the Directive's requirements.

IV. SUMMARY TABLES

1. Legal implementation

1.1 Electricity

Table 1: Legal Implementation of the Unbundling Provisions of the Electricity Directive

Country	Transposition of directives	TSO Unbundling regime*	DSO Unbundling regime*	Postponement of implementation – <i>note only DSO L is admitted under the Directive</i>	100.000 exemption for DSO legal	100.000 exemption for DSO functional	Excluded DSOs
Austria	Partly	L F A (only a federal level and in Styria and Vienna)	L F A	No	Yes	Yes	122
Belgium	Yes	L F A	L F A	No	No	No	0
Czech Republic	Partly	O	L F (as of 1 January 2007) A (partly)	DSO L DSO F	Yes, Modified (less than 90.000 customers)	Yes, Modified (less than 90.000 customers)	307
Denmark	Yes	O/ L F A	L F A	No	No	Yes. Partly In relation to mgt separation, not in relation to compliance, confidentiality	107 in relation to management separation
Finland	Partly	O	A (L as of 1 January 2007) (F as of 1 January 2007 if not legally unbundled before that)	DSO L DSO F	Yes Modified	Yes Modified	59 (from legal unbundling) 76 (from functional unbundling)
France	Yes	L F A	F A L as of 1 July 2007	DSO L	Yes	Yes	155-165
Germany	Yes	L F A	L (by 1 July 2007), F A	DSO L	Yes	Yes	Approx. 780
Hungary	Partly	L (as of 1/1/06) F (as of 1/1/06) A	L (as of 1 July 2007) F (as of 1 January 2006 some	TSO L TSO F	No	No	0

			and others as of 1 July 2007) A	DSO L DSO F			
Ireland	Partly	F A (L implemented but not yet occurred)	F A	N/A (as no implementation of L DSO so far)	No	No	0
Italy	Partly	O (main TSO as of July 2007) L A + administrative (with regard to the other TSOs)	L (mandatory till 2004) L (facultative at present for DSOs with >300.000 customers) A + administrative (mandatory)	No	No	No	0
Poland	Partly	L F A	L as of 1 July 2007 F A (still missing some administrative regulations)	DSO L	Yes	Yes	0
Portugal	No	O	A	No	No	No	0
Slovakia	Partly	O	L F A	DSO L DSO F	Yes	Yes	Not available
Slovenia	Partly	L F A	A L and F (as of 1 July 2007)	DSO L and F	Yes - modified 1.000	Yes - modified 1.000	0
Spain	Partly	O (main TSO) L A (others)	L A	No	No	No	0
Sweden	Yes	O	L F A	No	No	Yes – modified (all need compliance programs)	169
The Netherlands	Yes	O	L F A	No	No	No	0
UK- Great	Ye	L F A / O	L F A	No	No	No	0

Britain							
N. Ireland	Partly	L F	F	No	No	No	0

* O: ownership unbundling; L: Legal unbundling; F: functional unbundling; A: accounting unbundling.

Table 2: A quick check list on the transposition of the unbundling provisions of the Electricity Directive

Country	Full	Partial	None	100.000 exemption	Modified Exemption
Austria		✓		✓	
Belgium	✓				
Czech Republic		✓			✓
Denmark	✓				✓
Finland		✓			✓
France	✓ (not yet fully effective)			✓	
Germany	✓ (not yet fully effective)			✓	
Hungary		✓			
Ireland		✓			
Italy		✓			
Poland		✓		✓	
Portugal			✓		
Slovakia		✓		✓	
Slovenia		✓			✓
Spain		✓			
Sweden	✓				✓
The Netherlands	✓				
UK - Great Britain	✓				
N. Ireland		✓			

Table 3: A quick check list on electricity TSO/DSO unbundling regime provided for in the Electricity Directive

Country	TSO ownership	TSO legal	TSO functional	DSO ownership	DSO legal	Postponement of implementation for DSO legal	DSO functional
Austria		✓	✓		✓ (as of 1 January 2006)		✓ (to a certain extent)
Belgium		✓	✓		✓		✓ (to a certain extent)
Czech Republic	✓				✓ (as of 1 January 2007)	✓	✓ (as of 1 January 2007)
Denmark	✓ (except regional TSOs)	✓ (Regional)	✓ (Regional)		✓		✓
Finland	✓				✓ (as of 1 January 2007)	✓	✓ (as of 1 January 2007, unless legally unbundled before)
France		✓	✓		✓ (as of 1 January 2007),	✓	✓
Germany		✓	✓		✓ (as of 1 July 2007)	✓	✓
Hungary		✓ (as of 1 January 2006)	✓ (as of 1 January 2006)		✓ (as of 1 July 2007)	✓	✓ (as of 1 January 2006)
Ireland		(not yet fully)	✓				✓
Italy	✓ (main TSO as of July 2007)	✓			✓ (Mandatory up to 2004 for DSOs serving more than 300.000 end users; Facultative at present)		✓ (administrative unbundling, similar to functional)
Poland		✓	✓		✓ (as of 1 July 2007)	✓	✓
Portugal	✓						
Slovakia	✓				✓	✓	✓
Slovenia		✓	✓		✓ (as of 1 July 2007)	✓	✓ (as of 1 July 2007)
Spain	✓				✓		
Sweden	✓	✓	✓		✓		✓
The	✓				✓		✓

Netherlands							
UK- Great Britain		✓	✓		✓		✓
N. Ireland		✓	✓				✓

1. 2. Gas

Table 4: Legal Implementation of the Unbundling Provisions of the Gas Directive

Country	Transposition of directives	TSO Unbundling regime*	DSO Unbundling regime*	Postponement of implementation - <i>note that only DSO L is admitted under Directive</i>	100.000 exemption for DSO Legal	100.000 exemption for DSO Functional	Excluded DSOs
Austria	Partly	L F A	L F A	No	Yes, reduced to 50.000	Yes, reduced to 50.000	16
Belgium	Yes	LFA	L FA	No	No	No	0
Czech Republic	Partly	L F (as of 1 January 2006) A (partly)	A (partially) L F (as of 1 January 2007)	DSO L DSO F	Yes Modified (less than 90.000 customers)	Yes Modified (less than 90.000 customers)	115
Denmark	Yes	O	L F A	No	No	No	0
Finland	-	-	-	-	-	-	-
France	Yes	L F A	F A + separate internal service, L (as of 1 July 2007)	DSO L	Yes	Yes	19
Germany	Yes	L F A	L (by 1 July 2007) F A	DSO L	Yes	Yes	Approximately 630
Hungary	Partly	L F (1/1/06) A	L (1 July 2007) F (1 January 2006) A	DSO L FSO F TSO F	Yes	Yes	6
Ireland	Partly	F A	F A	N/A Non-transposition of TSO/DSO L	No		0
Italy	Partly	L A + administrative (from storage)	L	No	No	No	0
Poland	Partly	LFA	L (as of 1 July 2007) F A (still missing	DSO L	Yes	Yes	0

			some administrative regulations)				
Portugal	---	----	---		---		---
Slovakia	Partly	L F A	L F A	DSO L DSO F	Yes	Yes	Not available
Slovenia	Partly	L F A	A L and F by 1 July 2007 (L and F inapplicable due to exemption)	DSO L DSO F	Yes	Yes	17
Spain	Partly	O (main TSO) L A (others)	L A	No	No	No	0
Sweden	Yes/Partly (not for DSO F)	L F A	L A	N/A Non-transposition of DSO F but in any case could be exempt	No	No	All effectively as in total less than 55.000 customers
The Netherlands	Yes	O	LFA	No	No	No	0
UK- Great Britain	Yes	O	L F A	No	No	No	0
N. Ireland	No Current implementation (expected January 2006)	No	No	N/A	N/A	N/A	N/A

* O: ownership unbundling; L: legal unbundling; F: functional unbundling; A: accounting unbundling.

Table 5: A quick check list on the transposition of the unbundling provisions of the Gas Directive

Country	Full	Partial	None	100.000 Exemption	Modified Exemption
Austria		✓			✓
Belgium	✓				
Czech Republic		✓			✓
Denmark	✓				
France	✓ (not yet fully effective)			✓	
Germany	✓ (not yet fully effective)			✓	
Hungary		✓		✓	
Ireland		✓ (No DSO/ TSO legal)			
Italy		✓			
Poland		✓		✓	
Slovakia		✓		✓	
Slovenia		✓		✓	
Spain		✓			
Sweden	✓				Effectively could say yes since no F obligation for DSOs as in total 55.000 customers
The Netherlands	✓				
UK- Great Britain	✓				
N. Ireland			✓		

Table 6: A quick check list on gas TSO/DSO unbundling regime provided for in the Gas Directive

Country	TSO ownership	TSO legal	TSO functional	DSO ownership	DSO legal	Postponement of implementation of DSO legal	DSO functional
Austria		✓	✓		✓		✓
Belgium		✓	✓		✓		✓ (to a certain extent)
Czech Republic		✓ (as of 1 January 2006)	✓ (as of 1 January 2006)		✓ (as of 1 January 07)	✓	✓ (as of 1 January 2007;)
Denmark	✓				✓		✓
Finland	-	-	-	-	-	-	-
France		✓	✓		✓ (as of 1 July 2007)	✓	✓
Germany		✓	✓		✓ (as of 1 July 2007)	✓	✓
Hungary		✓	✓ (partly already partly as of 1 January 2006)		✓ (as of 1 July 2007)	✓	✓ (partly already, partly as of 1 January 2006)
Ireland			✓				✓
Italy		✓ (except for storage)	✓ (administrative, similar to functional)		✓		✓ (administrative, similar to functional)
Poland		✓	✓		✓ (as of 1 July 2007)	✓	✓
Portugal	---	---	---	---	---		---
Slovakia		✓	✓		✓	✓	✓
Slovenia		✓	✓		✓ (as of 1 July 2007) not applicable to all 17 DSOs due to exemption	✓	✓ (as of July 1, 2007) not applicable to all 17 DSOs due to exemption
Spain	✓	✓			✓		
Sweden	✓	✓	✓		✓		Only 55.000 gas consumers
The Netherlands	✓				✓		✓

UK- Great Britain	✓				✓		✓
N. Ireland							

2. Practical implementation (Electricity and Gas)

Table 7: Overview of the situation: the practical implementation of the Electricity and Gas Directives

Country	Management independence	Common services	Compliance program	Other measures to increase independence	Legal form chosen	Regime governing relation
Austria	Partly	In some cases	Not in all cases (but planned for 2006)	No in most cases	Stock company	Company Law
Belgium	Partly	In most of the cases	Yes	Sometimes separate locations	Separate company	Company Law/ Articles of Association/ Corporate governance rules/Regulator
Czech Republic	Partly	Yes	Yes	Yes	N/A	Company Law
Denmark	Yes	In some cases	Not in all cases	Separate location	Subsidiary separate company	Company law/ articles of association
Finland	Yes but no functional unbundling (electricity)	Yes	No	Sometimes separate location	Business unit	Company law /contractual and administrative arrangements
France	Yes (Mostly)	In few cases	Yes (code of conduct in most cases)	Confidentiality rules / separate information system / separate location / independent recruiting	Stock Company/ Separate division within the same company	Company Law/ articles of association
Germany	Yes	Yes	Yes	Separate location mostly	Subsidiary separate company	Company law/ articles of association
Hungary	No	Yes	No	N/A	N/A	N/A
Ireland	Yes	Yes	Yes	Separate location	Ring-fenced division	N/A
Italy	Partly	Yes	Yes	Separate location	Separate Company	Company Law
Poland	Only in some cases	In most of the cases	Yes (Under preparation in some cases)	Separate locations mostly	Separate company	Company Law/ articles of association
Portugal	Partly (only one)	Yes	No	Separate location	Separate company	Company Law

	DSO vertically integrated in electricity)					
Slovakia	Partly	Yes	Under preparation in most cases	No	N/A	Internal directives / Company Law
Slovenia	Partly	Yes	No	In a few cases separate location	Parent or affiliate	Company law/ articles of association
Spain	No	Not available	Not available	In one case Separate Location	Separate company	Regulatory rules
Sweden	Yes	In some cases	Under preparation	Separate location	Subsidiary separate company	Company law
The Netherlands	Yes	Yes	Yes	Separate location in some cases	Separate Company	Electricity/Gas Act - Articles of Association – the Dutch Civil Code
UK¹⁷ Great Britain	Yes	Yes	Yes	Separate location and branding in most cases.	Subsidiary separate company	Company law

¹⁷ Our sample companies only included companies in Great Britain and so the sample conclusions do not apply to Northern Ireland. Details are provided in Annex 18.