THE INTERNAL GAS MARKET

INTRODUCTION

Traditionally, the European Commission has paid little attention to natural gas. Because of the energy efficiency efforts following the Gulf crises, there was a restriction on its use as a fuel for power stations for some years. This was abandoned in 1991 in response to the demand from power generators and because of a rapid increase in potential supplies, not least from the North Sea. However, with the decision in the late 1980s that the Single Market should include energy, this meant specifically the grid-based energies, electricity and gas.

As discussed earlier (Chapter Three A), the Commission treated the challenge of opening up the gas and electricity markets in parallel, proposing the same instruments, with the necessary differences between gas and electricity. Thus, the price transparency Directive carries very similar reporting obligations for industrial and consumer rates across a band of consumer categories for both fuels (Chapter Three). The gas transit Directive, although taking a little longer to negotiate in the Council, is identical in concept to the electricity transit Directive, although different in detail.

Following that first phase, the Commission chose to continue the parallel approach, with its joint proposals for common rules in the gas and electricity markets. The Parliament responded with an Opinion on both and the Commission revised both proposals at the same time. The Council elected to negotiate electricity first and, therefore, the draft gas market Directive lay untouched on the Council's table for three years. With the experience of the electricity Directive behind them, though, the Member States were then able to move more swiftly towards agreement on the common gas rules.

This chapter looks at the history of the negotiations on the gas Directive with reference to a few of the Member States' concerns, and at the detail of the legislation. As with the chapter on electricity, there is also a survey of those competition cases dealt with by Commission in recent years, although there are relatively few in the gas sector.

NEGOTIATING THE GAS DIRECTIVE - IN THE STEPS OF ELECTRICITY

Although the electricity transit Directive was approved by the Council with relative ease, the gas transit Directive proved a more divisive dossier. The strong continental gas industry, dominated by Ruhrgas and Gasunie, was not in favour of the Community's interference in the sector and lobbied hard in Brussels. The German and Dutch governments also opposed the measure when it was finally voted on and agreed in May 1991.

The terms of the Directive as adopted are, to a large extent, the same as those for the electricity transit Directive (Chapter Three A). Those transmission utilities listed in an annex must notify the Commission and national authorities of any request for transit in connection with contracts; they must open negotiations on the request, and inform the Commission and national authorities of the result of the negotiations. They must also notify the Commission and national authorities of the reasons for any failure for a contract to result within 12 months following notification of a request.

The Directive defines that the conditions of transit must be non-discriminatory and fair for all parties concerned and shall not include unfair clause or unjustified restrictions and not endanger security of supply and quality of service, taking full account of the utilisation of reserve production and storage capacity and the most efficient operation of existing systems.

The terms of the gas transit Directive

The Commission regularly receives notifications of transit requests - seven during 1997, for example - under the terms of the Directive, although, because the market is fairly mature in Europe, most of the requests are linked to new pipeline projects. There appears to be some degree of ambiguity over whether renewal of contracts requires notification, and also on which party is required to make the notification. In some cases, the Commission makes its own enquiries.

The Directive also required the Commission to set up a committee to give advice on implementation and to propose conciliation compromises. In fact, this committee was not set up until 1996, following a Commission Decision in December 1995. Like the electricity transit Directive, it has 20 members, a representative from the operating grid in each Member State, one from the gas industry association Eurogas, three experts (presenting technical, legal-economic,

and consumer viewpoints), and a Commission representative who chairs the meeting. The committee is now convened, on average, once a year (usually in November). Although there have been no disputes to settle so far, the committee does offer an opportunity for the Commission to gather information from the experts on particular topics and about the situation in the Member States.

Proposal for common rules in the gas market

A draft Directive for the internal gas market was put forward together with that for electricity in January 1992. The Council found them both overly ambitious and, by November the same year, had agreed Conclusions restricting the Commission's plans. On gas, for example, the Council signalled its concern about long-term security of supply and take-or-pay contracts, and the need for future arrangements "to ensure the maximum economic development over time and under fair conditions of the gas resources in the Community and sufficient supply from third countries". On the basis of these Conclusions and the European Parliament's detailed first reading, the Commission issued revised proposals in December 1993.

Gas proposal shelved for three years

Almost immediately, the Council decided to put the draft gas Directive to one side and concentrate on the common rules for electricity. It was not until a Common Position had been agreed on electricity in mid-1996 that discussions on gas resumed. In July 1996, the Irish Presidency restarted negotiations by convening a joint meeting with the Commission and the gas industry.

With key compromise solutions to a number of the political and technical questions on liberalisation resolved in the electricity Directive and the confidence derived from having reached a unanimous agreement, negotiations in the Council's energy working group on gas proceeded relatively swiftly. The Irish Presidency prepared a new text for the Directive, incorporating some of the compromises from the electricity Directive and some of the points raised by delegations in the working group discussions. Inevitably, though, there were complications.

General support in favour of the Directive

At the December 1996 Energy Council, there was clearly a willingness on the part of most delegations to press ahead with the dossier. The Council's Conclusions noted "a considerable convergence of views" on the right of Member States to impose public service obligations, and on the need for unbundling and transparency; but the Conclusions also pointed to the considerable additional work needed on market access and on take-or-pay issues.

Progress during the Dutch Presidency

Much of the detailed work on the Directive was achieved during the first half of 1997 under the Dutch Presidency, through a combination of high-level meetings (involving national heads of department) and the Council energy working group. A mechanism for determining market access, different from that in the electricity Directive, was more or less agreed. The Presidency noted, at the May Energy Council, that there was broad agreement to open the market to power generators and to large industries with a certain annual consumption level. It also concluded there should be both a minimum level for the opening of the gas markets in the Member States and a voluntary upper threshold, so that if the Directive's mechanisms would normally require a Member State to open its market more than the threshold, then it would be allowed to make certain adjustments.

During this period it was also agreed to make special allowance for emergent markets unconnected to the EU grid - Greece and Portugal. There was, though, less clarity over a mechanism for protecting emergent regions from the full force of the access rules. The Presidency invited delegations to submit a draft list of such regions and proposed they should be considered for inclusion in the Directive.

Given their very intense interest in gas matters, the Dutch pressed strongly to reach political agreement on the Directive during their Presidency. They even pencilled in an extraordinary Council at the end of June. However, this was not convened, partly because a newly installed French government was unwilling to be hurried into a decision, and partly because there were too many political differences remaining and too few solutions on the table to be traded.

Political agreement reached under Luxembourg Presidency

It thus fell to a less self-interested Member State, Luxembourg, to preside as President over the all-important political agreement. It began its Presidency by distributing a new draft text of the Directive before the summer; it then called a special Energy Council in October 1997. The only

formal result of that Council was an agreement by ministers to reach agreement at the next Council in December. Nevertheless, a consensus had emerged that there should be a band of 10% between the minimum level for market opening and a maximum threshold which, if breached in a Member State, would allow it to restrict the eligibility rules.

Single procedure for take-or-pay contracts

Agreement was also reached on a single procedure for granting exceptions to the market rules for take-or-pay contracts. Throughout the negotiations, there had been a general consensus that derogations for future take-or-pay contracts should be authorised by the Commission, but a large number of Member States wanted the authority to exempt existing contracts. Furthermore, by the October Council, the idea of an indicative list of emergent regions had been dropped in favour of a tight definition of the kind of region that could apply to the Commission for a temporary exemption.

At this stage there were, though, a number of outstanding problems: the actual market access thresholds, the mechanism for take-or-pay contracts, the role of the distributors (as with the electricity Directive, the French insisted there should be no mandatory inclusion), and how to ensure access to upstream networks (requested by a majority of States, but opposed strongly by Norway lobbying from the sidelines). Unanimous political agreement (which was later confirmed as a Common Position in February 1998) came at the Energy Council on 8 December 1997.

The Parliament's second reading and final adoption

The Parliament moved swiftly to consider its second reading. There was substantial support, especially from the Socialist group, for an amendment to derestrict combined heat and power producers from the limitations imposed by the Council's compromise. However, the rapporteur, Claude Desama, advised against any changes, and the Common Position was approved on 30 April without amendments (as with electricity). The legislation was approved by the Council on 11 May 1998, will formally be adopted into the Community acquis during the first half of June, and will be published soon after in the Official Journal.

THE INTERNAL GAS MARKET - DETAILS FROM THE DIRECTIVE

According to Article 1 of the final text: "*This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the rules relating to the organisation and functioning of the natural gas sector, including liquefied natural gas (LNG), access to the market, the operation of systems, and the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas.*" A series of 25 definitions make up Article 2.

French insistence on exclusion of distributors

Article 3 sets down the rules allowing Member States to impose public service obligations, which must be clearly defined and notified to the Commission. At the insistence of the French, with support from Belgium and Austria, the ministers agreed to a new paragraph, similar to that included in the electricity Directive, allowing Member States to exclude distributors from the market access rules, if necessary to implement public service obligations in the general economic interest, in so far "as the development of trade between Member States would not be affected to such an extent as would be contrary to the interests of the Community". Articles 4 and 5 cover, respectively, systems of authorisation and a requirement to ensure technical design for interoperability of systems.

Articles 6, 7 and 8 deal with non-discrimination and information transparency/confidentiality with regard to transmission, storage and LNG. Similarly, Articles 9, 10 and 11 deal with distribution and supply and allow for the imposition of an obligation to supply customers in a given area or of a certain class. Articles 12 and 13 deal with unbundling and transparency of accounts. Vertically integrated companies must keep separate accounts for transmission, distribution and storage activities (and where appropriate consolidated accounts for non-gas activities) "with a view to avoiding discrimination, cross-subsidisation and distortion of competition".

Rules on market access and eligible consumers

The core of the Directive is contained in Articles 14-23 on access to the system. Member States may choose to use a system of negotiated access or regulated access or both, according to Articles 14-16, for opening their markets to natural gas undertakings and eligible customers from both inside and outside their territories. In the case of negotiated access, Member States are required to publish annually "their main commercial conditions" for use of the system. (A number of States and the Commission had wanted a requirement to publish an indicative range of tariffs, but were opposed by France, Italy, and Germany among others.) Member States opting for a procedure of regulated access must give access rights "on the basis of published tariffs and/or other terms and obligations for use of that system".

Article 17 allows natural gas undertakings to refuse access to the system on the basis of lack of capacity, because of public service obligations (as in Article 3), or because of take-or-pay obligations, although "duly substantiated reasons must be given".

Specific gas use shares (%)*

	>25m cubic metre/yr	>15m cubic metre/yr	>5m cubic metre/yr
Aus	50.2	53.1	58.2
Bel	39.3	42.7	47.1
Den	61.6	62.1	65.0
Fin	91.0	92.7	93.8
Fra	19.6	24.5	31.6
Ger	31.0	35.0	44.0[1]
Gre	0	0	0
Ire	75.0	77.0	81.0
Ita	36.0	38.0	44.0
Lux	43.4	46.7	48.2
Net	40.5	41.5	42.5
Por	0	0	0
Spa[2]	29.0	42.0	60.0
Swe	39.2	44.0	56.0
UK	28.8	31.1	35.3
EU-15[3]	**33.2**	**36.4**	**42.3**

***** Share of total gas consumption consumed by all power generators (using more than 1m cubic metre/yr) and industrial consumers consuming above the three given thresholds. Figures based on responses to a questionnaire distributed by the Commission.
[1]Estimate; [2] CHP included; [3] Weighted average based on Eurostat figures for gas consumption in 1996.

Source: Council working paper

Conditions for specifying eligible consumers

Member States must specify "eligible customers", according to Article 18, which have the legal capacity to contract for or to be sold natural gas. The Member States must designate at least the following as eligible customers:

"*- Gas-fired power generators, irrespective of their annual consumption level; however, and in order to safeguard the balance of their electricity market, the Member States may introduce a threshold, which may not exceed the level envisaged for other final customers, for the eligibility of combined heat and power producers. Such thresholds shall be notified to the Commission;*

- other final customers consuming more than 25m cubic metres of gas per year on a consumption-site basis."

Special terms for combined heat and power

On the CHP question, a statement in the Council minutes aims to clarify the rules so that, where a final customer with a CHP unit falls below the appropriate threshold, it can still have access to the liberalised market for the fuel for the power production share of the CHP unit.

Market opening of 33% after ten years

Also according to Article 18, Member States must ensure that, within two years, their definition of eligible customers will result in a market opening of 20%. The Commission, the UK and a number of other delegations had insisted that the minimum opening level should be 23%, no less than that agreed for electricity. However, under strenuous lobbying from France, the figure of 20% was finally agreed by all delegations. Five years after the Directive's entry into force, the Member States must ensure they raise the level of market opening to 28%, and, after a further five years, to 33%. After the same intervals, the definition of final consumers to be considered eligible must be lowered to those consuming 15m cubic metre/yr and 5m cubic metre/yr, on a consumption site basis, respectively.

A mechanism in the Directive allows Member States to modify their definition of eligible customers "in a balanced manner" if the definition results in a market opening of 10% more than the prevailing minimum threshold (i.e. 30%, 38% and 43% within two years, five years, and ten years respectively). Member States are obliged to publish the criteria for definition of eligible customers and the Commission has the authority to request modifications "if they create obstacles to the correct application of the Directive as regards the good functioning of the internal gas market".

Provisions on equality and upstream networks

Article 19 follows the precedent set by the electricity Directive in providing a mechanism for avoiding an imbalance in the market because of a difference between Member States' definitions of eligible customers. States must ensure gas companies can supply eligible customers by direct lines, according to Article 20, and must designate a competent authority for dispute settlement defined according to Article 21. Under Article 22, States must create "appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position".

Although the Directive does not apply directly to the upstream pipeline network (it is specifically excluded from the definition of transmission in Article 2), Article 23 seeks to ensure that Member States take all necessary measures to ensure that gas companies and eligible customers are able to

obtain access. States may, though, refuse access for a number of fairly broadly defined reasons which include the incompatibility of technical specifications; the need to avoid difficulties which could prejudice hydrocarbon production; the need to respect duly substantiated reasonable needs of the owner; and the need to apply national laws in conformity with the Hydrocarbon Licensing Directive (Chapter Three C). Each Member State is to set up a dispute settlement procedure and, in the case of cross-border disputes, the procedure of the State having jurisdiction over the network that has refused access will be utilised.

Authorising derogations for take-or-pay contracts

Articles 24-31 deal with "Final provisions", the most important of which concern take-or-pay contracts in Article 25. In essence, a Member State or its competent authority can allow a natural gas undertaking to refuse access to the system if "it would encounter serious economic and financial difficulties because of its take-or-pay commitments". The Member State or its competent authority, however, must notify its decision with all relevant information to the Commission, which then has four weeks to ask for the decision to be amended or withdrawn. An extensive list of nine criteria are included which the Member States and the Commission should take into account when deciding on the need for a take-or-pay derogation.

Distinction between existing and future take-or-pay contracts

A distinction between existing and future take-or-pay contracts, which had been the subject of some dispute, was finally agreed on 8 December by means of the following statement: "*A decision on a request for a derogation concerning take-or pay contracts concluded before the entry into force of this Directive should not lead to a situation in which it is impossible to find economically viable alternative outlets. Serious difficulties shall in any case be deemed not to exist when the sales of natural gas do not fall below the level of minimum offtake guarantees contained in gas purchase take-or-pay contracts, or in so far as the relevant gas purchase take-or-pay contract can be adapted or the natural gas undertaking is able to find alternative outlets.*"

Article 26 provides a derogation from the market access rules for States not directly linked to the interconnected system or having only one supplier meeting 75% or more of its needs. The derogation expires as soon as the qualifying criteria are breached. There is also a mechanism for emergent regions which gives the Commission authority to grant a similar derogation, for no more than 10 years, for "a geographically limited area" with a view to encouraging investments.

The other final provisions concern temporary safeguard measures in the event of a sudden crisis, the entry into force of the Directive 20 days after publication in the Official Journal, and transposition by Member States no later than two years after the entry into force. Also, it stipulates, the Commission must submit a report, as with the electricity Directive, on the need for harmonisation requirements not linked to the provisions of the Directive, and put forward any necessary proposals within a year. It must also review the application of the Directive in order to improve further the internal gas market, in time for any changes to be effective after ten years.

LIMITED OPPORTUNITIES FOR APPLICATION OF COMPETITION LAW

Although, throughout the 1990s, the Competition Commissioners have bombastically called for more progress on the liberalisation of the gas and electricity sectors together as though they operated under identical conditions, there have been far fewer attempts to apply Community law in the gas sector than in the electricity sector. Of the nine infringement proceedings started by the Commission in the early 1990s against import/export monopolies, full legal challenges concerning gas monopolies were prepared against only two States - France and Denmark - in the mid-1990s.

Denmark's commitment on market opening

The case against Denmark, which unlike that against France solely concerned the gas sector, was dropped by the Commission just prior to the start of formal proceedings. Partly prompted by the threat of the Court case, the Danish government had informed the Commission, in a letter, of its intention to repeal the monopoly enjoyed by Dangas. The letter also stated Denmark's intention in principle to remove the internal distribution and transmission monopolies, but said that the decisions would be enacted only when Denmark was satisfied there was adequate reciprocity with an acceptable internal energy market in all other Member States.

The other case, which did proceed to the Court and concerned France's monopolies in both electricity and gas, only reached a conclusion three years later. In fact, the Court, which made no distinction between the gas and electricity sectors in its judgement, rejected the Commission's arguments (Chapter Three A).

There have been few other gas market investigations by the Commission in recent years. In October 1996, TransCo, a division of British Gas, notified the Commission about a binding "network code" for use by itself and as the basis for all contracts with its customers in the gas transportation and storage business. Summary details were published in the Official Journal and DGIV asked for any third party comments. At the end of May 1997, Brussels authorised the network code because it was deemed not to prevent, restrict or distort competition.

Restricting long-term gas supply agreements

It is worth noting that in recent years the Commission has, while examining restricted electricity supply contracts of some new power station projects, also looked into the feedstock arrangements where appropriate. It authorised, for example, without restriction, the notified gas supply contracts for new power stations in Italy (Chapter Three A).

Commission monitoring of gas supply arrangements

While investigating the electricity contracts of the REN/Turbogas project in Portugal, the Commission also looked in more detail at a notified agreement for the supply of natural gas by Transgas to the Tapada power station. The Commission agreed that the power station was a key element in the process of introducing gas to Portugal - "a major outlet in this embryonic market", it said - and estimated that the three units, when fully operational, would account for 68% of the Portuguese gas market in 1997 and reduce to 36% in 2012. However, before authorising the agreement, the Commission obliged the parties to delete a proposed obligation on the part of the generator to obtain Transgas' prior consent before it sold electricity to third parties. It also reduced the duration of the restricted agreement. In its 1996 report on competition policy, the Commission noted, without naming the project, that it had authorised a long-term contract for supplying a high-capacity power station "inasmuch as the commitment guaranteed a stable and sufficiently sizeable outlet to enable the emergent gas market in a Member State to develop". It also warned, though, that it might take a different view in respect of other long-term agreements which might foreclose the market.

Dutch prices for gas to horticulture

One issue, concerning the pricing policies employed by the Dutch government, has reemerged over the years and the Commission has intervened several times to insist that the horticulture sector and fertiliser manufacturers are not given unfair advantages by the partly state-owned Gasunie. In January 1995, approval was given for a new gas tariff scheme for horticulture in the period 1994-98 proposed by the Dutch authorities. The Commission said the tariff system did not give an economic advantage to horticulture vis-a-vis other sectors of the Dutch economy which could obtain the same tariff "if they use the same quantities of gas in the same dimension as horticulture". The Commission added that the tariff system was based on a formula indexing the gas price to that of oil and reflected principles agreed between it and the Dutch authorities in 1982.

Although the Commission did lose a Court case over its defence of the Dutch pricing policies in 1990, it won a second case in 1996, brought by Belgium in 1993. The latter case revolved around a Commission Decision, made in December 1992, authorising the Dutch Tariff F for fertiliser producers. Belgium claimed the Commission had made a manifest error of assessment but the Court found wholly in favour of the Commission.

Germany's attempts to break down regional monopolies

As in the electricity sector, the German cartel office, the Bundeskartellamt, has been pressing harder to break down traditional monopolies than the Commission and, as of early 1998, there were two cases before the Court of Justice.

Ruhrgas's efforts to hold on to demarcation contracts

The first dispute centres on an agreement between Ruhrgas and Thyssengas to demarcate gas sales areas in which the two companies would not compete. The Bundeskartellamt took action against the agreement; the action was opposed by the gas firms and brought to the Berlin court, which then referred the case to the Court of Justice. Ruhrgas and Thyssengas claim the Bundeskartellamt has known about, and acquiesced to, the demarcation contracts for a long time. Moreover, as gas distribution companies they are entrusted with the operation of services of general economic interest. The two firms are also challenging the powers of the national authority to implement Articles 85 and 86, of the EC Treaty, while negotiations are under way for an internal market in gas. The Berlin court's referral asked a whole series of complex questions relating to market liberalisation and the interface between national and EU legislation.

A second case, dating from 1992, also referred by the Berlin court to the Court of Justice, in 1997, concerns the objection made by the municipal authority of Detmold, in North Rhine-Westphalia,

over Wingas, a Wintershall subsidiary, supplying gas to a company on the border of its area. Wingas, which has said it aims to meet 15% of the German gas market by 2010, has been building up an alternative transmission network with direct connections to customers - something which is not yet happening in other Member States. The local authority said Wingas was operating within the territory demarcated to another supplier, and took the company to court. The court then referred the case to Luxembourg and asked for a ruling on the interpretation of Articles 85 and 90-2 as they apply to a situation where a local authority reserves for a single undertaking the right to use the public network for the distribution of gas to private and industrial consumers.

The Commission's inspection of gas sector mergers

Finally, it is worth noting that the Commission has examined a few merger applications in the gas sector. In 1995, it looked at the contractual arrangements for the joint venture, Interconnector (UK), between nine leading European gas companies - Amerada Hess, BP, British Gas, Conoco (UK), Distrigaz, Elf, National Power, RAO Gazprom and Ruhrgas - to build a gas pipeline from the UK to Belgium. The Commission noted that the subsea pipeline between the UK and Continental gas networks is considered an important project in the trans-European gas network, would contribute to the supply of gas in the EU, and would be an economically and technically viable basis on which the integration of the UK and continental gas markets could develop.

The UK-Continent interconnector

According to the agreement, the marketing and use of the pipeline capacity remains substantially within the individual companies' control and each company is free to dispose of capacity rights to third parties. There are, however, restrictions to enable the members to use the interconnector for a specified period to allow adequate recompense for the expense of building the new line. The Commission said it was satisfied that consumers would be allowed a fair share of the resulting benefit in the form of increased choice of supply with resulting competition on price and other terms.

In early 1996, the Commission authorised a joint venture between British Petroleum and Algeria's state-owned Sonatrach aimed at joint research, exploration and marketing of natural gas from the In Salah region in southwest Algeria. In making its decision, the Commission took into account the available data, including contracts already signed, concerning European demand for natural gas in the 2002-20 period. It concluded that the operation is unlikely to create or reinforce a dominant share in the common market or a substantial part of it. The combined share of the two companies is unlikely to exceed 25%. The Commission also noted that two other supply sources - Russia and Norway - are likely to hold a comparable or even higher market share than BP and Sonatrach together.

BP's venture with Sonatrach

In mid-1996, the Commission approved the takeover of 25% of the German oil/gas firm Erdol-Erdgas Gommern (EEG) by Bayernwerk, part of the German energy group Viag. Gaz de France Deutschland is the other shareholder of EEG. The Commission said the only overlap between the activities of Bayernwerk and EEG was in the market for the storage of natural gas underground but that the combined market share of the two would not exceed 5%, and it noted there were several other suppliers of underground gas storage.

ASSESSMENT

The Commission's proposals, presented in the late 1980s, to oblige Member States' gas grid operators to offer non-discriminatory transit rights to their counterparts in other Member States came as something of a shock to the industry. Apart from the restrictions on the use of gas for power stations, which were widely ignored by then, it had suffered little interference from Brussels. An intense lobbying campaign, spearheaded by the Dutch and German giants, Gasunie and Ruhrgas, vehemently opposed the proposal. This was in marked contrast to the electricity industry which gave its backing to the electricity transit Directive.

The gas industry lobby pointed out that intra-Community trade of gas accounted for over a fifth of the total (compared to but a few percent for electricity), that gas companies already transited gas for each other, and that huge investments were required for developing gas supplies, especially through the use of take-or-pay contracts. And the system worked well, it said, so why change it? The strength of the gas lobby, and criticism of the Directive by Germany and the Netherlands in the Council, delayed its adoption until 1991. But, as with the electricity transit Directive, it proved a symbolic law rather than one with any clout.

Chapter Three B

Following the introduction of the TPA proposals, the key players in the gas industry lobby redoubled their efforts and the same arguments were to be heard again. And again, whereas the electricity industry offered a constructive criticism to the proposals, the dominant players in the gas industry stuck to a simple and simple-minded opposition.

Evolution of the gas industry in the 1990s

Yet, during the mid-1990s, the gas industry did begin to swing round slowly. Perhaps this was partly because it saw how committed the Commission and most, if not all, Member States really were to finding solutions that would bring about the internal electricity market; and, consequently, they saw the same determination would be brought to bear on the gas market. Perhaps, more importantly, the industry itself was changing. In the UK, the opening of the gas market was no longer an interesting experiment but a reality, even for domestic consumers. In Germany, the competition authorities were taking swinging swipes at demarcation contracts, and Wintershall was pressing on with its alternative grid. Moreover, the market was growing fast, with an increasingly diverse set of customers, less quiescent, perhaps, than those in the cosy monopoly-dominated past.

Thus, whereas position statements from Eurelectric were frequent and detailed throughout the negotiations on the electricity Directive, they were infrequent and bland from Eurogas during the gas negotiations. Immediately after the Common Position was agreed, in February 1998, Eurogas put out a pithy statement designed to advise the Parliament against putting forward amendments. Eurogas, the statement said, expressed "the wish that no further delays are introduced in the already prolonged discussions on the gas industry". The gas industry had come a long way to be as positive as this about the Council's text!

The most important EU energy laws ever passed

The negotiations in the Council moved more swiftly and more smoothly, despite some usual national difficulties (French elections) and technical complications (developing the banding mechanism, and devising a scheme to embrace the offshore networks), than might have been expected. Those observers following the negotiations sensed a more cooperative approach among the Member States than during the electricity negotiations and a greater degree of confidence that agreement would eventually be reached. The gas and electricity Directives are certainly the most important energy laws ever passed at Community level. Indeed, the Energy Commissioner Christos Papoutsis has said he believes they will be considered as two of the biggest successes of Jacques Santer's Presidency of the Commission.

Many of the comments in the previous chapter on the electricity Directive, regarding the Commission's role, for example, apply equally well to the gas Directive but need not be repeated here. There are, of course, some very different concerns regarding the future operation of a Community gas market, such as those connected with security of supply (Chapter Five), but the very fact that the Council was unanimously behind the Directive is surely a signal that each government intends to make the internal gas market a reality.