



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.7.2007
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COMMUNICATION FROM THE COMMISSION

Towards a European Charter on the Rights of Energy Consumers

1. INTRODUCTION

In the energy policy Communication¹ and in the Communication on the internal gas and electricity market² of 10 January 2007, the Commission stated its full commitment to ensure that consumer interests are fully taken into account and that the highest possible standards of public services in energy across the European Union are applied. The Council³ and the European Council⁴ welcomed the Commission's approach and agreed on the need for improving consumer rights in the internal market for gas and electricity.

There is broad consensus that market mechanisms alone cannot fully ensure consumers' best interests in the energy sector. For that reason, the electricity and gas Directives⁵ provide for public service obligations and consumer rights. The full opening of the European Union's gas and electricity markets is an appropriate opportunity to reiterate the need for adequate consumer rights. This is why forthcoming European action will focus on monitoring implementation and effective enforcement of consumer rights at national level and reinforcing or, where necessary, extending some of these rights.

Effective consumer rights are essential to ensure that liberalisation successfully delivers real choice and gives consumers the confidence to switch supplier if they wish to do so. Consumers will be active players on the energy market if they are effectively protected. The European Union's binding objectives concerning reduction of CO₂⁶ emissions further stresses the need for strengthening consumer rights' on information and in particular appropriate information to better manage energy consumption.

The consultation document containing possible elements of a future Charter on the Rights of Energy Consumers annexed to this Communication constitutes an important part of this policy.

¹ Communication from the Commission to the European Council and the European Parliament: An Energy Policy for Europe, COM(2007)1 of 10.1.2007.

² Communication from the Commission to the European Council and the European Parliament on Prospects for the Internal Gas and Electricity Market, COM(2006) 841 of 10.1.2007.

³ Council conclusions 15.2.2007 in Council document 6271/07.

⁴ Presidency conclusions, Brussels European Council of 8./9.3.2007, Council document 7224/1/07 request *Better consumer protection, e.g. through the development of an Energy Customers' Charter*.

⁵ 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, OJ L 176 of 15.7.2003, p. 37 (*Electricity Directive*), and 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, OJ L 176 of 15.7.2003, p. 57 (*Gas Directive*).

⁶ Presidency conclusions, Brussels European Council of 8./9.3.2007, Council document 7224/1/07

2. INFORMATION CAMPAIGN

Stimulating consumer interest in alternative supply offers is expected to play a part in creating competitive markets. Past experience has shown that consumers will only be active on the market place if they are confident that their rights continue to be protected, in particular when switching operator.

In close connection with the full opening of Europe's gas and electricity markets for individual consumers (and small businesses) on 1 July 2007, the Commission has launched a major information and awareness-raising campaign, with two overall objectives: to raise consumers' awareness of the benefits of alternative offers that are created by open electricity and gas markets, and to assure them that their rights remain fully protected when they decide to make use of such offers.

The Commission's consultation process on the future Charter will be closely associated with the information campaign.

3. CONTEXT

The Energy Policy Communication stated that *"Energy is essential for every European. Existing European legislation already requires the respect for Public Service Obligations. But the European Union needs to go further in tackling energy poverty."* The Commission committed itself to developing an energy consumers' charter with four key goals:

a. *Energy is essential for every European*

Energy is of the greatest importance in ensuring social and territorial cohesion, economic stability and sustainable development. In developed economies, individuals are cut off from society if they do not have access to electricity. The same holds true for business. Adequate energy provision therefore constitutes one of the key elements towards achieving citizens' successful participation in social and economic life.

A sufficient number of market competitors, an extensive supply offer, competitive prices, and active and informed consumers can create a genuine internal market for electricity and gas. However, the development towards an internal energy market has occurred gradually, and all conditions for the full opening of the European Union's gas and electricity markets only apply as of 1 July 2007⁷. The improved safeguard and reinforcement of consumer interests on *a par* with corporate interests is a prerequisite for a well functioning internal market and is also expected to lead to increased energy efficiency. It also provides impetus to competition, innovation and economic development.

⁷

14 Member States will open the market for electricity and/or gas only on 1.7.2007.

b. *Existing European legislation already requires the respect for public service obligations*

The European Union has opted to bring about growth and competitiveness with respect for the principle of sustainable development. Protection of the environment, of consumers and the socially vulnerable is an integral part of the European Union's policy towards attaining a single market. Long before the general European debate on services of general interest started, provisions for public services already constituted a *sine qua non* condition of energy law⁸. Public service obligations are a necessary supplement to competition. If market forces alone do not meet society's general economic interest, governments have the right – and sometimes an obligation – to intervene. Member States are therefore granted the right to impose public service obligations on companies, where necessary. They are free to define the details as long as these obligations are designed to meet common European objectives⁹ and comply with the principles laid down in the Directives¹⁰.

Keeping national priorities in line with common objectives under European policy is a great challenge. During transition towards effective competition an imbalance of power between consumers and the industry and lack of information tend to weaken individual consumers. Social and environmental conditions in the European Union are affected by external factors such as international competition and internal factors based on the disparities in Member States' economies. Well targeted universal and public service obligations for energy consumers must remain at the heart of the market-opening process.

c. *The European Union needs to go further in tackling energy poverty.*

Notwithstanding the fact that a large majority of European citizens are satisfied with their electricity supply¹¹, fuel poverty is considered to be a growing risk. High prices for primary energy sources as well as a number of national and European policy choices for energy or in relation to environmental aspects may cause inflation in energy prices.¹² The situation of individual consumers in vulnerable financial situations may further aggravate through incomprehensible billing arrangements or unjustified metering arrangements.

⁸ Since 1996: Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, OJ L 27 of 30.1.1997, p. 20 (former Electricity Directive), and Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, OJ L 204 of 21.7.1998, p. 1 (former Gas Directive)

⁹ Article 3(2) of both the electricity and the gas Directives give Member States the right to impose public service obligations concerning the following objectives: ... *security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency and climate protection*. By means of a notification mechanism, the Commission ensures compliance with European law and publication grants full transparency.

¹⁰ Principles such as clear definition, transparency, non-discrimination, verifiability and equal treatment, including equal access to consumers for all companies

¹¹ European consumers are fairly satisfied with energy supply: the average score at EU25 level is 7.6 (on a scale from 1 to 10) for both electricity and gas – Consumer Satisfaction Survey – 2006 – to be published.

¹² For more information, see the European Commission Report on the Evaluation of the Performance of Network Industries Providing Services of General Interest – 2006 – annex, p. 93 – to be published

While it seems necessary to encourage consumers in their attempt to find the best offers, an overall increase in energy prices may become a heavy burden on the budget of individual consumers. Infrequent metering and billing can also increase the economic impact of rising energy prices and exacerbate fuel poverty. The electricity and gas Directives set out safeguards to protect vulnerable consumers and require, in particular, appropriate measures against disconnection.

The Commission is of the opinion that Member States have not sufficiently addressed the problem of vulnerable consumers. Indeed, only half of the Member States have attempted to even define such consumers and only five Member States are considered to have any form of social default tariff. Where Member States are in violation of existing obligations, the Commission will continue to pursue infringement procedures.

The Commission considers that the future Charter should offer guidance on the best way(s) to efficiently address vulnerable consumers' needs.

d. *The key goals*

A European Charter on the Rights of Energy Consumers must focus on four issues raised by the Commission's Energy Policy Communication¹³:

- *assist in establishing schemes to help the most vulnerable EU citizens deal with increases in energy price,*
- *improve the minimum level of information available to citizens to help them choose between suppliers and supply options,*
- *reduce paperwork when consumers change supplier, and*
- *protect consumers from unfair selling practices.*

Enforcement of consumer rights, information on energy efficiency measures and patterns of behaviour, consumer representation, access to adequate levels of energy and reasonable prices are further elements of significance for better consumer rights.

e. *Points of departure for possible new elements*

Effective consumer protection is essential to ensure that consumers will be active players on the energy market and that liberalisation successfully delivers real choice. European energy market legislation in force¹⁴ and transposed by Member States into national legislation addresses general and consumer interests and, in particular, provides for

- the universal right to be supplied with electricity¹⁵.

¹³ p 10 of the Commission Communication : An Energy Policy for Europe

¹⁴ 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, OJ L 176 of 15.7.2003, p. 37 (Electricity Directive), and 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, OJ L 176 of 15.7.2003, p. 57 (*Gas Directive*).

¹⁵ Article 3(3) of the Electricity Directive

The same legislation obliges Member States to *ensure that there are adequate safeguards to protect vulnerable consumers*. Member States are further required to *ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement* and that it is possible to *switch to a new supplier free of charge and without obstacles*.¹⁶

General consumer protection legislation also contributes to the protection of energy consumers, and protects European consumers from **unfair** commercial practices.

Efforts to improve the position of individual European consumers of electricity or gas – which Member States may extend to small businesses - must be based on the provisions laid down by Community and national legislation:

European consumers of electricity and gas services must have the right to transparent, comparable and enforceable **contract** structures. They must obtain transparent offers. They must be able to **switch** supply free of charge and have access to information on available energy efficiency measures. They must be granted access to a well functioning **dispute** settlement mechanism.

Special attention should be paid to the way measures are being put in place to ensure the protection of the most **vulnerable** European consumers who are not able to protect themselves.

Effective implementation of the rights of energy consumers also requires them to be equipped with the means and the **knowledge** to make rational choices on energy supply and energy efficiency.

Consumer **associations** are invited to help and assist.

4. THE INSTRUMENT

The Commission does not envisage the future European Charter on the Rights of Energy Consumers to be a legal document. Instead, this Charter should set out, in an easily comprehensible way existing Community legislation and possible elements for future action.

It is expected to outline action in relation to each of the following nine issues crucial to consumers' rights and interests:

- A. Connection
- B. Contracts
- C. Prices, Tariffs, and Monitoring
- D. Free choice of Supplier

¹⁶ Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive, which both include references to their respective Annexes A.

E. Information

F. Complaints

G. Representation

H. Social Measures

I. Unfair Commercial Practices

The principle of *shared responsibility* will play an important role in establishing rights of energy consumers. All parties involved, i.e. the Community, the Member States, including in their respective field of competence governments, legislators and regulatory authorities, the energy industry, represented by all social partners, as well as consumer representatives, have a role to play to make European energy policy a success among European citizens. The Charter should also contribute to improving the production, transmission and efficient consumption of electricity and gas in a socially, economically and environmentally sustainable way.

With this communication, the Commission wishes to launch an appeal to and stimulus for all these various actors to provide their contributions to safeguarding the interest of energy consumers in their respective field of competence. A consultation of all these stakeholders will ensure a balanced choice of priorities. The present consultation document, the consultation process and the future charter will increase the publicity of consumer rights already stated in European and national legislation, which is expected to create higher public confidence in these rights. The Commission will continue efforts to communicate its contents to European consumers.

The Commission does not exclude that the result of this consultation may also lead to contributing to a reinforcement of consumer rights by putting forward any legislative proposals it may consider appropriate to that effect.

5. THE PROCEDURE

The present Commission communication sets out, in its Annex I, possible elements concerning a future European Charter on the Rights of Energy Consumers.

A public consultation of all stakeholders (consumer representatives, energy regulators, governments and the industry, represented by all social partners) will be launched in order to consult them on the future Charter's content and will be organised between July and September 2007 (deadline: 28 September 2007) by way of its internet website (see Annex II for details).

In the light of the result of this consultation process, the Commission intends to adopt a second communication containing the final version of the Charter. Apart from setting set out existing legislation, it will give guidelines for its practical implementation. It might also indicate concrete elements for further action either at Member State level or through self-regulation.

The Commission also intends to invite all stakeholders to commit to giving the widest possible publicity to the final version of the Charter set out in its second communication. The Commission will itself make an effort to communicate the content of the Charter to EU citizens through the most appropriate communication channels.

ANNEX I

Elements for a future European Charter on the Rights of Energy Consumers

The future European Charter on the Rights of Energy Consumers is not intended to be a legal document. Instead, this Charter should set out, in an easily comprehensible way:

- a) Existing Community legislation granting consumer rights and obligations of energy providers.
- b) Possible elements that should be taken into account by Member States authorities (governments or regulatory authorities) in implementing and applying that legislation.
- c) Possible elements which might supplement existing rights and which fall within the responsibility of Member States.
- d) Possible elements which might supplement existing rights and which could be achieved through self-regulation¹⁷. by private stakeholders, i.e. the industry and consumer representatives

In the light of the results of the public consultation conducted between July and September, the Commission intends to adopt a second communication containing the final version of the Charter. Apart from setting out existing legislation (points a) of chapters below), it will give guidelines for its practical implementation (points b) of chapters below). It might also indicate concrete elements for further action either at Member State level (points c) of chapters below) or through self-regulation (points d) of chapters below).

The Commission also intends to invite all stakeholders to commit to giving the widest possible publicity to the final version of the Charter set out in its second communication.

1. POSSIBLE ELEMENTS FOR AN INTRODUCTION TO A EUROPEAN CHARTER ON THE RIGHTS OF ENERGY CONSUMERS

- 1. The European Charter on the Rights of Energy Consumers shall contribute to the creation of a sustainable energy market with competitive offers and a proactive participation of energy consumers aware of their rights and choices.
- 2. The European Charter on the Rights of Energy Consumers constitutes an appeal to and stimulus for governments, energy regulators and the industry, represented by all social partners, to provide a concrete contribution to ensuring that energy consumers' interest are being taken into account.

¹⁷ see points 22 and 23 of the *Interinstitutional Agreement on Better Law-making*", OJ C 321 of 31.12.2003, p.1

3. It is, however, important to stress the fact that any new elements proposed by the Charter triggering action at the level of Member States or for self regulation will have to comply with the Community regulatory framework.

4. Under no circumstances consumer rights should be misused to favour domestic energy producers at the expense of producers in other Member States.

5. The Member States of the European Union, including governments, legislators and the electricity and gas regulators, the electricity and gas industry, represented by all social partners, in the European Union and energy consumer associations in the European Union are invited to cooperate in order to ensure respect and promotion of the rights of European energy consumers.

2. ELEMENTS FOR A FUTURE EUROPEAN CHARTER ON THE RIGHTS OF ENERGY CONSUMERS

A. CONNECTION

a) Community legislation requires that:

European electricity consumers have the right to *enjoy universal service, that is the right to be supplied with electricity of a specified quality ... at reasonable, easily and clearly comparable and transparent prices*.¹⁸

b) Possible elements for the implementation of Community legislation

1. European gas consumers should have the right to be supplied where available, with natural gas of specified quality at reasonable price.

c) Possible supplementary elements coming under Member States' responsibility

2. Member States have the right to appoint a supplier of last resort¹⁹. No matter if such a mechanism is organised by the industry or set up by law or administrative action, consumers should be informed of any *supplier-of-last-resort* mechanism applied in order to safeguard continuity of delivery.

3. Competent bodies at national levels should be required to set up a mechanism to monitor access to electricity and gas. Results of monitoring of access should be presented to the public.

d) Possible supplementary elements to be achieved through self-regulation

4. Any distinction between categories of consumers should be justified in an objective and transparent manner.

¹⁸ Article 3(3) of the Electricity Directive

¹⁹ Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive

5. The transparency and predictability of published prices and conditions might be further improved through comprehensible and easily accessible calculation methods.
6. Electricity and gas are provided to consumers against payment. Nonetheless disconnection should generally be considered an undesirable remedy in case of non-payment.
7. Suppliers or network operators should, under their respective responsibilities, install easily accessible help-lines to deal with connection problems and other service quality issues occurring.

B. CONTRACT

a) Community legislation requires that

European energy consumers have a right to contract *conditions that are fair and well known in advance ... and provided prior to conclusion ... of the contract.*²⁰ Contracts must contain minimum elements:

- *the identity and address of the supplier;*
- *the services provided, the service quality levels offered, as well as the time for establishing the initial connection;*
- *the types of maintenance service offered;*
- *the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;*
- *the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;*
- *any compensation and refund arrangements which apply if contracted service quality levels are not met; and*
- *the method of initiating procedures for settlement of disputes.*

*European energy consumers shall be given adequate notice of any intention to modify contractual conditions and ... about their right of withdrawal in such cases.*²¹

*General terms and conditions shall be fair and transparent and be given in clear and comprehensible language.*²²

*Suppliers shall abstain from unfair terms in contracts concluded with consumers.*²³

²⁰

Annex A(a) of both the Electricity and the Gas Directives

²¹

Annex A(b) of both the Electricity and the Gas Directives

²²

Annex A(d)part. of both the Electricity and the Gas Directives

²³

Council Directive 93/13/EEC of 5 April 1993 on unfair contract terms in consumer contract, OJ L 95, 21.04.1993, p.29 (*Unfair Contract Directive*)

c) Possible supplementary elements coming under Member States' responsibility

1. It might be considered necessary to require also the following elements to become part of supply contracts:

- the tariffs payable and the attached conditions, such as parameters for calculating the tariffs and any indexation mechanism must be presented in a comprehensible and easily accessible form;
- available payment parameters and facilities;
- specification on how appropriate metering and informative billing that accurately reflects individual consumers' consumption should be provided;
- specification on how the consumer will be provided with up-dated information on available energy efficiency improvement measures, comparative end-user profiles and/or objective technical specifications for energy-using equipment.

2. All information obligations of the pre-contractual phase (see above under a) first item) should unrestrictedly apply to all elements of a future contract.

C. PRICES, TARIFFS AND MONITORING

a) Community legislation requires that

*European energy consumers shall receive transparent information on applicable prices and tariffs and on standard terms and conditions.*²⁴

European electricity and gas prices shall be *reasonable*, electricity prices also *easily and clearly comparable and transparent*.²⁵

European energy consumers shall be offered *a wide choice of payment methods*.²⁶

European energy consumers shall be provided - *in so far as it is technical possible, financially reasonable and proportionate in relation to the potential energy savings – with competitively priced individual meters* accurately reflecting *actual energy consumption* and *information on the time of use*.²⁷

European energy consumers have a right to receive energy bills based on actual energy consumption.²⁸

²⁴ Article 3(3) of the Electricity Directive and Annex A(c) of both the Electricity and the Gas Directives

²⁵ Annex A(g) of both the Electricity and the Gas Directives

²⁶ Annex A(d)part. of both the Electricity and the Gas Directives

²⁷ Article 13(1) of Directive 2006/32/EC of 4 April 2006 on energy end-use efficiency and energy services OJ L 114 of 27.04.2006 p.64 (*Energy Efficiency Directive*)

²⁸ Article 13(2) of the Energy Efficiency Directive

c) Possible supplementary elements coming under Member States' responsibility

1. Competent bodies at national level should monitor the electricity and gas offers available on the market. They should present the results of price monitoring to the public in a manner making it possible to compare prices and basic conditions of available offers.

d) Possible supplementary elements to be achieved through self-regulation

2. Conditions referring to price changes should allow consumers to understand their effects easily.

3. Tariff calculators should be made available, and information on prices per KW and per hour should be published at regular intervals.

4. Energy invoices should be timely and frequent enough to provide accurate and comprehensible information that also reflects actual consumption.

5. Promotion offers should ensure that European energy consumers to a large extent benefit from metering facilities reflecting actual consumption and information on the time of use.

D. FREE CHOICE OF SUPPLIER

a) Community legislation requires that

*Member States shall ensure that the eligible consumer is in fact able to switch to a new supplier.*²⁹

European energy consumers *shall not be charged for changing supplier.*³⁰

d) Possible supplementary elements to be achieved through self-regulation

1. European energy consumers should benefit from an improvement of the efficiency of existing switching procedures. The period required for switching to a new supplier of electricity or gas should therefore not last longer than one month.

2. In case contract conditions require minimum contract duration, the expiry date should be mentioned on the bill.

E. INFORMATION

a) Community legislation requires that

European energy consumers shall *receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity and gas services.*³¹

²⁹ Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive
³⁰ Annex A(e) of both the Electricity and the Gas Directives

European electricity consumers shall obtain information on *the contribution of each energy source to the overall fuel mix of the supplier over preceding years ... and on the environmental impact, in terms of the least emissions of CO₂ and the radioactive waste resulting from the electricity produced by it.*³²

European consumers of electricity *having access to universal service under the provisions adopted by Member States ... shall be informed of their rights regarding universal service.*³³

European consumers *connected to the gas system shall be informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices.*³⁴

European energy consumers have the right to receive information, *in or with their bills, contracts or other transactions, receipts, etc., on a) current actual prices and actual consumption; b) yearly comparison of energy actual consumption; c) comparison with benchmarked energy user; d) contact details for objective information on energy efficiency improvement measures, end-user profiles and equipment specifications.*³⁵

b) Possible elements for the implementation of Community legislation

1. Information on energy supply to European energy consumers should be available without incurring excessive or costly enquiries.

d) Possible supplementary elements to be achieved through self-regulation

2. European energy consumers should have easy access to updated information on
- the energy supply available in their area, and
 - on all national programmes, mechanisms and financial and legal frameworks promoting energy efficiency.

F. COMPLAINTS

a) Community legislation requires that

European energy consumers shall *benefit from transparent, simple and inexpensive complaint procedures*³⁶ ... *wherever possible* following, the *principles set out in Commission Recommendation 98/257/EC*³⁷ and 2001/310/EC³⁸.

³¹ Annex A(c) of both the Electricity and the Gas Directives

³² Article 3(6) of the Electricity Directive

³³ Annex A(g) of the Electricity Directive

³⁴ Annex A (g) of the Gas Directive and the general Treaty principle of non-discrimination

³⁵ Article 13(3) of the Energy Efficiency Directive

³⁶ Annex A(f) of both the Electricity and the Gas Directives

³⁷ Commission Recommendations 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, OJ L 115 of 17.4.98, p. 31.

c) Possible supplementary elements coming under Member States' responsibility

1. Non-judicial dispute settlement, such as out-of court settlement, administrative procedures or mediation procedures should enable disputes to be settled fairly, promptly (within a period of 3 months) and with no cost to the consumer.
2. The role of energy regulators in dispute settlement should be clarified and energy consumers should be informed thereof without delay.

d) Possible supplementary elements to be achieved through self-regulation

3. Suppliers and network operators should be encouraged to put in place a common entry point for consumer complaints.

G. REPRESENTATION

a) Community legislation requires that

Consumer organisations are given the power by Member States to *bring actions* for an *injunction* in the *courts or administrative authorities* that Member States designate.³⁹

c) Possible supplementary elements coming under Member States' responsibility

1. Best ways to promote official organisation of energy consumer representation shall be developed and contribute to regular stocktaking and tracking of market developments.
2. A regular dialogue between energy consumer organisations and all other stakeholders (social partners, energy, regulators, government representatives, etc.) on all issues of energy consumer rights shall ensure that the maximum is done to achieve a high level of consumer rights.
3. Consumer organisations and authorities responsible for consumer protection should co-operate to check the accuracy of the information provided by the electricity and gas suppliers.

³⁸ Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, OJ L 109 of 19.4.2001, p. 56.

³⁹ Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, OJ L 166 of 11.6.1998, p. 51 (Articles 1, 2 and 3). Since the 2003 energy directives are not listed in the annex of the injunction directive, the injunction directive only applies to issues that fall within the scope of consumer directives such as the Unfair Contract Directive and the Unfair Commercial Practices Directive.

H. SOCIAL MEASURES

a) Community legislation requires that

*Member States shall ... in particular ensure that there are adequate safeguards to protect vulnerable consumers, including measures to help them avoid disconnection.*⁴⁰

b) Possible elements for the implementation of Community legislation

1. European energy consumers with special needs caused by impairments or in a poor financial situation should benefit from essential energy services to maintain their physical and mental health and well-being, at reasonable prices or, where necessary, free of charge.
2. Member States should adopt and publish a definition of vulnerable consumers to be applied - without further request by the vulnerable consumer - by all suppliers of electricity and gas, where gas supply meets basic household needs .
3. Member States should ensure that the rights linked to the status of vulnerable consumer are applied without placing an excessive burden on the consumers demanding it. Particular attention should be granted in this respect to cases of pending disconnection.
4. Existing measures for the benefit of vulnerable consumers should be well targeted and periodically reassessed. They should be well balanced in order not to prevent market opening, create discriminations among European energy suppliers, distort competition, restrict resale or create discriminatory treatment of other consumers.

d) Possible supplementary elements coming under Member States' responsibility

5. Member States should intervene in the market in order to bring about social prices and conditions for well defined categories of electricity and gas consumers in remote areas or with special needs, or at least ensure that such consumers have systematic access to the lowest offer on the market.

I. UNFAIR COMMERCIAL PRACTICES

a) Community legislation requires that

*European energy consumers shall be protected against unfair and misleading selling methods.*⁴¹

Unfair commercial practices are prohibited by the Unfair Commercial Practices Directive.⁴²

⁴⁰ Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive

⁴¹ Annex A(d)end of both the Electricity and the Gas Directives

⁴² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive

- European citizens shall be effectively protected *from being pressurized through misleading and aggressive practices*,⁴³ for example to switch operators.
- Any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another trader may be qualified as an unfair commercial practice.⁴⁴

d) Possible supplementary elements coming under Member States' responsibility

1. Authorities defending consumer interests and national energy regulators should co-operate effectively in order to achieve the best possible results.

84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, OJ L 149 of 11.06.2005, p. 22. (*Unfair Commercial Practices Directive*)

⁴³ Article 11 of the Unfair Commercial Practices Directive

⁴⁴ Article 9(d) of the Unfair Commercial Practices Directive

ANNEX II

Public Consultation

PUBLIC CONSULTATION ON A EUROPEAN CHARTER ON THE RIGHTS OF ENERGY CONSUMERS

The Commission invites all interested parties to comment on a text containing elements for a European Charter on the Rights of Energy Consumers. Comments can be sent to the following address:

European Commission

Directorate General for Energy and Transport

Public consultation on European Charter on the Rights of Energy Consumers

tren-energy-consumer-rights@ec.europa.eu

or

Rue De Mot 28

B-1049 Brussels

Comments should be sent to the Commission by **28 September 2007** at the latest. Replies and comments should mention the number of the subject they are referring to.

If you have views on some questions and not others, do not hesitate to send an answer covering only these questions.

For the information of interested parties, the Directorate General for Energy and Transport of the Commission will put contributions received electronically, together with the sender's contact data, on this page [*webpage*] provided the senders concerned have explicitly agreed to their publication.

For data protection reasons, the Commission will not process any specified personal data that you include with your reply.

In the light of *inter alia* the contributions received, the Commission intends to adopt a second communication containing the Charter.