

TABLE OF CONTENTS

	<u>Page No.</u>
Table of contents	vii
Table of appendices	xvi
Index	1147

Paragraph

Chapter 1 Introduction

1.	The gradual progress of creating an Internal Energy Market	1.1
2.	The basic requirements for creating competitive electricity and gas markets.....	1.22
2.1.	Creating a competitive electricity and gas wholesale market.....	1.24
2.2.	Third party access.....	1.26
2.3.	Unbundling	1.27
2.4.	The establishment of an independent energy regulator	1.28
2.5.	High public service standards	1.30
2.6.	Effective EU-wide rules on trade-related regulatory issues.....	1.33

Chapter 2 Creating a common electricity and gas wholesale market

1.	Electricity	
1.1.	Introduction	2.1
1.2.	The authorisation procedure	
1.2.1.	Substantive issues.....	2.13
1.2.2.	Procedural issues.....	2.30
2.	Gas	2.35

Chapter 3 Third Party Access

1.	Introduction	3.1
2.	Duties and responsibilities of transmission and distribution system operators: Electricity	
2.1.	General duties	3.6
2.2.	Specific duties and responsibilities of electricity transmission and distribution system operators	

Table of contents

2.2.1.	Procurement of energy for losses, reserve capacity and balancing energy	3.8
2.2.2.	Balancing	3.13
2.2.3.	Dispatching	3.15
2.2.4.	Demand-side management	3.23
2.2.5.	Confidentiality	3.25
2.3.	Duties of transmission and distribution system operators: Gas	3.26
3.	Regulated third party access	3.29
3.1.	Publication of standard tariffs	3.34
3.2.	Regulation of tariffs	3.41
3.2.1.	Cost reflectivity	3.45
3.2.2.	Level of detail of a tariff methodology	3.62
4.	Negotiated third party access (storage and ancillary services)	3.66
5.	Negotiated access: upstream gas pipelines	3.84
6.	Transit	
6.1.	Background to transit	3.88
6.2.	ECJ Case C17/03 VEMW and others	3.101
6.3.	Citiworks	3.130
6.4.	Sabatauskas	3.139
7.	Direct lines	
7.1.	Direct lines - electricity	3.147
7.2.	Direct lines – gas	3.159

Chapter 4 Unbundling of Transmission System Operators

1.	Introduction	
1.1.	The need for unbundling	4.1
1.2.	The first and second Directives	4.5
1.3.	The Third package: towards ownership unbundling	4.8
1.4.	Ownership unbundling under competition rules	4.25
2.	The unbundling options in a nutshell	
2.1.	TSO unbundling under the Second Directives	4.28
2.2.	Ownership unbundling	4.29
2.3.	ISO	4.30
2.4.	ITO	4.34
3.	General principles	
3.1.	Application to the gas and electricity sectors	4.44
3.2.	Options for unbundling	
3.2.1.	Three main options	4.49
3.2.2.	ITO+: “unbundling à la carte”	4.53
4.	Level playing field	4.58
4.1.	Acquisition of rights within an ownership unbundled TSO	4.60
4.2.	General provision on level playing field	4.64
5.	Designation of TSOs and the certification procedure	4.71
5.1.	Approval and designation of the TSO	4.74
5.2.	General rules on certification	4.76
5.2.1.	Launch and timing of the procedure	4.78

Table of contents

5.2.2.	Procedure and timing	4.83
5.3.	The control of an EU transmission system operator by a company from a non-EU country	
5.3.1.	Introduction.....	4.90
5.3.2.	Substance and procedure	4.100
6.	Implementation by the Member States	4.115
7.	Derogations	4.120
8.	The unbundling options in detail	
8.1.	Schematic analysis of the main features of the unbundling options	4.122
8.2.	Ownership unbundling	
8.2.1.	Network owner as a network operator	4.123
8.2.2.	Application of unbundling rules to companies controlling transmission system operator or supplier	4.126
8.2.2.1.	The concept of control	4.131
8.2.2.2.	The concept of rights	4.136
8.2.2.3.	The rule in practice	4.139
8.2.3.	Application of unbundling rules to non-controlling companies	4.148
8.2.4.	Application of unbundling rules to board members	4.153
8.2.5.	Application of unbundling rules to public entities	4.155
8.2.6.	Application of unbundling rules across the gas and electricity sectors	4.163
8.2.7.	Specific extension of time for transposition of part of the ownership unbundling rules	4.166
8.3.	Independent System Operator (ISO)	4.169
8.3.1.	Appointment of the ISO.....	4.171
8.3.2.	Tasks of the ISO	4.178
8.3.3.	The transmission system owner.....	4.181
8.3.4.	Specific duties of the regulatory authority	4.189
8.3.5.	Unbundling of transmission system owners	4.195
8.4.	The Independent Transmission Operator (ITO)	4.201
8.4.1.	Autonomy of the ITO: rules on assets, equipment, staff and identity (Article 17)	4.205
8.4.2.	Independence of the transmission system operator (Article 18)	4.213
8.4.3.	Independence of the staff and the management of the transmission system operator (Article 19)	4.220
8.4.4.	Supervisory Body (Article 20)	4.224
8.4.5.	Compliance programme and compliance officer.....	4.227
8.4.6.	Network development and powers to make investment decisions (Article 22).....	4.234
8.4.7.	Decision-making powers regarding the connection of new powerplant, storage facilities, LNG regasification facilities and industrial customers to the transmission system	4.242
8.4.8.	Specific duties of the regulatory authority	4.245

Chapter 5 Unbundling of DSOs

1.	Introduction	5.1
2.	Definition of a vertically integrated company	5.12
3.	Legal unbundling	
3.1.	Definition	5.20
3.2.	Combined network operator.....	5.24
4.	Management unbundling	
4.1.	Introduction	5.26
4.2.	General definition of management unbundling	5.27
4.3.	Independent management.....	5.35
4.4.	Separation of personal interests.....	5.40
4.5.	Autonomy and control over assets by the network operator.....	5.45
4.6.	Compliance officer and compliance programme	5.60
4.7.	Prohibition to take advantage of vertical integration to distort competition	5.64
5.	Accounting unbundling	
5.1.	The requirements of the Directives	5.67
6.	Exemptions	
6.1.	Exemption for small distributors	5.76
6.1.1.	Unbundling of DSO in electricity	5.84
6.1.2.	Unbundling of Network Operators in gas distribution	
6.2.	Exemption for closed distribution systems	5.85

Chapter 6 National Regulatory Authorities

1.	The need for a strengthened sector specific regulator	6.1
2.	Designation of a single regulatory authority	6.8
2.1.	Regional regulatory authorities	6.11
2.2.	Small and separated systems	6.12
2.3.	Scope of derogations.....	6.13
3.	Independence of regulatory authorities.....	6.16
3.1.	Principle of independence.....	6.18
3.2.	Rules guaranteeing independence	6.21
3.3.	Rules protecting independence.....	6.24
3.3.1.	Financial resources	6.27
3.3.2.	Appointment of the management of the regulators.....	6.28
4.	General objectives of the regulatory authority	
4.1.	General principles applicable to the general objectives.....	6.32
4.2.	Content of the general objectives.....	6.38
5.	Duties of the regulatory authority	
5.1.	General principles applicable to the duties	6.39
5.2.	Content of the duties	6.46
5.2.1.	The fixing of network tariffs	6.48
5.2.2.	Ensuring compliance of gas and electricity undertakings with their obligations	6.50
5.2.3.	Other duties	6.54

Table of contents

6.	Powers of the regulatory authority	6.63
6.1.	The adoption of binding decisions	6.67
6.2.	The promotion of effective competition and ensuring the proper functioning of the Marketing Manager	6.68
6.3.	The provision of information	6.72
6.4.	Penalties	6.73
6.5.	Powers of instructions	6.78
6.6.	Transparency in the supply market (record keeping)	6.80
7.	Procedural issues	
7.1.	Power to deal with complaints	6.82
7.2.	Appealing a decision of the regulatory authority on tariffs	6.87
7.3.	Judicial appeal	6.91
8.	Regulatory regime for cross border issues	6.95
9.	Compliance with guidelines	6.100
10.	Conclusion	6.111

Chapter 7 The Agency for the cooperation of Energy Regulators (ACER)

1.	Introduction	
1.1.	The need for a Regulatory Agency	7.1
1.2.	ACER as Regulatory Agency	7.7
2.	The negotiations that led to the agreement to create an Agency	
2.1.	Proposal of the European Commission	7.12
2.2.	First reading	
2.2.1.	European Parliament	7.20
2.2.2.	Council	7.22
2.2.3.	European Commission	7.24
2.3.	Second reading	7.25
3.	Tasks of ACER	
3.1.	ACER's tasks as regards ENTSOs	
3.1.1.	Creation and operation of ENTSOs	
3.1.1.1.	Creation of ENTSOs	7.28
3.1.1.2.	Operation of the ENTSOs	7.30
3.1.2.	Framework guidelines and network codes	7.37
3.1.2.1.	Establishment of framework guidelines	7.38
3.1.2.2.	Involvement of ACER in preparing and monitoring binding network codes	7.42
3.1.2.3.	Network codes prepared by ENTSOs	7.43
3.1.2.4.	Network codes prepared by ACER	7.46
3.1.2.5.	Modification of network codes	7.47
3.1.2.6.	Monitoring of network codes	7.48
3.1.3.	Other ACER tasks in relation to Transmission Systems	7.51
3.2.	ACER's tasks as regards National Regulatory Authorities	
3.2.1.	"Soft" ACER competences in relation to National Regulatory Authorities	7.55
3.2.2.	ACER's binding decision making power	7.63

Table of contents

3.3.	Other tasks of ACER	
3.3.1.	Advisory role to the EU institutions	7.79
3.3.2.	Monitoring and reporting.....	7.81
3.3.3.	Miscellaneous tasks	7.85
3.4.	ACER's procedural requirements: consultation.....	7.90
4.	Organisation of ACER	
4.1.	Institutions of ACER	
4.1.1.	The Administrative Board.....	7.95
4.1.2.	The Board of Regulators.....	7.108
4.1.3.	The Director	7.116
4.1.4.	The Board of Appeal.....	7.125
4.2.	The planning and budget cycle of ACER	
4.2.1.	Principles	7.133
4.2.2.	Establishment of a work programme for ACER.....	7.135
4.2.3.	Establishment of the budget (Article 23).....	7.137
4.2.4.	Implementation and control of the budget (Article 24).....	7.141
4.2.5.	Forecast	7.145
4.3.	General provision of the Agency Regulation	
4.3.1.	Staff issues.....	7.148
4.3.2.	Participation of third countries	7.152
4.4.	Procedure to modify the set up and operation of ACER.....	7.161

Chapter 8 The regulation on cross-border electricity exchanges: substantive rules

1.	Introduction	8.1
2.	Tarification	
2.1.	The physical and economic principles underlying tarification	8.4
2.2.	Cross-border tarification and the Regulation	8.25
2.3.	National transmission and distribution tariffs principles	8.34
3.	Congestion management	
3.1.	Introduction	8.36
3.2.	Constraints on available capacity.....	8.40
3.2.1.	Long-term capacity reservation agreements	8.41
3.2.2.	Public service obligation.....	8.44
3.3.	Congestion management methods.....	8.45
3.3.1.	First come, first served	8.46
3.3.2.	Pro-rata	8.48
3.3.3.	Explicit auction.....	8.49
3.3.4.	Implicit auction.....	8.54
3.4.	Requirements of the Regulation	8.59
3.4.1.	Requirement for market based methods.....	8.61
3.4.2.	Maximisation of the use of capacity	8.64
3.4.3.	Requirement for co-ordination between TSOs.....	8.66
3.4.4.	Distribution of congestion rents	8.69
4.	Locational signals	
4.1.	Introduction	8.73

Table of contents

4.2.	Requirements of the Regulation.....	8.78
5.	Harmonisation of tariff structures.....	8.85
6.	Transparency	8.92
7.	Network security and calculation of available capacity.....	8.98

Chapter 9 The gas regulation: substantive access rules

1.	Introduction	9.1
2.	The Gas Regulation	9.4
3.	Charges for access tot networks.....	9.7
4.	Third party access services.....	9.23
4.1.	Third party access services concerning LNG facilities	9.31
5.	Capacity allocation and congestion management	9.33
5.1.	Allocation of available capacity	9.35
5.2.	Contractual congestion.....	9.42
6.	Capacity allocation and congestion management for LNG	9.48
7.	Transparency	
7.1.	Introduction	9.54
7.2.	Definition of relevant points	9.60
7.3.	Level of detail to be published	9.64
7.4.	Confidentiality	9.66
8.	Transparency for LNG	9.70
9.	Balancing	9.73

Chapter 10 Retail market development and public service objectives

1.	Introduction	10.1
2.	Retail market development, consumer protection and provisions on public service	10.9
3.	Detailed analysis of the requirements of Article 3	
3.1.	Obligation to ensure non-discrimination	10.10
3.2.	Obligation to assign State aid or exclusive rights in a non-discriminatory manner	10.14
3.3.	The right of Member States to impose public service obligations	10.21
4.	Types of Public Service Obligations	
4.1.	Universal service guarantee for electricity.....	10.34
4.2.	Security, including security of supply, regularity	10.39
4.3.	Quality and price of supplies	
4.3.1.	Universal service and price caps in practice	10.49
4.3.2.	Regulated tariffs: consistent with the Directives?	10.53
4.4.	Environmental labelling provisions	10.60
4.5.	Protection of vulnerable consumers: electricity	10.68
4.5.1.	Appropriate measures to protect final customers	10.73
4.5.2.	Shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers. In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of	

Table of contents

	disconnection of electricity to such customers in critical times.	10.74
4.5.3.	Member States shall take measures to protect final customers in remote areas.....	10.81
4.6.	Protection of vulnerable consumers: gas.....	10.90
4.7.	Customer protection obligations.....	10.92
4.8.	Obligation on Member States to ensure that eligible customers can easily switch supplier.....	10.100
4.9.	Environmental protection, including energy efficiency and climate protection	10.104
5.	Positive duty to achieve specified public service objectives	10.108
6.	Notification of public service obligations by Member States.....	10.112
7.	Publication of public service objectives	10.115
8.	Licensing and authorisation regimes.....	10.121
9.	Information for consumers.....	10.122
10.	Intelligent metering systems	10.128
11.	Roles of market operators.....	10.135
12.	Roles of regulators	10.139

Chapter 11 Derogations and exemptions

1.	Introduction	11.1
2.	Derogations granted during the accession process.....	11.4
3.	Small isolated systems (electricity)	11.9
3.1.	Derogations being dealt with by the Commission.....	11.20
3.2.	Specific derogation for Malta under the Third Package.....	11.24
4.	Isolated markets (gas)	11.25
4.1.	Express derogations under the Third Package.....	11.30
5.	Emergent markets	11.32
5.1.	Derogations being dealt with by the Commission.....	11.38
5.2.	Express derogations under the Third Package.....	11.40
6.	Emergent regions	11.41
6.1.	Derogations being dealt with by the Commission.....	11.49
7.	Specific derogations to unbundling rules for TSOs	11.50
8.	Take-or-pay contracts	
8.1.	Introduction	11.52
8.2.	Extent of a possible derogation.....	11.53
8.3.	Procedure	11.54
8.4.	Substantive issues relevant to the grant of a derogation	11.61
8.5.	Derogations being dealt with by the Commission.....	11.67
9.	New infrastructure	11.68
9.1.	Introduction	11.70
9.2.	Substantive issues relevant to the grant of a derogation	11.81
9.3.	Procedure	11.84
9.4.	Exemptions dealt with by the Commission.....	11.91
9.4.1.	OPAL pipeline (Germany, Czech Republic)	11.92
9.4.2.	Nabucco pipeline (Austria, Bulgaria, Romania, and Hungary)	11.93
9.4.3.	Britned Interconnector (UK-Netherlands).....	11.99

9.4.4.	Liongas LNG terminal (Netherlands)	11.100
9.4.5.	Poseidon pipeline (Italy and Greece)	11.102
9.4.6.	Isle of Grain LNG terminal (Thames Estuary)	11.104
9.4.7.	South Hook LNG terminal (Milford Haven, Wales)	11.109
9.4.8.	Dragon LNG terminal (Milford Haven, Wales)	11.114
9.4.9.	BBL gas pipeline	11.117
9.4.10.	Brindisi (southern Italy)	11.124
9.4.11.	Rovigio (Italy)	11.128
9.4.12.	Estlink	11.129
9.5.	Provisions under the Third Package	11.135
10.	Modifications from the Second to the Third Package	11.136

Chapter 12 The establishment of common network rules

1.	Introduction	12.1
2.	Network code development process	12.5
3.	The electricity and gas regulations; procedural issues	
3.1.	Implementation of the regulations: direct effect	12.6
3.2.	The comitology procedure	12.11
4.	TSO cooperation: establishment and tasks of ENTSO	12.24
4.1.	Tasks of the ENTSO	12.34
4.2.	Establishment and modification of network codes	12.50
4.2.1.	Non-binding Framework Guidelines and the adoption of codes	12.56
4.2.2.	Binding Guidelines	12.69
4.2.3.	Modification of existing network codes	12.75
4.3.	Regional cooperation	12.77
5.	The Florence and Madrid Fora	12.83
6.	Regional initiatives and the Pentalateral Forum	12.94

Chapter 13 Security of supply

1.	Introduction	13.1
2.	Balancing supply and demand – electricity	13.25
2.1.	Introduction	13.25
2.2.	The tendering option in the electricity Directive	
2.2.1.	Introduction	13.28
2.2.2.	Environmental protection and the promotion of infant new technologies	13.32
2.2.3.	Procedure	13.36
2.3.	Measures to ensure the supply and demand balance in the security of electricity supply Directive	13.38
3.	Operational security of the electricity network	13.41
4.	Security of supply – gas	13.55
4.1.	Security of supply legislation for gas	13.62

Chapter 14 Reporting and review of the Directives

1. Obligations on the Commission14.1
2. Obligations on Member States and regulators14.9

Chapter 15 Implementation and entry into force

1. Implementation and entry into force of the Third Package15.1
2. Infringements procedures concerning the Second Package15.6
 - 2.1. Infringements for non-notification of the transposition measures
of the Directives15.10
 - 2.2. Infringements for non-conformity with the Directives15.13
 - 2.3. Infringements for violation of the electricity and gas Regulations15.19

Chapter 16 The internal energy market and neighbouring countries

1. Introduction16.1
2. The internal energy market and the EU-accession process16.3
3. The Energy Community Treaty16.6
 - 3.1. An extension of the EU energy market16.6
 - 3.2. The dispute settlement mechanism16.13
 - 3.3. The extension of the Energy Community to new Parties16.16
4. The European Economic Area, Norway and Switzerland16.19
 - 4.1. The European Economic Area and Norway16.19
 - 4.2. Switzerland16.23
5. Energy in other international instruments16.26
 - 5.1. Energy and trade agreements16.26
 - 5.1.1. Export tariffs16.27
 - 5.1.2. Energy taxes16.28
 - 5.1.3. Quantitative restrictions and security of supply16.29
 - 5.1.4. Transit16.31
 - 5.1.5. Dual pricing for energy16.32
 - 5.1.6. Energy services16.33
 - 5.2. The Energy Charter Treaty16.34
 - 5.3. Regional agreements16.39
 - 5.3.1. The Mediterranean area16.39
 - 5.3.2. The Eastern Partnership16.43
 - 5.4. Bilateral EU agreements16.45
 - 5.4.1. Russia16.46
 - 5.4.2. Ukraine16.51

Chapter 17 An introduction to energy market law in the United States of America

1. Introduction17.1
2. Market opening and third party access17.10
 - 2.1. Wholesale market17.10

Table of contents

2.2.	Retail markets	17.21
3.	Unbundling	
3.1.	Transmission: electricity	17.28
3.2.	Transmission: gas	17.41
3.3.	Distribution	17.48
4.	Regulation	17.53
5.	Inter-State regulation	17.61
6.	Infrastructure	17.76
7.	Security of supply	17.83
8.	Conclusion	17.92

TABLE OF APPENDICES

	<u>Page No.</u>
Appendix 1:	617
Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC	
Appendix 2:	683
Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC	
Appendix 3:	755
Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003	
Appendix 4:	789
Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005	
Appendix 5:	823
Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators	
Appendix 6:	849
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	

Table of appendices

Appendix 7: 879

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

Appendix 8: 911

Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply

Appendix 9: 919

Interpretative note on Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning common rules for the internal market in natural gas – The unbundling regime

Appendix 10: 949

Interpretative note on Directive 2009/73/EC concerning common rules for the internal market in natural gas – Third party access to storage facilities

Appendix 11: 965

Interpretative note on Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning common rules for the internal market in natural gas – Retail markets

Appendix 12: 977

Interpretative note on Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning common rules for the internal market in natural gas – The Regulatory authorities

Appendix 13: 997

Note of the Directorate-General for Energy and Transport of the European Commission on Unbundling, issued on 22.01.2004

Appendix 14: 1017

Note of the Directorate-General for Energy and Transport of the European Commission on Regulatory authorities, Issued on 22.01.2004

Table of appendices

Appendix 15:	1029
Note of the Directorate-General for Energy and Transport of the European Commission on Distribution, issued on 22.01.2004	
Appendix 16:	1039
Staff working document on exemptions for New Infrastructure published on 6 May 2009 by the Commission	
Appendix 17:	1057
Commission Staff Working Paper on the VEMW Judgement C17/03	
Appendix 18:	1061
Commission Decision of 11 November 2003 establishing the European Regulators Group	
Appendix 19:	1065
Energy Community Treaty	
Appendix 20:	1087
Implementing measures of the Electricity and Gas Directive	
INDEX	1147
