

**CEER Comments on the proposed EU  
Directive concerning energy end-use  
efficiency and energy services**

## **General Comment**

CEER welcomes and supports the initiative for more efficiency in energy use in Europe. Demand side management is essential in reducing the dependence of the European economy on imported primary energy. As regulators responsible for electricity and gas markets CEER provides comments on possible effects of the proposal on those two energy markets. CEER explicitly restricts its comments to the core of regulators tasks. Therefore possible comments on other parts of the draft directive have been omitted.

## **Unbundling, clear incentives and the proposal on energy services**

The new directives on the internal electricity and gas markets set up the framework for the intended evolution towards a fully opened and integrated European market. One of the key elements of these directives are a strict unbundling of economic interests of monopolistic network operators and competitive generation and retail parts of integrated companies. This new proposed directive on energy services should take this into account. The interest of those companies generating and supplying energy are to increase their profit. Traditional pure energy suppliers are normally interested in increases of volumes as long as marginal costs are lower than prices. However competition might bring about new sales strategies, so that suppliers would try to achieve price discrimination by integrating services into their energy supply business. This development may finally change the market so that services become the primary product and energy is only an input for it. CEER supports this development and underlines the necessity to guarantee maximum flexibility and competition in the energy supply business to allow for these above mentioned dynamics.

CEER holds that only clear economic interests have the chance to bring about efficient results. Therefore if there shall be a market for energy services, CEER thinks that the market should decide which economic entity will provide them.

## **Should legislation create markets?**

Article 4 states that costs of the measures should not outweigh their benefits. The proposal also clearly states the intention to establish a market for energy services. CEER notes a potential conflict of this goal with the procedure how services shall be fostered. If the focus is on measures

which are marketable the first priority should be to eliminate any legal or administrative barriers to the full development of this market. **CEER therefore recommends to clearly distinguish services where market failure is not relevant and those where the market might not bring about desirable results.** If this distinction is left to the discretion of member states, market distortions are very likely.

Furthermore a free provision of energy audits by distribution or retail companies at least impedes the possibility for establishing direct commercial relations between customers and auditors. The auditing market will either disappear (every company providing the service to their own customers) or if the companies use third party auditors, they will gain a very strong market power on the demand side. Neither the possibility to attach free auditing to distribution companies nor activities in the energy service sector go lightly with the principle of unbundling which is based on a strict separation of interest between network business and energy supply. **CEER therefore rejects the idea to weaken the unbundling provisions by this new directive.**

**Again only in case of market failure the proposed approach to force companies to provide potentially profitable services to their customers without any charges should be taken.** CEER believes that at least integrated energy services (energy supply and provision of energy services like heat or light), which are the main focus of the proposal should be subject to market forces. There may however be a case for considering some sectors of the market as 'market failures' e.g. domestic energy efficiency measures.

#### **CEER's vision of the market:**

CEER underlines the importance of a market for energy services. At the same time CEER holds that only clearly defined roles with consistent economic interests will succeed. Therefore CEER does not believe that energy suppliers should take over the role of energy service providers (at least should not be forced to do so).

Electricity and gas companies are supplying input for services, their interest as producers is clearly to increase the volume of sold energy. Preferably separate service providers should combine energy input with consultation on efficiency and least cost provision of services like cooling, heating and so on. If it is the case that the service market will only be viable when there is enough information on energy consumption and information (auditing) itself is not marketable, then this service should be supported in a way that does not distort competition.

#### **Detailed Comments:**

##### **Recital 11**

Commission Proposal	Suggested Amendment
<p>Energy distribution and retail energy sales companies can improve energy efficiency in the European Community if energy services are marketed that include efficient end use, such as efficient thermal comfort, domestic hot water, refrigeration, illumination and motive power. Profit maximisation for these companies thus becomes more closely related to selling energy services to as many customers as possible instead of selling as much energy as possible to each customer.</p>	<p>Energy retail energy sales companies <u>and energy service companies</u> can improve energy efficiency in the European Community if energy services are marketed that include efficient end use, such as efficient thermal comfort, domestic hot water, refrigeration, illumination and motive power. <del>Profit maximisation for these companies thus becomes more closely related to selling energy services to as many customers as possible instead of selling as much energy as possible to each customer.</del></p>

*Justification*

*Clear incentives for companies and the experience in different countries indicate that energy sellers are not best suited to take over the part of providing energy services.*

**Art 2**

Commission Proposal	Suggested Amendment
<p>This Directive shall apply to the distribution and retail sales to final customers of energy.</p>	<p>This Directive shall apply to retail sales to final customers of energy <u>and to the energy service business.</u></p>

*Justification*

*Development of the energy services market requires that actually the main focus of the directive are service providers.*

**Art 6**

Commission Proposal	Suggested Amendment
<p>Member States shall remove barriers to the demand for energy services and ensure that energy distributors and/or retail energy sales companies selling electricity, gas, district heat and/or heating oil:</p> <p>(a) offer and actively promote energy services as an integral part of the distribution and/or sales of energy to customers, either directly or through other energy service providers. Energy audits shall be provided for free to their customers as long as 5% of them are not covered by energy services.</p> <p>(b) refrain from any activities that might impede the delivery of energy services, energy efficiency programmes and other energy efficiency measures or hinder the development of the market for energy services and energy efficiency measures in general. The authorities or agencies designated in Article 4(5) shall take the necessary</p>	<p>Member States shall remove barriers to the demand for energy services and ensure that energy distributors and/or retail energy sales companies selling electricity, gas, district heat and/or heating oil:</p> <p>(a) <del>offer and actively promote energy services as an integral part of the distribution and/or sales of energy to customers, either directly or through other energy service providers. Energy audits shall be provided for free to their customers as long as 5% of them are not covered by energy services.</del></p> <p>(b) <del>refrain from any activities that might impede the delivery of energy services, energy efficiency programmes and other energy efficiency measures or hinder the development of the market for energy services and energy efficiency measures in general. The authorities or agencies designated in Article 4(5) shall take the necessary</del></p>

<p>measures to bring such activities to an end where they occur;</p> <p>(c) provide the information on their end-use customers necessary for the appointed authorities or agencies designated in Article 4(4) to properly design and implement energy efficiency programmes, and to promote energy services and energy efficiency measures. This information should include historical and current information on end-user consumption, load profiles, customer segmentation, and geographical location of customers, where applicable, while preserving the integrity and confidentiality of commercially sensitive information.</p>	<p><del>measures to bring such activities to an end where they occur;</del></p> <p>(c) provide the information on their end-use customers necessary for the appointed authorities or agencies designated in Article 4(5) to properly design and implement energy efficiency programmes, and to promote energy services and energy efficiency measures. This information should include historical and current information on end-user consumption, load profiles, customer segmentation, and geographical location of customers, where applicable, while preserving the integrity and confidentiality of commercially sensitive information.</p>
---	--

*Justification*

- a) *If distribution companies offer energy services as part of the distribution business competition for services will be impossible to establish. If retail companies have to offer those services this constitutes an additional entry barrier into the retail market. Concerning a free provision of audits up to 5% market coverage, this will hamper a possible market development right at the beginning.*
- b) *Impediments to energy services might be seen as any advertising activities for one energy or against competing energies. Furthermore for the authority designated according to Art 4(5) it seems to be a very drastic intervention to prohibit such activities if the agency deems them detrimental to set targets.*
- c) *The correct reference seems to be Art 4(5) instead of Art 4(4).*

**Art 10**

Commission Proposal	Suggested Amendment
<p>Member States shall ensure that:</p> <p>(a) incentives to increase the volume of transmitted energy or sales of energy embedded in tariff regulation schemes in monopoly segments of the distribution of net-bound energy are removed. This may be done by the introduction of transmission and distribution tariff structures that take into account, in addition to the volume of sales, such factors as the number of customers served, by the use of revenue caps or by any other measures that can be deemed to have the same effect;</p> <p>(b) costs for investments made on the energy end-use side by distribution companies can be recovered by including them in their distribution tariffs, where appropriate, having due regard for the need to ensure equal competition and a level playing field for other providers of energy services. Cost recovery may be allowed for costs incurred in fulfilling energy service obligations pursuant to Article 6(a), provided that such costs are deemed reasonable and competitive by the responsible authority.</p>	<p><del>Member States shall ensure that:</del></p> <p><del>(a) incentives to increase the volume of transmitted energy or sales of energy embedded in tariff regulation schemes in monopoly segments of the distribution of net-bound energy are removed. This may be done by the introduction of transmission and distribution tariff structures that take into account, in addition to the volume of sales, such factors as the number of customers served, by the use of revenue caps or by any other measures that can be deemed to have the same effect;</del></p> <p><del>(b) costs for investments made on the energy end-use side by distribution companies can be recovered by including them in their distribution tariffs, where appropriate, having due regard for the need to ensure equal competition and a level playing field for other providers of energy services. Cost recovery may be allowed for costs incurred in fulfilling energy service obligations pursuant to Article 6(a), provided that such costs are deemed reasonable and competitive by the responsible authority.</del></p>

*Justification*

- a) *Any cost reflective tariff scheme brings about decreasing average costs for consumers and therefore partly results in an incentive to increase volumes. The alternative would be to implement heavy socialization of costs. Nevertheless any system of revenue or adequate formulation of price cap eliminates the incentive for the distribution company to increase volumes. Indicated additional tariff parts seem to be a special case of revenue regulation and not of the tariff scheme.*
- b) *The inclusion of those costs into network cost basis may well impede the establishment of a service market outside distribution companies, as they have less risk and less acquisition costs.*

**Art 13**

Commission Proposal	Suggested Amendment
<p>Member States shall ensure that:</p> <p style="padding-left: 40px;">all end-use customers of net-bound energy distribution and/or retail supply companies are provided with competitively priced individual meters that accurately reflect the customer's actual energy consumption and actual time of use.</p>	<p>Member States shall ensure that:</p> <p style="padding-left: 40px;">all end-use customers of net-bound energy distribution and/or retail supply companies are provided with competitively priced individual meters that accurately reflect the customer's actual energy consumption and actual time of use <u>where appropriate</u>.</p>

*Justification*

*Time of use meters are expensive in relation to bills of small customers. These additional fixed costs would increase the tendency of decreasing average costs with volume and therefore potentially counteract the goal of the directive. Although this effect might be outweighed by the possibility of implementing demand side management.*

*Nevertheless if this measure involves major price increases for small customers, the acceptance in public will be limited. The actual implementation should depend on metering prices and the way this cost is translated into tariffs.*

September 15, 2004