

WRITTEN QUESTION E-0951/04
by Angelika Niebler (PPE-DE)
to the Commission

Subject: Interpretative notes relating to the transposition into national law of the Directives on the electricity and gas markets in the European Union

On 22 January 2004, and after the text had undergone a series of revisions, the Energy and Transport DG published on the Internet interpretative notes for the transposition into national law of the Directives on the electricity and gas markets in the European Union. Those interpretative notes lay down the procedures for the transposition by the Member States of Directives 2003/54/EC¹ and 2003/55/EC² into national law. They include some very detailed and far-reaching requirements which exceed those laid down in the Directives. For example, the role and actions of national regulatory authorities are specified in detail, and that restricts the Member States' room for manoeuvre originally laid down. There is a danger that, in the final analysis, the interpretative notes will contribute to legal uncertainty and create effects which were not intended by the bodies which participated in the legislative process.

1. In the Commission's view, what role should the interpretative notes play in the transposition process?
2. Does the Commission share the view that the possibility cannot be excluded that the interpretative notes may lead to the creation of a de facto binding effect?
3. In the Commission's view, how will the interpretative notes guarantee that the Member States have the requisite room for manoeuvre when they transpose the Directives referred to above?
4. In the Commission's view, can the possibility be excluded that the interpretative notes will be used as a yardstick for the assessment of national transposition measures and/or that they will be attributed a specific role in any actions brought before the European Court of Justice in connection with such transposition?
5. Do the interpretative notes simply reflect the opinion of the Energy and Transport DG, or does the Commission as a body approve the notes and their content?
6. The Directives referred to are the outcome of a common legislative process. That being the case, should not the interpretative notes have been mutually agreed by the bodies which participated in the legislative process?

¹ OJ L 176, 15.7.2003, p. 37.

² OJ L 176, 15.7.2003, p. 57.