



## **Customer Protection**

# **An EREG Best Practice Proposition for Public Consultation**

**Ref: E05-CFG-03-06**

**24 February 2006**

## Invitation for interested parties to comment

On **1<sup>st</sup> March 2006**, EREG launched a public consultation on a Best Practice Proposition dealing with Customer Protection in view of the opening of retail markets (household customers and small enterprises) to competition in July 2007. The Proposition identifies strategic priorities, highlights best practice, makes recommendations and establishes basic principles.

The Proposition is aimed for helping with the implementation of the Electricity (2003/54/EC) and Natural Gas (2003/55/EC) Directives as well as for applying the national legislation in practice in the energy companies. Both the Electricity and Gas Directives include a separate annex (Annex A), which includes measures on consumer protection to be applied at least to household customers

EREG invites stakeholders to comment on issues raised in this text and in particular to the items highlighted in the summary of the Proposition. Following the termination of the public consultation period, EREG will publish all comments received from stakeholders.

If a participant would like EREG to treat their contribution with confidentiality then this must be explicitly mentioned in their reply.

Any comments should be received by **28th April 2006** and should be sent by email to [customerbestpractice@erreg.org](mailto:customerbestpractice@erreg.org). Any question to this document should in the first instance be directed to:

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Brief description and main issues of Best Practice Proposition follows.

### Customer Protection

This Best Practice Proposition aims at setting recommendations and principles for customer protection in the electricity and natural gas markets. It addresses both supply and network activities and the related services provided to customers. The Proposition includes recommendations on the way that electricity and natural gas suppliers as well as distribution network operators should provide and guarantee a high level of customer protection in electricity and natural gas markets.

The Proposition identifies three strategic priorities for customer protection. 1) Through a timely connection to a distribution network to provide the customer with energy at reasonable prices; 2) To ensure reliable and continuous supply; and 3) To help the customer effectively redress the conflict with the energy company.

## Summary

EREGEG has identified three strategic priorities for customer protection. They are 1) Through a timely connection to a distribution network to provide the customer with energy at reasonable prices; 2) To ensure reliable and continuous supply of good quality; and 3) To help the customer effectively redress the conflict with the service provider. On the basis of these strategic priorities, the major recommendations are the following:

- The customer shall be guaranteed a connection, an upgrade of connection or activation of connection to the electricity distribution network within a reasonable time after request.
- The grounds for amending or terminating a contract on supply and distribution network service should be clearly specified and the customer should be properly informed about them.
- The regulatory authorities should ensure that the tariffs and prices for connection and other network services are non-discriminatory, reasonable and transparent.
- The network operators should make their best efforts to ensure their customers' supply of electricity with good quality. The network regulatory systems applied to distribution network operators should include right and proper incentives to promote supply of good quality.
- Efficient arrangements for the supplier of last resort or equivalent instruments should be enforced to protect retail customers.
- Efficient, transparent and neutral mechanisms should be established to make sure that eligible passive customers are supplied in a proper manner.
- A dispute settlement system that the customer can use without a charge should be available. The dispute settlement system should be neutral, transparent and efficient.

## Subject matter and scope

1. This Best Practice Proposition aims at setting recommendations and principles for customer protection in the electricity and natural gas markets. It addresses both supply and network activities and the related services provided to customers. The Proposition includes recommendations on the way that electricity and natural gas suppliers as well as distribution network operators should provide and guarantee a high level of customer protection in electricity and natural gas markets.

2. The Proposition has as its purpose to assist with the implementation of the Electricity (2003/54/EC) and Natural Gas (2003/55/EC) Directives as well as to assist the application of national legislation in practice to energy companies. Both the Electricity and Gas Directives include a separate annex (Annex A), which includes measures on consumer protection to be applied at least to household customers.

3. The Proposition covers the rules and practices regarding customer protection in the retail electricity and natural gas markets. For this purpose, the retail market is defined to be the market for household customers and for small enterprises.<sup>1</sup>

4. The ERGEG Best Practice Propositions on Price Transparency and Supplier Switching complement this Best Practice Proposition through addressing the price transparency and supplier switching issues in particular. Indeed, they contain a number of elements related to customer protection. These three Propositions are recommended to be assessed and applied together to ensure the full coverage of customer protection aspects.

### **Definition and significance of customer protection in electricity and gas markets**

5. For the purpose of this Proposition, the following definitions shall apply

“Customer protection” stands for, as defined in the Electricity and Natural Gas Directives (2003/54/EC and 2003/55/EC, Article 3), measures ensuring transparency regarding general contractual terms and conditions, general information and dispute settlement mechanisms.

“Default supplier” stands for the Supplier to which the customer is attributed when he does not choose a supplier.

“Supplier of last resort” stands for a Supplier who is obliged to provide energy to final customers in emergency situations according to national legislation when the chosen supplier does not serve or cannot serve.

“Dispute settlement mechanisms” are the mechanisms in place to resolve disputes related to transmission, distribution and supply of energy.

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<sup>1</sup> Directive 2003/54/EC concerning common rules on the internal market in electricity states in its Article 3, paragraph 3 that Member States shall ensure that all households and where Member States deem it appropriate, small enterprises (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million) enjoy universal service.

“Eligible customers” are customers who are free to purchase energy from the supplier of their choice.

6. The Electricity Directive emphasizes the importance of customer protection. Article 3 of the Electricity Directive states that Member States shall ensure that all household customers and, where Member States deem it appropriate, small enterprises, enjoy universal service that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort.

7. According to Article 3 (5) Member States shall take appropriate measures to protect final customers, and shall in particular ensure that there are adequate safeguards to protect vulnerable customers, including measures to help them avoid disconnection. For that purpose Member States may take measures to protect final customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Furthermore, Member States shall ensure that the eligible customer is in fact able to switch to a new supplier.

8. The Natural Gas Directive imposes obligations on Member States and suppliers as well as on network operators regarding customer protection in the field of natural gas supply. Accordingly, Member States shall take appropriate measures to protect final customers and to ensure high levels of consumer protection.

9. According to the Natural Gas Directive's Article 3 (3) Member States shall take appropriate measures to protect final customers and to ensure high levels of consumer protection, and shall, in particular ensure that there are adequate safeguards to protect vulnerable customers, including appropriate measures to help them avoid disconnection. In this respect they may take appropriate measures to protect customers in remote areas who are connected to the gas system. Additionally, Member States may appoint a supplier of last resort for customers connected to the gas network. Likewise as for electricity, Member States shall ensure high levels of consumer protection, particularly regarding general contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall also ensure that the eligible customer is effectively able to switch to a new supplier.

### **Status of customer protection in ERGEG member countries – ERGEG report**

10. In autumn of 2005, the ERGEG published a status report on customer protection. The report touches among other things upon commercial quality of supply, dispute settlement, supplier of last resort and how Member States participating in the survey manage these issues.

11. Many countries do not have official standards for commercial quality. Furthermore, the standards are very country-specific and vary greatly among different countries.

12. On the other hand, the respondent countries seem to have similar basic approaches to dispute settlement. In the majority of cases, the energy regulators are involved and have a role in dispute settlement. They receive complaints from the customers, investigate them and give a decision to be followed by the parties. However, in some countries, the regulator does not have the powers to investigate complaints from the customers but can influence the solving of problems on a more general level through for instance regulations, codes, recommendations and terms of licences. In a number of cases, some kind of consumer protection board also exists that is mandated to investigate and decide on consumer complaints in the electricity and gas sector.

13. As regards supplier of last resort, in most countries surveyed, the local distribution company or the incumbent supplier is the one who has an obligation to take care of supply for all the customers in the network area. The terms of the service are usually regulated.

14. Not all the countries have special provisions concerning the supply to vulnerable customers and in these cases state social assistance is used as a form of economic last resort to help such customers to pay for their energy bills.

15. Annex A in both Electricity and Gas Directives states that among the measures referred to in Article 3 of the Directives to guarantee consumer protection is the task to ensure that customers have a right to a contract with their electricity/gas service provider that specifies among other things: the identity and address of the supplier; the services provided; the means to get up-to-date information on tariffs; the duration of the contract; the conditions for renewal and termination of services and of the contract; any compensation and the refund arrangements which apply if contracted service quality levels are not met; and the method of initiating procedures for settlement of disputes. Regarding the contract and the items in it, various approaches exist to guarantee consumer protection. One approach is to rely solely on general contract legislation and this is applied mainly to supply contracts in the competitive part of the market. Very often the general contract legislation is complemented by electricity and gas sector specific legislation to lay down the minimum requirements. Standard terms set by authorities are used in some countries. Another approach is to use standard agreements within the industry and self-regulation.

16. In most of the respondent countries suppliers must ensure the public availability of terms of sale, prices, pricing principles and other contractual terms. The time required for publication of modifications on terms and conditions generally varies between 14 and 30 days.

17. In most countries the supplier's right to terminate the contract is very limited and must be justifiable. Specifically, customer debt and electricity theft are the two of the most commonly accepted reasons for termination.

18. The opening up of electricity and gas markets and the resulting unbundling of energy and network services creates a new situation with relation to contracts. The customer may have separate contracts with the supplier and the distribution network operator, or the customer may have one contract with the supplier whilst the supplier deals with the distribution network operator or the customer may be able to choose between these two options.

### **Strategic priorities for customer protection**

19. On the basis of the ERGEG report on customer protection and on the basis of the experiences and knowledge of the ERGEG member regulatory authorities, strategic priorities for customer protection have been identified. The three strategic priorities for customer protection are 1) Through a timely connection to a distribution network to provide the customer with energy at reasonable prices; 2) To ensure reliable and continuous supply; and 3) To help the customer effectively redress the conflict with the energy company.

#### **Through a timely connection to a distribution network to provide the customer with energy at reasonable prices**

20. The customer shall be guaranteed a connection, an upgrade of connection and activation of the connection to the electricity network within a reasonable time after request to the service provider, which is either the distribution network operator in the case of separate contracts for energy and distribution network services or the supplier in the case of integrated contracts. The same shall apply to customers requesting a connection to a natural gas network in those areas where a natural gas network exists.

21. The service provider has to give to the customer, prior to making a contract on connection and/or distribution network services, information on the relevant terms and conditions. Either through making a written contract or sending a confirmation to the customer it has to be ensured that the customer has received sufficient and correct information on the services he/she has contracted for.

22. The customer has to be offered the possibility to enter a contract on connection, distribution network services and electricity/gas supply either for a specified period or until further notice.

23. The service provider has the right to suspend or terminate a connection contract if the customer has essentially violated his/her obligations that are based on the connection contract, and furthermore, if the customer has not remedied his/her breach of contract within a reasonable time given by the service provider. The service provider has to send a written notification about the annulment of the contract. In the notification, the grounds for annulment and the expiry date of the contract have to be clearly specified.

24. The service provider has the right to suspend or terminate a supply contract, a distribution network contract or an integrated contract covering both supply and distribution network service if the customer has essentially violated his/her obligations that are based on the contract, and furthermore, if the customer has not remedied his/her breach of contract within a reasonable time given by the service provider. Examples of such breaches of obligation are payment default or electricity theft. The service provider has to send a written notification about the annulment of the contract. In the notification, the grounds for annulment and the expiry date of the contract have to be clearly specified.

25. The service provider may amend the terms and conditions of the connection contract, distribution network contract, supply contract and integrated contract on the grounds specified in the contract, on the condition that the contents of the contract do not change essentially. Additionally, the contracts may be amended if the amendment is based on a change in legislation or a decision given by an authority if the service provider has not been able to take that into consideration while entering the contract. Furthermore, the contracts may be amended on the special grounds specified in the legislation.

26. Connection and activation of connection times are regarded as important elements of commercial quality of network service. To ensure a good level of service for network connection and its activation, maximum length of connection and activation of connection times can be imposed by legislation or rules set by regulatory authorities at a national level. The customer has to be informed accordingly about the service standards related to network connection and activation of connection.

27. If the provision of connection or activation of connection to the distribution network is delayed, the customer should be compensated for the delay.

28. The regulatory authorities should ensure that the tariffs and prices for connection and other distribution + network services are non-discriminatory, reasonable and transparent. The Electricity and Natural Gas Directives require that the regulatory authorities shall be responsible for fixing or approving, prior to their entry into force, at least the methodologies used to calculate or establish the terms and conditions for connection and access to national networks, including transmission and distribution tariffs.

### **To ensure reliable and continuous supply of good quality**

29. As society has become increasingly dependent on the availability of electricity, and of natural gas supply to the customers who are using it, the uninterrupted supply of energy to customers via networks is a key element of network service.



30. The network regulation regimes applied to service providers should include right and proper incentives to promote supply of good quality. Such regimes could entail economic incentives included in economic regulation of distribution network activities and/or technical indicators monitored and applied in technical regulation of distribution networks.

31. Distribution network operators should make their best efforts to ensure their customers' supply of electricity/gas with good quality. Customers should be entitled to compensation in case the supply is interrupted for a non-negligible time.

32. Efficient arrangements for supplier of last resort should be enforced to protect the retail customers. The service provider shall not terminate supply due to a reason related to retail supplier before the service provider has informed the customer about the termination and its cause. The service provider has to continue to supply the customer for a reasonable time after the customer has been informed about the termination.

33. In countries where there is a Default Supplier, efficient, transparent and neutral mechanisms should be established to make sure that customers who have not chosen their supplier are supplied in a proper manner.

34. The mechanisms for supplier of last resort and default supplier should be neutral for the suppliers in such a way that they support the newly established market mechanism.

35. Mechanisms to attend vulnerable customers, as defined by national law, and their special needs in the electricity and natural gas markets should be established to ensure the necessary protection of these customers while at the same time taking into account the neutral treatment and equal market position of energy retail suppliers.

### **To help the customer effectively redress the conflict with the service provider**

36. A dispute settlement system that the customer can use without a charge should be available. The dispute settlement system should be neutral and transparent.

37. Customers should be properly informed about their right to dispute settlement. This information should contain detailed instructions on where and how to turn to dispute settlement.

38. The time to take care of dispute settlement should be reasonable. Accordingly, Member States and relevant authorities should make their best efforts to guarantee timely procedures.

39. Due to the special nature and technicalities of energy related disputes, energy knowledge should be guaranteed in the dispute settlement system to safeguard the interests of both the customer and the service provider and to reach a sustainable solution for dispute.

40. It would be advisable for the service providers to establish a code of conduct describing the ways to prevent a conflict and the practices to be followed to reach an acceptable and sustainable solution.

## Appendix – Definitions

### Terms extracted from directives 2003/54/EC and 2003/55/EC

**Complaint:** A charge against a supplier or a transmission/distribution operator.

**Consumer protection:** Measures ensuring “transparency regarding general contractual terms and conditions, general information and dispute settlement mechanisms” (2003/54/EC and 2003/55/EC art.3).

**Contract:** Written agreement between the client and the supplier, or between the client and the transmission/distribution operator for the provision of a certain service or product.

**Customers:** “Wholesale and final customers of energy” (2003/54/EC art.2 §7 and 2003/55/EC art.2 § 24).

**Customer protection:** Same definition as Consumer protection.

**Disconnection:** The action of interrupting delivery of energy to a point of supply. This action can be initiated by the supplier, the network operator or the customer.

**Dispute:** Argument or disagreement between parties (a customer, a supplier and a transmission/distribution operator).

**Dispute settlement mechanisms:** The mechanisms in place to resolve disputes related to transmission, distribution and supply of energy.

**Distribution:** The transport of energy through local or regional networks with a view to its delivery to customers, but not including supply (2003/54/EC and 2003/55/EC art.2 §5).

**Eligible customers:** “Customer[s] who [are] free to purchase energy from the supplier of [their] choice” (2003/54/EC art.2 §12 and 2003/55/EC art.2 § 28). “From 1 July 2004, [...] all non-household customers” (see this definition). “From 1 July 2007, all customers” (see this definition) (2003/54/EC art.21 and 2003/55/EC art.23).

**Final Customers:** “Customers purchasing energy for their own use” (2003/54/EC art.2 §9 and 2003/55/EC art.2 §27).

**Household customers:** “Customers purchasing energy for their own household consumption, excluding commercial or professional activities” (2003/54/EC art.2 §10 and 2003/55/EC art.2 §25).

**Service provider:** A provider of services related to energy supply or distribution/transmission. A Service provider is not necessarily a Supplier (see this definition).

**Small enterprises:** “Enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million” (2003/54/EC art.3 §3).

**Supplier:** Seller or reseller of energy to customers (see Supply).

**Supplier of last resort:** A supplier of last resort is obliged to provide energy to final customers in emergency situations according to national legislation when the chosen supplier does not serve or cannot serve.

**Supplier switching:** The action through which a customer changes supplier.

**Supply:** “The sale, including resale, of energy to customers” (2003/54/EC art.2 §19 and 2003/55/EC art.2 §7).

**Transparency:** Principle of openness, honesty and accountability in public and private transactions. Concerning customer protection, the principle of transparency applies to “contractual terms and conditions, general information and dispute settlement mechanisms” (2003/54/EC art.3 §5 and 2003/55/EC art.3 §3).

**Universal service:** “Right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices” (2003/54/EC art.3 §3).

**Vulnerable customers:** Customers defined by national laws as persons to be protected in their relations with energy suppliers (example: disabled, chronically sick, pensioners, living on low-incomes and living in remote areas).

**Other relevant terms:**

**Activation:** The action of enabling the delivery of energy to a specific point of supply. Activation and connection might be separately requested by the final customer.

**Connection:** The action of physically connecting a point of supply to the network. Only new points of supply are concerned by a connection, existing points of supply are considered connected (but not necessarily with an activated meter. Activation (see this definition) must take place following connection if the customer wants to use energy.

**Default supplier:** The Supplier (see this definition) to which the customer is attributed when he does not choose a supplier.

**Disconnection:** A point of supply whose meter has been de-activated and no energy can be consumed/supplied.

**Incumbent supplier:** The historical supplier in a specific geographical area (sometimes with the obligation to supply energy to local customers).

**Integrated contract:** A contract related to the access to the energy network and the supply of energy. This contract is usually signed by the customer with the supplier (who has its own agreement with the system operator).

**Supply contract:** A contract exclusively related to the supply of energy to the customer. This contract is signed by the customer with the supplier.