



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Security of supply, Energy markets & Networks
B.2 - Electricity & Gas

Brussels, 15 June 2010
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Mr Waldemar Wietrzykowski,
ul. Jableczna 38/1
50-539 Wrocław
Poland

Subject: Your complaint to the European Commission of 2 March 2010 concerning failure to comply with Community Law (Directive 2009/72/EC)

Dear Mr. Wietrzykowski,

The Commission has received and registered your complaint submitted to the Commission on 23.03.2010. The complaint concerned Polish authorities' alleged negligence of transposing Directive 2009/72/EC¹ provisions on vulnerable consumer into the national law. As a proof of this negligence, you quoted Article 6(3) a) of the Polish Energy Law of 10 April 1997 (Dz. U z 2006 r. Nr. 89, poz. 625) that gives the power companies the right to suspend the supply of gas, electricity or heating if the consumer delays paying the bills for used gas, electricity or heating or connected services at least one month after the deadline for the payment and after the consumer has been informed in writing about the company's intention to suspend the supply and been granted additional two weeks for settling the outstanding amounts.

Article 3(7) of the 2009/72/EC directive is indeed obliging the Member States to take appropriate measures to protect final customer, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable costumers. The same article provides for Member States' obligation to define the concept of vulnerable costumers. The protection of vulnerable costumers may refer to a prohibition of disconnection at critical times.

However, while the Directive 2009/72/EC was adopted in June 2009 and entered into force in September 2009, the measures defined in the Directive 2009/72/EC shall apply from 3 March 2011. It means that the Member States are required to transpose the provisions of the Directive 2009/72/EC by 3 March 2011. Until this date, the provisions of the Directive 2003/54/EC apply.

¹ 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

It should be noted that also Article 3(5) of the Directive 2003/54/EC already requires from the Member States to take appropriate measures to protect final costumers and in particular vulnerable costumers. The definition of vulnerable consumers is left for Member States' discretion, as it must also take into account other social policy measures that are being used to protect vulnerable consumers. As a result, each Member State has broad discrepancy in pursuing its policies aimed at protecting vulnerable customer and there is no strict obligation to make explicit reference to vulnerable customer in the national law. One of the reasons behind the Commission's proposal to replace the Directive 2003/54/EC was to strengthen the provisions relating to the consumer protection.

As soon as the deadline for the transposition of the Directive 2009/72/EC lapses (on 3 March 2011), the Commission will in detail examine national law of each Member State so as to make sure that it contains definition of vulnerable customer and that adequate measures to protect vulnerable costumers exist.

Yours sincerely,



Heinz Hilbrecht
Acting Head of Unit

Heinz HILBRECHT
Directeur