



**EREG's response to
the European Commission's
public consultation document
"Towards a European Charter of the
Rights of Energy Consumers"**

**Ref: E07-CFG-15-03
12 September 2007**

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Executive summary

The paper constitutes the response by the European Regulators Group for Energy and Gas (ERGEG) to the European Commission's public consultation on the document "Towards a European Charter of the Rights of Energy Consumers".

ERGEG welcomes the European Commission's initiative to address the need for effective consumer protection on the electricity and gas markets. In this context, it is imperative to focus on the legislative, technical and administrative structures that have to be in place in order to offer an energy market in which consumers can and will actively participate. ERGEG supports the Commission's initiative to present key goals in a short and comprehensible document.

For many years, ERGEG has worked with a special focus on electricity and gas consumers. It is therefore now gratifying to experience the birth of a European Commission Consumer Charter, and to understand that it is in great part in line with ERGEG positions. An area of special importance is how to protect vulnerable consumers. As ERGEG has stated in its Position Paper on End-user Price Regulation (E07-CPR-10-03, 18 July 2007), building competitive electricity and gas markets is in the general interest of customers. Protecting "vulnerable customers" remains necessary in a competitive market but the protection of "vulnerable customers" should not be confused with maintaining regulated prices for all (or certain categories of) customers. The tools used for the protection of vulnerable customers must work in line with and support the prerequisites of open, competitive markets. Any policy aimed at protecting vulnerable customers must therefore be brought into line with market conditions and not hinder the efficient functioning of a competitive market.

As a general remark, ERGEG notes that the status of the Charter is not yet clear, and it is still uncertain which parties are going to sign it. Furthermore it is not easy to pinpoint the exact target groups for a charter. ERGEG suggests that the target group of the Charter should be residential consumers, and that it should be signed by all stakeholders who have a role to play in making the Charter become a reality. The Charter should express the European Commission's, Member States' and relevant actors' strong political commitment to the energy consumer, and present visions of a near future in which the consumer is an actor of a well-functioning market, with good protection for the vulnerable consumer.

The key goals set up in the Charter are highly relevant for the market functioning in general and for consumers' situations in particular. However, ERGEG proposes some small changes. Furthermore, we feel it is important that the document clearly specifies the aim, status and target groups as well as giving some brief information on the electricity and gas markets, since we know that they are not easy to comprehend.

Some of the ERGEG positions on consumer issues are described in the following documents, which can be found on www.ergeg.org:

- End-User Energy Price Regulation – An ERGEG Position Paper (E07-CPR-10-03), 18 July 2007
- ERGEG Status Review on End-user Price Regulation (E07-CPR-08-04), 14 June 2007
- Obstacles to switching in the gas retail market – Guidelines of Good Practice and Status Review (E06-CSW-05-03), 18 April 2007
- Customer Information Handbook – A Review of Good Practices (E06-CPR-0403), 6 December 2006
- Transparency of Prices – Best Practice Proposition (E05-CFG-03-04), 21 July 2006
- Supplier Switching Process – Best Practice Proposition (E05-CFG-03-05), 21 July 2006
- Customer Protection – Best Practice Proposition (E05-CFG-03-06), 21 July 2006

Consumers play a key role in stimulating competition between suppliers by “shopping around” for the best value and exercising their right to choose. Thus it is essential to increase consumers' knowledge of their rights and possibilities. All stakeholders on the energy markets have a joint responsibility to create attractive markets. Regulators will continue to be active participants in consumer issues, both as advisors to the European Commission at an EU level and in our daily national work.

1. Introduction

The European Regulators Group for Electricity and Gas (EREGEG) welcomes and supports the outline, propositions and basic ideas of a charter for European electricity and gas consumers.

The opening of the energy markets on 1st July this year was indeed a milestone but is simply not enough. It must go hand in hand with integrating national markets, establishing strong, independent regulation and effective unbundling - all part of the current debate in the EU Institutions. Only then will Europe deliver to energy consumers the levels of security, choice and competition that they expect.

EREGEG has strongly supported the European Commission in launching the 2007 consumer awareness campaign, in order to explain to energy consumers their rights and to better understand how to change their supplier.

EREGEG welcomes the European Commission's initiative to address the need for effective consumer protection on the energy markets.

In this context, it is imperative to focus on the legislative, technical and administrative structures that have to be in place in order to offer an energy market in which consumers can actively participate. Therefore ERGEG supports the Commission's initiative to include the key goals in a short and comprehensible document.

The following ERGEG comments and suggestions on the Charter are structured in two parts. The first part focuses on the broad scope of the Charter, the second part on the different elements in Annex1 of the document "Towards a European Charter of the Rights of Energy Consumers", ANNEX 1. The paragraphs are numbered as they are found in the ANNEX. We have also numbered our suggestions ("EREGEG advocates...") in consecutive order.

2. Comments and suggestions on the broad scope of the Charter

2.1 Aim of the Charter

According to the Commission's MEMO/07/278 the only aim of the Charter is "to inform EU citizens about their rights relating to electricity and gas".

Comment 1: If this is the aim, the Charter should contain only the legislation already in place. Otherwise, consumers will find the information confusing. Is it a document showing a vision, or instrumental information for the consumer? However, when reading the text, ERGEG gathers that another aim is to encourage and establish a commitment among Member States and other stakeholders.

Comment 2: It is also not always clear what type of consumer the Charter is directed at: residential/households or small businesses? ERGEG believes it should only be targeted at residential consumers. "Citizens" is a confusing term.

1. ERGEG advocates that

it should be expressly stated that the Charter is only directed at residential consumers. The Charter should express the European Commission's, Member States' and relevant actors' strong political commitment to the energy consumer, and present visions of a near future in which the consumer is an actor of a well-functioning market, with good protection for the vulnerable consumer. This aim should be clearly expressed at the outset.

2. ERGEG advocates that

in the introduction, an explicit reference to "electricity and gas residential consumers" should be made, instead of "energy consumers", to avoid any misunderstanding by consumers.

Comment 3: The Charter should explicitly state that a major purpose of the internal energy market initiatives of introducing competition and regulating network monopoly activities is to increase consumer influence and protection.

3. ERGEG advocates that

The introduction should explicitly state that a major purpose of the international energy markets initiatives is to increase consumer influence and protection.

Comment 4: Under EU law, “vulnerable customers” are safeguarded under the liberalised market framework. How does the Charter relate to that? What kind of special customer protection does the Charter address?

2.2 Status of the Charter

The proposed outline of the Charter implies that it will contain a) parts of the Electricity and Gas Directives, b) parts that are not legally binding.

The parts that are not legally binding are defined as “Possible elements for the implementation of Community legislation”, “Possible supplementary elements to be achieved through self-regulation”, and “Possible supplementary elements coming under Member State’s responsibility”.

Comment 1: The sentence *“The future European Charter on the Rights of Energy Consumers is not intended to be a legal document”* in the introduction should be replaced by *“The future European Charter on the Rights of Energy Consumers is not a legal document”*, as it is not legally possible to turn it into a legal document. It is a document which complements the Electricity and Gas Directives and other relevant EU legislation, by committing the signers of the charter to show and improve their work for energy consumers.

Comment 2: The content of the Charter is directed at different actors: governments, regulators, industry (suppliers and distributors) and consumer representatives. Who should then sign the Charter? ERGEG recognises that some regulators will, for constitutional reasons, have difficulties in signing the Charter.

Comment 3: The Charter should clearly state what the signing of the Charter entails for the signing parties.

4. ERGEG advocates that

the Charter should at the outset describe its aim, how its content should be implemented and the implications for the signing parties.

2.3 Structure of the Charter

Comment 1: It is important to understand how the key goals could be achieved, as well as the relevance of the goals to the nine issues stated in the Charter itself. As the document (ANNEX 1) is now formulated, the key goals are not mentioned at all.

5. ERGEG advocates that

the Charter text (A – I), including the headings, be structured under the headings of the four key goals.

Comment 2: The structure of ANNEX 1 is unclear. The same or similar headings appear in three places.

6. ERGEG advocates that

the ANNEX could, for instance, have the following headings:

1. BACKGROUND AND STATUS
2. GOALS OF THE CHARTER
3. HOW TO REACH THE GOALS (presented under the four key goals respectively)

The background could include references to and small summaries of basic documents, such as:

- the general EU rules on consumer protection as stated in article 153 of the EU Treaty,
- specific EU legislation including Regulation 2006/2004 on cooperation between national authorities on consumer protection,
- the specific consumer protection rules in EU energy legislation.

2.4 Understanding energy markets

The comments and suggestions below are based on EREGEG experiences with open energy markets as well as on the ongoing discussion within the European Institutions and EREGEG concerning unbundling between distribution and supply.

Comment 1: The EREGEG experience from the countries that already have some history of fully opened energy markets is that many consumers have great difficulties in understanding that there are different market actors. The main problem is understanding that there is a difference between monopoly and open market, between distributors and suppliers. EREGEG is fully aware that the texts in the directives often refer to both the functions of distributors and suppliers, but when copying these into a charter it is very important to clarify which actor is concerned.

7. EREGEG advocates that

the Charter text is as explicit as possible by always making it clear whether the paragraphs refer to distributors or suppliers or both: What price is referred to? Which type of contract is referred to? These are just two examples. If the Charter is supposed to be read by a consumer, confusing terminology should be avoided and it would benefit from a short description of the differences actors in the energy sector.

Comment 2: The terms “prices” and “tariffs” are not defined in the Charter.

8. EREGEG advocates that

the Charter defines, at the beginning, what exactly is to be understood by “prices” and “tariffs”, and that in each instance where these are used, it be specified what is meant (is it e.g. the total price, the network tariff, or the energy end-user price).

2.5 Key goals

The Commission's Communication "Towards a European Charter of the Rights of Energy Consumers" presents four key goals:

- assist in establishing schemes to help the most vulnerable EU citizens deal with increases in energy price,
- improve the minimum level of information available to citizens to help them choose between suppliers and supply options,
- reduce paperwork when consumers change supplier, and
- protect consumers from unfair selling practices.

It is ERGEG view that the four key goals describe the most important areas. We would, however, like to propose some changes.

Comment 1: It is very important to establish well-functioning energy markets. End-user price regulation in electricity and gas markets distorts the functioning of the market and jeopardizes both security of supply and the efforts to fight climate change. ERGEG advocates that end-user price regulation should be abolished, or where appropriate, brought into line with market conditions. These issues need to be highlighted in the key goals.

Comment 2: The first goal states that vulnerable citizens should be helped in dealing with "increases in energy price". We know that vulnerable consumers could have problems with paying the energy bill without having had any increase in the prices. Even a decrease in prices could still be too high a price if you are poor. "Increase in energy prices", and price fluctuations in general, are an integrated element of a well functioning competitive market, in order to ensure macroeconomic optimal resource-allocation.

Comment 3: ERGEG would interpret the term "energy services" as concerning services *aside* from energy and network prices. The term "energy services" needs to be clarified.

9. ERGEG advocates that

the first goal could be formulated as follows:

- assist in establishing schemes to help the most vulnerable EU consumers deal with the provision of energy services, without disturbing the market. Energy services includes

Comment 4: The third goal should make clear what is meant by the phrase “reduce paperwork” and to clarify for whom. It is also not sufficient to focus on the paperwork only. What about queuing on telephone lines, internet service problems and other administrative problems for different stakeholders?

10. ERGEG advocates that

the third goal could be formulated as follows:

- reduce administrative work and inconvenience for consumers, distributors and suppliers when consumers change supplier.

3. Comments and suggestions on the elements of the Charter (ANNEX 1)

3.1 Possible elements for an introduction

Comment: The energy markets are to be developed to give the consumers the possibility to buy energy from foreign countries. In this regard, it is important to also mention the suppliers in the fourth paragraph.

11. ERGEG advocates that

paragraph 4 should be formulated as follows:

Under no circumstances should consumer rights be misused to favour domestic energy producers or suppliers at the expense of producers or suppliers in other Member States.

3.2 Elements for a future European Charter ...

3.2.1 CONNECTION

Comment 1: 2 A: The term “connection” refers to distribution. Parts of the content in this chapter refer to suppliers.

12. ERGEG advocates that

the heading is changed to CONNECTION AND SUPPLY

Comment 2: 2 A, d): To protect vulnerable consumers it is of utmost importance to emphasize that distributors must take appropriate measures to avoid interruptions of supply.

13. ERGEG advocates that

a new part is added to this chapter, formulated as follows:

Network operators must take appropriate measures to avoid interruptions of supply. Planned interruptions (for example due to maintenance or repair of a network) require a justified pre-warning sent within a minimum delay. In the case of disconnection due to a consumer fault (e.g. non-payment of invoices), network operators and suppliers should provide all means possible to allow consumers to rapidly resolve the situation that has justified the disconnection, and for supply to be reinstated.

3.2.2 CONTRACT

Comment 1: 2 B a): As previously mentioned, this chapter needs to make clear where the paragraphs refer to distributors or suppliers or both. ERGEG believes that the consumer should benefit from having adequate information in both types of contracts.

14. ERGEG advocates that

the CONTRACT chapter clearly sets out what the consumer should expect from a distribution contract and a supplier contract *respectively*, where applicable.

Comment 2: 2 B c): The basis for energy delivery is physical connection, and the right to this connection. This right should be emphasized.

15. ERGEG advocates that

a new third part is added to the CONTRACT chapter 2 B c), formulated as follows:

- tariffs for connection and other distribution and network services should be non-discriminatory, reasonable and transparent.

Comment 3: 2 B c) point 1: As regards the issue of energy efficiency, the Charter refers to “comparative end-user profiles”. However, there must be some interpretation of the data with concrete, individual suggestions for consumers on how to increase their energy efficiency.

Comment 4: 2 B c) point 1: As regards “informative billing” it is important to emphasize the fact that many consumers have great difficulties in understanding their energy bill. One reason is that the market is difficult to understand, another factor is that many countries require a lot of information to be presented on the bill. It is a delicate issue to find the balance between necessary information that the consumer needs and presenting too much information that obscures the essential information; for example the information necessary to enable the customer to switch to a new supplier. Information beyond that should be carefully considered. There are several possible alternative channels that can be used for communicating information to the consumer. ERGEG therefore considers that all relevant stakeholders should take care when prescribing additional information to be included on bills.

Comment 5: 2 B c) point 1: As regards the issue of energy efficiency, ERGEG finds it more appropriate to move this part to a self-regulation paragraph (d), and with a slight change of wording.

16. ERGEG advocates that

the last part of point 1 (2 B c), “specification on ...” is deleted and replaced by a new part under a self-regulation heading, formulated as follows:

d) Possible supplementary elements to be achieved through self-regulation

Concerning advice on energy efficiency improvement measures, there could be information provided by the supplier as part of, or accompanying, the contract on how customers can get information and advice on ways to increase their energy efficiency.

3.2.3 PRICES, TARIFFS AND MONITORING

17. ERGEG advocates that

the heading be changed, as follows:

PRICES, TARIFFS, BILLS AND METERING

Comment 1: 2 C c), point 1, goes far beyond what monitoring bodies in some countries can present publicly.

18. ERGEG advocates that

In paragraph 2 C c) point 1 only the first sentence should be retained: Competent bodies at national level should monitor the electricity and gas offers available on the market.

19. ERGEG advocates that

a new sixth paragraph is added under 2 C d), formulated as follows:

6. Relevant bodies can present results of price monitoring to the public in a manner making it possible for consumers to compare prices and the basic conditions of available offers.

Comment 2: It is important to clarify the difference between tariffs (monopoly) and energy prices. ERGEG presumes that paragraph 2 C d) 3 refers to energy price.

20. ERGEG advocates that

paragraph 2 C d) 3 be slightly changed to read as follows:

Energy price calculators should be easily available to consumers, and information on energy prices should be published at regular intervals.

Comment 3: 2 C d) 4: The estimation of energy consumption is still a problem in some Member States.

Comment 4: 2 C d) 4: As has been mentioned above, it is well known that many consumers have great difficulties in understanding their energy bill. See comment 3.2.2, comment 4.

21. ERGEG advocates that

paragraph 2 C d) 4 be formulated as follows:

Energy invoices should be timely and frequent enough to provide accurate and comprehensible information. Where applicable, it should also reflect actual consumption.

Comment 5: 2 C: According to EU legislation, invoices must be consumer-friendly and transparent. However, this is often not yet the case.

22. ERGEG advocates that

a new eighth part is added under paragraph 2 C d) formulated as follows:

Energy invoices should present information on the present electricity/gas energy price as well as distribution network price (where appropriate) in a clear and transparent way.

Comment 6: 2 C d) point 5: ERGEG is unclear as to what the term "Promotion offers" means. It needs clarification.

23. ERGEG advocates that

paragraph 2 C d) point 5 is formulated as follows:

5. Promotion offers, such as, should ensure that European energy consumers benefit, to a large extent, from metering facilities that reflect actual consumption and information on the time of use.

3.2.4 FREE CHOICE OF SUPPLIER

Comment 1: 2 D, d): The supplier switch must be easy for the consumer. He/she should only need to be in contact with one party, preferably the new supplier.

24. ERGEG advocates that

paragraph 2 D d) point 1 is formulated as follows:

1. European energy consumers should benefit from an improvement in the efficiency of existing switching procedures. The period required for switching to a new supplier of electricity or gas should therefore not last longer than one month after the contract has been signed. The consumer should only need to be in direct contact with one party, preferably the new supplier, when initiating the switch.

25. ERGEG advocates that

a new third part be added to the FREE CHOICE OF SUPPLIER chapter, 2 D d), formulated as follows:

It should be ensured that the new supplier to a consumer quickly gains access to the data on its new consumer through the distributor, in an uncomplicated and non-discriminatory way and without incurring cost.

Comment 2: 2 D d) 2: The inclusion of the minimum contract duration is not sufficient for the consumer to directly deduct when he/she can switch supplier; also the notice period must be stated clearly, using an unambiguous wording.

26. ERGEG advocates that

the text under 2 D d) 2 be elaborated so as to read as follows:

2. Should contract conditions of the energy supply contract require a minimum contract duration, the expiry date and the notice period for the termination of the contract should be easily available for the customers, e.g. on the energy bill.

3.2.5 COMPLAINTS

Comment 1: ERGEG differentiates between complaints and disputes. Given that annex A of the electricity and gas directives refer to complaints, ERGEG suggests that this chapter in the Charter deal with disputes.

Comment 2: 2 F a): If the Charter is supposed to be targeted at the consumer, “the principles set out in Commission Recommendation 98/257/EC” is too difficult a wording. The consumer cannot be expected to know what is written in that recommendation.

27. ERGEG advocates that

the Charter text includes a summary of the Recommendation 98/257/EC.

Comment 3: 2 F c) and d): It is important to recognise that complaints should in the first instance be dealt with by the supplier or the network operator. Only if this fails and a complaint becomes a dispute should dispute settlement mechanisms come into play. Equally, “a common entry point”, via self-regulation, can only be for disputes, and not the initial complaint which should be made to the relevant supplier or network operator.

28. ERGEG advocates that

2 F c) 1) is amended as follows: Where the provider has proven unable to resolve a consumer's complaint, non-judicial dispute settlement...

29. ERGEG advocates that

2 F d) 3) “complaints” should be replaced with disputes.

3.2.6 REPRESENTATION

Comment 1: 2 G c) point 2: It seems that the word ‘energy’ in brackets should instead be, for instance, the energy industry.

Comment 2: 2 G c) point 3: The Commission's suggestion in point 3 applies to information provided by network operators as well.

30. ERGEG advocates that

2 G c) point 3, the words and network operators are added after the word “suppliers”.

3.2.7 SOCIAL MEASURES

Comment 1: The d) paragraph should probably be changed to c).

Comment 2: The basic idea for establishing open energy markets with unbundled market actors is the presumption that this is the best possible market for consumers. This means that we all have to find ways of acting so that consumers can experience the benefits of open markets. Well-functioning open markets attract investors and competition in prices. Fuel poverty is not necessarily related to the cost of energy. Rather, in many cases it is related to the whole income situation of a household. To take care of a vulnerable household is not the core business of a distributor or supplier. It could be more comfortable and effective for the vulnerable household not to have to deal with a business actor (or several business actors), but with an independent institution (social security system etc.) who can take care of the household's total welfare situation, of which energy is only a part.

Comment 3: The term "energy services" needs clarification.

31. ERGEG advocates that

paragraph 2 H b) point 1 be amended so as to read as follows:

European energy consumers with special needs caused by impairments or in a poor financial situation should benefit from essential energy services to maintain their physical and mental health and well-being. In order to avoid market intervention, this basic supply is to be granted through subsidies or other social measures within the general social assistance framework of each Member State. "Energy services" means

Comment 4: 2 H b) point 2: ERGEG does not comment on the varying definitions of vulnerable consumers. However, it is important that irrespective of the definitions chosen, they should not be applied "by all suppliers of electricity and gas". Member States may choose their own way of protecting vulnerable consumers, according to their welfare policy and approaches to state subsidies. To intervene in the market by establishing (regulated) social prices is not the right way to protect vulnerable consumers, where fully liberalised markets and a well-established social security scheme (already) exist.

32. ERGEG advocates that

the text under 2 H b) point 2 is shortened, formulated as follows:

2. Member States should adopt and publish a definition of vulnerable consumers, without further request by the vulnerable consumer.

Comment 5: 2 H, d): It is advisable to avoid saying that Member States should intervene in the market. As ERGEG has stated in its Position Paper on End user energy price regulation (E07-CPR-10-03, 2007), it is essential that any policy aimed at protecting vulnerable customers be brought into line with market conditions. It is of the outmost importance that any wish and attempt to protect vulnerable customers does not hinder the efficient functioning of a competitive market. Building competitive energy markets is in the general interest of customers. For this reason, it is preferable that such measures are pursued through self-regulation or voluntary initiatives, i.e. corporate social responsibility, or through direct intervention by the Member States' welfare policy initiatives.

33. ERGEG advocates that

paragraph 2 H, d) 5 is changed to be formulated as follows:

5. A transition period from regulated to not regulated end-user prices may be necessary in some countries. Even after a transition period, there may be justifications for protecting certain "vulnerable consumers", using alternatives other than regulated end-user prices.

3.2.8. UNFAIR COMMERCIAL PRACTICES

Comment: The d) paragraph should probably be changed to c).