

Decreto Legislativo 16 marzo 1999, n. 79

**“Attuazione della direttiva 96/92/CE recante norme comuni per il mercato
interno dell’energia elettrica”**

pubblicato nella *Gazzetta Ufficiale* n. 75 del 31 marzo 1999

UNOFFICIAL TRANSLATION

*Legislative Decree concerning the implementation of
Directive 96/92/EC*

THE PRESIDENT OF THE REPUBLIC

In consideration of articles 76 and 87 of the Constitution;

In consideration of Law N° 481 of 14 November 1995 containing rules for competition and regulation of services of public utility. Institution of Authorities for regulation of services of public utility;

In consideration of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity;

In consideration of Law N° 128 of 24 April 1998 containing measures for compliance with obligations deriving from Italy's membership of the European Communities and, specifically, of article 36 which delegates the Government to issue one or more Legislative Decrees for implementation of the aforesaid Directive 96/92/EC and consequently to redefine all relevant aspects of the national electrical system;

In consideration of the preliminary resolution of the Council of Ministers adopted in the meeting of 10 November 1998;

In consideration of the opinion expressed by the competent Committees of the Senate and of the Chamber of deputies of the Republic;

In consideration of the opinion of the joint Conference set up under Legislative Decree 281 of 28 August 1997;

In consideration of the resolution of the Council of Ministers, adopted in the meeting of 19 February 1999;

On the proposal of the President of the Council of Ministers, of the Minister of Industry, Trade and Crafts, and of the Minister for Community Policies, in concert with the Ministers of Foreign Affairs, of Justice and of the Treasury, of Finance and of the Treasury, of the Budget and of Economic Planning;

ISSUES

The following Legislative Decree

Chapter I
(Liberalisation of the electrical market)

Art. 1
(Liberalisation and corporate transparency)

1. The activities of generation, importation, export, purchase and sale of electricity are free, subject to compliance with the public service obligations contained within the provisions of this present decree. The activities of transmission and dispatching are reserved exclusively to the State and attributed under concession to the operator of the national transmission grid of which in article 3. The activity of distribution of electricity is performed under a concession regime: the concessions are issued by the Ministry of Industry, Trade and Crafts.
2. The Ministry of Industry, Trade and Crafts shall provide for the security and economy of the national electrical system and shall pursue these objectives through specific guidelines, with the aim also of safeguarding continuity of supply and of reducing the vulnerability of the system.
3. For the ends of the security of the system, in the transition phase, until the entry into function of the system of economic dispatch of which in section 2 of article 5, the Ministry of Industry, Trade and Crafts shall issue specific directives and in particular shall determine, by its own measures, assumption of responsibility by the operator of the national transmission system, by the single buyer and by the market operator of which in articles 3, 4 and 5.
4. Without detracting from the provisions of article 9 section 8, those organisations that perform the activities of which in section 1 under a special or exclusive title may perform other activities on condition that accounting and administrative separation are ensured, following the modalities established by the Authority for electricity and gas, or may take shares in companies or make purchases in other segments of production.
5. The functions of guidance in the sector that belong to the government, the attributions of the Authority for electricity and gas, with special reference to article 2 section 12 of Law N° 481 of 14 November 1995 and those reserved to Regions and Local Authorities are protected.

6. In order to identify instruments that could govern the social effects of the change, the progressive harmonisation of economic and regulatory treatment, the Ministry of Labour and Social security and the Ministry of Industry, Trade and Crafts shall ensure the involvement of social organisations in the start-up stage of the liberalisation process, including by appropriate forms of concertation.
7. The tariff applied to the franchise clients of which in section 7 of article 2 shall be the same in all parts of the country.

Art. 2
(Definitions)

1. For the effects of this present decree, the definitions in the following sections shall apply.
2. "*Autoproducer*" is a natural or legal person who generates electricity and utilises it in a measure of not less than 70% annually for its own use or for use of subsidiary companies, parent companies or companies controlled by the same parent and also for use by members of the co-operative societies for the production and distribution of electricity of which in article 4 number 8 of Law N° 1643 of 6 December 1962, by members of consortia or consortium companies formed for the generation of electricity from renewable sources or the uses of supply authorised in industrial sites before the date of entry into force of this present decree.
3. "*Clients*" are distribution enterprises or companies, wholesale purchasers and end purchasers of electricity.
4. "*Final client*" is the natural or legal person that buys electricity exclusively for its own use.
5. "*Wholesale client*" is the natural or legal person who purchases and sells electricity without carrying out activities of generation, transmission and distribution in countries of the European Union.
6. "*Eligible client*" is the natural or legal person who has the right, by means of this present decree, to enter into supply contracts with any producer, distributor or wholesalers, whether in Italy or abroad.
7. "*Franchise client*" is the final client who, not coming within the category of eligible clients, can enter into supply contracts

exclusively with the distributor that provides the service in the area where the user is located.

8. "*Cogeneration*" is the combined generation of electricity and heat on the conditions defined by the Authority for electricity and gas, which ensures a significant saving of energy as compared with separate generation
9. "*Bilateral contract*" is the contract for supply of electrical services between two operators on the market.
10. "*Dispatch*" is an activity aimed at imparting instructions for coordinated operation and utilisation of generating equipment, the transmission network and ancillary services.
11. "*Economic Dispatch*" is the activity of which in section 10, implemented by order of economic merit, save for constraints or impediments of the grid
12. "*Pass-through dispatch*" is the activity of which in section 10, conditioned solely by any constraints or impediments of the grid.
13. "*Interconnection device*" is a device for connecting electrical grids.
14. "*Distribution*" is the transmission and transformation of electricity on medium-low voltage distribution networks for delivery to final clients.
15. "*Renewable energy sources*" are the sun, wind, hydraulic sources, geothermal sources, tides, wave motion and the transformation into electricity of energy crops or of organic or inorganic wastes.
16. "*Direct line*" is an electrical transmission line that connects a centre of generation to a centre of consumption, independently of the transmission and distribution system.
17. "*Small isolated system*" is every network with a consumption of less than 2,500 GWh in 1996 of which less than 5 percent obtained from interconnection with other networks.
18. "*Generator*" is the natural or legal person that generates electricity, independently of ownership of the plant.
19. "*Generation*" is the generation of electricity, however produced.
20. "*National transmission system*" is the whole of transformer stations and high voltage electrical transmission lines on the national territory managed as one unit.

21. "*Interconnected system*" is a number of transmission and distribution networks linked together by means of interconnection devices.
22. "*Ancillary services*" are all the services necessary for the operation of a transmission or distribution network such as, for example, services of frequency regulation, reserve, reactive power, voltage regulation and network restart.
23. "*National electrical system*" is the whole of generation plant, transmission and distribution networks, ancillary services and interconnection and dispatching devices located within the national territory.
24. "*Transmission*" is the activity of transmission and transformation of electricity on the high voltage interconnected network for the purpose of delivery to clients, distributors and the users of autoproduced power in the senses of section 2.
25. "*System user*" is the natural or legal person who supplies or is supplied by a transmission or distribution network.

Chapter II ***(Regulation of the electrical sector)***

Art. 3 ***(The operator of the national transmission grid)***

1. The operator of the national transmission grid, hereinafter called "Operator" shall perform the activities of transmission and dispatching of electricity, including therein unified management of the national transmission grid. The Operator has the obligation to connect all those who apply to the national transmission grid without compromising the continuity of the service and provided the technical rules of which in section 6 of this article, and the technical and economical conditions for access and interconnection established by the Authority for electricity and gas are complied with. The Operator shall give due reasons for any refusal of access to the grid. The Operator of the national transmission grid shall supply those responsible for the operation of every other grid in the European Union interconnected with the national transmission grid with sufficient information to ensure secure and efficient operation,

co-ordinated development and inter-operability of the interconnected grids.

2. The Operator of the national transmission grid shall manage the energy flows, the corresponding interconnection devices, and the necessary ancillary services; it shall guarantee fulfilment of every other obligation to ensure the security, reliability, efficiency and least cost of the service and of supply. It shall manage the network without discrimination between users or classes of users. It shall decide on network maintenance and development actions, of which the costs shall be met by the companies of which in section 8, in such a way as to ensure the safety, security and continuity of supply, as well as development of the network in compliance with the guidelines issued by the Minister of Industry, Trade and Crafts. The competencies, rights and powers of public and private sector organisations, including self-regulating bodies, provided for in current regulations in reference to the activities reserved to the Operator are transferred to the Operator. The Operator of the national transmission grid must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.
3. The Authority for electricity and gas shall lay down conditions such as to guarantee all users of the network freedom of access on equal conditions, and the maximum impartiality and neutrality of the transmission and dispatching service. In the exercise of this competence, the Authority shall pursue the objective of the most efficient utilisation of the electricity generated or in any way fed into the national electrical system, compatibly with the technical constraints of the network. The Authority shall also impose an obligation to priority utilisation of electricity produced from renewable energy sources and of that produced by cogeneration.
4. Within the term of thirty days from the entry into force of the present decree, ENEL S.p.A. shall form a joint stock company on which, within the following sixty days, it shall confer all the assets, except ownership of the networks, the legal relationships relating to the activities of the Operator itself, including a share of the indebtedness relating to the assets conferred, and the personnel necessary for the activities for which it has competence. The Minister of Industry, Trade and Crafts, having

heard the opinion of the Authority for electricity and gas, shall issue a decree within thirty days following the date of this conferral providing for any further conferrals necessary for the activities of the Operator and approving the conferrals. The same Minister shall issue a measure establishing the date on which the company shall assume the responsibility and the function of Operator of the national transmission grid. From the same date the shares in the aforesaid company shall be assigned free of charge to the Ministry of the Treasury, of the Budget and of Economic Planning. Shareholders' rights shall be exercised by accord between the Minister of the Treasury, of the Budget and of Economic Planning and the Minister of Industry, Trade and Crafts. The strategic and operational guidelines for the Operator shall be defined by the Minister of Industry, Trade and Crafts. Until the same date, ENEL S.p.A. is responsible for the correct operation of the national transmission grid and dispatching activities, as well as for the provisions of section 12.

5. The Operator of the grid shall hold a concession for the activities of transmission and dispatching. The concession shall be governed by a decree of the Minister of Industry, Trade and Crafts to be issued within one hundred and eighty days of the entry into force of this present decree.
6. The Operator, in its own resolutions, shall determine the rules for dispatching in compliance with the conditions of which in section 3 and the guidelines of which in section 2 of article 1. On the basis of directives issued by the Authority for electricity and gas within ninety days of the entry into force of this present decree, the Operator of the national transmission grid shall adopt technical regulations of an objective and non-discriminatory character concerning the design and operation of generation plant, distribution networks, directly connected equipment, interconnection devices and direct lines, in order to ensure the most appropriate connection to the national transmission grid and also the security and operating connection among grids. The Authority for electricity and gas shall check the conformity of the technical regulations adopted by the Operator with the directives it has issued and shall pronounce on them, after hearing the views of the Operator, within ninety days; in the event of no pronouncement being made within this term, the regulations shall be deemed approved. In no case shall rights of

exclusive or priority use, or more favourable conditions for any type of use, be attributed to owners of or those with rights over, parts of the national transmission grid. Utilisation of the national transmission grid for purposes extraneous to the electricity service must not in any event involve constraints or restrictions on use of the grid for the purposes governed by this present decree. The technical regulations of which in the present section shall be published in the *Official Journal of the Italian Republic* and notified to the European Commission under article 8 of Council Directive EEC/83/189 of 28 March 1993.

7. Within ninety days of the coming into force of this present decree, Minister of Industry, Trade and Crafts, having heard the opinion of the Authority for electricity and gas and the parties concerned, shall issue a decree establishing the ambit of the national transmission grid, including networks at voltages of 220 kV or more, and parts of the network at voltages from 120 kV and 220 kV to be identified on the basis of functional criteria. Following the issue of this decree, the Operator may assign operation of limited portions of the national transmission network not directly functional to the same to third parties, subject to authorisation by the Minister of Industry, Trade and Crafts and on the basis of agreements approved by the Authority for electricity and gas. Within thirty days from the issue of the decree determining the national transmission grid, the owners of this grid, or those having the use thereof, shall create one or more joint stock companies to which they shall transfer, within the following ninety days, exclusively the goods and relationships, assets and liabilities, relating to transmission of electricity. The Minister of Industry, Trade and Crafts and the Minister of the Treasury, of the Budget and of Economic Planning, may promote the aggregation of the aforesaid companies, including in the form of consortia, encouraging the participation of all market operators.
8. The Operator shall sign conventions, including with companies that have transmission grids, to regulate maintenance and development of the grid and the corresponding interconnection devices with other grids. The said conventions shall be stipulated in conformity with a standard convention defined, within one hundred and twenty days of the entry into force of this present legislative decree, by a decree of the Minister of

Industry, Trade and Crafts on proposal by the Authority for electricity and gas in accordance with Law N° 481 of 1995, after hearing the opinion of the joint Conference instituted under Legislative Decree N° 281 of 28 August 1997. This convention shall provide:

- a) The competence of the Operator to take decisions on maintenance, operation and development of the network;
- b) An adequate remuneration for activities and investments, taking account of the regulatory obligations falling on operators
- c) Modalities for ascertainment of any malfunctions and non-fulfilments and determination of the corresponding penalties, of the possibilities for actions in lieu and of any indemnities for the injured parties.
- d) The modalities for involvement of the Regions concerned in relation to aspects of location, rationalisation and development of the grid.

9. In the event of failure to sign conventions with companies that have transmission grids, within one hundred and twenty days from issue of the Legislative Decree determining the national transmission grid of which in section 7, the same shall be defined and made effective within the following sixty days by decree of the Minister of Industry, Trade and Crafts on proposal by the Authority for electricity and gas. Until the assumption of ownership by the Operator of which in section 4, the owners of the grids shall remain responsible for the proper maintenance and functioning of the grids and devices they own; the corresponding costs may be recognised by the Operator of the national transmission grid in the context of the corresponding convention. Any non-fulfilment or outage shall be sanctioned by the Authority for electricity and gas. The Authority for electricity and gas shall check that the relationships covered by the conventions proceed in compliance with the provisions contained therein, and may apply the penalties provided for in article 2 section 20 letter c) of Law N° 481 of 14 November 1995 in the event that the violations ascertained prejudice access to and use of the national transmission grid on equal conditions. Advance notice shall be given to the Minister of Industry, Trade and Crafts of measures and actions taken under this section.

10. A fee for access to and use of the national transmission grid shall be due to the Operator and shall be determined independently of the geographical location of generating plant and of final clients, and in any event on the basis of non-discriminatory criteria. The size of the fee shall be determined by the Authority for electricity and gas within ninety days of the coming into force of this present decree, taking account of the costs associated with the tasks provided for in section 12 and such as to give the Operator an incentive to perform the activities within its competence according to criteria of economic efficiency. In the same measure, the Authority shall also regulate the transition period until the assumption of responsibility by the Operator of which in section 4.
11. Within one hundred and eighty days of the coming into force of this present Legislative Decree, one or more decrees from the Minister of Trade, Industry and Crafts, in concert with the Minister of the Treasury, of the Budget and of Economic Planning, on proposal by the Authority for electricity and gas, shall identify the overhead costs associated with the electrical system, including research activities and the activities of which in article 13 section 2 letter e). The Authority for electricity and gas shall provide for the consequent adjustment of the fee of which in section 10. The part of the fee to cover such costs to be charged to final clients, in particular for activities with high energy consumption, shall be allocated at a rate decreasing with increasing consumption.
12. The Minister of Industry, Trade and Crafts shall issue a measure in the senses of section 3 of article 1 to determine the cession by ENEL S.p.A. of the rights and obligations relating to the purchase of electricity produced by other national operators to the Operator of the national transmission grid. The operator will also take delivery of the electricity, of which in article 22 section 2 of Law N° 9 of 9 January 1991, offered by producers at prices determined by the Authority for electricity and gas on the basis of the principle of avoided cost. Under specific conventions, following authorisation by the Minister of Industry, Trade and Crafts after hearing the opinion of the Authority for electricity and gas, the electricity and corresponding rights of which in Title IV letter B of CIP measure N° 6/1992 shall likewise be ceded to the Operator by generator-distributor enterprises; the

duration of such conventions shall be set at eight years, starting from the date the plant is brought into operation, and the price paid shall include avoided costs.

13. From the date when the system of economic dispatch comes into operation, the Operator, remaining guarantor of compliance with contract clauses, shall cede the power purchased under section 12 to the market. In order to ensure that the costs incurred by the Operator are covered, the Authority for electricity and gas shall include the difference between the Operator's cost of purchase and the amount of the revenues deriving from sale of the power on the market, and from the sale of the rights of which in section 3 of article 11, in the costs of the system.
14. Authorisation to construct direct lines shall be issued by the competent authorities subject to conforming opinion of the Operator for lines exceeding 120 kV. Due reasons must be given for refusal of authorisation.
15. The Minister of Industry, Trade and Crafts may make use of technical support from the operator for tasks relating to implementation of this present decree. To ensure continuity of operation, the appointment provided for in article 22 section 2 of Law N° 10 of 9 January 1991 may be renewed twice.

Art. 4

(Single buyer to guarantee franchise clients)

1. Within six months of the coming into force of this present decree, the operator of the national transmission grid shall form a joint stock company denominated "Single buyer". The Company shall stipulate and operate supply contracts in order to guarantee franchise clients availability of the necessary electricity generating capacity and the supply of electricity in conditions of continuity, safety, security and efficiency of service, as well as parity of treatment, including tariff treatment.
2. Within six months of the coming into force of this present decree, the Minister of Industry, Trade and Crafts, having heard the opinion of the Minister of Foreign Trade and the Authority for electricity and gas, shall adopt guidelines which the Single Buyer shall follow in order to safeguard the safety, security and economy of supply to franchise clients as well as to ensure

diversification of energy sources, with the utilisation, also, of renewable energy and energy produced in cogeneration.

3. Eligible clients may apply to the Single buyer, with notice of at least six months and simultaneous notice to their own distributor, to be included in the market of franchise clients for a two-year term, renewable only once. In the transition phase of which in section 3 of article 1, eligible clients may notify their own distributor directly of their wish to be included transitionally in the market of franchise clients for a period that may also be less than two years.
4. By the thirtieth of June in each year, the Single buyer shall prepare a forecast of the demand to be satisfied in the following three year period, inclusive of the supply guarantee reserve, informing the Operator of which in article 3 and the Ministry of Industry, Trade and Crafts. To this end, operators are required to supply data on their own activities. In the absence of comments within the following thirty days, the forecast shall be deemed defined.
5. On the basis of the forecast defined in accordance with section 4 and of its own estimates for a further five year period, the Single buyer shall stipulate supply contracts, including long term contracts, adopting transparent and non-discriminatory procedures. In making its estimates, the Single buyer shall take account of the evolution of the market in accordance with articles 5 and 14 and of the measures of which in section 1 of article 9.
6. The Single buyer shall sign sales contracts, on the basis of guidelines from the Authority from electricity and gas, with electricity distributors on non discriminatory conditions such as to allow a single tariff for franchise clients, as the same time allowing balance of the accounts.
7. The Minister of Industry, Trade and Crafts, having heard the opinion of the Authority for electricity and gas, may authorise the Operator to cede shares in the Single buyer to bodies which, individually or in the form of associations, represent significant components of the activities of electricity distribution. None of these last bodies may control, directly or indirectly, more than ten percent of the share capital. The Operator shall in any case retain the majority of the equity.

8. The date on which the Single buyer assumes the function of guarantor of supply to franchise clients shall be established by the Minister of Industry, Trade and Crafts in a measure in the senses of section 3 of article 1. Until that date, ENEL S.p.A. shall ensure the supply to distributors on the basis of current contracts and modalities.
9. The measure of the fees for the activities performed by the Single buyer shall be determined by the Authority for electricity and gas and shall be such as to encourage that company to perform its activities according to criteria of economic efficiency.

Art. 5

(Functions of the market operator)

1. Economic management of the electrical market is entrusted to a market operator. The market operator is a joint stock company formed by the Operator of the national transmission grid within nine months of entry into force of this present decree. It shall organise the market according to criteria of neutrality, transparency and objectivity, as well as of competition among generators, likewise ensuring the economic management of an adequate availability of reserve capacity. The regulations on the market, prepared by the market operator within one year of its formation, shall be approved by decree of the Minister of Industry, Trade and Crafts, having heard the opinion of the Authority for electricity and gas. These regulations shall specifically govern, in compliance with the aforesaid criteria, the tasks of the market operator in balancing supply and demand and the obligations of generators and importers of electricity who do not avail themselves of the provisions of article 6.
2. Pass-through dispatch shall be applied from the date of entry into force of this present decree. By 1 January 2001, the order of entry into operation of electricity generation units and also the selection of reserve units and all ancillary services offered shall be determined, save as is provided for in article 11, on the basis of dispatching on economic merit. From the date on which this is applied, the market operator shall assume management of offers to purchase and sell electricity and all associated services.

Until the same date, the Operator of which in article 3 shall make a site for negotiation of bilateral contracts available to operators. Bilateral contracts stipulated outside the aforesaid site shall be transmitted to the Operator in a copy conforming to the original.

3. Under article 20 section 4 of Directive EC/96/92, the Authority for electricity and gas is also competent for disputes about access to interconnection networks and about import and export contracts.

Art. 6

(Bilateral contracts)

1. The negotiation clauses and technical regulations essential for adequate operation of the entire electrical system, to be included in contracts with eligible clients, shall be established by decision of the Authority for electricity and gas to be adopted within sixty days of the coming into force of this present decree. The same Authority, on request by the parties concerned and subject to conforming opinion of the grid Operator, may authorise bilateral contracts in derogation to the system of offers of which in article 5, and that also after the market operator takes up its operational role.
2. The authorisation of which in section 1 may be subjected to conditions or denied only for reasons of incompatibility of contract clauses with the provisions of article 3, sections 1, 2 and 3 of the present decree, and in any case when such contracts are strongly detrimental to competition or to security and efficiency of electrical service. Refusals, complete with reasons, shall be notified to the European Commission.
3. For bilateral contracts in derogation to the system of offers of which in article 5, within thirty days of request by the parties concerned, the Authority for electricity and gas, having heard the opinion of the grid Operator, shall determine a specific fee, based on objective, transparent and non-discriminatory criteria, also taking into account the consequent system and market constraints, additional to that of which in article 3, section 10, which generators, sellers and suppliers of services shall be required to pay to the grid Operator or to the distributors

concerned in a measure proportional to the constraints imposed on the grids for which they are respectively competent. This fee shall be payable from the time when the economic dispatch of which in article 2 section 5 is applied.

4. Until implementation of economic dispatch, the Authority for electricity and gas shall monitor the behaviour of market operators and in particular shall adopt appropriate remedies, including penalties, in the event of agreements in conflict with the provisions of which in section 1.

Art. 7

(Small isolated systems)

1. Regulations on the operation of small isolated systems shall be issued by the Ministry of Industry, Trade and Crafts by 30 September 1999, on proposal by the Authority for electricity and gas in the senses of article 17 section 2 of Law N° 400 of 23 August 1988 after hearing the opinion of the joint conference instituted under Legislative Decree N° 281 of 28 August 1997. The regulations shall conform to the following criteria and objectives.
 - a) Security, efficiency and economy of service
 - b) Development, where possible, of interconnection with the national transmission grid
 - c) Priority use of renewable sources.

Art. 8

(Generation)

1. Starting from 1 January 2003, no party shall be allowed to generate or import, directly or indirectly, more than 50% of the total electricity generated in and imported into Italy. In the event that this limit, calculated as a three year mean, is exceeded, the Competition and Market Guarantee Authority shall adopt the measures of which in article 15 of Law 287 of 10 October 1990. To this end, by the same date, ENEL S.p.A. shall cede not less than 15,000 MW of its own generating capacity. To this end, ENEL S.p.A. shall prepare a plan for the ceding of the plant within one hundred and twenty days of entry into force of this

present decree; approval of this plan and of the choice of modalities of alienation, shall be in the form of a decree by the Prime Minister on proposal by the Minister of the Treasury, of the Budget and of Economic Planning in concert with the Minister of Industry, Trade and Crafts. The plan for ceding of the plant must allow both adequate market conditions and the necessary attention to the presence of industrial plans, to maintaining output at the sites and effects on employment, and must take account of requirements relating to activities of development, innovation, research and internationalisation of ENEL S.p.A.

2. In the event that the term of 1 January 2003 of which in section 1 is not compatible, by reason of market conditions, with compliance with the obligations set out in the same section, the Competition and Market Guarantee Authority, having heard the opinion of the Authority for electricity and gas, may issue an extension order, on request of the party concerned, for a period not exceeding one year.
3. Without affecting the provisions of Legislative Decree N° 112 of 31 March 1998, nor the regulations on environmental impact, within one year of the coming into force of this present decree, one or more regulations shall be issued under article 17 section 2 of Law 400 of 23 August 1988 to govern authorisation to build and operate new electricity generation plant or to modify or repower existing plant fuelled by conventional sources.
4. The regulations shall conform to the following principles.
 - a) Projects shall be authorised in accordance with a standardised and simplified procedure for each category of plant and the issue within a specified time of a single final measure covering both the main plant and the associated works and infrastructure essential to its operation
 - b) Projects for modification or repowering shall be assessed in town planning terms only in the event that they occupy areas external to the site of the existing plant.
5. Refusal of authorisation, which must in any case be based on objective and non-discriminatory reasons, shall be notified to the applicant together with the reasons. Information on the action shall be given to the Commission of the European Communities.

6. Up to the date of entry into force of the regulations of which in section 3, the regulations and procedures currently in force shall apply.

Art. 9
(*Distribution*)

1. Distribution enterprises are obliged to connect all those making an application to their networks, without compromising continuity of service, provided that the technical regulations and the decisions issued by the Authority for electricity and gas on tariffs, fees and costs are complied with. Distribution enterprises operating at the date of entry into force of this present decree, including, for the different quotas of their members, the production and distribution co-operatives of which in article 4 number 8 of Law N° 1643 of 6 December 1962, shall continue to perform a distribution service on the basis of concessions to be issued by the Ministry of Industry, Trade and Crafts by 31 March 2001 and expiring on 31 December 2030. The same measures shall identify those responsible for operation, maintenance and if necessary development of the distribution networks and their corresponding interconnection devices, who must maintain the confidentiality of confidential commercial information. The concessions shall also contain provisions to increase the energy efficiency of end uses of energy according to quantitative targets set by decree of the Minister of Industry, Trade and Crafts in concert with the Minister of the Environment within ninety days of the entry into force of this present decree.
2. Regulations to be issued by the Minister of Industry, Trade and Crafts, adopted under article 17 section 3 of Law 400 of 23 August 1988, after hearing the opinion of the joint Conference set up under Legislative Decree 281 of 28 August 1997 and of the Authority for electricity and gas, shall establish modalities, conditions and criteria - including remuneration of investments made by the previous concession holder - for the new concessions to be issued on the expiry date of 31 December 1930, subject to definition of the ambit, in any case not less than the territory of a municipality and not exceeding one quarter of all final clients. The said service shall be awarded on the basis of

calls for competitive tender to be issued in compliance with national and European Union regulations on public calls for tender no later than the five year period preceding the expiry date.

3. In order to rationalise electricity distribution, only one distribution concession shall be issued in any one municipal territory. In municipalities where more than one distributor is operating at the date of entry into force of this present decree, these shall adopt appropriate measures to aggregate, through the normal rules of the market, submitting their proposals for approval to the Minister of Industry, Trade and Crafts by 31 March 2000; in the event that the same Minister expresses no opinion within the term of sixty days, the proposals shall be deemed approved. The same Minister, and the Minister of the Treasury, of the Budget and of Economic Planning, shall promote the aforesaid aggregation, including through specific programme agreements.
4. For the ends of which in section 3 and for the ends of maintaining pluralism in the offer of services and strengthening of enterprises in the prospect of extension of the distribution market, in the absence of the proposal of which in the aforesaid section 3 or in the event that it is rejected, giving reasons, by the Minister of Industry, Trade and Crafts, distribution companies in which local authorities have a stake may ask ENEL S.p.A. for transfer of branches of the firm dedicated to exercise of distribution activities in municipalities in which the aforesaid companies serve at least twenty percent of consumers. For the purposes of the aforesaid transfer, which shall take place by 31 March 2001, the consistency of the assets, their value, and the number of personnel to be transferred shall be determined by agreement between the parties. In the absence of agreement by 30 September 2000, the determination shall be performed by three qualified third parties, two of whom indicated respectively by each of the parties, which shall carry the corresponding costs, and the third, whose costs shall be carried by the party requesting the transfer, by the President of the court competent for the area, who shall operate according to proven financial methodologies that take account of market values. Save as otherwise agreed between the parties, the transfer shall take place on the basis of the aforesaid determinations.

5. For the same ends of which in section 3, in relation to contiguous territories, within one year of the date of entry into force of this present decree, local authority companies with not less than 100,000 final clients may apply to the Minister of Industry, Trade and Crafts to avail themselves of the procedures of which in the said section 3.
6. The Authority for electricity and gas shall establish the criteria and economic parameters for determination of the annual fee to be paid to any owners of distribution networks not awarded the corresponding concession. The Minister of Industry, Trade and Crafts may divide or modify the concession granted, subject to the consent of the concessionaire.
7. Within one hundred and eighty days of the entry into force of this present decree, the owners of distribution facilities that supply more than 300,000 final users shall form one or more joint stock companies to which, within the following six months, they shall transfer exclusively the goods and relationships, assets and liabilities, relating to distribution of electricity and sale to franchise clients, including a share of debt relating to the assets conferred.

Art. 10

(Import and export)

1. Within six months of the entry into force of this present decree, and subsequently with at least biennial frequency, the Operator shall identify the electrical lines of the national transmission grid interconnected with the electrical systems of other states, distinguishing those of the European Union. It shall likewise notify the Ministry of Industry, Trade and Crafts and the Authority for electricity and gas of the corresponding capacities utilised for the import and export of electricity and of those available for new contractual commitments referred to a period of not less than ten years, taking account of security margins for operation of the grid.
2. A decree from the Authority for electricity and gas shall identify modalities and conditions for importation in the event that available transmission capacity is insufficient, taking account of a fair overall division between the market and the free market. The same decree shall establish modalities and procedures to

allow the Operator, on the basis of the guidelines of which in section 2 of article 1, to refuse access to the grid for imported electricity to the benefit of an eligible client in the event that the same qualification is not recognised for the same type of client in the country of generation.

3. The Authority for electricity and gas will issue rules for environmental and economic compatibility of electricity imported from non European Union countries, taking into account the reciprocity conditions.

Art. 11

(Electricity from renewable sources)

1. In order to encourage use of renewable energy, energy saving, reduction of carbon dioxide emissions and utilisation of national energy resources, from the year 2001 importers and those in charge of plants which in any year import or generate energy from non renewable sources, have the obligation to supply to the network in the following year a share produced from renewable source plant coming into operation or repowered, in respect of the additional output only, on a date subsequent to that of the coming into force of this present decree
2. The obligation of which in section 1 applies to importation and generation of electricity, net of cogeneration, consumption within the power station and exports, exceeding 100 GWh. The quota of which in section 1 is initially set at two percent of the aforesaid energy exceeding 100 GWh.
3. The same organisations can also fulfil the aforesaid obligation by purchasing, in whole or part, the equivalent quota or rights from other producers, provided that they feed the energy from renewable sources into the national electrical system, or from the Operator of the national transmission grid. The rights relating to the plant of which in article 3, section 7 of Law N° 481 of 14 November 1995 are assigned to the Operator of the national transmission grid. In order to compensate for annual fluctuations in output or for insufficient supply, the Operator of the national transmission grid may purchase and sell rights to production from renewable sources, independently of their real availability, with the obligation to compensate any issues of rights in the absence of availability on a three year basis.

4. The Operator of the national transmission grid shall ensure precedence for the electricity produced by plants that use, in order, renewable energy sources and cogeneration systems on the basis of specific criteria defined by the Authority for electricity and gas, and national primary sources, these last to an annual maximum of not more than fifteen percent of all the primary energy necessary to generate the electrical energy consumed.
5. A decree by the Minister of Industry, Trade and Crafts, in concert with the Minister of the Environment, shall set out guidelines for implementation of the provisions of sections 1, 2 and 3, and of increases in the percentage of which in section 2 for the years following 2002, taking account of the variations associated with compliance with regulations aimed at limiting emissions of polluting gases, with special reference to the international commitments provided for in the Kyoto Protocol.
6. In order to promote the use of different types of renewable source, a resolution of the CIPE, adopted on the proposal of the Minister of Industry, Trade and Crafts, having heard the opinion of the joint Conference instituted under Legislative Decree N° 281 of 28 August 1997, shall set pluriannual objectives for each source, with a sharing out between the Regions and Autonomous Provinces of the resources to be allocated to provision of incentives. The Regions and Autonomous Provinces shall promote the involvement of local communities in initiatives and provide incentives for renewable sources through tender procedures, also using their own resources.

Art. 12

(Hydroelectric concessions)

1. At least five years before expiry of a concession for a large head installation for hydro-electric purposes, every organisation, provided it is in possession of appropriate organisational and financial requisites, may ask for issue of the same concession on condition that it presents a programme for increasing the energy generated or the capacity installed, as well as a programme for environmental improvement or restoration of the drainage basin concerned.

2. In the presence of one or more applications, the competent administration shall assess suitability and notify the content to the concession holder. This notice shall be deemed notice of cancellation of the expiring concession. Within three months of receipt of the notice of cancellation, the concession holder, if it has not already presented its own programme for improving the productivity of the plant, may notify the administration of its own commitment to implement a programme of identical or improved content compared to those judged suitable. Failure to notify shall be deemed as renunciation of renewal of the concession.
3. In cases where the competent administration does not consider that there is a prevailing public interest in some different use of the waters, in whole or part incompatible with continuation of use for hydroelectric purposes, it shall issue the concession for a thirty year period, giving preference to the previous concession holder if conditions are equal.
4. In every case the new concession must be compatible with the presence in the river bed of the minimum constant vital flow, determined after hearing the views of local authorities, and with priority for hydraulic safety of the drainage basin in the senses of Law 183/1989 and subsequent modifications and additions, as well as with the flows for use as potable water under concessions which, with priority in the senses of article 2 of Law 36/94, must be extracted from the same water body.
5. In cases differing from section 1, including the case of expiry, renunciation or revocation, and without detracting from what is stated in sections 3 and 4, the competent administration shall issue a call for tenders for issue of the concession on payment. In cases other than expiry, renunciation or revocation, the call for tenders shall be issued no later than five years before the expiry date. The Authority for electricity and gas, having heard the opinion of the Operator of the national transmission grid, shall determine, in a decree of its own, the organisational and financial requisites, the parameters for increased energy generated and capacity installed concerning the procedures of which in section 1 and the present section.
6. The concessions issued to ENEL S.p.A. for large hydroelectric head installations shall expire at the end of the thirtieth year from the date of entry into force of this present decree.

7. Concessions that have expired or will expire by 31 December 2010 are extended to this last date without the need for any further administrative act, and the owners of the concessions concerned shall pursue their activities, notifying the administration granting the concession thereof within ninety days from the date of entry into force of this present decree, without affecting the provisions of section 2 of the following article 16.
8. For concessions for which the expiry date is after 31 December 2010, the terms of expiry established in the original deed of concession shall apply.
9. The characteristics of the concessions for hydroelectric head installations of which in sections 6, 7 and 8 shall be modified in such a way as to guarantee the presence in the river bed of the minimum constant vital flow of which in Law 183/1989 and subsequent modifications and additions, to be determined according to the general criteria of which in article 88 section 1 letter p) of Legislative Decree N° 112 of 31 March 1998. In the event that this involves a reduction in the nominal mean energy capability, the concessionaire shall have no right to any indemnity but only to reduction of the state land concession fee.
10. From the date of entry into force of this present decree, competence to issue the concessions of which in this present article is conferred on the Regions and on the Autonomous Provinces, with the exclusion of those of which in article 89, section 2 of Legislative Decree N° 112 of 31 March 1998, according to what is established in the Legislative Decree, to be issued in implementation of the combined provision of which in articles 29 sections 1 and 3, and 88 section 1 letter o) of Legislative Decree N° 112 of 31 March 1998, The same decree shall define the general objectives and specific constraints for Regional and drainage basin planning on the topic of utilisation of water resources for energy purposes and the modalities for co-ordinated sector energy planning at Regional level. For actual exercise of the function conferred on the Region, the criteria, terms and procedures applied are those established by articles 7, 10 and 89 sections 4 and 5 of Legislative Decree N° 112 of 31 March 1998, as well as those of article 2, section 12, letters b) and d) of Law N° 481 of 14 November 1995.

11. The modalities for setting state land concession fees shall be established by the Legislative Decree of which above in section 10.
12. Sections 1, 2, 3, 5 and 11 of article 9 of Presidential Decree N° 342 of 18 March 1965 are abrogated.

Chapter III

(Measures for implementation of the new regulations on the electricity market)

Art. 13

(Corporate structure of ENEL S.p.A.)

1. ENEL S.p.A. shall assume functions of strategic guidance and co-ordination of the industrial structure and activities of the companies controlled by it. Within sixty days from the entry into force of this present decree, ENEL S.p.A. shall resolve on the consequent changes to its Statute.
2. ENEL S.p.A. shall form separate companies to perform the following activities.
 - a) The generation of electricity
 - b) Distribution of electricity and its sale to franchise clients
 - c) Sale to eligible clients
 - d) Exercise of rights of ownership of the transmission grid, including transmission lines and transformer stations and associated activities of maintenance and development decided by the Operator in the senses of article 3 section 10.
 - e) The decommissioning of nuclear power stations, management of the fuel cycle and related and consequent activities, including in consortia with other public sector agencies or companies which, if with a public sector presence, may also acquire title to the same.
3. Within 180 days of entry into force of this present decree, all the assets and legal relationships relating to the objects of their activities shall be conferred on the companies to be formed, including a share of indebtedness relating to the assets conferred. Until the said date, ENEL S.p.A. can continue exercise of the activities of which in section 1.
4. The equity of which in section 2 letter e) are assigned to the Ministry of the Treasury, of the Budget and of Economic

Planning; the same company shall follow the guidelines formulated by the Minister of Industry, Trade and Crafts.

5. The act of conferral may establish that the effects of the conferral shall apply from a date not before that of the last accounts of the conferring company, including for company tax purposes.

Art. 14
(*Eligible clients*)

1. The following have the right to be qualified as eligible clients from the date of entry into force of this present decree.
 - a) Distributors, limited to the electricity supplied to eligible clients connected to their own networks
 - b) Wholesale purchasers, limited to the electricity consumed by eligible clients with which they have stipulated sales contracts
 - c) Organisations on which other States have conferred the legal ability to conclude contracts for the supply or purchase of electricity, selecting the seller or distributor, limited to energy consumed outside the national territory.
 - d) The firm of which in article 10 of D.P.R. N° 235 of 26 March 1977.
2. From the same date of which in section 1, the subjects specified below with an annual consumption of electric energy, inclusive of any autoproduced energy, in the measure listed below, have the right to qualify as eligible clients:
 - a) Every final client whose consumption in the previous year, measured at one single point within the national territory, was over 30 GWh.
 - b) Enterprises in the form of companies, groups of enterprises, including in the senses of article 7 of Law N° 287 of 10 October 1990, consortia and consortium companies whose consumption in the previous year, taken also as the sum of the consumption of the component members of the legal person concerned, exceeded 30 GWh, whose consumption, with a minimum of 2 GWh annually each, is located exclusively in the same municipality or in contiguous municipalities, saving for areas identified in specific acts of Regional programming.
3. From 1 January 2000, the following have the right to qualify as eligible clients.
 - a) The organisations of which in section 2 letter a) with consumption not below 20 GWh
 - b) The organisations of which in section 2 letter b) with consumption not below 20 GWh, with a minimum dimension of 1 GWh
4. From 1 January 2002, the following have the right to qualify as eligible clients.

- a) The organisations of which in section 2 letter a) with consumption not below 9 GWh
 - b) The organisations of which in section 2 letter b) with consumption not below 9 GWh, with a minimum dimension of 1 GWh
 - c) Every final client whose consumption in the preceding year exceeded 1 GWh at each measurement point considered and exceeded 40 GWh as the sum of the aforesaid measurement points.
5. In the event that the market of eligible clients, including auto-producers, proves to be less than 30% at 19 February 1999, 35% at 1 January 2000, or 40% at 1 January 2002, the Minister of Industry, Trade and Crafts shall issue a decree, also on proposal by the Regions, establishing new limits for attribution of the qualification of eligible client, taking account of the process of rebalancing of the tariff system.
 6. The Minister of Industry, Trade and Crafts, having heard the opinion of the Authority for electricity and gas, shall issue a decree establishing new limits for attribution of the qualification of eligible client, to the end of a greater opening of the market, if there is comparable opening of their markets by other States.
 7. The Minister of Industry, Trade and Crafts, having heard the opinion of the Authority for electricity and gas, shall issue regulations, within three years of entry into force of this present decree, in the senses of article 17 section 3 of Law N° 400 of 23 August 1988, identifying further parties to which to attribute the qualification of eligible client in the years following 2002, to the end of further progressive opening of the market.
 8. On the basis of the provisions of this present article, eligible clients shall certify their own qualification for the year 1999 to the Authority for electricity and gas. Within ninety days of the coming into force of the present decree, the same Authority shall issue its own decree establishing modalities for recognition and verification of qualification of eligible client of those having the right thereto.

Art. 15

(Transitional regulations relating to renewable sources)

1. The starting date for the incentives concerning the measures of which in article 3 section 7 of Law N° 481 of 14 November 1995, is established in the preliminary convention signed with ENEL S.p.A. before the date of entry into force of this present decree and cannot be postponed. Parties that do not comply with date for entry into operation of the plant indicated in the convention, without detraction from any charges provided for therein, shall be deemed to have withdrawn. In the event of implementation delayed with reasons from the aforesaid date, the Minister of Industry, Trade and Crafts may concede an extension not exceeding two years against a coherent plan for implementation, without affecting the starting date for the incentives.
2. In order to define a firm time framework for implementation, the beneficiaries of the aforesaid incentives shall be obliged to present the authorisations necessary for construction of the plant not yet in operation to the Authority for electricity and gas within one year from the entry into force of this present decree. Failure to fulfil this obligation shall involve loss of every right to the aforesaid incentives.
3. On request, with reasons, by the parties of which in section 1, the location of the plants provided for in the conventions of which in the same section may be altered by decree of the Minister of Industry, Trade and Crafts, subject to an opinion in favour by the local authorities competent, on condition that the operation of the electric network in the new area concerned is not adversely affected. The request does not suspend any of the terms of which in sections 1 and 2 and, in the event of renunciation of every public incentive shall be accepted, even in the absence of motivations, and notified to the Authority for electricity and gas, on condition that the aforesaid local authorities have expressed opinions in favour.
4. The parties of which in section 1 who, within six months of the entry into force of this present decree, expressly renounce the faculties and obligations subscribed in the acts of preliminary convention shall not be subject to any penalty.

5. The location provided for in the conventions of which in section 1 of plants for the generation of electricity from wastes, in the senses of Legislative Decree N° 22 of 5 February 1997, may be modified subject to notification to the Ministry of Industry, Trade and Crafts and subject to the favourable opinion the local authorities competent for the territory. With the same modalities, a generator which, for documented technical reasons, does not meet the dedicated capacity limits laid down in such conventions, may transfer the quotas of electricity that cannot be produced at the original site to another site. The notification does not suspend any of the terms of which in sections 1 and 2.

Art. 16

(Prerogatives of the Autonomous Region of the Valle d'Aosta and of the Autonomous Provinces of Trento and Bolzano)

1. The statutory prerogatives of the Autonomous Region of the Valle d'Aosta and of the Autonomous Provinces of Trento and Bolzano are protected as provided for in sections X and 16 of article 2 of Law N° 481 of 14 November 1995. The necessary co-ordination between the regulations in this present decree and the current statutory laws of the Autonomous Region of the Valle d'Aosta and of the Autonomous Provinces of Trento and Bolzano is delegated to specific implementation regulations of the corresponding Statutes to be issued within one hundred and twenty days from the entry into force of this present decree, as well as to the Legislative Decree to be issued under article 12 section 10 of this present decree.
2. The regulations for implementation of the Statutes of which in section 1 may also establish regulations independently of the regulations of which in sections 3, 6 and 7 of article 12.

Art. 17

(Entry into force)

1. This present decree shall enter into force on the day following that of its publication in the Official Journal of the Italian Republic.