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The year 2008 was marked by major developments in the energy landscape in Belgium.

First of all, the powers of the CREG were extended to include new tasks relating to supervision on the electricity and natural gas markets. As of now, the Commission is in charge of supervising competition on the markets and monitoring these markets, as well as keeping an eye on the essential interests of consumers. From now on, it will also be able to put forward opinions and proposals relating to both prices and the promotion of good market operation.

This extension of the tasks of the federal regulator, whose powers have until now been limited to transmission and distribution activities, relates specifically to activities that are open to competition, i.e. generating, importing and supplying, which account for most of the consumer’s final bill. Given the extent of the tasks to be carried out, the CREG has set priorities for 2009 and the years thereafter. These priorities relate to the analysis of the costs of generation, imports and supply, as well as their mutual objective relationship and the prices offered to consumers. In addition, the CREG is to take a closer look at how the market works, including the electricity and gas exchanges.

Another striking development that occurred during the past year related to the merger between GDF and Suez, not only because it resulted in the creation of a major player at world level, but also because it led to a number of measures being taken to improve competition on the Belgian market, particularly in the natural gas sector. In line with its undertakings to the European Commission, Suez transferred its shares in Distrigas and enabled the holding company, Publigas, to acquire the majority of the capital in Fluxys. The establishment of Fluxys International with special provisions to guarantee a certain degree of independence regarding the operation of and investment in the Zeebrugge terminal is also worth noting.

In the electricity sector, the most striking change in 2008 was the exchange of approximately 1,700 MW in generating capacity between Electrabel and E.ON. Suez had given commitments to the Belgian government that it would do so as part of the “Pax Electrica II”.

All these developments may be described as structural and initiative-driven, as they considerably alter the structure of the electricity and natural gas markets. Although they are necessary to improve the operation of the market and competition, time will tell whether they are sufficient to ensure consumers get the best prices.

The year 2009 coincides with the tenth anniversary of the liberalisation of the gas and electricity markets in Belgium. Although the markets were gradually opened up to competition, until household clients in Wallonia and Brussels also became eligible in January 2007, a considerable amount of ground has been covered in terms of reforming the sector. The integrated companies have divided up and focused on specific specialist areas. The government, meanwhile, has had to become familiar with the terms relating to the liberalised market and has come to apply totally new laws as a result.
The government, market operators and consumers now agree that the results of liberalisation are improving year by year, but still reveal sharp contrasts. However, Belgium is not alone in this respect by any means, as the same can be said of almost all the countries in the European Union. The EU has to accept a third legislative package this year to give new impetus to the European energy policy. This is proof that the development towards a market that operates as best as possible is yet complete and that it is a gradual process which has to be considered from a long-term perspective.

François Possemiers
Chairman of the Management Board
April 2009
1. The Commission for Electricity and Gas Regulation (CREG)
1. The tasks entrusted to the CREG

On the basis of the Law of 29 April 1999 on the organisation of the electricity market (Electricity Act) and the Law of 12 April 1965 on the transmission of gaseous and other substances by pipeline (Gas Act), the CREG is entrusted with an advisory task on behalf of the federal government regarding the organisation and functioning of the electricity and natural gas markets on the one hand and a general task of supervision and monitoring of the application of the relevant laws and regulations on the other.

The approval of the law containing various provisions dated 8 June 2008 brought about a considerable expansion in the powers of the CREG by attributing it a further monitoring assignment. This means that from now on, the CREG is entrusted with the task of supervising transparency and competition on the electricity and natural gas markets, making sure that the situation as regards technical aspects and rates in the electricity and natural gas sectors and developments in these areas are in the general interest, ensuring ongoing monitoring of both markets, upholding the basic interests of consumers and the practical application of the public service obligations, making sure the electricity or natural gas companies refrain from anti-competitive behaviour or unfair trading practices, putting forward opinions and proposals on prices and improving the way in which the market operates and transparency on the market and finally assessing whether the prices applied by an electricity or a gas company are in proportion to the costs incurred on an objective basis.

In addition, the CREG has been given a number of powers and rights with a view to enabling the Commission to carry out its new tasks. For instance, it can request particulars, reports and periodic information from the electricity or natural gas companies and consult all the necessary particulars and documents on site. In this context, the Programme Law of 22 December 2008 further increased the regulatory powers of the CREG by giving the King the task of appointing the members of the Management Board and the members of staff to be given the capacity of officer in the judicial police.

2. The bodies of the CREG

2.1. The General Council

The composition of the General Council was modified by the Royal Decree of 15 May 2008. The Council is to be supplemented by a member who represents industries that generate electricity for their own needs, a member who will be proposed by the operator of the transmission grid and a member who represents the market operator for the exchange of energy blocks, proposed by Belpex. The number of members representing the gas companies will be reduced from three to two, who are natural gas supply permit holders and who are members of FEBEG. The two members representing the intermediaries and suppliers in future will represent electricity supply permit holders who are members of FEBEG.

The members of the General Council were appointed by the Ministerial Decree of 5 March 2004 for a period of three years. This period expired on 20 February 2007. Since then, the General Council has continued to operate while awaiting a complete renewal that is scheduled to take place in early 2009. A number of representatives of the federal government were replaced by a Ministerial Decree dated 13 May 2008.

---

4. Federation of Belgian Electricity and Gas Companies.
In 2008, the General Council was chaired by Mr Peter CLAES and met eleven times. An extraordinary meeting was convened to present the study by Cambridge Economic Policy Associates (CEPA) on the “Structure and functioning of the natural gas market in Belgium in a European context.” This study gives a detailed analysis of the existing entry barriers that hamper or slow competition in Belgium and puts forward a number of measures designed to eliminate these barriers and/or improve the competition conditions in Belgium. In October 2008, the General Council issued an opinion on this study. In addition to comments and thoughts about the methodology and the analysis of the natural gas market, the General Council also made a number of recommendations. For instance, it advocates taking appropriate measures to avoid any risk of a conflict of interests (or the perception of such a conflict) as regards the system operator, and to create a regulatory framework for the natural gas exchange. The General Council also stresses the need to make more efficient use of the existing storage and transmission capacity. Fluxys is also encouraged to continue its efforts towards a “full” entry-exit system. All stakeholders in the natural gas market, including the regulator, should also contribute towards greater transparency on the market. Finally, short-term, medium-term and long-term scenarios regarding gas imports should be drawn up and the General Council argues in favour of granting the regulator the necessary independence, resources and autonomy.

The presence of the Minister for Energy at the meetings of the General Council in February and December 2008, when he set out the main thrusts of the policy he wishes to adopt in the electricity and gas sector gave rise to a successful exchange of information between the Minister and the members of the General Council. Moreover, the permanent participation of a representative of the Minister for Energy made it possible for the General Council to focus its activities on the most pressing issues and to be informed at regular intervals of the government’s concerns regarding natural gas and electricity.

In 2008, among other things the General Council dealt with the following issues, which are discussed further in this report:

- the inadequate electricity-generating capacity in Belgium;
- the Belpex Day-Ahead Market and the use of capacity at the interconnections with France and the Netherlands during the first half of 2008;
- proposals to improve liquidity at the Zeebrugge hub;
- monitoring natural gas import capacity;
- electricity and natural gas price components;
- the implementation of the commitments and agreements entered into by the Suez Group in the context of the Pax Electrica I and II;
- the federal contribution towards offsetting the loss of earnings suffered by the municipalities further to the liberalisation of the electricity market;
- the code of conduct.

In addition, questions raised by the Minister for Energy were prepared and discussed in various working groups before being dealt with in the General Council.

In October, the General Council approved the CREG draft budget for 2009 after very extensive discussions.

2.2. The Management Board

The Management Board is responsible for the operational management of the CREG and takes care of everything that is necessary or useful for the fulfilment of the assignments entrusted to it under the Electricity Act and the Gas Act.

The chairman and the three directors who make up the Management Board deliberate as a college in accordance with the usual rules on deliberation meetings.

The Management Board is chaired by Mr François POSSEMIERS, who is also responsible for the management of the CREG. The three directors are Mr Guido CAMPS, who is in charge of prices and accounts monitoring, Mr Bernard LACROSSE, who heads the administrative directorate and Mr Dominique WOITRIN, who is in charge of the technical operation of the electricity and natural gas markets. The members of the Management Board were appointed at the start of 2007 for a period of six years by a royal decree discussed in the Council of Ministers.

6 Study CREG-CEPA032008.
7 For a concise summary of this study, see CREG press release No 64 from the CREG of 7 March 2008, “The General Council of the CREG takes note of the report from Cambridge Economic Policy Associates on the Belgian natural gas market” available at www.creg.be.
8 Par. 2.4.1., p. 55.
9 Par. 2.9, p. 70.
10 Par. 2.3., p. 30.
11 Par. 2.5.2.1., p. 33.
12 Pars. 2.7.3 and 2.8.2., p. 44 and p. 67.
13 Par. 2.8., p. 46.
14 Par. 6.2.6., p. 17.
15 Par. 2.5.2.2., p. 32.
## Table 1: Members of the General Council as per 31 December 2008

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<th>Category</th>
<th>ACTUAL MEMBERS</th>
<th>DEPUTY MEMBERS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Federal government</strong></td>
<td>DUJARDIN Davine</td>
<td>DEWISPELAERE Sophie</td>
</tr>
<tr>
<td></td>
<td>MABILLE Luc</td>
<td>NIKOLIC Diana</td>
</tr>
<tr>
<td></td>
<td>CHAHID Ridouane</td>
<td>HOUTMAN Eric</td>
</tr>
<tr>
<td></td>
<td>ROOBROUCK Nele</td>
<td>BOEYKENS Marc</td>
</tr>
<tr>
<td></td>
<td>DE COSTER Nicolas</td>
<td>ONCLINX Philippe</td>
</tr>
<tr>
<td><strong>Regional governments</strong></td>
<td>BIESEMAN Wilfried</td>
<td>BALFROID Fabienne</td>
</tr>
<tr>
<td></td>
<td>DEVUYST Philippe</td>
<td>TANGHE Martine</td>
</tr>
<tr>
<td></td>
<td>GLORIEUX Jacques</td>
<td>LEFERE Raphaël</td>
</tr>
<tr>
<td><strong>Representative employees’ organisations sitting on the National Labour</strong></td>
<td>LEEMANS Marc</td>
<td>BERT Nadine</td>
</tr>
<tr>
<td>Council**</td>
<td>DE LEEUW Rudy</td>
<td>VANHEMELEN Valérie</td>
</tr>
<tr>
<td></td>
<td>VERCAMST Jan</td>
<td>DECROP Jehan</td>
</tr>
<tr>
<td></td>
<td>PANNEELS Anne</td>
<td>GALLER Jean-Claude</td>
</tr>
<tr>
<td></td>
<td>SKA Marie-Hélène</td>
<td>VAN MOL Christiaan</td>
</tr>
<tr>
<td><strong>Representative employees’ organisations sitting on the Council for Consumption</strong></td>
<td>WILLEMSTom</td>
<td>MAES Fre</td>
</tr>
<tr>
<td></td>
<td>VAN DAELE Daniel</td>
<td>SPIESENS Eric</td>
</tr>
<tr>
<td><strong>Organisations for the promotion and protection of the general interests of small-scale users</strong></td>
<td>LABARRE Vincent</td>
<td>ADRIAENSENSSE Claude</td>
</tr>
<tr>
<td></td>
<td>SCHOCKAERT Chantal</td>
<td>LESAGE Olivier</td>
</tr>
<tr>
<td><strong>Representative organisations of industry, banking and insurance sector sitting on the Central Economic Council</strong></td>
<td>VEN Caroline</td>
<td>VANDERMARLIERE Frank</td>
</tr>
<tr>
<td></td>
<td>CHAPUT Isabelle</td>
<td>CALOZET Michel</td>
</tr>
<tr>
<td></td>
<td>AERTS Kristin</td>
<td>VAN DER MAREN Olivier</td>
</tr>
<tr>
<td><strong>Representative organisations of the crafts, small and medium-sized trading companies and small-scale industry sitting on the Central Economic Council</strong></td>
<td>ERNOTTE Pascal</td>
<td>WERTH Francine</td>
</tr>
<tr>
<td></td>
<td>VANDENABEELE Piet</td>
<td>VAN GORP Michel</td>
</tr>
<tr>
<td><strong>Major electricity consumers</strong></td>
<td>CLAES Peter</td>
<td>BOSCH Claire</td>
</tr>
<tr>
<td><strong>Major natural gas consumers</strong></td>
<td>BRAET Luc</td>
<td>ELENS Claire</td>
</tr>
<tr>
<td><strong>Producers who are members of the Professional Federation of Producers and Distributors of Electricity in Belgium</strong></td>
<td>DE GROOF Christian</td>
<td>SIMONS Mariane</td>
</tr>
<tr>
<td></td>
<td>HEYVAERT Griet</td>
<td>GREGOIRE Claude</td>
</tr>
<tr>
<td><strong>Renewable energy sources producers</strong></td>
<td>JACQUET Annabelle</td>
<td>VERBRUGGEN Aviel</td>
</tr>
<tr>
<td><strong>Co-generation producers</strong></td>
<td>PEERSMAN Inneke</td>
<td>MARENNE Yves</td>
</tr>
<tr>
<td><strong>Distribution network operators</strong></td>
<td>DECLERCQ Christine</td>
<td>BURTOMBOY Marc</td>
</tr>
<tr>
<td>• INTERMIXT</td>
<td>HUJOEL Luc</td>
<td>DRAPPS Willem</td>
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<td></td>
<td>PEETERS Guy</td>
<td>VERSCHELDE Martin</td>
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<tr>
<td></td>
<td>DE BLOCK Gert</td>
<td>HOUGARDY Carine</td>
</tr>
<tr>
<td><strong>Transmission system operator</strong></td>
<td>GERKENS Isabelle</td>
<td>AERTSENS Walter</td>
</tr>
<tr>
<td><strong>Gas companies, other than the distribution companies, who are members of the Association of the Gas Industry</strong></td>
<td>LEBOUT Didier</td>
<td>DEBERDTRDirk</td>
</tr>
<tr>
<td></td>
<td>NIEUWLAND Dominique</td>
<td>LAMMENS Griet</td>
</tr>
<tr>
<td></td>
<td>GILLIS Michaël</td>
<td>LEYEN Ingrid</td>
</tr>
<tr>
<td><strong>Environmental associations</strong></td>
<td>CLAEYS Bram</td>
<td>ANGE Mikael</td>
</tr>
<tr>
<td></td>
<td>PATERNOSTRE Véronique</td>
<td>DELLAERT Peter</td>
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<tr>
<td><strong>Intermediaries</strong></td>
<td>STERCKX Luc</td>
<td>LAMBERCHTS Véronique</td>
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<tr>
<td><strong>Suppliers</strong></td>
<td>PUTMAN Philippe</td>
<td>DUTORDOIR Sophie</td>
</tr>
<tr>
<td><strong>Chairman of the CREG Management Board</strong></td>
<td>POSSEMIERS François</td>
<td>-</td>
</tr>
</tbody>
</table>
THE GENERAL COUNCIL

Peter Claes
Chairman

Daniël Van Daele
Vice-Chairman

THE MANAGEMENT BOARD

François Possemiers
Chairman

Guido Camps
Director

Bernard Lacrosse
Director

Dominique Woitrin
Director
### 3. The staff of the CREG

As per 31 December 2008, the CREG had sixty-four members of staff, not including the chairman and the directors.

#### Table 2: Directorates and staff of the CREG as per 31 December 2008

<table>
<thead>
<tr>
<th>Chairmanship of the Management Board</th>
<th>POSSEMIERS François</th>
<th>Chairman of the Management Board</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DEVACHET Christiane</td>
<td>Assistant to the director</td>
</tr>
<tr>
<td></td>
<td>FIEUX Jan</td>
<td>Secretary of the Management Board</td>
</tr>
<tr>
<td></td>
<td>ROMBAUTS Josiane</td>
<td>Chief advisers</td>
</tr>
<tr>
<td></td>
<td>VAN DEN BORRE Tom</td>
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<tr>
<td></td>
<td>JACQUET Laurent</td>
<td></td>
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<tr>
<td></td>
<td>LOQUET Koen</td>
<td>Senior advisers</td>
</tr>
<tr>
<td><strong>Directorate for the technical operation of the markets</strong></td>
<td>WOOTRIN Dominique</td>
<td>Director</td>
</tr>
<tr>
<td></td>
<td>GOOVAERTS Wendy</td>
<td>Assistant to the director</td>
</tr>
<tr>
<td></td>
<td>VAN KELECOM Inge</td>
<td>Mult-purpose secretary</td>
</tr>
<tr>
<td></td>
<td>GREYU Jacques</td>
<td>Chief advisers</td>
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<td></td>
<td>MARIEN Alain</td>
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<td></td>
<td>MEES Emmeric</td>
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<td>VAN ISTERDAEL Ivo</td>
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<td></td>
<td>CLAIREWEERT Geert</td>
<td>Chief advisers</td>
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<td>CUJJPERS Christian</td>
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<td>DE WAELLE Bart</td>
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<td>FONTAINE Christian</td>
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<td>PONCELET Yves</td>
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<td></td>
<td>VAN HALLVERMEIREN Geert</td>
<td>Senior advisers</td>
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<tr>
<td></td>
<td>TIREZ Andreas</td>
<td>Adviser</td>
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<tr>
<td><strong>Directorate for price and accounts monitoring</strong></td>
<td>CAMPS Guido</td>
<td>Director</td>
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<td></td>
<td>FELIX Kim</td>
<td>Assistant to the director</td>
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<tr>
<td></td>
<td>De RUETTE Patrick</td>
<td>Chief advisers</td>
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<td>LAERMANS Jan</td>
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<td>WILBERZ Eric</td>
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<td>ALONSIUS Johan</td>
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<td>HERNOT Kurt</td>
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<td></td>
<td>PIECK An</td>
<td>Advisers</td>
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<tr>
<td></td>
<td>DE MEYERE Francis</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LIBERT Brice</td>
<td>Assistant advisers</td>
</tr>
<tr>
<td><strong>Administrative directorate</strong></td>
<td>LACROSSE Bernard</td>
<td>Director</td>
</tr>
<tr>
<td></td>
<td>SELLESLAUGH Ariette</td>
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</tr>
<tr>
<td><strong>General Council</strong></td>
<td>DELOURME Freddy</td>
<td>Chief economic advisor</td>
</tr>
<tr>
<td></td>
<td>HERZEEL Murielle</td>
<td>Assistant</td>
</tr>
<tr>
<td><strong>General administration</strong></td>
<td>DE PEUTER Caroline</td>
<td>Office Manager</td>
</tr>
<tr>
<td></td>
<td>ESSER Merceïdes</td>
<td>Translator</td>
</tr>
<tr>
<td></td>
<td>HAENSEDONCK Herman</td>
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</tr>
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<td></td>
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<tr>
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<tr>
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<tr>
<td><strong>Finance</strong></td>
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<td></td>
<td>LECOQ Nathalie</td>
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<tr>
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<td>PINZAR Laurent</td>
<td>Administrative staff member</td>
</tr>
<tr>
<td><strong>Studies, documentation and archives</strong></td>
<td>BORN Raphael</td>
<td>Senior advisers</td>
</tr>
<tr>
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<td>CHICHAH Chorok</td>
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<tr>
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<td>MARTINET Paul</td>
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<td>PARTSCH Gwendoline</td>
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<td></td>
<td>ROOBOUCK Myriam</td>
<td></td>
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<tr>
<td></td>
<td>STEELANDT Laurence</td>
<td></td>
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<tr>
<td></td>
<td>ZEGER Laetitia</td>
<td>Senior advisers</td>
</tr>
<tr>
<td></td>
<td>Smedts Hilde</td>
<td>Adviser</td>
</tr>
<tr>
<td></td>
<td>HENGESCH Luc</td>
<td>Archivist</td>
</tr>
</tbody>
</table>


4. The policy plan

For the second year in succession and in accordance with the Electricity Act, the Management Board prepared the policy plan to be handed to the Council of Ministers along with the draft budget of the CREG for the year 2009. This policy plan comprises the strategic objectives intended to implement the general policy of the government, as well as the special rules and conditions for fulfilling the assignments which the legislator has entrusted to the CREG.

First and foremost, the policy plan for the year 2009 continues to pursue the thirteen objectives described in the policy plan for 2008. The plan then explains in detail the three additional objectives which the CREG is to endeavour to achieve in 2009 in the context of the new powers granted to it by the Law of 8 June 2008\textsuperscript{16}. These objectives respectively consist of assessing the objective relationship between costs and prices, monitoring the operation of the electricity and the natural gas markets and taking the necessary initiatives to ensure the proper levying of the federal contribution for electricity. The policy plan also outlines the reasons for choosing these three objectives, states the need for additional resources to be able to attain them and discusses the various conditions for achieving the desired results.

The policy plan was handed to the Minister for Energy on 28 October 2008, along with the CREG draft budget for 2009.

5. Cooperation with other bodies

5.1. The CREG and the European Commission

Once again in 2008, the CREG, working closely with the regional regulators and the Energy Administration, drew up a report for the European Commission with a view to the publication of the latter’s annual report on the progress made with the creation of an internal electricity and natural gas market\textsuperscript{17}. The report provides an overview of the Belgian electricity and natural gas markets during the year 2007 and in particular discusses the implementation in Belgian domestic law of the relevant European regulations, the wholesale and retail markets, the exchange and the hub, network rates, investments in networks, storage, generation, security of supply, and the powers and tasks of the various energy regulators operating on Belgian territory.

In addition, the CREG cooperated on numerous other consultation processes and reports on behalf of the European Commission via its membership of the CEER and ERGEG\textsuperscript{18}.

5.2. The “Citizens’ Energy Forum”

By analogy with the Madrid Forum\textsuperscript{19} and the Florence Forum\textsuperscript{20}, the first London Forum, or “Citizens’ Energy Forum” was organised at the end of October 2008. The purpose of this forum is to contribute toward implementing and strengthening consumers’ rights in the European energy market. The specific feature of this Forum is that the European Commission, along with co-organiser ERGEG, not only brought together the regulators, national governments and representatives of the industry, but also allotted an active role to consumer organisations. The focus of this forum was on consumer protection and on the creation of a competitive retail market in the interest of consumers. The Forum looked at the following aspects: clear and transparent billing, simplification of supplier switch, vulnerable customers and the issue of energy poverty, smart meters and their possible usefulness for the consumer, unfair trading practices and the implementation by the member states of Appendix A of the gas and electricity directives\textsuperscript{21} relating to the provisions on consumer protection\textsuperscript{22}. It was decided to organise another such Forum in the autumn of 2009.

\textsuperscript{16} Par. 1 above.
\textsuperscript{17} This report is available at www.energy-regulators.eu.
\textsuperscript{18} Par. 5.3 below
\textsuperscript{19} Par. 1.3., p. 49.
\textsuperscript{20} Directives 2003/55/EC and 2003/54/EC.
\textsuperscript{21} The conclusions of the Forum can be consulted at www.energy-regulators.eu.
5.3. The CREG within the CEER and the ERGEG

The CREG is a member of both the CEER and of ERGEG and takes part in the CEER working groups (including the “Gas Working Group”, the “Electricity Working Group”, the “Customer Working Group”, the “Energy Package Working Group” and the “Financial Services Working Group”). In the context of the Regional Initiatives, the CREG is the lead regulator of the “Electricity regional initiatives” in the “Central-West” region.

In 2008, both the CEER and ERGEG once again focused largely on the third legislative package from the European Commission, paying particular attention to the setting up and the tasks of the future Agency for cooperation between energy regulators and its relations with the national regulators, unbundling, transparency and the implementation of existing European directives. ERGEG and CESR also issued a joint opinion on European Parliament and Council Directive 2003/6/EC of 28 January 2003 on insider trading and market manipulation (market abuse) and possible proposals for remedies, and ERGEG organised the first London Forum. Finally, a consultation process entitled “First thoughts on implementing the third package” was organised at the end of 2008 in the context of the implementation of the measures included in the third legislative package and a conference was held in Brussels on this subject at the initiative of the CEER and ERGEG.

In May 2008, the CEER published a position paper on the measures contained in the Green Package proposed by the European Commission in January 2008. The measures included in this package will impact among other things on future investments in the grids.

The CREG also started discussions and the examination of the European Commission’s “Second Strategy Review” at the end of 2008 through its various working groups.

5.4. The CREG and the regional regulators

The CREG and the three regional regulators hold regular consultation meetings on an informal basis. In 2008, five meetings were organised, at which the CREG took the chair during the first six months of the year and the CWaPE during the second half.

The main issues dealt with by the regulators in 2008 related among other things to how to deal with CEER questionnaires, the Agency to be set up in the context of the European Commission’s third legislative package, the ramifications of a number of judgements from the Court of Justice of the European Communities, the conclusions of the first “Citizens’ Energy Forum”, the issue of VAT as regards green power certificates, decentralised generation, the conclusions of the “Spring of the Environment” study carried out by the VREG and the role that the regulators can play in creating this model.

In the spring of 2008, for the fourth time the regulators published a joint (statistical) overview on the development of the electricity and natural gas markets in Belgium.

5.5. Dealing with questions and complaints

In February 2008, the Management Board received a request from Greenpeace for access to the documents on the overall expenditure of receipts for electricity generating-interconnection-transmission activities and on the overall expenditure of receipts for electricity distribution activities of the Monitoring Committee for the 1971-2006 period. In July 2008, after an initial refusal in March 2008, the Management Board for Electricity and Gas decided that Greenpeace’s request for public disclosure should be rejected on the grounds of Article 26, §2 of the Electricity Act which includes a duty of confidentiality required by law within the meaning of Article 6, §2, 2° of the Law of 11 April 1994 on the public nature of administration.

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23 The CEER has 29 members, i.e. the regulators of the 27 EU member states plus Norway and Iceland.
24 ERGEG is the official advisory body of the European Commission, set up further to a decision from the European Commission (2003/796/EC) of 11 November 2003. The CEER prepares much of the work of the ERGEG.
25 Committee of European Securities Regulators.
27 Par. 5.2, above
28 The papers produced by the CEER and ERGEG can be consulted at www.energy-regulators.eu.
29 Par. 1.1., p. 25
30 Par. 1.2., p. 25.
31 Par. 5.2, above.
32 Par. 2.4.5.2., p. 57.
33 Available at www.creg.be.
34 The Monitoring Committee was abolished in July 2003 and its powers were taken over by the CREG.
requested documents fall within this duty of confidentiality in their entirety as they contain detailed data on the costs and profitability of the generation, transmission and distribution activities.

As regards the mediation service for energy, in early 2008 a royal decree 36 was passed setting out detailed rules on the operation of this service, as well as the rules that apply to its members. However, by 31 December 2008 the King had not yet appointed the members of the mediation service. While awaiting the start-up of this service, questions about the energy market in general may be addressed to the Information Service of the Federal Public Service for the Economy 37.

6. The CREG finances

6.1. The federal contribution

The federal contribution is a surcharge levied on the quantity of energy used. Electricity and natural gas suppliers collect this federal contribution from their customers and use it to feed the various funds run by the CREG.

In 2007, the European institutions were given permission by the Minister for Energy to be exempted from the federal gas and electricity contribution, backdated to 2003. Reimbursements were made amounting to a total of €1,119,671.

6.1.1. The federal contribution for gas

Each quarter, the CREG bills the nine holders of a natural gas supply permit operating on the transmission grid for one fourth of the annual requirements of the gas funds. These suppliers feed the CREG fund (and its reserve), the social energy fund and the protected customers fund directly. Consequently the receipts booked by the CREG correspond exactly to the expected amounts, which in 2008 comprised the basic amount of each fund for the year 2008 together with a supplementary amount to guarantee repayment to the European institutions.

Every year, a comparison between the amount claimed by the CREG and the amount that suppliers were actually able to invoice to their customers during the previous year gives rise to an adjustment. The adjustment made for the year 2007 led to the booking of an additional amount of €746,963 for all funds combined. This will be taken into account the next time the federal contribution is calculated.

6.1.2. The federal contribution for electricity

Each quarter, suppliers pay the amount of the federal contribution that they have charged their customers during their previous quarter into a single fund set up for this purpose (direct contribution). At the same time, they provide the CREG with a certificate on the basis of which the latter divides these amounts among the CREG fund, the social energy fund, the denuclearisation fund, the greenhouse gases fund and the protected customers’ fund. In 2008, to compensate for the reductions in the federal contribution (degressivity) granted by the electricity suppliers to some of their customers in accordance with the Electricity Act, the Administration of the Treasury paid the sum of €46,478,791 into the federal contribution fund, along with €501,977 corresponding to the balance of the degressivity for 2007.

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36 Royal Decree of 18 January 2008 on the mediation service for energy (Belgian official journal of 12 February 2008).

37 The information service can be contacted every weekday between 9:00 am and 12 noon and between 1:00 pm and 5:00 pm by telephone (toll free) 0800 12033; fax (toll free) 0800 12057; e-mail info.eco@mineco.fgov.be; post Rue du Progrès 50, B-1210 Brussels.
In 2006\textsuperscript{38} and 2007\textsuperscript{39}, the CREG had noted that the amount paid into the five funds by the electricity sector (via the direct contribution and degressivity) was lower than the expected total amounts. The CREG took this into account when calculating the federal contribution for 2008, so as to compensate for this lack of income for the various funds. Consequently, the amounts expected for 2008 consist of the basic amount of each fund for the year 2008 and a supplementary amount to offset the previous shortfall and to guarantee repayments to the European institutions.

As per 31 December 2008, the total cash assets of the federal contribution fund amounted to € 35,844,135. On the one hand, suppliers are still owed € 519,731 and a further € 171,469 has to be recovered on various amounts receivable. On the other hand, the degressivity certified by the suppliers for 2008 amounts to € 46,444,333. A total sum of € 34,458 will therefore have to be repaid to the Federal Public Service for Finance.

The federal contribution and the degressivity certified by the suppliers for the fourth quarter of 2008 amounted respectively to € 24,910,765 and € 11,464,618. The last degressivity instalment for 2007 amounts to € 125,494. On the basis of this, a further € 36,500,877 can be divided among the five funds for the 2008 financial year.

In 2008, the five funds were able to obtain the necessary revenue to cover their own needs for the year. However, for some of them the increased contribution was insufficient to make up all their previous shortfalls. Table 3 shows the surplus or shortfall in income for the various funds, including the aforementioned supplement, for the year 2008.

### Table 3: Surplus or shortfall recorded for 2008, including supplement (€)

<table>
<thead>
<tr>
<th>Fund</th>
<th>Surplus or shortfall (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CREG</td>
<td>91,449</td>
</tr>
<tr>
<td>Social energy fund</td>
<td>-296,218</td>
</tr>
<tr>
<td>Denuclearisation</td>
<td>-3,778,146</td>
</tr>
<tr>
<td>Greenhouse gases</td>
<td>-2,135,922</td>
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<tr>
<td>Protected customers</td>
<td>569,188</td>
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</tbody>
</table>

In order to ensure a more efficient collection of the federal contribution in the future, the legislator\textsuperscript{40} has stipulated that the transmission system operator will be responsible for collecting the federal contribution for electricity and paying it to the CREG. The same law provides for a new fund, intended to finance the flat-rate reductions for heating by natural gas and electricity. Finally, under this Programme Law the reductions in the federal contribution granted to large-scale users (degressivity) are increased. These measures entered into force on 1 January 2009. The terms and procedures relating to the new collection procedure, as well as the date on which this procedure will come into effect, will be determined by royal decree.

### 6.2. The funds

#### 6.2.1. The CREG Fund

The CREG budget for the year 2008 amounted to € 13,223,735. This amount is allocated to the CREG budget (€ 12,773,487) and to the reserves (€ 450,248). Since 2005, the sum of € 832,054 has been permanently available for the installation and initial operation of the mediation service. The CREG accounts for 2008 are described in detail in paragraph 6.3 below.

#### 6.2.2. The Social Energy Fund

For 2008, a total of € 48,117,708, of which € 27,942,950 came from the electricity sector and € 20,174,758 from the natural gas sector, was provided to help the Public Centres for Social Welfare with their task of providing assistance and financial social support in the field of energy. However, the amount from the electricity sector was supplemented by € 2,547,780 to offset shortfalls from the past and repay the European institutions. The amount from the natural gas sector was reduced by € 2,170,709, corresponding to the surplus amount collected in the past and the amount set aside to repay the European institutions. The total revenue ultimately booked for electricity in 2008 was € 30,194,512. Only € 18,004,049 was recorded for gas as the surplus collected by the gas fund in the past (€ 2,195,252) which was already available, was offset against the demand for payment of the contribution by the natural gas suppliers. In addition to the balance payable to the Public Centres for Social Welfare for 2007 (€ 10,691,655), the cash assets made it possible to pay out € 36,028,545 in 2008, as provided for by the Federal Public Planning Service for Social Integration, as well as the additional € 4,000,000 originally planned for 2007 for the gas convectors\textsuperscript{41}.

The investment of these sums with the National Bank of Belgium pending their allocation yielded € 66,867 in interest. As

\textsuperscript{38} Annual Report 2006, Table 15, p. 58.
\textsuperscript{39} Annual Report 2007, Table 3, p. 13.
\textsuperscript{40} Programme Law (I) of 22 December 2008 (Belgian official journal of 29 December 2008).
\textsuperscript{41} Annual Report 2007, par. 7.2.2., p. 14.
As per 31 December 2008, the overall amount available in the fund stood at € 12,321,931, including interests and amounts still to be distributed from the federal contribution fund.

6.2.3. The Denuclearisation Fund

This fund, which is financed exclusively by the federal contribution charged by the electricity sector, should have stood at € 55,000,000 for 2008, plus € 7,815,321 to offset shortfalls from the past and to repay the European institutions. However, apart from the payment of the balance from 2007 (€ 22,441,000), the CREG was only able to transfer to O.N.D.R.A.F./N.I.R.A.S., the Belgian agency for radioactive waste and enriched fissile materials, the sum of € 37,870,000 out of the amount owed of € 41,250,000 which it should have received in 2008 to fulfil its denuclearisation task. The payment arrears to O.N.D.R.A.F./N.I.R.A.S fell slightly compared with 2007. The annual amount is to be maintained at the current level of € 55,000,000 for the years 2009 to 2013.

As per 31 December 2008, the total amount held in the fund stood at € 13,481,913, including the amounts still to be distributed from the federal contribution fund.

6.2.4. The Greenhouse Gases Fund

This fund, which is supplied exclusively by the federal contribution charged by the electricity sector, should have stood at € 27,843,602 for the year 2008, plus € 3,955,682 to offset the shortfalls from the past and to repay the European institutions. However, only € 29,663,362 was booked into the fund. The total amount budgeted for 2009 (€ 2,300,000) was paid in advance by the CREG into the organic budget fund of the Federal Public Service for the Environment, intended for the annual financing of the federal policy on the reduction of greenhouse gas emissions.

The investment of these amounts with the National Bank of Belgium pending their allocation yielded interests of € 1,831,645. As per 31 December 2008, the total amount of the fund stood at € 38,346,945, including interests and amounts still to be distributed from the federal contribution fund.

An additional sum of € 50,000,000 stipulated by royal decree, was transferred from the greenhouse gases fund to the Kyoto Joint Implementation/Clean Development Mechanism fund (JI/CDM). This transfer supplements the existing resources which are intended specifically to fund projects to reduce emissions of greenhouse gases abroad, enabling Belgium to acquire emissions quotas with a view to attaining its targets under the Kyoto protocol. The Royal Decree of 7 December 2008 provided for an addition amount of € 30,000,000 to be transferred by the Greenhouses Gases Fund by 15 April 2009 at the latest. In 2008, the sum of € 26,000,335 was drawn from the fund for the purchase of CO₂ emission credits and the sum of € 2,417 for other projects.

For the Kyoto fund, the investment of these amounts with the National Bank of Belgium pending their allocation yielded € 3,452,547 in interest. As at 31 December 2008 the total amount in the fund stood at € 88,748,545, including interest.

6.2.5. The Protected Customers’ Fund

For the year 2008, this fund should have stood at a total of € 25,520,000 for electricity and € 29,877,744 for natural gas, to which should be added € 2,523,113 and € 22,256 respectively to offset shortfalls from the past and to repay the European institutions. Ultimately, € 28,612,301 was booked into the electricity fund in 2008. As regards the gas fund, however, the planned sum of € 29,900,000 was effectively recorded.

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42 Royal Decree of 21 October 2008 setting the amounts intended to finance the nuclear liabilities BPI and BP2 for the 2009-2013 period, implementing Article 4, §2 of the Royal Decree of 24 March 2003 determining the more detailed rules on the federal contribution towards financing certain public service obligations and the costs related to the regulation and monitoring of the electricity market (Belgian official journal of 22 December 2008).

43 Royal Decree of 13 July 2008 amending the Royal Decree of 28 October 2004 establishing the management procedures for the fund to finance federal policy on the reduction of greenhouse gas emissions. (Belgian official journal of 22 July 2008).

44 Royal Decree of 7 December 2008 amending the Royal Decree of 28 October 2004 establishing the management procedures of the fund to finance the federal policy on the reduction of greenhouse gas emissions (Belgian official journal of 24 December 2008).
Repayments to companies in the sector that supplied protected household customers at maximum social rates continued in 2008 with the sum of € 4,304,972 for electricity suppliers and € 709,018 for natural gas suppliers.

The investment with the National Bank of Belgium of these amounts, pending the allocation of the electricity and gas fund, yielded interests of € 1,862,163 and € 1,316,215 respectively. As per 31 December 2008, the total amounts stood at € 76,199,710 for the electricity fund and € 60,849,359 for the gas fund, including interests and sums still to be distributed from the federal contribution fund.

6.2.6. The fund to offset the loss of revenue suffered by the municipalities

This fund is financed by the distribution network operators for electricity who collect the federal contribution to offset the loss of revenue suffered by the municipalities and pass it on to the CREG. The CREG is responsible for administering this fund and redistributing the sums paid into it by the distribution network operators among the municipalities. Since the introduction of this federal contribution on 1 May 2004, the distribution network operators have been encouraged to ensure the prefinancing of the fund administered by the CREG. The plan was for the contributions prefinanced by the distribution network operators for the period from 1 May 2004 to 31 May 2005 to be recovered from 1 July 2007 to 31 August 200945.

In 2004, the Walloon46 and the Brussels-Capital47 regions immediately decided to exempt end users connected to their respective distribution networks from this federal contribution to offset the municipalities’ loss of revenue. For its part, the Flemish region48 decided to grant an exemption from this federal contribution as of 1 January 2008.

It was decided by Royal Decree of 20 December 200749 to keep the tax rate of this contribution at € 4.91/MWh until 31 August 2009 and thereafter at € 2.50/MWh until 1 July 2010. As of 1 July 2010, assessments will no longer be carried out.

At the request of the Minister for Energy, the Management Board examined the relationship between these various legislative acts. The Management Board published a study50 in which it took stock of the situation and pointed to the lack of clarity of the legal basis for recovering the amounts prefinanced by the distribution network operators. In September 2008, the General Council expressed its point of view on the matter to the Minister for Energy and Minister Crevits of the Flemish Government.

The CREG received the final quarterly advance relating to the 2007 financial year from the distribution network operators, that is € 20,720,522 and passed this on to the municipalities in early 2008. The CREG also transferred € 1,023,847 to the suppliers to cover the administrative costs incurred in collecting this contribution. Moreover, the adjustment in favour of the fund based on the amounts actually owed by the distribution network operators for 2006 was carried out and amounted to € 6,191,391. For the year 2008, the CREG no longer received any contributions from the distribution network operators.

In 2008, the investment of these sums with the National Bank of Belgium pending their allocation brought in € 170,920 in interests. As per 31 December 2008, the overall amount of the fund stood at € 9,102,995, including interests.

45 Ministerial Decree of 13 May 2005 implementing Article 22bis of the Law of 29 April 1999 on the organisation of the electricity market and the Royal Decree of 20 April 2005 determining the procedures for allocating the federal contribution introduced to offset the loss of income suffered by the municipalities further to the liberalisation of the electricity market.

46 Decree from the Walloon Government of 23 December 2004 on the exemption from the federal contribution to offset the loss of income suffered by the municipalities further to the liberalisation of the electricity market.

47 Decree from the Government of the Brussels-Capital Region of 16 December 2004 on the exemption from the federal contribution to offset the loss of income suffered by the municipalities further to the liberalisation of the electricity market and decree from the Government of the Brussels-Capital Region of 12 June 2008 on the exemption from the federal contribution to offset the loss of income suffered by the municipalities further to the liberalisation of the electricity market (Belgian official journal of 16 July 2008).

48 Decree from the Flemish Government of 23 November 2007 on the exemption from the federal contribution to offset the loss of income suffered by the municipalities further to the liberalisation of the electricity market.

49 Royal Decree of 20 December 2007 amending the tax rate of the federal contribution to offset the loss of income suffered by the municipalities further to the liberalisation of the electricity market (Belgian official journal of 12 February 2008).

50 Study (F)080515-CDC-768.
6.3. The accounts for 2008

The total charges of the CREG for the 2008 financial year amounted to € 12,480,341, which corresponds to 97.7% of the total budget initially planned. Both staffing costs and operating costs remained below budget. It is also worth noting that legal fees relating to the appeals filed against CREG decisions alone (€ 647,909) amounted to 21.3% of the budget allowed for operating costs.

The shortfall of the federal contribution invoiced by the natural gas suppliers in 2007 (€ 38,808) was repaid to these suppliers in 2008. This adjustment in their favour was deducted from the revenue relating to the portion of the gas contribution provided to cover the operating costs of the CREG. However, the amount of this revenue released by the natural gas suppliers in 2008 was not yet known on 31 December 2008.

Moreover, the adjustment of the surplus collected as recorded in the CREG accounts in 2007 (€ 797,808) was undertaken in favour of the natural gas sector.

For the 2008 financial year, the surplus of the revenue collected by the CREG in comparison with its actual charges amounted to € 1,017,926, to be divided into a surplus of € 909,685 in favour of the electricity sector and a surplus of € 108,241 in favour of the natural gas sector.

However, of the surplus in favour of the electricity sector recorded in 2008, the sum of € 209,873 was used to complete the re-establishment of the reserve for this sector, which was heavily drawn on in 2006 to cover the shortfall in the electricity sector at that time. The reserve as a whole has therefore again returned to its maximum level of 15% of the 2008 budget.

These data will be taken into account for the next calculation of the surcharges, when adjustments will be made with regard to both sectors.

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51 Annual Report 2007, par. 7.3., p. 15.
Table 4: Income statement as per 31 December 2008 (€)

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<th>ITEMS</th>
<th>DESCRIPTION</th>
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<td>Personnel costs</td>
<td>Salaries and charges</td>
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<td>Provisions for indemnities for outgoing members of the Management Board</td>
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<td>Provisions for holiday bonuses</td>
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<td>Temporary staff</td>
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<td>Recruitment costs</td>
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<td>Training, seminars</td>
<td>101,149</td>
<td>72,999</td>
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<td></td>
<td>Lease of company cars</td>
<td>225,243</td>
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<td>Value added tax</td>
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<td>Sub-total</td>
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<td>64,482</td>
</tr>
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<td>Sub-total</td>
<td></td>
<td>56,952</td>
<td>64,482</td>
</tr>
<tr>
<td>&quot;Personnel costs&quot; sub-total</td>
<td></td>
<td>9,434,364</td>
<td>8,812,147</td>
</tr>
<tr>
<td>External experts</td>
<td>EXTERNAL STUDIES</td>
<td>247,461</td>
<td>766,915</td>
</tr>
<tr>
<td></td>
<td>Communication service</td>
<td>31,085</td>
<td>32,146</td>
</tr>
<tr>
<td></td>
<td>Translators, Auditor, Lawyers, Social Secretariat, etc.</td>
<td>125,758</td>
<td>96,908</td>
</tr>
<tr>
<td></td>
<td>Legal fees relating to lawsuits</td>
<td>647,909</td>
<td>650,546</td>
</tr>
<tr>
<td>Sub-total</td>
<td></td>
<td>1,052,213</td>
<td>1,546,515</td>
</tr>
<tr>
<td>Operating costs</td>
<td>Rental and charges - premises</td>
<td>904,157</td>
<td>885,791</td>
</tr>
<tr>
<td></td>
<td>Parking facility rentals</td>
<td>60,002</td>
<td>61,927</td>
</tr>
<tr>
<td></td>
<td>Building maintenance and security</td>
<td>106,763</td>
<td>113,251</td>
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<tr>
<td></td>
<td>Equipment maintenance and servicing</td>
<td>45,792</td>
<td>34,076</td>
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<tr>
<td></td>
<td>Documentation</td>
<td>121,814</td>
<td>100,449</td>
</tr>
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<td></td>
<td>Telephone, post, Internet</td>
<td>46,143</td>
<td>46,913</td>
</tr>
<tr>
<td></td>
<td>Office supplies</td>
<td>67,476</td>
<td>69,525</td>
</tr>
<tr>
<td></td>
<td>Costs of meetings and expenses</td>
<td>83,381</td>
<td>75,338</td>
</tr>
<tr>
<td></td>
<td>Travel expenses (including abroad)</td>
<td>32,248</td>
<td>29,881</td>
</tr>
<tr>
<td></td>
<td>Membership of associations</td>
<td>34,287</td>
<td>33,081</td>
</tr>
<tr>
<td></td>
<td>Insurance, taxes and sundry costs</td>
<td>216,675</td>
<td>133,079</td>
</tr>
<tr>
<td></td>
<td>Value added tax</td>
<td>175,089</td>
<td>245,549</td>
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<tr>
<td>Sub-total</td>
<td></td>
<td>1,893,827</td>
<td>1,828,860</td>
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<tr>
<td>Depreciation costs</td>
<td>Depreciation on intangible and tangible fixed assets</td>
<td>83,326</td>
<td>99,227</td>
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<tr>
<td></td>
<td>Depreciation on leasing</td>
<td>10,660</td>
<td>11,472</td>
</tr>
<tr>
<td>Sub-total</td>
<td></td>
<td>93,986</td>
<td>110,699</td>
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<tr>
<td>Financial costs</td>
<td>Financial charges on leasing and loans</td>
<td>1,122</td>
<td>1,940</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>4,829</td>
<td>2,167</td>
</tr>
<tr>
<td>Sub-total</td>
<td></td>
<td>5,951</td>
<td>4,107</td>
</tr>
<tr>
<td>&quot;Operating costs&quot; sub-total</td>
<td></td>
<td>3,045,977</td>
<td>3,490,181</td>
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<tr>
<td>TOTAL CHARGES</td>
<td></td>
<td>12,480,341</td>
<td>12,302,328</td>
</tr>
<tr>
<td>Income</td>
<td>Operating cost fees</td>
<td>13,364,764</td>
<td>12,395,059</td>
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<tr>
<td></td>
<td>Gas suppliers’ adjustment, year n-1</td>
<td>-38,808</td>
<td>689,207</td>
</tr>
<tr>
<td></td>
<td>CREG adjustment electricity, year n</td>
<td>-909,685</td>
<td>-159,446</td>
</tr>
<tr>
<td></td>
<td>CREG adjustment gas, year n</td>
<td>-108,241</td>
<td>-797,808</td>
</tr>
<tr>
<td></td>
<td>Other fees</td>
<td>4,298</td>
<td>22,599</td>
</tr>
<tr>
<td>Sub-total</td>
<td></td>
<td>12,312,328</td>
<td>12,149,611</td>
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<tr>
<td>Financial income</td>
<td>Income from current assets</td>
<td>128,071</td>
<td>131,460</td>
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<tr>
<td></td>
<td>Other financial income</td>
<td>43</td>
<td>17</td>
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<tr>
<td>Sub-total</td>
<td></td>
<td>128,114</td>
<td>131,477</td>
</tr>
<tr>
<td>Extraordinary income</td>
<td>Other extraordinary income</td>
<td>39,899</td>
<td>21,240</td>
</tr>
<tr>
<td>Sub-total</td>
<td></td>
<td>39,899</td>
<td>21,240</td>
</tr>
<tr>
<td>TOTAL INCOME</td>
<td></td>
<td>12,480,341</td>
<td>12,302,328</td>
</tr>
<tr>
<td>RESULT FOR FINANCIAL YEAR</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: CREG
### Table 5: Balance sheet as per 31 December 2008 (€)

#### ASSETS

<table>
<thead>
<tr>
<th>Category</th>
<th>2008</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FIXED ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intangible and tangible fixed assets</td>
<td>227,354</td>
<td>202,040</td>
</tr>
<tr>
<td>IT and telephone equipment</td>
<td>57,538</td>
<td>39,092</td>
</tr>
<tr>
<td>Security equipment, video surveillance</td>
<td>14,032</td>
<td>0</td>
</tr>
<tr>
<td>Office furniture and decoration</td>
<td>6,966</td>
<td>12,615</td>
</tr>
<tr>
<td>Building refurbishment</td>
<td>148,818</td>
<td>150,333</td>
</tr>
<tr>
<td><strong>Leasing</strong></td>
<td><strong>12,804</strong></td>
<td><strong>23,417</strong></td>
</tr>
<tr>
<td>Leased equipment</td>
<td>12,804</td>
<td>23,417</td>
</tr>
<tr>
<td><strong>Financial fixed assets</strong></td>
<td><strong>344</strong></td>
<td><strong>344</strong></td>
</tr>
<tr>
<td>Various guarantees</td>
<td>344</td>
<td>344</td>
</tr>
<tr>
<td><strong>VARIABLES GUARANTEES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amounts receivable within one year</td>
<td>617,141</td>
<td>1,087,798</td>
</tr>
<tr>
<td>Trade debtors</td>
<td>6,200</td>
<td>2,856</td>
</tr>
<tr>
<td>Other amounts receivable</td>
<td>610,941</td>
<td>1,084,942</td>
</tr>
<tr>
<td><strong>Cash at bank and in hand</strong></td>
<td><strong>303,059,127</strong></td>
<td><strong>236,990,191</strong></td>
</tr>
<tr>
<td>Federal contribution fund</td>
<td>35,844,135</td>
<td>38,816,253</td>
</tr>
<tr>
<td>CREG fund and mediation service</td>
<td>4,351,380</td>
<td>4,363,518</td>
</tr>
<tr>
<td>Social Energy Fund</td>
<td>5,051,077</td>
<td>7,604,457</td>
</tr>
<tr>
<td>Greenhouse Gases Fund</td>
<td>29,207,947</td>
<td>48,977,417</td>
</tr>
<tr>
<td>Denuclearisation Fund</td>
<td>16,033</td>
<td>2,929</td>
</tr>
<tr>
<td>Kyoto Fund JI/CDM</td>
<td>88,659,749</td>
<td>61,298,749</td>
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<tr>
<td>Protected Customers Fund - Electricity</td>
<td>69,422,511</td>
<td>42,518,905</td>
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<tr>
<td>Protected Customers Fund - Gas</td>
<td>60,776,255</td>
<td>29,866,784</td>
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<tr>
<td>Municipalities Fund</td>
<td>9,093,980</td>
<td>3,204,608</td>
</tr>
<tr>
<td>Litigation</td>
<td>635,397</td>
<td>335,629</td>
</tr>
<tr>
<td>Cash</td>
<td>663</td>
<td>942</td>
</tr>
<tr>
<td><strong>Deferrals and accruals</strong></td>
<td><strong>1,114,151</strong></td>
<td><strong>2,035,296</strong></td>
</tr>
</tbody>
</table>

**TOTAL ASSETS**

<table>
<thead>
<tr>
<th>2008</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>305,030,921</td>
<td>240,339,086</td>
</tr>
</tbody>
</table>

#### LIABILITIES

<table>
<thead>
<tr>
<th>Category</th>
<th>2008</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CAPITAL AND RESERVES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit brought forward</td>
<td>1,314,222</td>
<td>1,314,222</td>
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<tr>
<td>Provisions</td>
<td>347,291</td>
<td>262,974</td>
</tr>
<tr>
<td>Employment agreements: Management Board members</td>
<td>347,291</td>
<td>262,974</td>
</tr>
</tbody>
</table>

**AMOUNTS PAYABLE**

<table>
<thead>
<tr>
<th>Category</th>
<th>2008</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amounts payable at more than one year</td>
<td>1,919,324</td>
<td>1,703,304</td>
</tr>
<tr>
<td>CREG sector reserve</td>
<td>1,916,023</td>
<td>1,690,500</td>
</tr>
<tr>
<td>Leasing obligations</td>
<td>3,301</td>
<td>12,804</td>
</tr>
<tr>
<td><strong>Amounts payable within one year</strong></td>
<td><strong>300,705,493</strong></td>
<td><strong>236,486,624</strong></td>
</tr>
<tr>
<td>Current portion of amounts payable at more than one year</td>
<td>9,503</td>
<td>10,613</td>
</tr>
<tr>
<td>Trade debts</td>
<td>1,138,280</td>
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</tr>
<tr>
<td>Taxes, salaries and social charges payable</td>
<td>1,974,299</td>
<td>1,761,127</td>
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<tr>
<td>Various debts (Social Energy Fund)</td>
<td>12,321,931</td>
<td>14,788,150</td>
</tr>
<tr>
<td>Various debts (Greenhouse Gases Fund)</td>
<td>36,045,945</td>
<td>57,147,038</td>
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<tr>
<td>Various debts (Denuclearisation Fund)</td>
<td>14,483,913</td>
<td>14,755,738</td>
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<tr>
<td>Various debts (Kyoto Fund JI/CDM)</td>
<td>88,478,545</td>
<td>62,328,804</td>
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<tr>
<td>Various debts (Protected Customers’ Fund - Electricity)</td>
<td>76,199,709</td>
<td>49,883,438</td>
</tr>
<tr>
<td>Various debts (Protected Customers’ Fund - Gas)</td>
<td>60,849,359</td>
<td>29,904,297</td>
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<tr>
<td>Various debts (Municipalities Fund)</td>
<td>9,102,065</td>
<td>3,204,206</td>
</tr>
<tr>
<td>Various debts (Mediation service)</td>
<td>832,054</td>
<td>832,054</td>
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<tr>
<td>Debts European institutions</td>
<td>0</td>
<td>313,504</td>
</tr>
<tr>
<td><strong>Accruals and deferrals</strong></td>
<td><strong>744,591</strong></td>
<td><strong>571,961</strong></td>
</tr>
</tbody>
</table>

**TOTAL LIABILITIES**

<table>
<thead>
<tr>
<th>2008</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>305,030,921</td>
<td>240,339,086</td>
</tr>
</tbody>
</table>

Source: CREG
6.4. The auditor’s report on the financial year closed on 31 December 2008

In accordance with the assignment entrusted to us by the Management Board pursuant to Article 9, §1 of the Royal Decree of 10 October 2001 (on approval of the internal rules), we have the honour of reporting to you on the accounts for the past financial year. This report contains our opinion on the accounts as well as the required additional statements and information.

Unqualified audit opinion on the accounts

We have audited the accounts of the Commission for the financial year ended 31 December 2008, prepared in accordance with the valuation rules adopted by the Management Board. These accounts are summarised in a balance sheet, the total of which amounts to 305,030,921 EUR and an income statement, the balance of which stands at 0 EUR, in accordance with the Royal Decrees of 24 March 2003 on the financing of the Commission, with the total income and charges standing at 12,480,341 EUR.

The Management Board is responsible for the preparation of the accounts. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation of the accounts that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate valuation rules; and making accounting estimates that are reasonable in the circumstances.

Our responsibility is to express an opinion on these accounts based on our audit. We conducted our audit in accordance with the auditing standards applicable in Belgium, as issued by the Institute of Registered Auditors (Institut des Réseurs d’Entreprises / Instituut der Bedrijfsrevisoren). Those standards require that we plan and perform the audit to obtain reasonable assurance whether the accounts are free from material misstatement, whether due to fraud or error.

In accordance with the above-mentioned auditing standards, we considered the Commission’s accounting system as well as its internal control procedures. We have obtained from the Management Board and the Commission’s officials, the explanations and information necessary for executing our audit procedures. We have examined, on a test basis, the evidence supporting the amounts included in the accounts. We have assessed the appropriateness of valuation rules and the reasonableness of the significant accounting estimates made by the Commission. We believe that these procedures provide a reasonable basis for our opinion.

In our opinion, the balance sheet for the year ended 31 December 2008 and the income statement for the 2008 financial year give a true and fair view of the assets, the financial position and the results of the Commission in accordance with the valuation rules adopted by the Management Board.

Additional statements and information

We would like to supplement our report with the following additional statements and information, which do not modify our audit opinion on the accounts:

• Without prejudice to formal aspects of minor importance, the accounting records were maintained in accordance with the general rules of the Law of 17 July 1975 on corporate accounting.

• As indicated in the annual report drawn up by the Management Board, the amount of the adjustment for the 2008 financial year between the gas suppliers and the Commission, calculated in accordance with Article 5, §2 of the Royal Decree of 24 March 2003 on the financing of the Commission by the gas market, was unknown on the date on which the accounts of the Commission as per 31 December 2008 were established and could therefore not be taken into account. The adjustment relating to the previous financial year was, however, booked.

• We have not noted any infringements of the “Electricity” and “Gas” Acts or their implementing decrees as regards transactions referred to in the accounts of the Commission.

Liège, 6 February 2009

André KILESSE
Auditor
2. Évolution du marché du gaz naturel
1. The European natural gas market

1.1. Overview of a number of European Commission publications

At the start of 2008, the European Commission issued a proposal for a directive to promote the use of energy from renewable sources and in its communication "20-20 by 2020: Europe’s climate change opportunity"; it set the following priorities for 2020: 20% reduction in emissions of greenhouse gases, a share of 20% of renewable energy sources in final energy consumption, a saving of 20% on demand for energy and greater security of supply, including the development of the grids. The European Commission report of April 2008 on progress with the creation of the internal market for gas and electricity indicates that in practice market integration is still far from complete and that, barring a few exceptions, the electricity and gas markets follow a national pattern economically speaking, with the result that there is little competition. One of the basic problems, namely the inadequate implementation of European legislation, can be resolved if the national regulatory bodies are given the necessary powers to be able to guarantee the correct application of the legislation, if further support is provided for the regional initiatives of ERGEG to achieve better regulatory practices across borders and if European legislation is implemented uncompromisingly.

At the end of 2008, the European Commission issued the following publications, among others:

- The Green Paper on the European energy network and its sustainable development, proposing six strategic initiatives that are essential for energy security in the European Union: an interconnection plan for the Baltic region, an energy ring in the Mediterranean region, an adequate north-south connection for gas and electricity with Central and South-eastern Europe, a wind energy network for the North Sea, a transit route for gas in the south and effective, liquefied natural gas (LNG) supplies for Europe;
- the quarterly report on the European electricity markets, analysing the main elements that determine volume and price trends;
- the "Second Strategic Energy Review," setting out the challenges for the 2020-2050 period and dealing with the following topics: infrastructure, foreign policy on energy relations, the issue of fuel oil and gas storage, energy efficiency and the best possible use of the energy sources found in the European Union.

1.2. The third legislative package from the European Commission

The legislation proposed by the European Commission that is part of the "third legislative package on the internal energy market" was dealt with by the European Parliament and the Council in 2008. The main measures proposed by the Commission in this package concern the following topics: the actual separation of production and supply activities on the one hand and network operations on the other, strengthening the powers and independence of national regulators for energy, the establishment of an Agency to promote cooperation between regulators for energy, a mechanism to improve cooperation between transmission system operators (ENTSO), improved market operation through greater transparency, consumer protection and increased security of supply.

The European Parliament voted on these Commission proposals after the first reading in June and July 2008. As regards unbundling, the Parliament accepted the
ownership unbundling model for the electricity transmission grids, but the ISO model (“Independent System Operator”\(^57\)), proposed by the Commission as a second alternative option was rejected. For natural gas transmission grids, the European Parliament also supported the ownership unbundling model and as a second option an ITO (“Independent Transmission Operator”\(^58\)) model with an independent Trustee, but again rejected the ISO model.

On 10 October 2008, the Council reached a political agreement on this third package, coming out among other things in favour of the co-existence of three options for the separation of generation and supply activities on the one hand and network operation on the other, these being ownership unbundling, the ISO model and an ITO model without an independent Trustee, for both natural gas and electricity.

The Council and the Parliament also included a range of amendments to the Commission proposals in their respective texts, relating among other things to the powers of the national regulators, the Agency, consumer protection and comitology and the formulation of guidelines by the European Commission.

At the start of 2009, the Council passed its joint position on the five legislative proposals that are part of the third package to the European Parliament, where they are being further considered in a second reading.

Anticipating one of the measures proposed in this third legislative package, the introduction of a mechanism for better cooperation between transmission system operators, on 19 December 2008, the operators of electricity transmission grids in Europe established a new association, the “European Network of Transmission System Operators for Electricity” (ENTSO-E).

The intention here is for ENTSO-E to fully replace the six existing organisations of transmission system operators, ETSO, UCTE, NORDEL, UKTSOA, TSOI and BALTSO once their activities have been transferred.

### 1.3. The European Gas Regulatory Forum

The Madrid Forum, the platform for consultation on the development of the internal natural gas market, met twice in 2008\(^59\).

In addition to covering matters such as storage, LNG and investments, much of the discussion at both meetings focused on the European Commission’s third legislative package. Consultation rounds also started in the course of 2008, both among the regulators via ERGEG\(^60\) and among the transmission system operators via GTE+\(^61\), to build support for their vision of the structure of the future European natural gas market. The forum hopes that this process will make it possible to swiftly implement the new European legislative framework.

The increasing importance of the regional integration of the markets, started by means of regional initiatives in the spring of 2006, was also noted. The Forum appreciated the work done and will look into ways in which the current organisation of these regional initiatives can be continued to optimal effect and how best a region can learn from the solutions adopted in other regions.

Finally, the Forum considered in detail the issue of monitoring the implementation of the ERGEG Good Guidelines Practices on the one hand and certain articles of Regulation (EC) No 1775/2005 on the other. The focus in 2008 was primarily on the issue of “Transparency” and the topics of “Rates” and “Balancing” were cautiously sounded out for 2009.

\(^{57}\) This model permits a vertically integrated company to retain ownership of the network assets on condition that the management is entrusted to an independent system operator (a company or entity that is separate from the integrated company). This model also involves detailed regulations and permanent monitoring by the regulator.

\(^{58}\) This model permits the operator of the transmission grid to remain part of a vertically integrated company, but renders it subject to a number of detailed rules intended to guarantee the independence of the operator and permanent monitoring by the regulator.


\(^{60}\) Par. 5.3., p.13.

\(^{61}\) Gas Transmission Europe represents the transmission system operators.
2. The Belgian natural gas market

2.1. Demand for natural gas

Thanks to increased take-up on the distribution networks (+7.1% compared with 2007), natural gas consumption rose slightly from 189.3 TWh in 2007 to 190.9 TWh in 2008. Unlike 2007, which was characterised by a particularly mild average outdoor temperature, 2008 was an average year in terms of weather conditions, with the result that heating requirements were almost 13% higher in 2008 than in 2007. The striking features of 2008 are the falls in natural gas consumption in industry (-4.4%) and for electricity generation (-3.7%). This downturn is the consequence of the sudden shrinking of industrial activity as of November 2008.

Table 6: Breakdown per sector of demand for natural gas in Belgium between 2001 and 2008 (in TWh)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Distribution</td>
<td>81.1</td>
<td>78.3</td>
<td>83.1</td>
<td>88.3</td>
<td>87.0</td>
<td>88.3</td>
<td>82.6</td>
<td>88.5</td>
<td>+7.1%</td>
</tr>
<tr>
<td>Industry (direct customers)</td>
<td>52.2</td>
<td>54.7</td>
<td>50.7</td>
<td>49.3</td>
<td>50.4</td>
<td>50.2</td>
<td>50.0</td>
<td>47.8</td>
<td>-4.4%</td>
</tr>
<tr>
<td>Power generation (centralised park)</td>
<td>37.5</td>
<td>40.9</td>
<td>51.1</td>
<td>49.7</td>
<td>52.5</td>
<td>51.9</td>
<td>56.7</td>
<td>54.6</td>
<td>-3.7%</td>
</tr>
<tr>
<td>Total</td>
<td>170.8</td>
<td>173.9</td>
<td>184.9</td>
<td>187.3</td>
<td>189.9</td>
<td>190.4</td>
<td>189.3</td>
<td>190.9</td>
<td>+0.8%</td>
</tr>
</tbody>
</table>

Source: CREG

Figure 1: Evolution of natural gas consumption per sector during the 1990-2008 period (1990 = 100) adjusted in line with climate fluctuations
2.2. Supplying natural gas

2.2.1. The natural gas supply companies

Federal supply permits for natural gas are granted by the Minister for Energy for a period of five years further to an opinion expressed by the CREG. In 2008, the CREG received six applications for an opinion: the application from Lampiris to be granted a supply permit for natural gas, three applications for the renewal of supply permits due to expire in 2008 (nuon Belgium, nuon energy trade & Wholesale and Electrabel Customer Solutions) and two applications to retain a supply permit further to a change of control (Distrigas and Electrabel). In total, the Management Board issued seven positive opinions in 2008, two of which related to applications for permits submitted at the end of 2007. The application from Electrabel was still being processed on 31 December 2008.

Unlike the trend over the previous five years, the relative share of L-gas in total natural gas consumption rose slightly in 2008. This may be attributed to the fact that L-gas is taken up almost exclusively on the distribution networks, the only sector that saw a rise in natural gas consumption in 2008. In 2007, the share of L-gas amounted to 27.0% of total natural gas supplies, while in 2008 this rose to 28.0%. As shown by Figure 2, the share of L-gas on the distribution networks is almost as high as the share of H-gas.

In 2008, the Minister for Energy granted natural gas supply permits to six supply companies: Gaselys, ConocoPhilips (UK) Ltd, Gazprom Marketing & Trading Ltd, Nuon Belgium, Nuon Energy Trade & Wholesale and Lampiris.

Three shippers who hold a supply permit actually became active on the transmission grid in 2008. The market share of the newcomers, E.ON Belgium, Eneco International and StatoilHydro remains unclear for the time being. In comparison with 2007, the share of Distrigas fell further in 2008 (-5.8%), while Gaz de France lost 2.2% of its market share. Wingas GmbH & Co KG slightly strengthened its position (+0.6%). Among the newcomers in 2007, SPE succeeded in acquiring the largest market share (6.0%), mainly because it supplies its own gas-fired power stations. However, the market position of EDF Belgium and Essent Energy Trading again remained negligible in 2008.

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Table 7: Natural gas supply companies in 2008

<table>
<thead>
<tr>
<th>Company</th>
<th>Domestic market</th>
<th>Date of permit</th>
<th>Sales volume in 2008 (TWh)</th>
<th>Market share in Belgium**</th>
</tr>
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<tbody>
<tr>
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<td>Domestic market</td>
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<td>ESSENT ENERGY TRADING B.V.</td>
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<td>n.d.</td>
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</tbody>
</table>

* As some supply companies failed to supply data on time, the figures published are based on the data provided by the transmission system operator and consequently refer to the volumes of natural gas transmitted on the high-pressure grid by the supply companies concerned in 2008. For separate statistics on supplies on the transmission and distribution market, please consult the joint publication of the four energy regulators on the CREG website (www.creg.be).

** Concerns the respective market shares of the holders of a supply permit for access to the transmission grid, on the basis of the figures in the “Belgium” column. These market shares are average values for the year 2008 and do not necessarily reflect the situation on 31 December.

Source: CREG

2.2.2. Maximum prices

The Ministerial Decree of 30 March 2007 replaces the old rate formulas by social rates calculated by the CREG by calculating per supplier the lowest commercial rate for the geographic region with the lowest distribution network rate (provided that at least 1% of the Belgian population lives in this zone) for the three-month period prior to the calculation of the social rate. The lowest commercial rate is calculated on the basis of the existing subdivisions of household customers. The social rate is expressed as an amount in €/kWh and no differentiation is made regarding consumption or use. It is set for six months at a time (from February to July inclusive and from August to January inclusive) and published on the website of the CREG, the suppliers and the distribution network operators. In principle, the new social rate was scheduled to be first applied as of 1 August 2007, but owing to the belated publication of the aforementioned Ministerial Decree of 30 March 2007, the Ministerial Decree of 27 August 2007 provided for a transitional period during which the social rates calculated on the basis of the parameters remains in force until 1 November 2007. For the following three months (from November 2007 to January 2008 inclusive), the social rates were calculated on the basis of the lowest commercial rates in the zone with the lowest distribution network rate, but taking into account the price difference between the old calculation system (based on parameters) and the new calculation system for the previous three months (from August 2007 to October 2007 inclusive). This transitional period ended on 31 January 2008 and from then on the calculation mechanism set out in the Ministerial Decree of 30 March 2007 alone has applied.

63 Ministerial Decree determining social maximum prices for the supply of natural gas to protected household customers on a low income or in a vulnerable position. 64 Ministerial Decree announcing the social maximum price applicable to the period from 1 August 2007 to 31 January 2008 inclusive for the supply of natural gas to protected household customers with a low income or in a vulnerable position.

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2.2.3. Indexation parameters

The CREG has calculated and published the parameters for the indexation of electricity and natural gas prices since October 2003. Although these parameters are adapted to the current situation and most of the suppliers continue to use them in the rates formulas, their origins lie in the past, and specifically in the setting of electricity and natural gas prices on the captive market.

In 2008, the Management Board conducted a detailed study\(^{65}\) of the appropriateness and the representative nature of and the need for the further publication of these indexation parameters in the context of the liberalised market and made recommendations designed to achieve greater transparency as regards the end prices charged for electricity and natural gas. For instance, in its study the Management Board noted that the trend followed by these parameters does not adequately reflect the trend in the costs and actual prices of electricity and natural gas. Indeed, some parameters (New G, New Iga and New Nc) reflect the trend in market prices and not that in costs, which means they become less representative as the formula that determines these values does not take into account certain changes on the liberalised market. Other parameters (Ne and Igd) reflect the trend in general sector costs and therefore do not take into account changes specific to the electricity and natural gas sectors.

The Management Board also pointed out that it does not have sufficient legal powers to gain access to the actual costs of all producers/importers and suppliers and hence be in a position (i) to calculate indexation parameters that are truly representative of the costs and prices for electricity and natural gas (ii) to examine the trend followed by these representative parameters compared with the prices applied by the various suppliers and (iii) to improve market transparency in the interest of consumers.

The Management Board consequently argued that it should be entrusted with the ongoing monitoring of the gas and electricity markets and in particular activities that are subject to competition in order to be able to anticipate market trends and, in the event of irregularities, gain immediate access to a database containing all relevant and essential information needed to carry out a thorough analysis of the problem observed and to approve the measures to be applied to this problem.

Pending such powers\(^{66}\), the Management Board decided to carry on calculating and publishing the existing indexation parameters, but pointed out that the responsibility for using these parameters lies exclusively with the suppliers.

2.2.4. The flat-rate reductions for supplies of natural gas

The Programme Law of 8 June 2008\(^{67}\), as amended by the Programme Law of 22 December 2008\(^{68}\), grants end users who use natural gas and electricity for heating, who do not benefit from the social rates and whose annual taxable household net income does not exceed the sum of € 26,000 a flat-rate reduction on their final bill of € 105 per family for supplies of both natural gas and electricity. These flat-rate reductions are funded by means of the income from the federal contribution\(^{69}\).

On 15 May 2008, the Management Board put forward a proposal for a royal decree relating to the flat-rate reductions for supplies of natural gas and electricity\(^{70}\) that was followed by a royal decree\(^{71}\) containing as an annex a specimen application form that applicants receive from their suppliers and that should be sent to the Federal Public Service for the Economy. If the conditions for granting this reduction are met, this Federal Service pays the discount.

2.3. Liquidity on the wholesale market

At the request of the Minister for Energy, in March 2008 the Management Board published a study\(^{72}\) setting out proposals to improve liquidity at the Zeebrugge hub by analogy with the BELPEX electricity exchange that has now been set up, in order to create sound market operation for trading in blocks for gas supplies.

The study was seen as an update of a previous study conducted in 2006\(^{73}\), by placing additional developments into perspective or by making comparisons with the structures in the electricity market\(^{74}\). In conclusion, the Management Board put forward a

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65 Study (F)080124-CDC-746.
66 In the meantime the Electricity Act and the Gas Act have been amended, including as regards the powers of the CREG (see par. 1, p. 7 of this report).
68 Belgian official journal of 29 December 2008.
69 Par. 6.1.2, page 14.
70 Proposal (C)080515-CDC-767.
71 Royal Decree of 1 September 2008 on the flat-rate reductions for supplies of natural gas and electricity (Belgian official journal of 11 September 2008). The aforementioned royal decree has since been annulled and replaced by the Royal Decree of 20 January 2009 on the flat-rate reductions for supplies of electricity, natural gas and fuel oil (Belgian official journal of 26 January 2009).
72 Study (F)080308-CDC-763.
73 Study (F)080719-CREG-554. See Annual Report 2006, par. 2.4., p. 13.
74 Study (F)040408-CDC-268, see Annual Report 2004, par. 2.7., p. 44.
number of recommendations, specifying required amendments to existing laws.

In October 2008, the General Council, partly following on from the study referred to above and from the conclusions of Management Board’s study of 2006, put forward its own general recommendations to improve the operation of the natural gas market in Belgium. On the one hand, it supports the proposal to provide a regulatory framework for the natural gas exchange with a view to promoting the reliability, transparency, efficiency and proper functioning of trade. On the other hand, it stresses the need for the rapid introduction of a Belgian balancing zone from which the natural gas exchange can be accessed directly and which therefore serves as a short-term trading exchange for the Belgian natural gas market.

### 2.4. Natural gas supplies

Natural gas suppliers can choose from among a series of entry points to supply their Belgian customers with H-gas. Gas customers who use L-gas are supplied directly from the Netherlands or indirectly in reverse flow via the Blaregnies interconnection point with France. LNG supplies, mainly from Qatar via the Zeebrugge terminal, remained stable in 2008 at 11% of Belgian natural gas consumption. It is worth noting the fluctuations in supply routes in the individual portfolios of the various suppliers are striking, in that more natural gas was imported via Zeebrugge (38.6% in 2008 compared with 36.2% in 2007) and less via Eynatten (2.6% in 2008 compared with 7.3% in 2007) and via ’s Graven-voeren and Dilsen (5.8% in 2008 compared with 9.3% in 2007). The increase in short-term purchases in 2008, most of which took place at the Zeebrugge hub, partly explains the supply via the western route.

The natural gas suppliers operating on the Belgian market have a differentiated supply portfolio in which long-term contracts concluded directly with the natural gas producers constitute by far the largest component. Nevertheless, in 2008 a sharp rise was recorded in short-term trade in supplying Belgium (20.9% in 2008 compared with 79% in 2007). The underlying factor here is that for short-term purchases both established suppliers and newcomers are looking towards the Zeebrugge hub (whether or not because of shortages of direct contracts with natural gas producers).

![Figure 3: Breakdown of supply per entry zone in 2008](source: CREG)

![Figure 4: Composition of aggregated supply portfolio of suppliers operating in Belgium in 2008](source: CREG)

#### 2.5. Transmitting natural gas

##### 2.5.1. Natural gas transmission permits

Prior individual authorisation is required from the Minister for Energy for the construction and operation of all transmission facilities. In the context of its power to issue opinions on applications for individual transmission permits, in 2008 the CREG received eighteen applications for opinions. The Management Board gave a positive opinion on seventeen of these applications, and one application was still being processed on 31 December 2008. In addition, the Management Board expressed two positive opinions on applications submitted in 2007.
2.5.2. Access to and managing the transmission grid

2.5.2.1. Appointing the transmission system operators

Further to the conditional positive opinion from the Management Board on the appointment of Fluxys as operator of the natural gas storage facility and operator of the natural gas transmission grid and its negative opinion on the appointment of Fluxys as operator of the LNG facility75, at the end of 2007, Fluxys submitted an adapted application for these three functions to the Minister for Energy and stated that they fulfilled the legal requirements.

An examination of the applications, certain elements of which had been adapted, revealed that as regards the appointments for the natural gas transmission grid and the storage facility, some proposals did indeed respond fully to the objections put forward by the CREG, but were in themselves insufficient to grant a positive opinion overall. At the start of 2008, the Management Board therefore expressed another conditional favourable opinion for these two functions. As regards the LNG facility, the objections noted previously remained unchanged, leaving the CREG unable to give a positive opinion on this application76.

2.5.2.2. Code of conduct

The guidelines submitted by the CREG for consultation in 2006 and the resultant consultation report77 were taken as a basis when drafting the new code of conduct. After having been revised several times on the basis of informal discussions with the staff of Fluxys and Fluxys LNG, at the end of 2007 the draft text was formally submitted to the latter, who handed their comments to the CREG in writing at the end of February 2008.

Following on from this, in May 2008 the CREG organised a second public consultation process when the draft version of the new code of conduct, revised on the basis of the input from Fluxys and Fluxys LNG, was submitted to the network users for consultation. The results of this second consultation were processed by the CREG and subsequently gave rise to the proposal for a royal decree on the code of conduct78 which the Management Board passed on to the Minister for Energy and the General Council in October 2008.

The General Council examined the proposal and considered that it was sufficiently well-defined given the consultation processes that were organised on the matter.

2.5.2.3. The indicative transmission programme

In early July 2008, Fluxys and Fluxys LNG submitted their proposals for an indicative transmission programme for the 2009-2010 period, relating respectively to transmission and storage services and the terminalling services in Zeebrugge. Further to discussions with the CREG services, adapted proposals were submitted for the storage and terminalling services on 19 December 2008, but an adapted proposal for the transmission services was not yet available at the end of 2008. Consequently, the process of assessing the proposals could not begin until the start of 2009.

2.5.2.4. The standard connection contract

At the start of March 2008, Fluxys submitted a new proposal for the standard connection contract for end-user access to the natural gas transmission grid (called the standard connection contract) to the CREG after having requested the results of the second public consultation process which ended in November 2007.

Once the parties involved had been offered a final opportunity to put forward their comments about this new proposal for a standard connection contract, the Management Board decided on 1 September 2008 not to approve it79. An adapted proposal is expected early in 2009.

2.5.2.5. Regional integration of the natural gas markets

In 2008, the group of the European North/Northwest region, of which Belgium has been a member since 2006, along with the Netherlands, Luxembourg, France, Germany, Great Britain, Ireland, Denmark, and Sweden80, focused its activities as regards achieving regional integration of the natural gas markets on investments, capacity and transparency.

As regards investments, various open-season consultation processes were organised, of which that relating to the coordination between GRTgaz and Fluxys for new capacity by means of north-south transit may be considered the most important. After a delay in the first half of 2008 because of the issue of the regulated transit rates in Belgium81, the General Council examined the proposal and considered that it was sufficiently well-defined given the consultation processes that were organised on the matter.

75 Annual Report 2007, par. 2.6.3.1., p. 47.
76 Opinion (A)080124-CDC-741.
77 Annual Report 2007, par. 2.6.3.3., p. 48.
78 Proposal (C)081009-CREG-797.
79 Decision (B)080901-CREG-789.
80 Poland and Norway are also represented as observers.
81 Par. 2.5.4.3, p. 37.
confidence in the market was restored in the second half of the year after further agreement had been reached with GTS in the Netherlands, making it possible to successfully complete the demand for new investments.

As regards capacity, research was carried out in a number of areas, including compatible short-term services, bundled cross-border products, flow commitments and the curtailing of nomination rules, always with a view to optimising and/or expanding the capacity on offer. The necessary information was gathered by means of questionnaires to be able to undertake clear, specified and well-defined projects in 2009.

The transparency project started up in 2007 at the request of the network users with a view to promoting the publication of information and clarifying the definitions used was completed at the end of 2008. The two interim reports published in July and October had already borne witness to clear progress. The final report is expected early in 2009.

2.5.2.6. The relevant points of a transmission system according to Regulation (EC) No 1775/2005

On the basis of Regulation (EC) No 1775/2005 and following consultation with the network users, in October 2008 the Management Board approved a list of twenty-nine relevant points for the natural gas transmission grid on which the prescribed information must be published. Greater transparency regarding these twenty-nine points is expected to benefit the operation of the market.

In an additional study, the Management Board will then examine case by case whether Fluxys is entitled to limit publication regarding a certain number of points at the request of the network users concerned for reasons of confidentiality. In particular, the Management Board has to reconcile legitimate commercial confidentiality with the aim of creating a competitive internal gas market. In this context, a public consultation process was started at the end of 2008.

2.5.2.7 Interaction between the Belgian market and the transit market for gas: proceedings against the CREG

On 6 March 2008, the Management Board lodged an appeal with the Court of Cassation against the judgement by the Court of Appeal in Brussels dated 11 December 2007. In its judgement, the Court of Appeal annulled the decision of the President of the Court of First Instance in Brussels of 27 February 2007 and banned the CREG from publishing its decision to serve formal notice on Fluxys and Distrigas&C° to hand over the transit activities of Distrigas&C° to Fluxys on the one hand and its study on determining the value of this transfer on the other.

2.5.3. Investments in the transmission grid

2.5.3.1. New installations commissioned in 2008

A number of facilities were commissioned in 2008 to strengthen the natural gas infrastructure. The aim is to expand the internal transmission grid and to improve the interconnection with adjacent networks.

First of all came the commissioning by Fluxys LNG of the fourth storage tank for liquefied natural gas on the site of the LNG terminal in Zeebrugge, which constituted the final phase in the project to double the import capacity for liquefied natural gas from 4.5 to 9 billion cubic metres per year. Moreover, in the context of improving the integration of the existing Vl/Tr/Tr pipeline in the domestic transmission grid, Fluxys brought on line the new compression station in Zelzate. This compression station provides for the high-pressure natural gas supplies of the East Flanders region, including the expansion of the port of Antwerp on the left bank, bearing in mind the expected increase in consumption levels both for the public distribution system and of companies and electricity-generating firms. Finally, the Brakel-Haaltert transmission pipeline was constructed and brought into service. This will have major repercussions for the security of supply in natural gas in the area to the west of Brussels.

The extent to which these investments genuinely contribute towards increasing import capacity and consequently improving access to the network will be discussed in paragraph 2.5.3.2 below.

2.5.3.2. Providing import capacity

One indicator of the accessibility of the Belgian market for natural gas suppliers is the development of import capacity on the transmission grid. For the period from January 2000 to January 2008, only one completed investment can be
announced that creates additional import capacity for the Belgian natural gas market (H-gas). This is the new interconnection point with the Dutch transmission grid at Zandvliet. Interconnection Zandvliet H came into operation in mid-2004 and offers 120 k.m³(n)/h additional firm import capacity. In April 2008, the doubling of the emission capacity of the LNG terminal came on line which, taking into account the capacity booked for the Belgian market before the expansion and the capacity booked for transit, means an increase in firm import capacity for the Belgian market of 300 k.m³(n)/h. In early December 2008, the new compression station in Zelzate came into service, and this is creating additional transmission capacity to Antwerp in the short term. However, this compression station will only be put to full use once natural gas can actually be imported in Zelzate via the interconnection point with the Dutch transmission grid. Actual natural gas imports in Zelzate are expected as of October 2010. Consequently, according to the schedule drawn up by Fluxys, the import capacity will remain unchanged in 2009 and it will be October 2010 before a major phased increase in import capacity can get underway.

The investments decided upon by Fluxys will create additional import capacity for the Belgian market amounting to 1,600 k.m³(n)/h by October 2012. This means a substantial increase of 42% compared with the 2008 level.

Given the rise of almost 15% in demand for natural gas in the 2000-2008 period, the planned investments in capacity for the Belgian market are essential to catch up and overcome problem areas. Shortages will remain as regards access to the Belgian market until 2011 and the current outlook both as regards the increase in the number of shippers and the growth in demand for natural gas, partly as a result of the growing number of power stations running on natural gas, call for timely further investment decisions by Fluxys for the Belgian market.

Figure 5: Development of import capacity for Belgian natural gas supplies in the January 2000 – January 2017 period (H-gas, in k.m³(n)/h)
2.5.3.3. Congestion on the transmission grid

In May 2008, the CREG published a study on the available import capacity to grant natural gas suppliers access to the Belgian natural gas market and ensure natural gas supplies. Following the concerns expressed since 2005 about the lack of investments for the national market and impeded market access, the CREG now has a substantiated basis on which to assert that as a network operator, Fluxys is having difficulty offering sufficient import capacity. Moreover, the network operator barely acknowledges the existence of contractual congestion on import capacity for Belgian users whereas: i) ever since available import capacity for Belgian users has been published, most of the figures have been zero or almost zero, ii) shippers can be forced to sign an interruptible contract for new connections, iii) a number of import capacity requests have been refused and iv) there is a reliance on conditional import capacity in reverse flow to which only a single historical shipper has access. The CREG believes that in order to create a genuine liberalised Belgian natural gas market, first of all the problems regarding the provision of import capacity must be dealt with.

In addition to calling for an increase in import capacity for the Belgian market, which may not be made subordinate to or dependent upon the transit activities, the study provides an incentive for a real and efficient congestion policy and for greater grid coupling through arrangements and agreements with neighbouring system operators.

In December 2008, the General Council issued an opinion on the study referred to above and expressed its concerns about the possible impact of the congestion issue on the operation of the Belgian natural gas market and on the security of supply for Belgian consumers, for both natural gas and indirectly for electricity. The General Council therefore stresses the need for investments in additional import capacity, the further implementation of an efficient congestion policy, the coordination of the technical border capacity with the network operators or neighbouring system operators.

2.5.3.4. The LNG open season

After an initial open season launched in 2003-2004 led to the construction and commissioning by Fluxys LNG of the fourth LNG storage tank on the site of the LNG terminal in Zeebrugge in 2008, at the end of 2007, Fluxys LNG launched another international market survey to gauge interest in additional throughput capacity of 9 billion m³ of natural gas per year at the LNG terminal. Fifteen parties expressed a provisional interest in the project. The aim would be to make the additional capacity available as of 2015-2016. However, the possible commissioning date depends on the level and type of the new investments that are needed and on how the authorisation processes go.

2.5.3.5. The expansion of storage capacity

The work started by Fluxys in 2007 to expand the underground storage capacity in Loenhout is intended to increase the useful storage capacity in stages by 15% from 600 to 700 million cubic metres over a four-year period from 2008 to 2011. As the next phase in the expansion, as of the 2009-2010 storage season the available storage volume will be increased to 650 million cubic metres. There are also plans to increase flexibility in the use of the storage facility: the export capacity is to be increased from 500,000 to 625,000 cubic metres an hour and the injection capacity from 250,000 to 325,000 cubic metres an hour. The aim is to increase the injection and emission capacity in stages from the 2010-2011 storage season.

Further to a seismic survey started by Fluxys in May 2007 in Poederlee to assess the potential of a new underground storage facility for natural gas, in February 2008 Fluxys decided to terminate this project, as it did not meet the economic criteria set out. The survey results indicated that the substratum in Poederlee would only have a useful storage capacity of a maximum of 120 million m³(n), whereas the original assumption was a useful storage capacity of 300 million m³(n).
2.5.3.6. End to investment in the L-gas market and switch to H-gas

The study on ending investment in the L-gas market and switching to H-gas\(^9\) dates from 13 September 2007 and looks into the potential, the methods and the costs of switching L-gas customers to H-gas in the short and medium term in implementation of the indicative plan for 2004-2014 approved by the Minister for Energy. The step-by-step plan that was developed as a reference for the conversion as a result of this study led to action being taken in 2008.

Following up this issue specifically with regard to the winter of 2008-2009 indicates that the network operator, Fluxys, was able to carry out a number of conversions in 2008 in conjunction with the large-scale end users in the Antwerp port zone. In accordance with the step-by-step plan, this created sufficient margin in the natural gas transmission grid to meet demand for L-gas. The necessary efforts will also have to be made in the coming years.

To complement the above activities, the Energy Board of the Federal Public Service for the Economy set up a working group to discuss the issue of L-gas security of supply. The CREG attended five meetings of this working group, together with representatives from Distrigas, GDF Suez, Fluxys and the distribution network operators. The Energy Administration will put certain policy recommendations to the Minister for Energy, among other things on the basis of the activities of this working group.

2.5.4. Transmission rates

2.5.4.1. Rates methodology

As stated in the Annual Report 2007\(^9\)\(^1\), as of 1 January 2008 a new regulatory methodology came into force that applies to the transmission of natural gas, storage and LNG terminalling activities. The rates for transmission when at least one intra-community border is crossed are also regulated for the first time.

As of the 2008-2011 regulatory period, the previous ‘cost-plus’ regulation is replaced by a methodology based on a guaranteed income for the network operator, supplemented by cost control incentives. Reference may be made to a ‘secured revenue’ method. This new system guarantees the network operator a total income during a regulatory period of four years that is adequate to cover the tasks set by law and allows for a reasonable profit margin in return for the capital invested in the network. By taking into account the volumes to be conveyed, nominal constant unit rates are deduced from the resultant total income for the four years which apply for the entire length of the regulatory period subject to extraordinary circumstances or an adaptation of the services to be provided. The income from each year of the regulatory period is divided into ‘controllable costs’, that is costs over which the network operator has direct control, and ‘non-controllable costs’. A factor for productivity and efficiency improvements is applied to the controllable costs, which has a favourable impact on the rates\(^9\)\(^2\). In addition, the network operator is offered an incentive that increases profits by means of the balance of the controllable costs: every year of the regulatory period, the difference between the actual and the budgeted controllable costs is attributed to them. The Royal Decree of 8 June 2007\(^9\)\(^3\) contains, among other things, the classification of the elements of income, the development rules for the costs in successive years of the regulatory period and the parameters for the reasonable profit margin.

At the end of each four-year regulatory period, the Management Board will issue an opinion on the use to which the balances accumulated from the non-controllable costs over the previous four years are to be assigned. The distribution of this balance is determined by royal decree, established after consultation in the Council of Ministers. Consequently, the new regulations no longer include the terms ‘bonus/malus’.

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9. Study (F)070013-CREG-691. Annual Report 2007, par. 2.6.4.6., p. 50.
9\(^1\). Annual Report 2007, par. 2.6.5.5., p. 55.
9\(^2\). Unlike electricity, the proposal put forward by the Management Board concerning the value of the factor for productivity and efficiency improvements to be applied during the 2008-2011 regulatory period was not followed by a Royal Decree in 2008. See also Annual Report 2007, par. 2.6.5.4., p. 55.
9\(^3\). Royal Decree of 8 June 2007 on the general rates structure and basic principles and procedures for rates and accounting of operators referred to in the Law of 12 April 1965 operating on Belgian territory for their expansion of facilities or new natural gas facilities for storing natural gas and for their expansion of facilities or new natural gas facilities for LNG, as well as their expansion of facilities or new natural gas transmission grids for capacity intended for transit, needed to enable the long-term development of these facilities.
2.5.4.2. Rates for 2007

In March 2008, the Management Board, pursuant to the Royal Decree of 15 April 2002 and the Royal Decree of 15 December 2003, submitted its report on the rates for the transmission and storage of natural gas, as well as for the use of the LNG terminal in Zeebrugge, applied by FLUXYS and FLUXYS LNG in 2007 to the Minister for Energy and the aforementioned companies.94

This report notes that, after having fallen steadily for five years, in 2007 transmission rates rose slightly compared with 2006 in line with inflation (2%). The rate for the underground storage of natural gas also rose by 11% as a result of investments in the expansion of the storage capacity in Loenhout and the storage project undertaken jointly by Fluxys and Gazprom in Polderlee, which has since come to an end. After falling steadily for five years, the rate for storing natural gas in liquid form fell by a further 9% between 2006 and 2007. Since 1 April 2007, ceiling rates have applied for the use of the LNG terminal in Zeebrugge, covering a period of 20 years. However, Fluxys LNG has to submit an updated proposal as soon as the final amounts of the investments made are known. When this annual report was drawn up, however, the Management Board had not yet received a proposal.

The report concluded that the rates approved offer Fluxys and Fluxys LNG sufficient financing possibilities to implement the proposed investment plans.

In the light of the monitoring of the rates applied in 2007, the Management Board examined the annual report on the income statements of the transmission grid for the 2007 operating year submitted by Fluxys and Fluxys LNG in February 2008. In addition to analysing the variances between the accounts of 2007 and the budgets submitted in 2006, the Management Board also looked at the application of the legal provisions on the individual accounts as well as compliance with the directives on fair profit margins.

Having completed its survey, the Management Board decided to increase the operating surplus recorded by Fluxys by a sum of €5.0 million for transmission activities and lower it by 0.2 million for storage activities. As regards Fluxys LNG, the Management Board lowered the operating surplus by 0.4 million for the first quarter of 2007. The amount noted for transmission activities will be deducted from the costs that form the basis of the future rates. The amounts noted for storage and terminaling will be added to the costs that form the basis of the future rates.

2.5.4.3. Rates for 2008-2011

Since 1 April 2004, the entry/exit system has formed the basis for the rates structure for natural gas transmission activities. The rates for storage relate to the storage services that consist of filling the storage facility with natural gas, maintaining the volume of natural gas stored and reinjecting the gas into the transmission grid. The rates for LNG terminaling cover docking and unloading the LNG tanker, storing LNG in the buffer and releasing it into the transmission grid after regasification.

As specified in paragraph 2.5.4.2. above as regards the terminaling activities, Fluxys LNG has to submit a new rates proposal as soon as the final amounts of the investments made are known. However, when this annual report was drawn up the Management Board had not yet received any proposal.

As regards transit activities, from 2008 onwards regulated rates will apply for the first time.

On 21 March 2008, Fluxys submitted a rates proposal for both the existing infrastructure and two new projects, North-South and VTribis.

On 15 May 2008, the Management Board set cost-covering transit rates applicable on a temporary basis that related only to the existing infrastructure. As regards the transit rates for new infrastructure, on 20 May 2008 the Management Board asked Fluxys to submit an adapted rates proposal including a request to deviate from the ordinary rates system for the North-South and VTribis projects.

The Royal Decree of 27 May 2008 suspended the implementation of the Management Board decision of 15 May 2008 on the transit rates for existing facilities.

On 6 June 2008, the Management Board took another decision whereby, having analysed the reasons behind the royal decree, it came to the conclusion that given the applicable legal framework, it was not in a position to modify its decision of 15 May 2008 and/or the provisional transit rates. The
Management Board therefore decided to confirm its decision of 15 May 2008, thereby putting an end to the suspension of the implementation of this decision\(^{101}\).

As regards transmission and storage activities, in 2007 the Management Board had already taken a number of decisions\(^{102}\).

As a result of the decision taken on 15 May 2008 on transit rates for the existing infrastructure, whereby a substantial portion of the costs which until then had been (wrongly) attributed to transmission activities were attributed to transit activities, on 6 June 2008 the Management Board also decided that the transmission grid rates applicable for Belgian consumers should be reduced by 17\% and storage rates by 3\%\(^{103}\).

2.5.4.4. Jurisprudence

In June 2008, Fluxys and Segeo lodged an appeal against the decision taken by the Management Board on 15 May 2008 relating to the transit rates for existing facilities and the decision taken by the Management Board on 6 June 2008 confirming the first decision\(^{104}\). The proceedings were brought before the Court of Appeal in Brussels and aimed to have the aforementioned decisions suspended and declared null and void.

On 10 November 2008, the Court of Appeal in Brussels suspended the aforementioned decisions of 15 May 2008 and 6 June 2008 following a ‘prima facie’ investigation. The judgement ‘on the merits’ of the Court of Appeal in Brussels is expected in the course of 2009.

Fluxys and Segeo also challenged the same decisions of 15 May 2008 and 6 June 2008 before the Council of State. The Council of State had not yet ruled on these matters by 31 December 2008.

On 27 June 2008, Fluxys also submitted an appeal to have suspended and declared null and void the Management Board’s decision of on 6 June 2008 reducing the transmission rates by 17\% and the storage rates by 3\% compared with 2007. On 31 December 2008, the Court of Appeal had not yet ruled on this case.

2.6. Distribution rates

2.6.1. Rates methodology

The Gas Act continues to see regulated access to the transmission grids for natural gas as the core of regulation. The rates that apply for access to the grid are an important factor here. These rates are non-discriminatory and are announced in advance.

The year 2008 was the last year of a regulatory system whereby the access rates were determined on a so-called cost-plus basis according to which the rates should enable distribution network operators to cover their costs and acquire a reasonable margin to remunerate the capital that they have invested in their network. The important point here is that this must involve actual (and therefore not flat-rate, estimated) costs. This implies, for instance, that they must stand up to the test of comparison with the costs of similar distribution network operators, they must be set in accordance with the ‘at arm’s length’ principle and there must be clear services in return from the suppliers.

The Management Board assesses the access rates proposed by the distribution network operators by means of an ex-ante check on the reasonable nature of the costs, of the fair profit margin and of the volumes taken into account.

Ex-post monitoring is also planned, whereby the Management Board examines whether the access rates applied during a given operating year have resulted in a bonus or a malus. As specified in the Annual Report 2007\(^{105}\), as of 2007 an important change was implemented as regards the method used to establish the bonus/malus. The Court of Appeal in Brussels stated in a number of judgements that the Management Board could not be followed in making a distinction between an operating result and a bonus/malus. According to the Court, the total of these two amounts constitutes the bonus/malus. Moreover, the Court was of the opinion that this bonus/malus forms the difference between the actual result that comes from the application of the rates approved by the Management Board and the budgeted result (fair profit margin) that is covered by these rates. This implies a ban on the ex-post recalculation of the fair profit margin on the basis of the actual evolution of the capital.

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101 Decision (B)080606-CDC-656G/09.
102 Annual Report 2007, par. 2.6.5.4., p. 54.
103 Decision (B)080606-CDC-656G/10.
104 A table providing an overview of the jurisprudence on the CREG is available at www.creg.be.
105 Annual Report 2007, par. 2.7.1., p. 56.
invested, as the Management Board did during the previous financial years. The Management Board went along with this judgement and consequently applied these principles when determining the bonus/malus resulting from the application of the rates in 2006 and 2007. However, the Management Board believes that this method removes any incentive for distribution network operators to reduce their costs, prompting them instead to over-estimate their budgeted rates and, in particular, their budgeted profit margin. Moreover, the definition of bonus/malus supported by the Court of Appeal substantially limits the power to assess the reasonable nature of the costs when examining the annual reports (see paragraph 2.6.2. below).

In a number of judgements in late 2008, the Court of Appeal in Brussels partly restored the assessment margin of the CREG with regard to ex-post monitoring of rates. As a result, the Management Board again has the possibility of checking the reasonable nature of the costs reported by the distribution network operators ex-post. However, the Court does state that this ex-post test of reasonableness should be limited to the costs that were not approved ex-ante. In other words, the Management Board cannot reject ex-post any expenses that correspond in terms of type and extent to a budgeted cost approved ex-ante. Consequently, the assessment margin of the Management Board as regards ex-post monitoring has only been partially restored.

As of the 2009 operating year, multi-annual rates for the distribution of natural gas apply. The rates methodology for these multi-annual rates is described in paragraph 2.6.4.1. on page 41 of this annual report.

2.6.2. Rates for 2007

In March 2008, the Management Board, pursuant to the Royal Decree of 29 February 2004, submitted its report on the distribution network rates applied in 2007\(^{106}\) to the Minister for Energy and the distribution network operators concerned. This report provides an overview of the procedure that led to the approval of the (provisional) rates applied by the distribution network operators for the year 2007. In addition, it specifies the points where the Management Board had the rate proposals adjusted so that they would comply with the legal criteria laid down in the Gas Act and in the Royal Decree of 29 February 2004. Finally, the report lists all the rates applied and examines the impact of these rates on customers in terms of figures, calculated on the basis of profiles of standard customers.

With a view to determining a bonus/malus, the examination of the annual reports from the distribution network operators on the 2007 operating year was, as in previous years, supplemented by on-site checks of the accounts and the bookkeeping organisation of the distribution network operators concerned.

As stated in paragraph 2.6.1. above, the methodology used to establish a bonus/malus has been changed since the treatment of the reports for the 2006 operating year in response to the judgements of the Court of Appeal in Brussels. The examination by the Management Board and the implementation of this new methodology went hand in hand with the allocation on the one hand of a bonus to three distribution network operators for a total amount of €107,851.39 and on the other hand, a malus imposed on the other fifteen distribution network operators for a total amount of €79,295,285.58, to be allocated to the distribution network rates for 2009-2012. All in all, the distribution network rates for 2009-2012 will therefore be increased by €79,187,434.19. This means that an overall shortage was noted for the second year in succession, whereas for the financial years 2003 to 2005 inclusive, an overall surplus was recorded that was deducted from the rates.

2.6.3. Rates for 2008

In 2007, the Management Board approved the rates of fourteen distribution network operators for the year 2008 and imposed provisional rates for three months on the remaining four. The rates of the latter were renewed for each of the other three quarters in the year 2008.
As shown by Table 8, in comparison with 2007, the rates applied in 2008 were on average 14% higher for household customers and professional customers. For industrial customers an average increase of 8.9% was recorded.

The main reasons for these rate hikes, which were announced in the 2007\(^{107}\) Annual Report, are the influence of the judgements of the Court of Appeal in Brussels, which impact on the assessment of the reasonable nature of costs, the settlement reached with the distribution network operators in the mixed sector which on the one hand put an end to all pending legal disputes regarding the operating years 2004-2007 and on the other hand managed to secure the cost cuts obtained in the 2003-2006 period, the increasing costs for public service obligations, an increase in the no-risk interest rate with an impact on the reasonable profit margin and, finally, the continued expansion of the natural gas network in certain zones.

As regards household customers, distribution network rates have on average returned to their level in 2004, the year from which the Management Board was given the power to approve said rates. Since 2004, the Management Board has rejected significant amounts in costs, resulting year by year in a drop in the distribution network rates in favour of consumers. As regards professional customers, the distribution network rates remain around ten per cent below their 2004 level.

In the context of the analysis and approval of the distribution network rates for 2008, the Management Board also analysed the trend followed by the total gas and electricity bill, including the transmission and energy component and the levies, for a household final user\(^{108}\). This analysis reveals that in 2008 an average family in Flanders would have had to pay €200 more for natural gas in 2008 than the year before. For a Walloon family the increase amounted to €215. The Management Board added a number of paths to this analysis which could...

Considerable differences in rates may be observed between distribution network operators, justified on the one hand by topographical and technical factors specific to the areas supplied and on the other by the extent of the public service obligations and whether or not the ‘fee for occupation of the public domain’ (taxe de voirie/wegenisretributie) is taken into account in the rates. Other factors, such as the transfer of balances from previous years (bonus/malus) also contribute towards these differences in rates.

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lead to offsetting the rises in the bills received by final users. A number of these paths have since been picked up in political circles, including expanding and consolidating the legal powers of the CREG.

2.6.4. Rates for 2009-2012

2.6.4.1. The regulatory framework

The Law of 8 June 2008 containing various provisions\textsuperscript{109} inserts into the Gas Act the provisions on the multi-annual rates for the distribution of natural gas. Implementing this, the Royal Decree of 2 September 2008\textsuperscript{110} was adopted at the proposal of the Management Board of 30 May 2008. This decision includes the rules on determining and monitoring the total income and the reasonable profit margin, the general rates structure, the balance between costs and receipts and the basic principles and procedures for proposing and approving rates, reporting and cost control by the distribution network operators.

The new system set out in this royal decree guarantees the distribution network operators a total income during a regulatory period of four years that is sufficient for them to carry out the tasks set by law and to obtain a reasonable profit margin in return for the capital invested. The income from each year of the regulatory period is divided into ‘controllable’ costs, that is costs over which the distribution network operator has direct control, and ‘non-controllable’ costs. The aforementioned Royal Decree of 2 September 2008 contains a list of these costs.

The total income is obtained by applying a number of development rules to the income from the first year, which is used as the reference income, in order to deduce the income for the second, third and fourth year of this period. By taking into account the volumes to be conveyed, unit rates are deduced from the total income of each of the four years which, barring exceptional circumstances or a change in the services provided, apply for the entire length of the regulatory period.

The most striking innovation is that – unlike with the previous ‘cost-plus’ system – the distribution network operators are offered an incentive that can increase their profits via the balance of the controllable costs: each year, the difference between the actual controllable costs and the budgeted controllable costs is allocated to the distribution network operator. A more traditional incentive-based system like this is also applied in other countries: after all, the cost cuts achieved by the distribution network operator should ultimately also lead to reductions in the rates charged to network users. The most striking development rule is that relating to the controllable costs: an indexation mechanism is planned for this, with both an ex-ante and an ex-post calculation.

The Royal Decree of 2 September 2008 also contains all the provisions relating to the fair profit margin. This results from the application of a return percentage that evolves annually on a regulated asset that also evolves annually. The calculation of the return percentage is still based on the so-called Capital Asset Pricing Model\textsuperscript{109} which takes as its basis the no-risk interest rate (OLO yield at ten years) plus the Belgian market risk premium (henceforth 3.50%) to which a Beta weighting factor of 0.85 is applied. The calculation of the regulated asset is based on the depreciated economic value of the network, but from now on is increased by the operating capital requirement of the distribution network operator (rather than, as in the past, their nominal operating capital).

Another important point is that an incentive to promote investment is also included: when tangible fixed assets are taken out of operation, as of 1 January 2009 the surplus value from the initial regulated asset based on the asset in question can be charged to the total income to be covered by the rates, provided that the corresponding amount of this surplus value is booked as an investment reserve and therefore remains within the company and can be used as a source of self-financing.

The Royal Decree of 2 September 2008 also requires the distribution network operators to use a factor to improve their efficiency and productivity, the value of which is determined by royal decree, at the proposal of the Management Board and after consultation of the Council of Ministers. For the first regulatory period, a coefficient for the improvement of productivity of 2.5% is applied to the controllable costs of the year 2009.

\textsuperscript{109} Belgian official journal of 16 June 2008.
\textsuperscript{110} Royal Decree on the rules relating to the determination and monitoring of the total income and the fair profit margin, the general rates structure, the balance between costs and receipts and the basic principles and procedures for proposing and approving rates, reporting and cost control by the operators of the distribution networks for natural gas (Belgian official journal of 12 September 2008).
2.6.4.2. The rates

On 30 September 2008, all distribution network operators except one submitted a rates proposal with a budget for the regulatory period 2009-2012 within the deadline stipulated by law. However, the Management Board decided to reject the rates proposals with budgets and to impose provisional rates for all distribution network operators. The reason for rejecting the rates proposals submitted by the distribution network operators is that none of the rates proposals with a budget submitted met the specific information requirements referred to in Article 17, §§1 and 2 of the Royal Decree of 2 September 2008. Moreover, as regards the processing of rates proposals for the first four-year regulatory period, the Royal Decree of 2 September 2008 provided for substantially limited processing periods. The periods were divided by two or three compared with the standard procedure, which meant that the Management Board was only able to come to a substantiated judgement on the rates proposals submitted if these met all the specific information requirements from the outset. This rejection ended the procedure and provisional rates were imposed which, in accordance with the provisions of the Royal Decree of 2 September 2008, are based on the last corresponding parts of the total income that were approved by the Management Board, i.e. the rates for the operating year 2008.

In May 2008, at the request of Infrax the Management Board examined the Regulated Asset Base (RAB) values for the regulated electricity and gas distribution activities of IVeG, WWEM and Inter-Energa, as well as for the electricity infrastructure with a transmission function of Inter-Energa. The Management Board first pointed out that the conclusions of this survey may not be considered a binding decision or an enforceable administrative act. A (binding) decision on the value of the regulated assets of the distribution network should be taken in the context of the assessment of the respective rates proposals submitted by the various distribution network operators. In its study, for various reasons the Management Board was unable to agree with the new value of the regulated assets proposed by the distribution network operators.

The Royal Decree of 2 September 2008 offers distribution network operators who have a technical inventory the possibility of submitting a regulated network value established on 31 December 2001, based on the value of the economic recovery, by 15 November 2008 and having this approved by the Management Board by 31 December 2008. Four natural gas distribution network operators and ten electricity distribution network operators submitted a revaluation application. For various reasons the Management Board decided not to approve the proposed revaluations.

Finally, in order to respond to certain questions put by market players, the Management Board also drew up a number of guidelines that are intended to clarify the approval and charging process for the rates approved by the Management Board, which apply specifically for services identified as a (social) public service in regional legislation. These guidelines endeavour, among other things, to provide an answer to the question as to whom the distribution network operator should charge the approved rates to.

2.6.5. Jurisprudence

In a number of judgements in September 2008 concerning the appeals instigated by certain distribution network operators against the decision of the Management Board to impose provisional rates for the operating year 2007, the Court of Appeal in Brussels significantly qualified its position on the power of the Management Board to undertake ex-ante assessments. As regards ex-ante checking of the reasonable nature of costs, in these judgements the Court acknowledges the legitimacy of testing the reasonable nature of the depreciation costs as undertaken in the past by the Management Board. It is also important to note that the Court now substantially qualifies its previous position that the accounts of the distribution network operators should be considered the cornerstone of rate-setting. With these judgements, the Court of Appeal confirms the decisions on rates of the Management Board during the 2007 operating year.

As regards ex-post monitoring, when the Management Board examines whether the access rates applied during a given operating year have resulted in a bonus or a malus, the Board of Auditors at the Council of State, unlike the Court of Appeal in Brussels in 2007, approved the method used to determine the bonus/malus and/or the operating surplus/
deficit applied by the Management Board in the past. The Board of Auditors at the Council of State acknowledges the discretionary power of the Management Board, including in an ex-post decision, rejecting the interpretation of the term “bonus” as a purely accounting deduction, acknowledging that a bonus has a cost management dimension and validating the distinction between the term “bonus” and the term “operating surplus.”

In a number of judgements in November 2008 concerning the appeal instigated by various distribution network operators against the decision of the Management Board to determine a bonus/malus for the 2005 operating year, the Court of Appeal in Brussels also significantly qualified its position on this ex-post power of assessment of the Management Board. On the basis of these judgements, the Management Board again has the possibility of testing the reasonable nature of the costs reported by the distribution network operators ex-post. However, the Court states that this ex-post test of the reasonable nature of costs should remain limited to the costs that were not approved ex-ante. In other words, the Management Board cannot reject any expenses ex-post that correspond in type and extent to a budgeted cost it has approved ex-ante. Consequently, this is only a partial restoration of the Management Board’s margin of assessment regarding ex-post monitoring.

2.7. Gas prices

2.7.1. The rise in gas prices announced by Electrabel in June 2007

Further to its study on the causes and consequences of the increases in natural gas and electricity prices announced by Electrabel Customer Solutions on 15 June 2007, in January 2008 the Management Board conducted a follow-up study at the request of the Minister for Energy, in which it examined whether the programme contract that applies for the settlement of the selling prices of petroleum products could be introduced to regulate the natural gas price. The study states that the main obstacles concern competition law, as in accordance with Article 2 §2 of the Law on the protection of economic competition or Article 81, paragraph 2 of the EC Treaty, programme contracts could be declared null and void. In addition, there is no market price for natural gas that is relevant for the price of the imported natural gas, which would considerably hamper a similar programme contract for natural gas. Moreover, regulation of the end price of natural gas does not seem to be at the right level to be able to deal with the problem raised and two major links in the end price, transport and distribution, are fully regulated, unlike for petrol. Finally, the retail market for natural gas is also less competitive than that for petrol, which means that there is no certainty that competition will mean that discounts will be given on the maximum selling prices.

In July 2008, the Management Board also took note of the decision of the Board of Auditors at the Competition Council on the price increases announced by Electrabel Customer Solutions. The Management Board regrets that the Board of Auditors has dropped the matter without taking any further action and points out that with regard to the two parties criticised by the Board of Auditors (Electrabel and Electrabel Customer Solutions), the mechanism only delivers a verdict on Electrabel. In addition, it should be stated that in its analysis of competition law, the Board of Auditors does not carry out a cost price analysis, owing to a prior methodological condition that was fulfilled in a highly questionable manner.

2.7.2. Announcement by Electrabel of the freeze on gas prices for household customers

In February 2008, at the request of the Minister for Energy and further to the freeze on prices in 2008 announced by Electrabel, excluding indexation, the Management Board examined the impact that this indexation could have on the bills for household consumers.

On the basis of conservative forecasts of the trend followed by the indexation parameters in the course of 2008, this survey set the increase in end prices for electricity and natural gas as a result of the indexation mechanism at 6% and 13% respectively between 2007 and 2008. However, these forecasts will have to be revised upwards if the indexation parameters, which were introduced since the last quarter of 2007, continue to progress in 2008.

After this survey, the Management Board also recalled the recommendations and conclusions that it had set out in the context of its study on the parameters for the indexation of the electricity and natural gas prices and their publication by the CREG.

114 Annual Report 2007, par. 2.9., p. 38
115 Study (F)08031-DC-745
116 Competition Council - Case MEDE-I/0-07/0014 - Electrabel
117 Study (F)080717-CDC-784
118 Study (F)080221-CDC-752
119 Par. 2.2.3., p. 30.
2.7.3. The components of the natural gas price

In 2008, at the request of the Minister for Energy, the Management Board conducted a study on the trend in the price of electricity and natural gas that is billed to end customers connected to the distribution networks and examined the respective contributions to the price trends noted per rate component.

In this study, increases in the price charged to final consumers of approximately 50% to 90% were noted between January 2004 and April 2008 for the various types of standard natural gas customers. The only component that forms the basis of this increase is the supplier’s price (energy price). No increase was noted in the distribution network rate for natural gas during the period 2004-2008, except for one standard customer. Rates reached their lowest level in 2007 and climbed back to their 2004 level in 2008 further to the settlement reached with a number of distribution network operators, the fall in transfers, the rise in OLO interest rates and the continued investments to expand the network.

Although the General Council attaches great importance to this study, owing to the fact that the trend in prices from the start of liberalisation in Flanders (2003) to 2008 inclusive is sketched out, it did not reach a consensual opinion. However, the General Council stresses the importance of following up and studying the trend in prices and the various components for the years ahead and for the territory as a whole.

This study was also presented to the Central Economic Council on 23 October 2008 as part of the preparation of its technical report on the available maximum margins for the trend in wage costs in Belgium.

2.7.4. The trend in gas prices on the household market

Since February 2008, the CREG has published the trend in natural gas prices on the household market on its website on a monthly basis. These trends show that in the initial phase, the liberalisation of the natural gas market mainly benefited household customers in the Flemish Region. For urban development and geographic reasons, the distribution costs are lower here than the national average. In the Walloon and the Brussels-Capital Regions, the distribution costs are higher than the national average, but the difference appears to be shrinking.

However, the positive trend in distribution network rates achieved since 2004 thanks to constant monitoring by the CREG was prejudiced in 2008 by a number of court decisions that meant that the CREG’s authority to conduct assessments was confined, with the result that distribution network rates rose. Moreover, most suppliers revised their indexation formulas for the energy component upwards in the past two years. In addition thereto, adjusting the index of this energy component in line with the prices of petrol products means that the latter currently account for almost two-thirds of the natural gas bill. However, choosing the right supplier makes it possible to save a considerable amount per year.

2.7.5. International comparison of gas prices

Figure 6 shows the trend in natural gas prices (excluding surcharges) for household customers in Belgium and in neighbouring countries for the 2004-2008 period.

The figure shows that in 2008, natural gas prices (excluding surcharges) for household use were the lowest in the United Kingdom and the highest in Germany. Unlike the trends observed in Germany, the United Kingdom and the Netherlands, prices for household use rose in Belgium and in France between 2007 and 2008. In Belgium, prices were still the lowest in 2007, rising to the level of German prices in 2008.
Figure 6: Trend in natural gas prices (excluding surcharges) for household customers in Belgium and in the neighbouring countries for the 2004-2008 period

Figure 7 shows the trend in natural gas prices for professional/industrial customers. In 2008, natural gas prices for professional/industrial customers were also the lowest in the United Kingdom (followed by the Netherlands) and the highest in Germany. As regards prices in Belgium, it should be noted that they are similar to those applied in France.

Figure 7: Trend in natural gas prices (excluding surcharges) for professional customers in Belgium and in the neighbouring countries for the 2004-2008 period

Source: Eurostat
2.8. Improving the operation and follow-up of the natural gas market

At the request of the Minister for Energy, in February 2008 the Management Board conducted a study on the effective level of compliance with the undertakings entered into by the Suez Group in the context of the Pax Electrica I (autumn 2005) and II (autumn 2006).

The Pax Electrica I came into being further to the public takeover bid by Suez on Electrabel and was intended to give practical form to a number of guarantees on anchoring energy supplies in Belgium and to work out a number of measures to improve the functioning of the electricity market.

The Pax Electrica II took place in the context of the announced merger between Suez and Gaz de France and went into the evaluation of the implementation of Pax Electrica I in greater detail. In addition, more extensive and detailed measures were worked out to improve the functioning of the Belgian electricity and gas markets.

In its study, the Management Board came to the conclusion that as regards the Pax Electrica I, most of the undertakings have indeed been met. As regards the Pax Electrica II, implementation of the commitments made seemed to depend heavily on the actual achievement of the merger between Suez and Gaz de France and the remedies developed by the European Commission in the context of the concentration dossier.

As the study produced by the Management Board dates from February 2008 and the actual merger between Suez and Gaz de France was only completed in July 2008, a number of important developments have occurred since the Management Board conducted its study.

These include the following:

- the sale of Distrigas shares by Suez-Tractebel to Italian company ENI;
- the increase in the independence of the natural gas transmission system operator, Fluxys;
- the increase in the holding (takeover of Gaz de France share) of Centrica in SPE;
- the transfer – by means of sale/swap or long-term contracts – of nuclear capacity from Electrabel to SPE;
- the transfer/exchange transaction involving nuclear capacity from Electrabel to E.ON.

The Management Board remains convinced that a periodic follow-up of the fulfilment of the commitments entered into by the Suez/Gaz de France group and affiliated companies is needed.

The General Council took note of the study conducted by the Management Board and agreed with its observations, but also noted that various elements in the agreements have not been fulfilled, or only partially so, while others still need to be clarified.
3. Evolution of the electricity market
1. The European electricity market

1.1. Overview of a number of publications from the European Commission

Readers are referred to paragraph 1.1. on page 25 of this report.

1.2. The third legislative package from the European Commission

Readers are referred to Paragraph 1.2. on page 25 of this report.

1.3. The European Electricity Regulatory Forum

The fifteenth meeting of the Florence Forum was held on 24 and 25 November 2008. This Forum is a platform for consultation on the development of a European internal market for electricity attended among others by the European Commission, the member states and the European regulators.

The European Commission explained the state of affairs regarding the negotiations with the Council and the Parliament on its third legislative package 123.

The Forum requested ERGEG to set up a “Project Coordination Group of Experts” consisting of representatives of the European Commission, the regulators, the European Transmission Systems Operators, Europex, Eurelectric and the European Federation of Energy Traders, and if appropriate to involve representatives of the member states. This group of experts is responsible for developing a practical and feasible model to harmonise congestion management, firstly at inter-regional level and then for the European Union as a whole and will put forward an action plan with concrete measures and a detailed time schedule, taking into account the progress recorded in the regional initiatives for electricity (ERI) of ERGEG.

The Forum stressed the importance of the regional initiatives and the need for these to be continued.

At the Forum, ERGEG presented the second report on the conformity of the transmission system operators with the obligations of Regulation (EC) No 1228/2003 and the guidelines for congestion management. The report concludes that since the first report of 18 July 2007, a great deal of progress has been made, mainly in the field of the regional initiatives. However, the regulation and the guidelines are still far from fully implemented and the Forum urges the regulators and the transmission system operators to speed up implementation. The European Commission informed the Forum of its plans to introduce infringement proceedings in the event of non-compliance with Regulation (EC) 1228/2003 or any other European rule.

123 Par.1.2., p. 25.
2. The Belgian electricity market

2.1. Called-up electrical power

According to the statistics passed on to the CREG\textsuperscript{124}, the electrical power called up by the ELIA grid, in other words the net consumption plus grid losses, is estimated at 86,095 GWh for 2008, compared with 86,749 GWh in 2007, which would represent a reduction of 1%.

The peak capacity called up is estimated\textsuperscript{125} at 13,147 MW, as against 13,770 MW in 2007.

Figure 8 provides an overview for the 2005 to 2008 period of average consumption on a monthly basis in the ELIA-controlled area. The sharp reduction in electricity consumption from October 2008 is striking. This fall continued in November and December 2008.

\textsuperscript{124} When this report was compiled, the CREG did not have the total called-up electrical power in Belgium. The CREG only has data provided by ELIA, but these do not take into account the small local generating units for which ELIA does not take any readings.

\textsuperscript{125} Source: ELIA, provisional data, January 2009. These amounts do not take into account local generation for which ELIA does not take readings (in principle local generating units < 25 MW).
Figure 9 shows the relative share of the various sectors in the total consumption of electrical power. The breakdown was based on provisional data for 2007. Industry accounts for almost half of total electricity consumption. Household consumption accounts for approximately a quarter, while trade and public services together account for approximately one fifth of total electricity consumption.

2.2. Supplying electricity

2.2.1. The electricity supply sector

Table 9 shows the market share of Electrabel and the other suppliers as regards net electricity supplies to major industrial customers connected to the federal transmission grid (grid with voltage in excess of 70 kV and to which the grid code applies). According to an initial estimate, the market share of Electrabel amounts to approximately 84.0%, or a fall of about 3.7 percentage points compared with 2007. The original volume of energy purchased by end customers from the transmission grid fell from 14,211.3 GWh in 2007 to 13,653.6 GWh in 2008. In 2008, none of the access points on the federal transmission grid switched to a different supplier.

In the context of the federal electricity supply permits, granted by the Minister for Energy at the proposal of the CREG for a five-year period, in 2008 the Management Board received five applications, namely two applications to renew a supply permit whose period of validity had expired (Nuon Belgium and Electrabel), one application from E.ON Energy Sales GmbH which is seeking to take over the supply activities of the existing supplier E.ON Energy Trading (previously E.ON Sales & Trading GmbH) and two applications from companies that do not yet operate on the federal transmission grid (Anode. and E.ON Belgium). The Management Board issued a total of five proposals in 2008, one of which related to an application for a permit submitted at the end of 2007 by Dufierco Energie. The application from E.ON Belgium was still being processed on 31 December 2008.

In the course of 2008, the Minister granted permits to Dufierco Energie, Nuon Belgium, Electrabel and E.ON Sales GmbH.

In 2008, thirteen suppliers held a federal permit to supply electricity to customers connected to the transmission grid: Dufierco Energie, EDF Belgium, Electrabel, Endesa Energie, Eneco Energie International, E.ON Energy Trading/E.ON Energy Sales, Essent Belgium, Essent Energy Trading, Gaselys, Nuon Belgium, RWE Key Account, RWE Solutions and SPE.

Table 9: Net supplies to customers connected to the grids with a voltage in excess of 70 kV for the years 2007 and 2008

<table>
<thead>
<tr>
<th>Suppliers</th>
<th>Consumption sites 1 January 2008</th>
<th>Consumption sites 31 December 2008</th>
<th>Power taken up in 2007 (GWh)</th>
<th>Power taken up in 2008 (GWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrabel</td>
<td>63</td>
<td>67</td>
<td>12,468.6 (87.7%)</td>
<td>11,470.3 (84.0%)</td>
</tr>
<tr>
<td>Other suppliers</td>
<td>13</td>
<td>13</td>
<td>1,742.7 (12.3%)</td>
<td>2,183.3 (14.0%)</td>
</tr>
<tr>
<td>Total</td>
<td>72*</td>
<td>76*</td>
<td>14,211.3</td>
<td>13,653.6</td>
</tr>
</tbody>
</table>

* Four consumption sites were supplied by two suppliers simultaneously.

Source: Elia (provisional data, January 2009)

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126 Data for 2008 were not yet available when this report was drawn up.
127 These figures do not take into account the energy supplied directly by local generation.
128 Proposals (E)080124-CDC-744 (Dufierco Energie), (E)080301-CDC-792 (Nuon Belgium), (E)080316-CDC-799 (Electrabel), (E)081106-CDC-807 (E.ON Energy Sales) and (E)081204-CDC-814 (Anode).
2.2.2. Maximum prices

Readers are referred to paragraph 2.2.2. on page 29 of this report which, with the exception of the applicable ministerial decrees130, applies mutatis mutandis to electricity.

2.2.3. The indexation parameters

Readers are referred to paragraph 2.2.3. on page 30 of this report.

2.2.4. Flat-rate reductions for power supplies

Readers are referred to paragraph 2.2.4. on page 30 of this report.

2.3. Liquidity on the wholesale market

2.3.1. The Belgian power exchange

The market coupling of Belgium (Belpex Day-Ahead Market) with the Netherlands (APX) and France (Powernext) again proved successful in 2008: the three markets rarely operated in total isolation from one another. Belpex and Powernext were coupled 84% of the time, as were Belpex and APX. Belgium was isolated from the other two markets for less than 1% of the time. On 3 May 2008, both interconnections for import were exceptionally congested.

Owing to the high level of market coupling, prices on average are very similar. It should be observed that in comparison with 2007, average prices rose sharply. The average annual price on Belpex stood at € 41.8/MWh in 2007 compared with € 70.6/MWh in 2008. The average monthly price followed on from the average monthly price for the last three months of 2007. Figure 10 shows the trend in average monthly prices for the three interlinked exchanges. In the months of February, March, April, May and September the prices on the Belpex DAM were higher than on the other two exchanges. Following higher prices in September and October 2008, during the last two months of 2008 prices fell sharply.

Figure 10: Average prices on the Belpex, APX and Powernext exchanges in 2008

<table>
<thead>
<tr>
<th>Month</th>
<th>Belpex</th>
<th>APX</th>
<th>Powernext</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>40</td>
<td>45</td>
<td>50</td>
</tr>
<tr>
<td>February</td>
<td>45</td>
<td>50</td>
<td>55</td>
</tr>
<tr>
<td>March</td>
<td>50</td>
<td>55</td>
<td>60</td>
</tr>
<tr>
<td>April</td>
<td>55</td>
<td>60</td>
<td>65</td>
</tr>
<tr>
<td>May</td>
<td>60</td>
<td>65</td>
<td>70</td>
</tr>
<tr>
<td>June</td>
<td>65</td>
<td>70</td>
<td>75</td>
</tr>
<tr>
<td>July</td>
<td>70</td>
<td>75</td>
<td>80</td>
</tr>
<tr>
<td>August</td>
<td>75</td>
<td>80</td>
<td>85</td>
</tr>
<tr>
<td>September</td>
<td>80</td>
<td>85</td>
<td>90</td>
</tr>
<tr>
<td>October</td>
<td>85</td>
<td>90</td>
<td>95</td>
</tr>
<tr>
<td>November</td>
<td>90</td>
<td>95</td>
<td>100</td>
</tr>
<tr>
<td>December</td>
<td>95</td>
<td>100</td>
<td>105</td>
</tr>
</tbody>
</table>

Source: CREG

130 Ministerial Decree of 30 March 2007 determining social maximum prices for the supply of gas to protected household customers on a low income or in a vulnerable position and Ministerial Decree of 27 August 2007 on the announcement of the social maximum prices applicable for the period from 1 August 2007 to 31 January 2008 inclusive for the supply of electricity to protected household customers with a low income or in a vulnerable position.
On average, around five times as much electricity is traded on Powernext as on Belpex. On APX, the figure is more than twice as much as on Belpex. The total volume traded on the Belpex DAM stood at 11.1 TWh in 2008, with Belgian electricity consumption amounting to 88 TWh\(^{131}\). The volume traded on Belpex therefore represents approximately 12.6% of the Belgian market. The total volume purchased on Belpex in 2008 amounts to 10.4 TWh and the volume sold to 4.3 TWh. Market coupling and the import and export with France and the Netherlands means that differences can be observed between the volume purchased and the volume sold. It is striking to note that during the first six months of 2008 Belgium imported net electricity every hour.

The sensitivity of the electricity price to additional volume (the market depth) is an important factor. Figure 11 shows that in the course of 2008 the price fell by an average of € 1.57/MWh with additional supply of 250 MW. Additional demand of 250 MW caused the price to rise by an average of € 2.04/MWh.

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\(^{131}\) Calculated on the basis of the Elia consumption figures.
Congestion rents are generated on an interconnection when this interconnection is saturated. This congestion gives rise to a price difference between the two electricity exchanges. The total congestion rents for 2008 in the four directions of the interconnections amounted to €44 million, of which €20 million was on the interconnection from France to Belgium.

The congestion rents on the interconnections are extremely volatile, which means that on some interconnections very high values in excess of one million euros are recorded during certain days. On 3 May 2008, for instance, the total congestion rents on the two import directions combined amounted to €4.8 million, partly as a result of an unexpected drop in nuclear electricity generation. These high amounts are the consequence of a price peak on the Belpex DAM while the other exchange (APX or Powernext) had far lower prices at the time.

In addition, on 13 March 2008 Belpex started two new market segments, the Continuous Day-Ahead Market (CoDAM) and the Continuous Intra-Day Market (CIM). As of 1 April 2008, SPE became the liquidity provider on the CIM, which means that SPE undertakes to ensure supply based on a pre-determined price formula 80% of the time, for both purchase and sale. The Belpex CIM is particularly successful. Figure 12 shows the number of transactions concluded per month, as well as the volumes for three products on the CIM: energy for a period of one hour, four hours or six hours. Of course, the volumes involved on this intraday market are far smaller than for the Belpex DAM. From mid-March until the end of December, approximately 89 GWh were traded on the Belpex CIM. Energy is exchanged via the Belpex CIM for almost 20% of the hours. The dominant player in the Buy and Sell market hold approximately 30% and 40% of the market respectively. The Belpex CIM price is on average somewhat lower than the average DAM price.

Figure 12: Belpex intraday market - number of transactions + monthly volumes
2.3.2. Virtual power plants

Virtual power plants (or VPPs) consist of options granting the holders the right, at any hour during a clearly defined period, to take up a specific generating capacity (Base\textsuperscript{132} or Peak\textsuperscript{133}) from the grid at a pre-defined price, known as the exercise price. These options were sold by Electrabel further to decisions taken by the Competition Council on 4 July 2003\textsuperscript{134} via seven auctions, the first of which was held in December 2003 and the last in May 2005. Since then, no further auctions have been organised.

The maximum total, which in 2008 amounted to just 0.54 TWh compared with 2.03 TWh in 2007, was virtually fully exercised (99.8% compared with 84% in 2007). In Base, 0.48 TWh were exercised or 100% of the available capacity of VPP base products. In Peak, 0.06 TWh were exercised, accounting for 92.5% of the available capacity of VPP peak products.

At the start of 2008, the maximum VPP capacity available for exercising amounted to just 100 MW (80 MW Base, 20 MW Peak) and in the third quarter of 2008 this fell back further to 60 MW (60 MW Base, no Peak). All VPP products have been exhausted since the third quarter of the year 2008. The importance of VPP products therefore declined substantially in 2008.

2.4. Power generation

2.4.1. The evolution of the Belgian power generating market

Since the study conducted by the Management Board in September 2007 on the increasing risk that over the coming years it will no longer be possible to cover the demand for electricity in Belgium owing to insufficient power generating capacity\textsuperscript{135}, no remarkable official announcements have been made about changes to the generating park that is connected to the Elia transmission grid, except for the commissioning during the first half of 2008 of two open-cycle gas turbines. Moreover, at the end of December 2008 the first offshore wind turbine of 5 MW was connected to the Elia grid. The first six offshore wind turbines of 5 MW should be fully operational by the end of May 2009.

In February 2008, the General Council issued an opinion on the aforementioned study by the Management Board, urging the creation of a legal and regulatory framework designed to encourage a better balance between electricity supply and demand in Belgium. It proposes a number of measures such as better control of demand, caution when taking authorised generating facilities out of service and making the country more attractive as a place for new investments in additional generating capacity.

2.4.2. The study on the outlook for electricity supplies for the 2008-2017 period

The Law of 1 June 2005 replaced the indicative programme for power generation resources in the Electricity Act, which the CReg was given the task of drawing up, by a study on the outlook for electricity supplies (the so-called ‘prospective study’) to be drawn up by the Directorate General for Energy\textsuperscript{136}.

At the request of this Directorate and to ensure the necessary continuity in respect of the indicative programmes, the CReg is taking part in the follow-up of the first prospective electricity study 2008-2017 and more specifically is contributing towards the assessment of the security of supply in terms of electricity in Belgium on the basis of simulations of the Belgian generating facilities which it has prepared. Since December 2008 the CReg has also been taking part in the follow-up of the environmental impact aspect of the prospective study.

However, the CREG, which has the power to advise on the draft prospective study, had not been asked on 31 December 2008 to give an opinion on the first prospective electricity study 2008-2017.

2.4.3. Power generating facilities

The construction of new power generating facilities is subject to the granting of a prior individual permit issued by the Minister for Energy at the proposal of the CREG. In this context, in 2008 the Management Board put forward three proposals\textsuperscript{137} to grant power generation permits. These related to the applications from Lillo Energy for the construction of a CHP unit in Lillo (Antwerp), from Nuon Power Generation Walloon for the

\textsuperscript{132} Base VPP are products that can be used to nominate energy with an exercise price of €12/MWh.
\textsuperscript{133} Peak VPP are products that can be used to nominate energy with an exercise price of €29/MWh.
\textsuperscript{134} Annual Report 2003, par. 2.5.1., p. 29.
\textsuperscript{135} Annual Report 2007, par. 2.5.1., p. 27.
\textsuperscript{136} Annual Report 2005, par. 2.5.2., p. 16.
\textsuperscript{137} Proposals (E)080320-CDC-754, (E)080424-CDC-760 and (E)080605-CDC-770.
construction of a CCGT unit in Manage and from Windvision Windfarm Estinnes for the construction of a wind farm in Estinnes. The Minister for Energy granted a permit for each of these three projects in 2008\textsuperscript{138}, as well as for the Electrabel project to adapt Unit 1 of the Doel nuclear power plant\textsuperscript{139}, on which the Management Board had already put forward a proposal in 2007\textsuperscript{140}.

On 31 December 2008, there were still three applications for an individual power generation permit being processed at the CREG.

In the course of 2008, the Minister for Energy granted authorisation for a total of approximately 600 MW of additional power generating capacity. Of the 1,200 MW additional power generating capacity authorised by the Minister in 2007, on 31 December 2008 approximately 650 MW had been achieved or was under construction.

In 2008, the Management Board also examined three announcements of changes in control, one involving Marcinelle Energie and two from T-Power, holders of a power generation permit. The proposals\textsuperscript{141} which the Management Board submitted to the Minister for Energy on this resulted in decisions by the latter in line with the proposals of the Management Board.

2.4.4. Domain concessions

2.4.4.1. Amendments to the regulatory framework

In January 2008, the Management Board, at the request of the Minister for Energy, published a study\textsuperscript{142} on the procedure to be followed to amend domain concessions granted, the scope of the duty to provide information referred to in Article 14 of the Royal Decree of 20 December 2000\textsuperscript{143} and the advisability of amending this royal decree.

Further to this, in April 2008, at the request of the Minister for Energy, the Management Board published an opinion\textsuperscript{144} on a draft royal decree amending the Royal Decree of 20 December 2000 mainly intended to replace the power to put forward proposals of the CREG with a power to issue opinions (by determining the coming into force of Article 6 of the Law of 1 June 2005 amending the Electricity Act), clarify the aforementioned duty to provide information and introduce a simplified procedure to amend domain concessions granted. On 28 September 2008, the royal decree amending the Royal Decree of 20 December 2000 was adopted\textsuperscript{145}.

2.4.4.2. Applications submitted to the CREG

At the end of January 2008, Eldepasco T.H.V. submitted an application to transfer the domain concession\textsuperscript{146} they had been granted by the Ministerial Decree of 15 May 2006 to Eldepasco N.V./S.A. In February 2008, the Management Board put forward a proposal\textsuperscript{147} to accept the transfer.

In the period from March to September 2008, the CREG received fifteen applications to obtain domain concessions for the construction and operation of a wind farm in the North Sea, one of which has since been withdrawn. Several of the applications are in competition with one another. On 31 December 2008, these fourteen applications, together with two applications from C-Power and Eldepasco, to modify and extend the domain concessions granted to them on the Thorntonbank and the nameless bank respectively, were still being processed by the CREG. As these applications were submitted before the amended Royal Decree of 20 December 2000 came into force, they will be processed in accordance with the old procedure. The first proposals from the Management Board are expected as of the second half of 2009.

In November 2008, in accordance with the new regulatory framework discussed above, the Management Board handed an opinion\textsuperscript{148} to the representative of the Minister for Energy on the application from Belwind to modify the domain concession granted to them in the Ministerial Decree of 5 June 2007 on the Blighbank in the North Sea.

Finally, in December 2008 the CREG received a request from Belwind to check the cost to be taken into consideration for the funding of the submarine cable to connect the wind farm that it wishes to build on the Blighbank pursuant to Article 7, § 2 of the Electricity Act. The system operator has to bear part of this cost price\textsuperscript{149}.

\begin{itemize}
\item \textsuperscript{138} Ministerial Decrees of 23 June 2008 (Belgian official journal of 7 July 2008), of 17 June 2008 and of 9 July 2008 (Belgian official journal of 18 July 2008).
\item \textsuperscript{139} Ministerial Decree of 18 February 2008 (Belgian official journal of 3 March 2008).
\item \textsuperscript{140} Annual Report 2007, par. 2.5.3, p. 28.
\item \textsuperscript{141} Proposals (E)080417-CDC-759, (E)080717-CDC-783 and (E)81120-CDC-809.
\item \textsuperscript{142} Study (I)080124-CDC-743.
\item \textsuperscript{143} Royal Decree of 20 December 2000 on the conditions and the procedure for granting domain concessions for the construction and operation of facilities for generating electricity using water, steam or wind, in sea areas where Belgian can exercise jurisdiction in accordance with international maritime law.
\item \textsuperscript{144} Opinion (A)080424-CDC-761.
\item \textsuperscript{145} Belgian official journal of 30 October 2008.
\item \textsuperscript{146} Annual Report 2008, par. 2.5.4., p. 35.
\item \textsuperscript{147} Proposal (I)080221-CDC-751.
\item \textsuperscript{148} Opinion (A)81127-CDC-813.
\item \textsuperscript{149} One third of the cost price with a maximum of €25 million, reduced proportionally if the project amounts to less than 216 MW.
\end{itemize}
2.4.5. Renewable energy

2.4.5.1. Green power certificates and the guarantees of origin

In May 2008, the Management Board, in application of Article 14, §1 of the Royal Decree of 16 July 2002, approved a proposed contract between Elia System Operator and Belwind on the purchase of green power certificates for electricity generated by offshore wind energy. In June 2008, the Management Board also approved Appendix 2 of this contract.

In July 2008, the Management Board published an opinion on a draft royal decree amending the Royal Decree of 16 July 2002. The comments made by the Management Board concerned mainly the method used to calculate the surcharge that funds the net real cost resulting from the difference between the costs related to the purchase of the green power certificate paid by the system operator and the income from the sale of this certificate on the market. The Royal Decree of 31 October 2008 amending the aforementioned royal decree took into account a number of comments made by the Management Board in its opinion and set this green power certificate surcharge at € 0.1272/MWh as of 1 October 2008.

In the course of 2008, the Management Board also developed a centralised databank for the management of the federal green power certificates as provided for by the Royal Decree of 16 July 2002. When this report was drafted, however, the Management Board had not yet issued any green power certificates for electricity generated by offshore windmills.

In September 2008, the Management Board, in application of Article 3, §2 of the Royal Decree of 16 July 2002, published a positive opinion on the application to recognise the non-profit association AIB-VINÇOTTE Belgium as a test institute. The test institute is responsible for issuing the certificate of origin guarantee for offshore wind power generating facilities and for carrying out periodic checks, at least once a year, on the conformity of the data included in the guarantee of origin. At the end of 2008, the Minister for Energy recognised AIB-VINÇOTTE Belgium as a test institute.

In addition, at the request of the Minister for Energy, the Management Board also conducted a study on the proposal for a directive from the European Parliament and Council to promote the use of energy from renewable sources. This study pointed among other things to the need to distinguish more clearly between the various functionalities of the proposed guarantees of origin, the vague nature of the working of the flexibility mechanism and the risk of interference with the existing national support mechanisms.

Finally, the Law of 22 December 2008 provided a legal basis for the introduction of a system managed by the CREG for granting guarantees of origin for electricity generated by offshore windmills, in order to promote trade in electricity from renewable energy sources and increase the transparency for the choice of the user as regards the fuel mix of the electricity supplied.

2.4.5.2. The Spring of the Environment

The Spring of the Environment is a major consultation process that aims to bring forward practical proposals on climate, the environment and sustainable development. On the basis of working groups, attempts are being made to work out measures with the players concerned to create a better living environment, including in the field of (renewable) energy. In May 2008, the CREG not only assumed the chairmanship and reporting duties of the working group focusing on the issue of green power certificates and support mechanisms in general, but also took an active part as an expert in the meetings on offshore and decentralised electricity generation.

The measures that were discussed in the various working groups resulted in an overall package of 159 measures that were approved by the government on 2 July 2008. In the autumn of 2008, the Minister for Energy asked the CREG to continue the activities implementing the decisions taken on 2 July 2008. The CREG took the necessary initiatives in this field to be able to implement the decision taken by the Council of Ministers.

150 Royal Decree of 16 July 2002 introducing mechanisms for promoting the use of electricity generated using renewable energy sources.
151 Decision (B)080520-CDC-769.
152 Decision (B)080620-CDC-772.
153 Opinion (A)080717-CDC-779.
155 Opinion (A)080925-CDC-794.
156 Study (F)080710-CDC-774.
158 Law containing various provisions (I) (Belgian official journal of 29 December 2008).
2.4.6. The impact of the system of CO₂ emission rights on electricity prices

In 2008, the Management Board updated the study it had prepared in 2006 on the impact of the system of CO₂ emission rights on the price of electricity in Belgium.

On the basis of the data available and using a methodology based on the calculation of the marginal costs, the Management Board found that in most cases the selling price of electricity would make it possible to integrate all or part of the CO₂ opportunity costs of the marginal production unit. On the wholesale market this price rise, applied to all the kWh generated for the Belgian market, enabled the electricity generators connected to the Belgian transmission grid to record a windfall profit that is estimated at €1,217 million for the 2005-2007 period. On the other hand, the analysis of the trend in the price excluding adaptation to the index on the retail market showed that the opportunity cost of the CO₂ emission rights obtained free of charge was not deducted from the selling price applied on this market.

The Management Board also analysed the preventive and corrective measures taken in other countries to limit windfall profits.

At the end of 2008, the General Council examined this study and issued an opinion at the start of 2009.

2.5. The group of experts on the energy mix in Belgium

GEMIX, a group of national and international experts entrusted with the task of studying the ideal energy mix for Belgium in the medium and long term, was established by a Royal Decree of 28 November 2008. The CREG is represented in GEMIX by Mr Dominique Woitrin, director in charge of technical operation of the electricity and natural gas markets. GEMIX is to submit a provisional report to the Minister for Energy by 30 June 2009 at the latest. Its final report is expected no later than 15 October 2009.

With regard to Belgian energy policy in the medium and long term, the Management Board continued to take note of the discussions held in the House of Representatives on the final report from the 2030 Energy Commission.

2.6. Electricity transmission

2.6.1. Operating the transmission grid

2.6.1.1. Corporate governance

The Management Board issued two opinions in implementation of Article 11 of the Royal Decree of 3 May 1999 on the management of the national transmission grid for electricity, according to which the auditors of the system operator are appointed and discharged by the general meeting of shareholders subject to a unanimous opinion from the CREG. The opinions relate to the appointment of two auditors at Elia.

2.6.1.2. The grid code

2.6.1.2.1. The general terms and conditions of the contracts of access coordinators and connection contracts

After the CREG organised a written consultation process at the end of 2007 on a new draft of the general terms and conditions of the connection contract proposed by Elia, the results of this were processed and passed on to Elia at the start of 2008. In the spring of 2008, various informal consultation meetings were held between Elia and the CREG on the results of this consultation and the various problem areas in this dossier, including that relating to the liability of the system operator, power quality and multi-user sites. Further to this consultation, in the course of 2008 Elia sent modified proposals for the draft connection contract to the CREG, containing adjustments designed to respond to a number of comments made by grid users and the CREG.

At the start of October 2008, the CREG organised a second written consultation process with the grid users on the adapted draft of the general terms and conditions of the connection contract proposed by Elia at the end of September. The results of this second consultation process were further discussed with Elia, along with a number of remaining problem...
areas such as the liability of the system operator. The aim of these consultations and informal discussions is to achieve balanced general terms and conditions for the connection contracts that can be approved by the Management Board.

In October 2008, the Management Board also took a decision\textsuperscript{166} on modifications that Elia proposed to make to the general terms and conditions of the access coordinator contracts. The modifications, which mean that a mechanism can be introduced for granting capacity for import and export on the northern border on an intraday basis were approved by the Management Board, as were the modifications concerning the organisation of an intraday mechanism for the injection points of the generating units. However, the Management Board refused to approve the modifications concerning the provisions on production variances on the offshore facilities for electricity generation proposed by Elia subject to reservations. Elia was asked to submit a new proposal for modification in this area.

2.6.1.2.2. Reserve capacity

In accordance with the grid code, the transmission system operator, Elia, has to assess and determine the primary, secondary and tertiary reserve capacity that contributes towards ensuring the security, reliability and efficiency of the transmission grid in the control area. It has to submit its evaluation method and the results of the evaluation to the CREG for approval.

In May 2008, the Management Board approved the evaluation method for the determination of the primary, secondary and tertiary reserve capacity for 2009 and the result of the application thereof\textsuperscript{167}.

2.6.1.2.3. Offsetting 15-minute imbalances

The transmission system operator Elia monitors, maintains and, if necessary, restores at any time the balance between supply and demand for electricity capacity in the control area caused amongst other things by possible individual imbalances among the various access responsible parties.

In accordance with the grid code, Elia has to submit a proposal for working rules to be applied on the market to offset 15-minute imbalances to the CREG for approval. At the end of 2008, the Management Board approved the Elia proposal for 2009\textsuperscript{168}, subject to an increase in the monitoring which the latter has undertaken since 2007. The proposed mechanism was to come into force on 1 January 2009.

2.6.1.3. Production variances of offshore wind farms

In application of Article 7, §3 of the Electricity Act, the King determines the more detailed rules for the calculation of the production variance on facilities used to generate electricity from wind in the sea areas, at the proposal of Elia and after the opinion of the CREG, including the way in which these additional costs are included in the transmission grid rates.

At the request of the Minister for Energy, in June 2008 the Management Board issued an opinion\textsuperscript{169} on the draft royal decree in question. However, by 31 December 2008 the royal decree had not yet been published.

2.6.1.4. The development plan

After the amendment of Article 13, §1 of the Electricity Act came into force on 1 September 2006, from now on the transmission system operator, in conjunction with the Directorate General for Energy and the Federal Planning Bureau, has to draw up a plan for the development of the transmission grid. This development plan is subject to the opinion of the CREG and the approval of the Minister for Energy.

At the end of 2007, the more detailed rules of the procedure for drawing up, approving and publishing the development plan were defined by royal decree\textsuperscript{170}.

The development plan should be drawn up for the first time within twelve months of the approval of the prospective study\textsuperscript{171}.

2.6.1.5. The regional integration of electricity markets

In 2008, the activities carried out under the leadership of the CREG in the context of the regional integration of the markets in the Central-West Europe region (referred to here as ‘the region’)\textsuperscript{172} mainly concerned the harmonisation and improvement of the auctioning mechanisms for granting cross-border transmission capacity in the long term, flow-

\textsuperscript{166} Decision B0801009-CDC-796.
\textsuperscript{167} Decision B080513-CDC-762.
\textsuperscript{168} Decision B081222-CDC-817.
\textsuperscript{169} Opinion A080220-CDC-771.
\textsuperscript{170} Royal Decree of 20 December 2007 on the procedure for drawing up, approving and announcing the plan for the development of the transmission grid for electricity (Belgian official journal of 1 February 2008) and erratum (Belgian official journal of 6 February 2008).
\textsuperscript{171} Par. 2.4.2., p. 55.
\textsuperscript{172} This region includes Belgium, Germany, France, Luxembourg and the Netherlands.
based D-1 market coupling, drawing up a cross-border regional mechanism for intraday exchanges and calculating interconnection capacities.

However, generally speaking delays were incurred with these priority activities, listed in the action plan of the regulators concerned for the 2007-2009 period.

As regards the harmonisation of the auctioning rules for capacity in the long term, the regulators concerned considered the proposal submitted by the system operators of the region in the early summer of 2008 to be inadequate. The regulators therefore organised a consultation process for the market players in November 2008 to continue and improve this harmonisation. These improved rules are scheduled to take effect before the summer of 2009.

As regards flow-based market coupling, in July 2008 the system operators announced a phased implementation. In the initial phase, the market coupling is to be based on interconnection capacities determined in accordance with the traditional calculation method recommended by ESTO. This phase, scheduled to come into force in March 2010, is still being examined by the regulators. For the second phase, the algorithm for the flow-based calculation is being developed. Although considerable progress has been made as regards dealing with grid restrictions and centralising the algorithm and the available data, difficulties have arisen in relation to the capacity calculation and non-intuitive market prices resulting from the coupling simulations.

Finally as regards the intraday mechanisms, the regulators have devoted themselves to ensuring that bilateral interim mechanisms are created rapidly, given the substantial delay with the regional mechanism provided for in the action plan referred to above. The regulators, together with the system operators and the exchanges, are working to set up the regional mechanism.

To achieve a coherent global design for all the market mechanisms that are being defined and implemented in the region, in 2008 the Management Board commissioned a study on the general design of the electricity market mechanisms close to real time, which covers the D-1 market (electricity exchanges), intraday and real-time (balancing), among other things. The main conclusions of this study are: the prominent importance of the real-time market compared with the other time intervals (D-1, intraday), the importance of a well-organised reference market model, the importance of introducing the same market algorithm for the various time intervals and the need to refine and optimise the geographic breakdown used at the moment (one country per zone).

2.6.1.6. Managing the available capacity at the interconnections with other countries

As the CREG believes that efficient use of the interconnection capacity with France and the Netherlands is of vital importance for the Belgian electricity market, at the end of July 2008 it drew up a memorandum on its own initiative examining the use of the grid capacity by the system operator. This memorandum notes that the regional market suffered a loss of € 1.5 million by not applying netting during a period of 17 months (1 January 2007 to 31 May 2008). Nevertheless, Elia was obliged to apply this netting to ensure efficient use of the interconnections. Netting has been applied on the border with France since 1 July 2008 and at the border with the Netherlands since mid-September 2008. In the first month after the introduction of this system at the border with France, the positive effects for the market became clear immediately.

Furthermore, in December 2008 the Management Board approved a decision on the proposal from Elia about the distribution of the commercial capacity at the Belgian-French interconnection over the various timescales. Although it advocates maximising the capacity allocated over the longest possible periods, the Management Board permitted the application of the distribution rule proposed by Elia, which reserves a certain portion of the available capacity for the day and for market coupling.

As regards the volume of capacity allocated at the Belgian-French interconnection, Figure 13 shows the trend in the monthly average of the capacity offered on D-1 from France to Belgium for 2006, 2007 and 2008. After the increase in capacity further to the reinforcement of the Aveline-Avelgem interconnection at the end of 2005, the annual averages for 2006 to 2008 inclusive remained almost equal, despite the strengthening of the interconnection in January 2007.

173 Study (F)080828-CDC-810.
174 Memorandum (Z)080730-CDC-775.
175 By applying netting the capacities nominated on an annual and a monthly basis are first set off against one another to release more capacity on a daily basis.
176 Decision (B)081211-CDC-61.
further to the installation of a phase-shift transformer at the Monceau substation, because of the increase in loop flows through the Belgian grid. The fact that three phase-shift transformers came into operation in June and September of 2008 on the 380 kV connection with the Netherlands has not yet led to any increase in the allocated capacity on the interconnection with France. Upon termination of the trial period, in 2009 this can in principle have a positive impact on the interconnection capacity with France as well.

As regards the interconnection with the Netherlands, in December 2008 the Management Board rejected the proposal put forward by Elia to introduce a mechanism for allocating intraday capacity on the Belgian-Dutch interconnection\textsuperscript{177} because the proposal did not entirely comply with the requirements of Regulation (EC) No 1228/2003 and the new guidelines. However, as the proposal represented clear progress compared with the current situation, the mechanism was permitted making it possible to introduce the same intraday mechanism as that for France for exchanges with the Netherlands.

\subsection*{2.6.1.7 The evolution of foreign trade}

Net physical imports of electricity into Belgium amounted to approximately 10.6 TWh in 2008\textsuperscript{178}, up around 3.9 TWh compared with 2007. This means that the net physical imports in 2008 exceed the previous maximum recorded after the liberalisation (10.2 TWh in 2006). Gross physical imports in 2008 amounted to approximately 17.1 TWh, compared with 15.8 TWh in 2007. Gross physical exports stood at approximately 6.6 TWh, compared with 9.0 TWh in 2007.

A substantial proportion of the physical energy flows comes from cross-border transiting of electricity through the Belgian grid. According to Elia, physical transit volumes accounted for around 4.7 TWh\textsuperscript{179} in 2008, down 2.5 TWh compared with 2007.

In 2008, unidentified flows through Belgium went mainly from north to south in the periods from January to April and October to December. The maximum of such flows from north to south amounted to approximately 2,030 MW and from south to north to approximately 2,200 MW.

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure13}
\caption{Evolution of the monthly averages of the capacity offered on D-1 at the interconnection from France to Belgium in 2006, 2007 and 2008}
\end{figure}

\textsuperscript{177} Decision B(2008)1218-CDC-819.
\textsuperscript{178} Elia - provisional data, January 2009.
\textsuperscript{179} ETSO calculation method.
In 2008, 218 GWh was imported from France and 362 GWh exported to France via the intraday mechanism for interconnection capacity set up on the southern border in May 2007. In 2008, the intraday interconnection mechanism was used 47% of the time, 20% to import energy and 32% to export energy (5.5% of the time energy was both imported and exported). Seven players operate on this market. The top three on the import and export market account for a market share of 90% and 91% respectively.

The main development in the transmission grid in 2008 was the start-up in June of the phase-shift transformer on 380 kV at the Zandvliet high-voltage station and the start-up in September of two phase-shift transformers on 380 kV at the Van Eyck high-voltage station. With these three phase-shift transformers of 1,300 MVA, Elia can better manage and distribute the electricity flows from neighbouring countries on the very high voltage grid.

2.6.2. Transmission rates

2.6.2.1. Rates methodology

As announced in the Annual Report 2007\footnote{Annual Report 2007, par. 2.7.2.4., p. 33.}, as of 1 January 2008 a new regulatory methodology came into force. As of the 2008-2011 regulatory period, the former ‘cost-plus’ system has been replaced by a methodology based on a guaranteed income for the system operators, supplemented with cost control incentives.

Readers are referred to paragraph 2.5.4.1. on page 36 of this report which, with the exception of the applicable royal decree\footnote{Royal Decree of 8 June 2007 on the rules on determining and monitoring the total income and fair profit margin, the general rates structure, the balance between costs and receipts and the basic principles and procedures for proposing and approving rates, reporting and cost control by the operator of the national transmission system.}, applies \textit{mutatis mutandis} to electricity.

2.6.2.2. Rates for 2007

As announced in the Annual Report 2007\footnote{Annual Report 2007, par. 2.7.2.3., p. 32.}, as a result of a decision by the Court of Appeal in Brussels, the Management Board of the CREG had to decide again on establishing a possible bonus or malus for Elia resulting from the application of the rates during the 2005 operating year and on the adjusted rates proposal from Elia for the 2007 operating year. In January 2008, the Management Board set\footnote{Decision (B)080124-CDC-658E/07.} the amount of the bonus for the 2005 operating year at € 4,503,000. Half of this amount is allocated to Elia and the other half, along with the operating surplus recorded for 2005, is taken into account in the new decision on the adjusted rates proposal for the 2007 operating year. This new rates decision\footnote{Decision (B)080124-CDC-658E/08.} stated that the costs originally rejected could be accepted as reasonable when determining the bonus or malus for the 2007 operating year.

In March 2008, the Management Board sent its report on the transmission rates applied in 2007\footnote{Report TE2007-1.} to the Minister for Energy and the transmission system operator.

In terms of procedure, in this report the Management Board noted on a number of occasions that both the system operator and the Management Board correctly followed the procedures set out by the legislator or the regulator. At the same time, the Management Board expressed its satisfaction with the fact that the labour-intensive annual rates procedures ended as of 1 January 2008.

In terms of content, the Management Board reported that the transmission grid rates for 2007 were again provisional and imposed. Also for 2007, the persistent critical assessment by the Management Board of the reasonable nature of the costs and the fair nature of the remuneration of the invested capital led to a clear reduction in costs for the grid users. As shown by Table 10, this fall for representative standard customers may be estimated at an average of 53% compared with the level of rates in the first nine months of 2002.

In its decisions of May and June 2008\footnote{Decisions (B)080529-CDC-658E/10 and (B)080620-CDC-658E/11.} the Management Board noted that the application of these provisional and imposed rates during the operating year 2007 gave rise to both an operating deficit and a bonus in respect of Elia. The amount of this bonus corresponds to 0.80% of the total turnover for 2007. The Management Board is to include its opinion on the intended use of the operating deficit for 2007, which amounts to € 12,843,850, in its general opinion on the balances from non-controllable costs for the years 2007, 2008, 2009 and 2010, which it will publish in the spring of 2011.
### Table 10: Evolution of electricity transmission costs depending on voltage level, excluding surcharges and VAT.

<table>
<thead>
<tr>
<th>Period of use (h/year)</th>
<th>Standard customer 1 Take-up in grids from 380/220/150 kV</th>
<th>Standard customer 2 Take-up in transformation to 70/36/30 kV</th>
<th>Standard customer 3 Take-up in grids from 70/36/30 kV</th>
<th>Standard customer 4 Take-up in transformation to medium-voltage</th>
</tr>
</thead>
<tbody>
<tr>
<td>7000</td>
<td>€/MWh % in proportion to previous period</td>
<td>€/MWh % in proportion to previous period</td>
<td>€/MWh % in proportion to previous period</td>
<td>€/MWh % in proportion to previous period</td>
</tr>
<tr>
<td>6.4014</td>
<td>-6.40%</td>
<td>9.0838</td>
<td>8.6259</td>
<td>10.9897</td>
</tr>
<tr>
<td>5.1503</td>
<td>-12.88%</td>
<td>5.1782</td>
<td>7.0442</td>
<td>8.7546</td>
</tr>
<tr>
<td>4.0949</td>
<td>-10.57%</td>
<td>4.5834</td>
<td>7.0442</td>
<td>8.7546</td>
</tr>
<tr>
<td>3.0232</td>
<td>-12.01%</td>
<td>4.1486</td>
<td>6.1883</td>
<td>7.3562</td>
</tr>
<tr>
<td>Overall rate reduction 2007 compared with 2002 - January to September</td>
<td>-52.77%</td>
<td>-54.35%</td>
<td>-52.43%</td>
<td>-53.37%</td>
</tr>
<tr>
<td>3.5002</td>
<td>15.78%</td>
<td>4.9766</td>
<td>7.7060</td>
<td>9.1063</td>
</tr>
<tr>
<td>Overall rate reduction 2007 since period (1)</td>
<td>-45.32%</td>
<td>-45.22%</td>
<td>-40.77%</td>
<td>-42.28%</td>
</tr>
</tbody>
</table>

Note 1: The amounts given in this table are expressed on the basis of the energy taken up, i.e. €/MWh taken up per hour.

Note 2: For each of the four voltage levels, account is taken of a representative period of use of the take-up for consumers connected directly to the transmission grid who do not have local generation.

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**2.6.2.3. Rates for 2008-2011**

In December 2007, the Management Board approved the rates included by Elia in its adapted rates proposal for the 2008-2011 regulatory period. Barring exceptional circumstances, the introduction of new services or the adaptation of existing services, these rates remain in force nominally unchanged, from 1 January 2008, throughout the regulatory period which ends on 31 December 2011. The surcharges to be applied may be adjusted.

As regards the development of the costs of the support services for the operating year 2009, on 1 July 2008 the Management Board received the report from Elia on the prices it was offered. On the basis of this report, in August 2008 the Management Board drew up a substantiated report which it sent to the Minister for Energy and to Elia. In this report, the Management Board stated that the price offered by the largest supplier of secondary reserve was clearly unreasonable, that the prices offered for voltage control were not clearly unreasonable and that the prices offered to offset grid losses were admittedly clearly unreasonable, but additional legal measures would be required to be able to reject them.

As regards these prices, the Minister, having consulted the Management Board and Elia, noted in September 2008 that they were not clearly unreasonable. Reference was made here to a number of arguments in line with the market on the one hand and to a legal framework which, at the time, was incomplete and did not allow them to be rejected on the other.

As regards the prices offered for the secondary reserve, the Minister for Energy, having consulted the Management Board, Elia and the supplier in question, judged that the offers submitted by the largest supplier were unacceptable and required Elia to conclude a contract with the supplier in question on the basis of the ‘cost-plus’ approach recommended by the Management Board and in line with the Elia tender documents. In his letter, the Minister said that such a contract not be concluded by 15 October 2008 at the latest, he would be forced to impose the conditions and prices on the supplier concerned taken from the report by the Management Board on this matter. After Elia held negotiations on this matter with the supplier concerned in the presence of the Management Board on 10 October 2008, on 15 October 2008 the supplier submitted another offer. This was followed by an additional offer with a price that tended in the direction of that proposed by the Management Board as reasonable.

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187 Annual Report 2007, par. 2.7.2.5., p. 34. 188 Report (RA)080228-CDC-78B.
On 22 December 2008, the Minister gave his agreement to the final conditions of a price acceptable to Elia and to the supplier concerned for the operating year 2009. On average, these price conditions correspond to the price level recommended by the Management Board.

In September 2007, Inter-Energa submitted a rates proposal with a budget in application of the Royal Decree of 8 June 2007 for grids designed for transmission for the regulatory period 2008-2011. As Inter-Energa had not fulfilled its commitments within the deadlines, in October 2007 provisional rates were imposed. However, in September 2008 this decision on rates was quashed by the Court of Appeal in Brussels. The Court ruled, among other things, that Inter-Energa’s grids intended for transmission neither come under the scope of application of the Royal Decree of 8 June 2007 as Inter-Energa is not a transmission system operator, nor under the rates provisions concerning the distribution network operator as national laws expressly exclude this and this situation whereby there is no rates system for part of the electricity grid can apparently not be reconciled with the provisions of the electricity directive. The Management Board believes that such a legal vacuum should be overcome by means of legislative initiatives in the interest of legal certainty.

2.6.2.4. Amendments to the regulatory framework

The Management Board had handed its proposal on the value of the factor to be applied by the transmission system operator during the 2008-2011 regulatory period for productivity and efficiency improvements to the Minister for Energy in October 2007.

In a Royal Decree of 18 December 2007 an overall saving of € 25 million was imposed on Elia for the 2008-2011 regulatory period.

2.7. Distribution rates

2.7.1. Rates methodology

Access to the distribution networks for electricity is regulated in accordance with the same general rates principles as those that apply for natural gas. The main elements of these principles are explained in paragraph 2.6.1 on page 38 of this report, which applies mutatis mutandis to electricity.

2.7.2. Rates for 2007

In March 2008, the Management Board, in accordance with the Royal Decree of 11 July 2002, handed its report on the distribution rates applied in 2007 to the Minister for Energy and the distribution network operators concerned. This report provides an overview of the progress with the procedure leading to approval of the (provisional) rates applied by distribution network operators for the year 2007. It also sets out the points for which the Management Board has had the rates proposals adapted to meet the criteria laid down the Electricity Act and the Royal Decree of 11 July 2002. Finally, the report gives all the rates applied and looks at the impact of these rates on consumers in terms of figures, calculated on the basis of standard customer profiles.

As for previous operating years, the analysis of the annual reports from the distribution network operators for the 2007 operating year with a view to determining a bonus/malus was supplemented by on-site checks of the accounts and the bookkeeping organisation of the distribution network operators concerned.

Since the report for the 2006 operating year was processed, the methodology used to determine a bonus/malus has been altered further to the judgements of the Court of Appeal in Brussels. The examination conducted by the Management Board and the introduction of this new methodology went hand in hand with the granting of a bonus to three distribution network operators amounting to a total of € 528,727.88 on the one hand and a malus to the other twenty-two distribution network operators amounting to a total of € 86,801,536.35, to be allocated to the distribution network rates of 2009-2012 on the other. All in all, distribution rates for the period 2009-2012 will therefore rise by € 86,272,808.48. This means that an overall deficit was noted for the second year in a row, whereas for the financial years 2003 to 2005 an overall surplus was recorded that was deducted from the rates.

Further to the judgements of the Court of Appeal in Brussels which are discussed below in paragraph 2.8.6., in 2008 the Management Board had to decide again for five distribution network operators on the rates for the 2007 operating year.

189 Royal Decree of 8 June 2007 on the rules relating to determining and monitoring the total income and fair profit margin, the general rates structure, the balance between costs and receipts and the basic principles and procedure for proposing and approving rates, reporting and cost control by the operator of the national transmission grids for electricity.

190 Annual Report 2007, par. 2.7.2.5., p. 34.

191 Annual Report 2007, par. 2.7.2.4., p. 34

192 Royal Decree on the value of the factor to be applied during the regulatory period 2008-2011 by the operator of the national transmission grid for electricity for productivity and efficient improvement (Belgian official journal of 11 February 2008).


194 Par. 2.6.1., p. 38.
2.7.3. Rates for 2008

In 2007, the Management Board approved the rates of nineteen distribution network operators for the year 2008 and imposed provisional rates for three months on the remaining seven. The rates applicable for the latter were renewed for each of the other three quarters of the year 2008.

Substantial differences in rates may be observed between distribution network operators, which are justified on the one hand by topographic and technical factors specific to the areas served and on the other by the extent of the public service obligations and whether or not the ‘fee for occupation of the public domain’ (taxe de voirie/wegenisretributie) is taken into account in the rates. Other factors, such as the transfer of the balances of operating results from previous years (bonus/malus) also contribute towards these rate differences.

As shown by Table 11, the rates applied in 2008 are on average 18.36% higher for household customers in comparison with 2007. A rise of 12.30% for consumption of 1,250 MW/h per year and of 17.55% for consumption of 30 MW/h per year could also be observed for industrial customers.

### Table 11: Rates for the use of the distribution network in 2007 and 2008, expressed in €/kWh

<table>
<thead>
<tr>
<th>€/kWh</th>
<th>Household low voltage 1,500 kWh/year (1)</th>
<th>Industrial medium voltage 20,000 kWh/year</th>
<th>Industrial medium voltage 1,250,000 kWh/year</th>
</tr>
</thead>
<tbody>
<tr>
<td>GRD</td>
<td>0.0452 0.0449</td>
<td>0.0498 0.0437</td>
<td>0.0192 0.0142</td>
</tr>
<tr>
<td>AGEM</td>
<td>0.0373 0.0360</td>
<td>0.0474 0.0458</td>
<td>0.0147 0.0154</td>
</tr>
<tr>
<td>AEISH</td>
<td>0.0532 0.0574</td>
<td>0.0432 0.0601</td>
<td>0.0167 0.0227</td>
</tr>
<tr>
<td>DNB BA</td>
<td>non applicable (3)</td>
<td>0.0803 0.0809</td>
<td>0.0304 0.0300</td>
</tr>
<tr>
<td>EVGIHA</td>
<td>0.0873 0.0881</td>
<td>0.0625 0.0650</td>
<td>0.0147 0.0160</td>
</tr>
<tr>
<td>GASELWEST</td>
<td>0.0443 0.0558</td>
<td>0.0406 0.0462</td>
<td>0.0144 0.0158</td>
</tr>
<tr>
<td>GASELWEST Wallonie</td>
<td>0.0459 0.0506</td>
<td>0.0422 0.0462</td>
<td>0.0161 0.0158</td>
</tr>
<tr>
<td>IDEG</td>
<td>0.0529 0.0576</td>
<td>0.0333 0.0441</td>
<td>0.0137 0.0164</td>
</tr>
<tr>
<td>IEH</td>
<td>0.0465 0.0481</td>
<td>0.0373 0.0440</td>
<td>0.0150 0.0162</td>
</tr>
<tr>
<td>IMEA</td>
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<td>0.0274 0.0320</td>
<td>0.0094 0.0116</td>
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<td>0.0390 0.0531</td>
<td>0.0154 0.0192</td>
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<td>0.0173 0.0202</td>
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<tr>
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<tr>
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<td>0.0153 0.0169</td>
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<td>0.0145 0.0184</td>
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<td>0.0128 0.0160</td>
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<tr>
<td>Average</td>
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<td>0.0398 0.0460</td>
<td>0.0147 0.0163</td>
</tr>
</tbody>
</table>

(1) Consumption during off-peak hours: 1,900 kWh; free kWh in Flanders not deducted from the rates.
(2) Rates excluding the ‘fee for occupation of public domain (taxe de voirie/wegenisretributie) of the Wallon and Brussels-Capital regions.
(3) DNO BA does not serve any household customers.

Source: CREG
The main reasons for these rate increases, which were announced in the Annual Report 2007\textsuperscript{195}, are as follows: the effect of the judgements of the Court of Appeal in Brussels which impacted on both the assessment of the reasonable nature of the costs and on the determination of the bonus/malus, the settlement that was reached with the distribution network operators in the mixed sector which terminated all pending legal disputes on the operating years 2003-2007 and secured the cost cuts obtained in the 2003-2006 period and finally the increasing costs for public service obligations and the rise in the no-risk interest rate with an impact on the fair profit margin.

Consequently, on average distribution network rates for low voltage again rise above their level of 2003, the first year in which they were approved by the Management Board. The rates for medium voltage remain generally below their 2003 level.

In the context of the analysis and approval of the distribution network rates for 2008, the Management Board also carried out an analysis of the evolution of the total gas and electricity bill, including the transmission component, the energy component and the levies, for a household end user\textsuperscript{196}. This analysis showed that an average family in Flanders would have to pay € 100 more for the electricity used in 2008 than in the year before. For a Walloon family the increase was € 80. The Management Board added a couple of paths to this analysis that could offset the increases observed in end users’ bills. A number of these paths have since been picked up by political circles, such as the expansion and anchoring of the legal powers of the CREG, the abolition of the federal contribution to offset the loss of income suffered by the municipalities and the proposal to recover the windfall profits from electricity generators.

2.7.4. Rates for 2009-2012

2.7.4.1. The regulatory framework

Readers are referred to paragraph 2.6.4.1 on page 41 of this report which, with the exception of the applicable Royal Decree of 2 September 2008\textsuperscript{197}, applies mutatis mutandis to electricity.

2.7.4.2. Rates

Readers are referred to paragraph 2.6.4.2. on page 42 of this report which applies mutatis mutandis to electricity.

2.7.5. Extending the night rate to public holidays

At the request of the Minister for Energy, the Management Board conducted a study on the impact of extending the night rate to public holidays for grid users connected to the low-voltage grid\textsuperscript{198}.

After examining the impact of this measure the Management Board came to a reserved conclusion. By limiting the time period (150 hours per year or 1.72% of the total time over the year) to which the proposed measure would apply, the Management Board feels that an actual shift in consumption seems improbable and in addition the proposed measure can only benefit grid users who have a dual-rate (day/night) meter. In addition, the distribution network operators and suppliers will see their income fall as a result of extending the number of hours recorded on the night meter (more kWh to bill at the lower night rate) and will incur a number of additional costs, which means they could adapt their prices if necessary.

\textsuperscript{195} Annual Report 2007, par. 2.8.4., p. 37.

\textsuperscript{196} Study (I)BO0513-CDC-763. See also par. 2.8.2 on p. 68 of this report and the press release of 18 January 2008 “Even with high energy prices on the international markets, the increase in the final bill of Belgian consumers can be cancelled out” available at www.creg.be.

\textsuperscript{197} Royal Decree on the rules relating to determining and monitoring the total income and fair profit margin, the general rates structure, the balance between costs and receipts and the basic principles and procedure for proposing and approving rates, reporting and cost control by the distribution network operators for electricity (Belgian official journal of 12 September 2008).

\textsuperscript{198} Study (I)BO0306-CDC-755.
2.7.6. Jurisprudence

In a number of judgements in September 2008 concerning the appeal lodged by certain distribution network operators against the decision of the Management Board to impose provisional rates for the operating year 2007, the Court of Appeal in Brussels significantly qualified its position on the power of the Management Board to undertake ex-ante assessments. As regards ex-ante monitoring of the reasonable nature of costs, in these judgements the Court acknowledges the legitimacy of testing the reasonable nature of the depreciation costs as undertaken in the past by the Management Board. It is also important to note that the Court now substantially qualifies its previous position that the accounts of the distribution network operators should be considered the ‘cornerstone’ of rate-setting.

Nevertheless the disputed decisions were annulled by the Court of Appeal because the Management Board rejected the costs of the network losses. According to the Court, when assessing their unreasonable nature the Management Board may not base its assessment solely on the comparison of the price with the trend followed by the Nc and Ne parameters, but should also take into account a comparison of the costs presented with the corresponding costs of similarly well performing companies.

Further to these judgements from the Court of Appeal in Brussels, in 2008 the Management Board took another decision for five distribution network operators about their rates for the 2007 operating year.

As regards ex-post monitoring, when the Management Board examines whether the access rates applied during a given operating year have resulted in a bonus or a malus in 2008, the Board of Auditors at the Council of State, unlike the Court of Appeal in Brussels in 2007, approved the method used to determine the bonus/malus and/or the operating surplus/deficit applied by the Management Board in the past. The Board of Auditors at the Council of State acknowledges the discretionary power of the Management Board, including in an ex-post decision, it rejects the interpretation of the term “bonus” as a purely accounting deduction, it acknowledges that a bonus has a cost control dimension and validates the distinction between the term “bonus” and the term “operating surplus”.

In a number of judgements in November 2008 concerning the appeal instigated by various distribution network operators against the decision of the Management Board to determine a bonus/malus for the operating year 2005, the Court of Appeal in Brussels also significantly qualified its position on this ex-post power of assessment of the Management Board. On the basis of these judgements, the Management Board again has the possibility of testing the reasonable nature of the costs reported by the distribution network operators ex-post. However, the Court states that this ex-post test of the reasonable nature of costs should remain confined to the costs that were not approved ex-ante. In other words, the Management Board cannot reject any expenses ex-post that correspond in type and extent to a budgeted cost it has approved ex-ante. Consequently this is only a partial restoration of the Management Board’s margin of assessment regarding ex-post monitoring.

2.8. Electricity prices

2.8.1. The announcement by Electrabel of a freeze on electricity prices for household customers

Readers are referred to paragraph 2.7.2. on page 43 of this report.

2.8.2. The components of the electricity price

The conclusions on the trend in the components of the natural gas price that the Management Board draws in its study on the components of the electricity and natural gas prices are fairly similar to those for electricity.

In the distribution zones in Flanders, where customers have been eligible since July 2003, increases in the price charged to end consumers of around 35% to 40% were observed between July 2003 and April 2008. These price rises can be as much as 50% or 55% for some standard customers. This upward trend can be attributed mainly to an increase in the supply price (energy price), the distribution network rate, the public levies and the contributions for renewable energy and cogeneration. The increases in the supply price (energy price) account for around 40% and can even be as high as 60% for some standard customers. The increases in the distribution network rate can account for 20% for low voltage customers of the

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199 A table providing an overview of the jurisprudence concerning the CREG is available at www.creg.be.
200 See also the press release of 6 October 2008 “CREG power of assessment is partially restored” available at www.creg.be.
201 Study (F)080513-CDC-763. See also par. 2.7.3., p. 44.
distribution network operators in Flanders. For medium voltage the distribution network rates in four of the six distribution zones compared have remained below their level of July 2003. The public levies and contributions for renewable energy and cogeneration play a significant role in the increase in the price charged to the final consumer.

2.8.3. The evolution of electricity prices on the household market

Just as for natural gas202, since February 2008 the CREG has published the trend in electricity prices on the household market on its website on a monthly basis. These trends indicate that the liberalisation of the electricity market mainly benefited household customers in the Flemish Region. For urban development and geographic reasons, the distribution costs are lower here than the national average and the region continues to grant kWh free of charge.

However, the positive trend in distribution network rates achieved since 2005 thanks to constant monitoring by the CREG was prejudiced in 2008 by a number of court decisions203 that meant that the CREG’s authority to conduct assessments was limited, with the result that distribution network rates rose. Although distribution network rates rose in 2008 as a result and limited the benefits of the liberalisation, choosing the right supplier in the Flemish Region still makes it possible for household customers to pay a lower rate than the index-adjusted, regulated rate of 2004.

In the Walloon and Brussels-Capital Regions the distribution costs, which are higher than the national average, and the equalisation of supplier rates with those applied in Flanders, with a fixed term that is clearly higher than in the old, regulated rate and the absence of free kWh, have had a negative impact on the price paid by household users. Since the increase in distribution network rates introduced in 2008 (see above), the situation has worsened further. As a result, certain consumers in certain distribution zones are no longer able to obtain more attractive prices than with the old regulated system, even if they opt for a more competitive supplier.

2.8.4. International comparison of gas prices

Figure 14 shows the trend followed by electricity prices, excluding surcharges, charged to household customers in Belgium and in neighbouring countries for the 2005-2008 period.

The graph shows that, unlike the trend seen in Germany, France and the Netherlands, electricity prices in Belgium and United Kingdom rose between 2007 and 2008. For instance, in 2008 electricity prices for household use were the highest in Belgium and the lowest in France, where they were also the least sensitive to increases in fossil fuel prices. This trend also worsens Belgium’s position compared with the Netherlands and with Germany which until then (until 2007) was characterised by more competitive prices than in Belgium.

Similar conclusions can be drawn as regards the trend in electricity prices charged to small industrial customers, as indicated in Figure 15, the difference being that in this case only Belgium and France saw a price rise between 2007 and 2008.
Figure 14: Trend in electricity prices, excluding surcharges, charged to household customers in Belgium and the neighbouring countries during the 2005-2008 period.

Figure 15: Trend in electricity prices, excluding surcharges, charged to small industrial customers in Belgium and the neighbouring countries during the 2005-2008 period.
2.9 Improved operation and follow-up of the electricity market

Readers are referred to paragraph 2.8 on page 46 of this report for a discussion of the study carried out by the Management Board on the implementation of the commitments and agreements entered into by Suez Group in the context of the Pax Electrica I and II.

In January 2008, the Management Board published a study on the Belpex Day-Ahead Market and the use of the capacity at the interconnections with France and the Netherlands over the year 2007. This was followed in July 2008 by the study on the first six months of 2008. These studies provide concise information about two important aspects of the Belgian electricity market which are closely linked to one another, i.e. the interconnections with other countries and the exchange of electricity on the Belpex DAM. The studies cover the prices and volumes on the three coupled markets (Powernext, Belpex DAM and APX NL) and the market shares on the Belpex DAM. The results of the express auctions of interconnection capacity, the use of this interconnection capacity and the congestion rents at the interconnections are also discussed in these studies.

On the basis of this permanent and structural follow-up of the Belpex DAM and the use of the interconnections, a specific and more far-reaching analysis can be carried out in the event of striking incidents. In such situations, other aspects can be examined, such as bidding behaviour on Belpex and nomination behaviour at the generating units and the interconnections, for individual market players. A specific survey like this was carried out in 2008 over the period of November 2007 when a number of price peaks were observed on the Belpex DAM. In the course of this survey, the CREG held formal consultations with SPE and Electrabel and requested and obtained additional information from these producers. In the course of 2008, a specific and more far-reaching analysis was also started on the period around 3 May 2008. Significant volumes were traded on the Belpex DAM that day, causing congestion as regards import capacity in the Belgian control area, with the result that the exchange prices were far higher than would normally be expected on a day like this. In early 2009, these specific and more far-reaching studies are to be completed, supplemented by an analysis of the remaining hours in 2007 and 2008.

Further to the study carried out by the Management Board on the first six months of 2008, the General Council issued an opinion noting that during the period under review Belgium was heavily dependent on other countries for its security of supply in electricity. The General Council points out that although Belpex, the DAM and market coupling actually contribute to better market integration of the countries concerned, the prices still vary widely and Belgian prices are often the highest. It therefore advocates far-reaching monitoring in this area.

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204 Study (F)080117-CDC-742. 205 Study (F)080717-CDC-782.
Appendix : List of CREG acts during the course of 2008

| TE2007-02 | 20.03.2008 | Rapport relatif aux tarifs de réseau de distribution appliqués par les gestionnaires de réseau de distribution d’électricité au cours de l’exercice d’exploitation 2007 |
| TG2007-01 | 20.03.2008 | Rapport relatif aux tarifs pour le réseau de transport de gaz naturel, l’installation de stockage pour le gaz naturel et l’installation de LNG durant l’exercice d’exploitation 2007 |
| TG2007-02 | 20.03.2008 | Rapport relatif aux tarifs de réseaux de distribution des gestionnaires de réseaux de distribution de gaz naturel appliqués au cours de l’exercice d’exploitation 2007 |
| (B)625E/04 à (B)625E/06 | 21.08.2008 → 18.12.2008 | • AGEM : beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007, over de vraag tot goedkeuring van het tarievenkostensaldo met budget voor de reguleringsperiode 2009-2012 en over de initiële waarde van het gereguleerd actief |
| (B)626E/08 à (B)626E/14 | 20.03.2008 → 18.11.2008 | • DNB BRUSSELS AIRPORT : beslissingen over de goedkeuring van de voorlopige tarieven voor de periode van 1 april tot en met 30 juni, van 1 juli tot en met 30 september en van 1 oktober tot en met 31 december 2008, over de vraag tot goedkeuring van het tarievenkostensaldo met budget voor het exploitatiejaar 2007 en de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tarievenkostensaldo met budget voor de reguleringsperiode 2009-2012 |
| (B)627E/07 à (B)627E/12 | 20.03.2008 → 18.12.2008 | • EV/GHA : beslissingen over de goedkeuring van de voorlopige tarieven voor de periode van 1 april tot en met 30 juni, van 1 juli tot en met 30 september en van 1 oktober tot en met 31 december 2008, over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007, over de vraag tot goedkeuring van het tarievenkostensaldo met budget voor de reguleringsperiode 2009-2012 en over de initiële waarde van het gereguleerd actief |
| (B)628E/09 à (B)628E/15 | 20.03.2008 → 18.12.2008 | • INTER-ENERGA : beslissingen over de goedkeuring van de voorlopige tarieven voor de periode van 1 april tot en met 30 juni, van 1 juli tot en met 30 september en van 1 oktober tot en met 31 december 2008, over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007, over de vraag tot goedkeuring van het tarievenkostensaldo met budget voor de reguleringsperiode 2009-2012 en over de initiële waarde van het gereguleerd actief |
| (B)628G/08 à (B)628G/14 | 20.03.2008 → 18.12.2008 | • INTER-ENERGA : beslissingen over de goedkeuring van de voorlopige tarieven voor de periode van 1 april tot en met 30 juni, van 1 juli tot en met 30 september en van 1 oktober tot en met 31 december 2008, over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007, over de vraag tot goedkeuring van het tarievenkostensaldo met budget voor de reguleringsperiode 2009-2012 en over de initiële waarde van het gereguleerd actief |
| (B)629E/07 à (B)629E/08 | 21.08.2008 → 25.09.2008 | • INTER-ENERGA : beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast voor de netten met een transmissiefunctie tijdens het exploitatiejaar 2007 |

• Confidential
• INTERGAS ENERGIE: beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

• IVEG: beslissingen over de goedkeuring van de voorlopige tarieven voor de periode van 1 april tot en met 30 juni, van 1 juli tot en met 30 september en van 1 oktober tot en met 31 december 2008, over de vraag tot goedkeuring van het tariefvoorstel met budget voor het exploitatiejaar 2007, over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007, over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012 en over de initiële waarde van het gereguleerd actief

• PBE: beslissingen over de vraag tot goedkeuring van de voorlopige tarieven voor de periode van 1 april tot en met 30 juni, van 1 juli tot en met 30 september en van 1 oktober tot en met 31 december 2008, over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007, over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012 en over de initiële waarde van het gereguleerd actief

• WVEM: beslissingen over de goedkeuring van de voorlopige tarieven voor de periode van 1 april tot en met 30 juni, van 1 juli tot en met 30 september en van 1 oktober tot en met 31 december 2008, over de vraag tot goedkeuring van het tariefvoorstel met budget voor het exploitatiejaar 2007, over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007, over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012 en over de initiële waarde van het gereguleerd actief

• GASELWEST: beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

• GASELWEST: beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

• IGAO: beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

• IMEA: beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

• Confidential
B637E/08 à (B)637E/10
21.08.2008 ➔ 18.11.2008
IMEWO : beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

B638E/08 à (B)638E/10
21.08.2008 ➔ 18.11.2008
INTERGEM : beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

B639E/08 à (B)639E/10
21.08.2008 ➔ 18.11.2008
IVEKA : beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

B640E/08 à (B)640E/10
21.08.2008 ➔ 18.11.2008
IVERLEK : beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

B641E/08 à (B)641E/10
21.08.2008 ➔ 18.11.2008
SIBELGAS NOORD : beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012

B643E/08 à (B)643E/08
AIESH : beslissingen over de vaststelling van een bonus of malus resulterend uit de tarieven toegepast tijdens het exploitatiejaar 2007 en over de vraag tot goedkeuring van het tariefvoorstel met budget voor de regulatoire periode 2009-2012 en à la valeur initiale de l’actif régulé

B642E/05 à (B)642E/07
AIEG : décisions relatives à la constatation de l’existence d’un bonus ou d’un malus résultant des tarifs appliqués pour l’exercice d’exploitation 2007, à la demande d’approbation de la proposition tarifaire accompagnée du budget pour la période régulatoire 2009-12 et à la valeur initiale de l’actif régulé

B643E/08 à (B)643E/08

Confidential
• TECTEO : décision relative au renouvellement des tarifs provisoires pour la période allant du 1er avril au 30 juin inclus, du 1er juillet au 30 septembre inclus et du 1er octobre au 31 décembre 2008 inclus, décision d’infliger une amende administrative et décisions relatives à la demande d’approbation de la proposition tarifaire accompagnée du budget pour la période régulatoire 2009-2012 et à la valeur initiale de l’actif régulé

• ALG : décisions relatives au renouvellement des tarifs provisoires pour la période allant du 1er avril au 30 juin inclus, du 1er juillet au 30 septembre inclus et du 1er octobre au 31 décembre 2008 inclus, décision d’infliger une amende administrative et décisions relatives à la demande d’approbation de la proposition tarifaire accompagnée du budget pour la période régulatoire 2009-2012 et à la valeur initiale de l’actif régulé

• RÉGIE DE L’ÉLECTRICITÉ DE LA VILLE DE WAVRE : décisions relatives au renouvellement des tarifs provisoires pour la période allant du 1er avril au 30 juin inclus, du 1er juillet au 30 septembre inclus et du 1er octobre au 31 décembre 2008 inclus, à la constatation d’un bonus ou d’un malus résultant des tarifs appliqués au cours de l’exercice d’exploitation 2005 et 2007, à la demande d’approbation de la proposition tarifaire accompagnée du budget pour la période régulatoire 2009-2012 et à la valeur initiale de l’actif régulé

• IDEG : décisions relatives à la constatation d’un bonus ou d’un malus résultant des tarifs appliqués au cours de l’exercice d’exploitation 2007 et à la demande d’approbation de la proposition tarifaire accompagnée du budget pour la période régulatoire 2009-2012

• IDEG : décisions relatives à la constatation d’un bonus ou d’un malus résultant des tarifs appliqués pour l’exercice d’exploitation 2007 et à la demande d’approbation de la proposition tarifaire accompagnée du budget pour la période régulatoire 2009-2012

• IEH : décisions relatives à la constatation d’un bonus ou d’un malus résultant des tarifs appliqués au cours de l’exercice d’exploitation 2007 et à la demande d’approbation de la proposition tarifaire accompagnée du budget pour la période régulatoire 2009-2012

• IGH : décisions relatives à la constatation d’un bonus ou d’un malus résultant des tarifs appliqués pour l’exercice d’exploitation 2007 et à la demande d’approbation de la proposition tarifaire accompagnée du budget pour la période régulatoire 2009-2012

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