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NOTE

from: General Secretariat
to: Permanent Representatives' Committee/Council
Subject: Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas
– Outcome of the European Parliament's first reading
(Strasbourg, 7 to 10 July 2008)

I. INTRODUCTION

The Rapporteur, Mr Romano Maria LA RUSSA (UEN - IT), presented a report consisting of 114 amendments (amendments 1-114) to the proposal for a Directive on behalf of the Committee on Industry, Research and Energy. In addition, another 31 amendments were tabled by different political groups and MEPs (amendments 115-145), although two of them were annulled (117 and 130). The rest of the amendments were distributed as follows: 4 were tabled by the EPP-ED group (115, 118-120), 7 by the PES group (116, 131-136), 9 by the ALDE group (121-129), 5 by the Greens/EFA group (139-143), 2 by the UEN group (137-138) and another 2 (144-145) by Alejo VIDAL-QUADRAS e.a.

II. DEBATE

The joint debate on the "Energy market", which took place on 8 July 2008, covered the following two proposals:

- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) N° 1775/2005 on conditions for access to the natural gas transmission networks, and
- Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas.¹

III. VOTE

The parliament adopted a total of 122 amendments when it voted in plenary on 09-07-2008. Amendments 1-41, 43 and 45-114 had been tabled by the Committee; amendments 116, 132, 133 and 136 had been tabled by the PES group; amendments 118 and 120 had been tabled by the EPP-ED group, and amendments 123, 125, 128 and 129 were tabled by the ALDE group.

The text of the amendments adopted and the European Parliament's legislative resolution are annexed to this note.

¹ For the content of the debate please refer to the second heading of document 11412/08.

Internal market in natural gas *I**

European Parliament legislative resolution of 9 July 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas (COM(2007)0529 – C6-0317/2007 – 2007/0196(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0529),
 - having regard to Article 251(2), Article 47(2) and Articles 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0317/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0257/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Amendment 1
Proposal for a directive – amending act
Recital 3

Text proposed by the Commission

Amendment

(3) *However, at present*, the right to sell gas in any Member State on equal terms and without discrimination or disadvantages cannot be guaranteed to **any company** in **the Community**. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist, since the *current* legal framework is insufficient.

(3) The right to sell gas in any Member State on equal terms and without discrimination or disadvantages cannot, *however, currently* be guaranteed to **all companies** in **all Member States**. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist, since the legal framework is insufficient.

Amendment 2
Proposal for a directive – amending act
Recital 5

Text proposed by the Commission

Amendment

(5) Without effective separation of networks from activities of production and supply, there is **an inherent** risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated companies to invest adequately in their networks.

(5) Without effective separation of networks from activities of production and supply, there is **a** risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated companies to invest adequately in their networks.

Amendment 3
Proposal for a directive – amending act
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The Member States should promote cooperation and monitor the effectiveness of the network at regional level. Several Member States have already put forward a proposal that would fulfil such an objective.

Amendment 4
Proposal for a directive – amending act
Recital 6

Text proposed by the Commission

(6) The rules on legal and functional unbundling currently in place have not led to effective unbundling of the transmission system operators. At its meeting in Brussels on 8 and 9 March 2007, the European Council invited the Commission to develop legislative proposals for the effective separation of supply and production activities from network operations.

Amendment

(6) The rules on legal and functional unbundling currently in place have not **yet** led to effective unbundling of the transmission system operators ***in every Member State, partly due to the fact that existing Community legislation has not been fully implemented.*** At its meeting in Brussels on 8 and 9 March 2007, the European Council invited the Commission to develop legislative proposals for the effective separation of supply and production activities from network operations.

Amendment 5
Proposal for a directive – amending act
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Any system for unbundling should be effective in removing any conflict of interests between producers and transmission system operators, in order to create incentives for the necessary investments and guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an onerous or cumbersome regulatory regime for national regulatory authorities that would be difficult or expensive to implement.

Amendment 6
Proposal for a directive – amending act
Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) Gas is mainly, and increasingly, imported into the European Union from third countries. Community law should take account of the specific integration of the gas sector into the world market, including the differences in the upstream and downstream markets.

Amendment 7
Proposal for a directive – amending act
Recital 8

Text proposed by the Commission

Amendment

(8) Since ownership unbundling requires, in some instances, the restructuring of undertakings, Member States should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should apply, moreover, across the two sectors.

(8) Since ownership unbundling requires, in some instances, the restructuring of undertakings, Member States ***that decide to implement ownership unbundling*** should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should apply, moreover, across the two sectors.

Amendment 8
Proposal for a directive – amending act
Recital 8 a (new)

Amendment

(8a) Member States that so wish may apply the provisions of this Directive that relate to the effective and efficient separation of transmission systems and transmission system operators. Such separation is effective insofar as it helps to ensure the independence of transmission system operators and is efficient insofar it provides a more appropriate regulatory framework to guarantee fair competition, sufficient investment, access for new market entrants and the integration of natural gas markets. Such separation is based on a pillar of organisational measures and measures relating to the governance of transmission system operators and on a pillar of measures relating to investment, connecting new production capacities to the network and market integration through regional cooperation. It is in line with the requirements laid down by the European Council at its meeting in Brussels on 8 and 9 March 2007.

Amendment 9
Proposal for a directive – amending act
Recital 8 b (new)

Text proposed by the Commission

Amendment

(8b) Member States should promote regional cooperation, with the possibility of designating a regional coordinator in charge of facilitating dialogue between competent national authorities. New power plants should, furthermore, be connected to the grid in an effective manner in due course.

Amendment 10
Proposal for a directive – amending act
Recital 8 c (new)

Text proposed by the Commission

Amendment

(8c) In order to ensure the proper implementation of this Directive, the Commission should assist those Member States that encounter problems therewith.

Amendments 116 and 137
Proposal for a directive – amending act
Recital 8 d (new)

Text proposed by the Commission

Amendment

(8d) The aim of an integrated European energy network is essential for security of supply and a well-functioning internal gas market. The Commission, in consultation with the stakeholders (in particular the transmission system operators and the Agency) should therefore assess the feasibility of creating a single European transmission system operator and analyse the costs and benefits with respect to market integration as well as the effective and secure operation of the transmission network.

Amendment 11
Proposal for a directive – amending act
Recital 10

Text proposed by the Commission

(10) The setting up of system operators independent from supply and production interests should enable vertically integrated companies to maintain their ownership of network assets whilst ensuring an effective separation of interests, provided that the independent system operator performs all the functions of a network operator and detailed regulation and extensive regulatory control mechanisms are put in place.

Amendment

(10) The setting up of system operators independent from supply and production interests should enable vertically integrated companies to maintain their ownership of network assets whilst ensuring an effective separation of interests, provided that the independent system operator performs all the functions of a network operator, ***or efficient and effective unbundling is implemented***, and detailed regulation and extensive regulatory control mechanisms are put in place.

Amendment 12
Proposal for a directive – amending act
Recital 11

Text proposed by the Commission

(11) Where the undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling ***and, as a derogation, setting up system operators which are independent from supply and production interests. The full effectiveness of the independent system operator solution needs to be assured by way of specific additional rules. To preserve fully the interests of the shareholders of vertically integrated companies, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated company into shares of the network company and shares of the remaining supply and production business, provided that the requirements resulting from ownership unbundling are complied with.***

Amendment

(11) Where the undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between ***three options: ownership unbundling, the establishment of an independent system operator or effective and efficient unbundling.***

Amendment 13
Proposal for a directive – amending act
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) In order to develop competition in the internal market for gas, non-household customers should be able to choose their suppliers as well as enter into contracts to secure their gas requirements with several suppliers. Such customers should be protected against exclusivity clauses, the effect of which is to exclude competing and/or complementary offers.

Amendment 14
Proposal for a directive – amending act
Recital 12

Text proposed by the Commission

Amendment

(12) The implementation of effective unbundling should respect the principle of *non discrimination* between the public and private sectors. To this *effect*, the same person should not be able to exercise any influence, solely or jointly, over the composition, voting or decision of the bodies of both transmission system operators and supply undertakings.
Provided that the Member State in question can demonstrate that this requirement is respected, two distinct public bodies could control on the one hand generation and supply activities and on the other transmission activities.

(12) The implementation of effective unbundling should respect the principle of *non-discrimination* between the public and private sectors. To this *end*, the same person should not be able to exercise any influence, solely or jointly, over the composition, voting or decision of the bodies of both transmission system operators and supply undertakings.

Amendment 15
Proposal for a directive – amending act
Recital 13

Text proposed by the Commission

(13) **Full** separation of network and supply activities should apply throughout the Community, **so that any network operator in the Community or its affiliated companies should be prevented from having any supply or production activities in any Member State**. This should apply equally to EU and *non-EU* companies. To ensure that network and supply activities throughout the Community are kept separate, regulatory authorities should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure a consistent application across the Community and the respect of the international obligations of the Community, the **Commission** should have the right to review the decisions on certification taken by the regulatory authorities.

Amendment

(13) Separation of network and supply activities should apply throughout the Community. This should apply equally to EU and *third-country* companies. To ensure that network and supply activities throughout the Community are kept separate, regulatory authorities should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure consistent application across the Community and the respect of the international obligations of the Community, the **Agency for the Cooperation of Energy Regulators ("the Agency")** should have the right to review the decisions on certification taken by the regulatory authorities.

Amendment 16
Proposal for a directive – amending act
Recital 14

Text proposed by the Commission

(14) The safeguarding of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the EU gas market. Use of the network is essential for gas to reach EU citizens. Functioning gas markets and in particular the networks and other assets associated with gas supply are essential for public security, *for* the competitiveness of the economy and *for* the well-being of *the* citizens of the *Community*. Without prejudice to *the* international obligations *of the Community*, the Community considers that the gas transmission system sector is of high importance to the Community and therefore additional safeguards are necessary regarding the influence of third countries in order to avoid any threats to Community public order and public security and the welfare of the citizens of the Community. Such measures are also necessary for ensuring compliance with the rules on effective unbundling.

Amendment

(14) The safeguarding of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the EU gas market ***and the integration of the isolated markets of Member States***. Use of the network is essential for gas to reach EU citizens. Functioning, ***open*** gas markets ***with genuine trading possibilities***, and in particular the networks and other assets associated with gas supply are essential for public security, the competitiveness of the economy and the well-being of citizens of the *Union*. Without prejudice to *its* international obligations, the Community considers that the gas transmission system sector is of high importance to the Community and therefore additional safeguards are necessary regarding the influence of third countries in order to avoid any threats to Community public order and public security and the welfare of the citizens of the Community. Such measures are also necessary for ensuring compliance with the rules on effective unbundling.

Amendment 17
Proposal for a directive – amending act
Recital 16 a (new)

Text proposed by the Commission

(16a) Member States should take concrete measures to assist the wider use of biogas and gas from biomass, the producers of which must be granted non-discriminatory access to the gas system, provided that such access is compatible with the relevant technical rules and safety standards on an ongoing basis.

Amendment

Amendment 18
Proposal for a directive – amending act
Recital 18

Text proposed by the Commission

(18) Energy regulators need to be able to take decisions on all relevant regulatory issues if the internal market is to function *correctly*, and to be fully independent from any other *public or private* interests.

Amendment

(18) Energy regulators need to be able to take decisions on all relevant regulatory issues if the internal market is to function *properly*, and to be fully independent from any other interests *of public or private companies*.

Amendment 19
Proposal for a directive – amending act
Recital 19

Text proposed by the Commission

(19) Energy regulators should have the power to issue binding decisions on *gas undertakings* and to impose effective, appropriate and dissuasive sanctions on *natural gas undertakings* which fail to comply with their obligations. They must also be granted the powers to decide, irrespective of the application of competition rules, on any appropriate measures *promoting* effective competition necessary for the proper functioning of the market; as well as to ensure high standards of public service in compliance with market opening, the protection of vulnerable customers and *that* consumer protection measures *are fully effective*. These provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a Community dimension, and the rules on the internal market, such as the free movement of capital.

Amendment

(19) Energy regulators should have the power to issue binding decisions on *network operators* and to impose effective, appropriate and dissuasive sanctions on *network operators* that fail to comply with their obligations. They must also be granted the powers to decide, irrespective of the application of competition rules, on any appropriate measures *regarding the access to networks with the aim of* effective competition necessary for the proper functioning of the market; as well as to ensure high standards of public service in compliance with market opening, the protection of vulnerable customers and *the full effectiveness of* consumer protection measures. These provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a Community dimension, and the rules on the internal market, such as the free movement of capital.

Amendment 20
Proposal for a directive – amending act
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Energy and financial market regulatory authorities should cooperate in order to allow each other an overview of their respective markets. They should have the power to obtain relevant information from natural gas undertakings through appropriate and sufficient investigations, to settle disputes, and impose effective sanctions.

Amendment 21
Proposal for a directive – amending act
Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The structural rigidities of the gas market which arise from the concentration of suppliers, the long-term contracts that underpin deliveries, and the lack of downstream liquidity, generate non-transparent pricing structures. In order to bring clarity to the cost structure, more transparency is needed in the price formation, and a trading obligation should therefore be mandatory.

Amendment 22
Proposal for a directive – amending act
Recital 22

Text proposed by the Commission

Amendment

(22) Prior to adoption by the Commission of guidelines defining further the record keeping requirements, the Agency for the Cooperation of Energy Regulators and the Committee of European Securities Regulators (CESR) should cooperate to investigate and advise the Commission on the content of the guidelines. The Agency and the Committee should also cooperate to further investigate and advise on the question whether transactions in gas supply contracts and gas derivatives should be subject to pre and/or post-trade transparency requirements and if so what the content of those requirements should be.

deleted

Amendment 23
Proposal for a directive – amending act
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) The public service requirements and the common minimum standards that follow therefrom need to be further strengthened to make sure that gas services are accessible to the public and to small and medium-sized (SMEs) enterprises.

Amendment 24
Proposal for a directive – amending act
Recital 23 b (new)

Text proposed by the Commission

Amendment

(23b) Member States should ensure that individual smart meters are installed, as provided for in Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services¹, in order to give consumers accurate information about energy consumption and to secure end-user efficiency.

¹ OJ L 114, 27.4.2006, p. 64.

Amendment 25
Proposal for a directive – amending act
Recital 23 c (new)

Text proposed by the Commission

Amendment

(23c) Consumers should be the main focus of this Directive. Existing rights for consumers need to be strengthened and guaranteed, and should include greater transparency and representation. Consumer protection means that all customers should benefit from a competitive market. Consumer rights should be enforced by national regulatory authorities by the creation of incentives and the imposition of sanctions on undertakings which do not comply with consumer protection and competition rules.

Amendment 131
Proposal for a directive – amending act
Recital 23 d (new)

Text proposed by the Commission

Amendment

(23d) Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. Following on from its communication of 5 July 2007 entitled 'Towards a European Charter of the Rights of Energy Consumers', the Commission should put forward, after consulting relevant stakeholders, including national regulatory authorities, consumer organisations and the social partners, an accessible, user-friendly charter listing the rights of energy consumers already in existing Community law including this Directive. Energy suppliers should ensure that all consumers receive a copy of that charter and that it is publicly available.

Amendment 26
Proposal for a directive – amending act
Recital 24

Text proposed by the Commission

Amendment

(24) In order to contribute to security of supply whilst maintaining a spirit of solidarity ***between Member States***, notably in the event of an energy supply crisis, ***it is important to provide a framework for regional solidarity cooperation.***

(24) In order to contribute to security of supply, ***Member States should***, whilst maintaining a spirit of solidarity, notably in the event of an energy supply crisis, ***work together closely. For this purpose, Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply¹ should serve as a basis.***

¹ OJ L 127, 29.4.2004, p. 92.

Amendment 27
Proposal for a directive – amending act
Recital 25

Text proposed by the Commission

(25) In view of the creation of an internal market for gas, Member States should foster the integration of their national markets and the cooperation of network operators at European and regional level.

Amendment

(25) In view of the creation of an internal market for gas, Member States should foster the integration of their national markets and the cooperation of network operators at European and regional level. ***Regional integration initiatives are an essential intermediate step in achieving the integration of Community energy markets, which remains the final objective. The regional level contributes towards accelerating the integration process by making it possible for the actors concerned, particularly the Member States, the national regulatory authorities and the transmission system operators, to cooperate in regard to specific issues.***

Amendment 28
Proposal for a directive – amending act
Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) The development of a truly pan-Community pipeline network should be one of the main goals of this Directive and regulatory issues on cross-border interconnections and regional markets should, therefore, be the responsibility of the Agency.

Amendment 29
Proposal for a directive – amending act
Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) Member States should consider with the social partners concerned the implications of amending Directive 2003/55/EC, in particular the different models to ensure independent transmission system operators, in terms of the employment, working conditions and information, consultation and participation rights of workers, with a view to mitigating the negative consequences.

Amendment 30
Proposal for a directive – amending act
Recital 32

Text proposed by the Commission

Amendment

(32) As regards Directive 2003/55/EC, power should be conferred on the Commission in particular to adopt the guidelines necessary for providing the minimum degree of harmonisation required to achieve the aim of this Directive. Since those measures are of general scope and are designed to supplement Directive 2003/55/EC by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

deleted

Amendment 31
Proposal for a directive – amending act
Article 1 – point -1 (new)
Directive 2003/55/EC
Article 1 – paragraph 2

Text proposed by the Commission

Amendment

(-1) Article 1(2) shall be replaced by the following:

"2. The rules established by this Directive for natural gas, including liquefied natural gas (LNG), shall also apply in a non-discriminatory way to biogas and gas from biomass or other types of gas in so far as such gases can technically and safely be injected into, and transported through, the natural gas system."

(Adding a clarification to Article 1 - paragraph 2 of Directive 2003/55/EC)

Amendment 32
Proposal for a directive – amending act
Article 1 – point 1 – point -a (new)
Directive 2003/55/EC
Article 2 – point 3

Text proposed by the Commission

Amendment

(-a) point 3 shall be replaced by the following:

"3. 'transmission' means the transport of natural gas through a [...] network containing mainly high-pressure pipelines, other than an upstream pipeline network or the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;"

Amendment 33
Proposal for a directive – amending act
Article 1 – point 1 – point - a a (new)
Directive 2003/55/EC
Article 2 – point 9

Text proposed by the Commission

Amendment

(-aa) point 9 shall be replaced by the following:

"9. 'storage facility' means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used *exclusively* for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;"

Amendment 34
Proposal for a directive – amending act
Article 1 – point 1 – point -a b (new)
Directive 2003/55/EC
Article 2 – point 14

Text proposed by the Commission

Amendment

(-ab) point 14 shall be replaced by the following:

"14. 'ancillary services' means all services necessary for access to and the operation of transmission and/or distribution networks and/or LNG facilities and/or storage facilities including load balancing, blending *and injection of inert gases*, but excluding facilities reserved exclusively for transmission system operators carrying out their functions;"

Amendment 35
Proposal for a directive – amending act
Article 1 – point 1 – point -a c (new)
Directive 2003/55/EC
Article 2 – point 17

Text proposed by the Commission

Amendment

(-ac) point 17 shall be replaced by the following:

"17. 'interconnector' means a long-distance gas pipeline which crosses or spans a border between Member States for the main purpose of connecting the national transmission systems of these Member States;"

Amendment 36
Proposal for a directive – amending act
Article 1 – point 1 – point b
Article 2 – point 36 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

For the avoidance of doubt, the long-term transport contract of an undertaking that holds interests in production or supply activities shall not constitute control of a transmission system per se.

Amendment 37
Proposal for a directive – amending act
Article 1 – point 1 – point b a (new)
Directive 2003/55/EC
Article 2 – point 36 a (new)

Text proposed by the Commission

Amendment

(ba) the following point shall be added:

"36a. 'isolated market' means a Member State that has no interconnection to other Member States' national transmission systems and/or whose gas supply is controlled by a person or persons from a third country;"

Amendment 38
Proposal for a directive – amending act
Article 1 – point 1 – point b b (new)
Directive 2003/55/EC
Article 2 – point 36 b (new)

Text proposed by the Commission

Amendment

(bb) the following point shall be added:
"36b. 'project of European interest'
means a gas infrastructure project which
results in new gas resources becoming
available to the Community and in greater
diversification of gas supplies in more
than one Member State;"

Amendment 39
Proposal for a directive – amending act
Article 1 – point 1 – point b c (new)
Directive 2003/55/EC
Article 2 – point 36 c (new)

Text proposed by the Commission

Amendment

(bc) the following point shall be added:
"36c. 'fair and undistorted competition in
an open market' means common
opportunities and equal access for all
providers within the European Union, for
which the Member States, national
regulatory authorities and the Agency
shall be responsible;"

Amendment 40
Proposal for a directive – amending act
Article 1 – point 1 – point b d (new)
Directive 2003/55/EC
Article 2 – point 36 d (new)

Text proposed by the Commission

Amendment

(bd) the following point shall be added:

"36d. 'energy poverty' means the situation where the members of a household cannot afford to heat their home to an acceptable standard, based on the levels recommended by the World Health Organisation;"

Amendment 41
Proposal for a directive – amending act
Article 1 – point 1 – point b e (new)
Directive 2003/55/EC
Article 2 – point 36 e (new)

Text proposed by the Commission

Amendment

(be) the following point shall be added:

"36e. 'affordable price' means a price defined by Member States at national level in consultation with national regulatory authorities, social partners and relevant stakeholders while taking account of the definition of energy poverty provided for in point 36d;"

Amendment 123
Proposal for a directive – amending act
Article 1 – point 1 – point b f (new)
Directive 2003/55/EC
Article 2 – point 36 f (new)

Text proposed by the Commission

Amendment

(bf) the following point shall be added:
"36f. 'industrial site' means a privately owned geographical area with a natural gas network managed by one company with a connection to the transmission or distribution network:
(a) which predominantly supplies the industrial activities of the network operator or of connected undertakings, or
(b) which supplies a limited number of industrial consumers or customers linked with the industrial activities on the industrial site;

Amendment 43
Proposal for a directive – amending act
Article 1 – point 1 a (new)
Directive 2003/55/EC
Article 3 – paragraph 2

Text proposed by the Commission

Amendment

(1a) Article 3(2) shall be replaced by the following:
"2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on undertakings operating in the gas sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity and quality [...], and environmental protection, including energy efficiency and climate protection. [...]"

Amendment 132
Proposal for a directive – amending act
Article 1 – point 1 b (new)
Directive 2003/55/EC
Article 3 – paragraph 3

Text proposed by the Commission

Amendment

(1b) Article 3(3) shall be replaced by the following:

"3. Member States shall take appropriate measures to protect final customers and [...] shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers, including prohibiting the disconnection of pensioners and disabled people in winter. In this context, Member States shall recognise energy poverty and shall provide definitions of vulnerable customers. Member States shall ensure that rights and obligations linked to vulnerable customers are applied and, in particular, shall take measures to protect final customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding [...] contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is in fact able easily to switch to a new supplier. As regards at least household customers, these measures shall include those set out in Annex A."

Amendment 45
Proposal for a directive – amending act
Article 1 – point 1 c (new)
Directive 2003/55/EC
Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(1c) In Article 3, the following paragraph shall be inserted:

"3a. Member States shall take appropriate measures to address energy poverty in national action plans in order to ensure that the number of people suffering energy poverty decreases in real terms and shall communicate such measures to the Commission. Each Member State shall be responsible for providing, in accordance with the principle of subsidiarity, a definition of energy poverty at national level, in consultation with regulatory authorities and stakeholders with reference to Article 2(36d). Such measures may include benefits in social security systems, support to energy efficiency improvements and energy production at the lowest possible prices, and shall not impede the opening of the market set out in Article 23. The Commission shall provide guidance to monitor the impact of such measures on energy poverty, and on the functioning of the market."

Amendment 46
Proposal for a directive – amending act
Article 1 – point 1 d (new)
Directive 2003/55/EC
Article 3 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

(1d) In Article 3, the following paragraph shall be inserted:

"3b. Member States shall ensure that all customers are entitled to have their gas provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is authorised or otherwise approved. In this regard, Member States shall take all necessary measures to ensure that undertakings which are approved as suppliers in another Member State can supply their citizens without having to comply with any further conditions."

Amendment 47
Proposal for a directive – amending act
Article 1 – point 1 e (new)
Directive 2003/55/EC
Article 3 – paragraph 4

Text proposed by the Commission

Amendment

(1e) Article 3(4) shall be replaced by the following:

"4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, with a view to lowering the cost of gas provided to low-income household customers and guaranteeing the same conditions for the customers living in remote areas, and the objectives of environmental protection [...]. Those measures include energy efficiency/demand-side management measures and means to combat climate change, and security of supply, and may also include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for the maintenance and construction of necessary network infrastructure, including interconnection capacity."

Amendment 48
Proposal for a directive – amending act
Article 1 – point 1 f (new)
Directive 2003/55/EC
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(1f) In Article 3, the following paragraph shall be inserted:

"4a. In order to promote energy efficiency, national regulatory authorities shall mandate natural gas undertakings to introduce pricing formulas which increase in the case of greater levels of consumption and shall ensure the active participation of customers and distribution system operators in system operations by supporting the introduction of measures to optimise the use of gas, particularly during peak hours. Such pricing formulas, combined with the introduction of smart meters and grids, shall promote energy efficiency behaviour and the lowest possible costs for household customers, in particular household customers suffering energy poverty."

Amendment 133
Proposal for a directive – amending act
Article 1 – point 1 g (new)
Directive 2003/55/EC
Article 3 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

(1g) In Article 3, the following paragraph shall be inserted:

"4b. Member States shall provide single points of contact in order to ensure that consumers have access to all necessary information concerning their rights, current legislation and the means of redress available to them in the event of a dispute."

Amendment 49
Proposal for a directive – amending act
Article 1 – point 1 h (new)
Directive 2003/55/EC
Article 3 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(1h) In Article 3, the following paragraph shall be inserted:

"5a. The implementation of this Directive shall have no negative consequences for the employment, working conditions and information, consultation and participation rights of the workers concerned. Member States shall consult the social partners concerned as regards the implementation of any amendments to this Directive to mitigate such negative consequences. The Commission shall report to the sectoral social dialogue committees for gas and for electricity on the consultations and measures taken."

(Adding a new paragraph after paragraph 5 of Article 3 of Directive 2003/55/EC)

Amendment 50
Proposal for a directive – amending act
Article 1 – point 2
Directive 2003/55/EC
Article 3 – paragraph 7

Text proposed by the Commission

Amendment

(2) In Article 3, the following paragraph 7 is added: ***deleted***

"7. The Commission may adopt guidelines for the implementation of this Article. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30 (3)."

Amendment 51
Proposal for a directive – amending act
Article 1 – point 2 a (new)
Directive 2003/55/EC
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

(2a) Article 4(2) shall be replaced by the following:

“2. Where Member States have a system of authorisation, they shall lay down objective and *non-discriminatory* criteria which shall be met by an undertaking applying for an authorisation to build and/or operate natural gas facilities *or* applying for an authorisation to supply natural gas. *Member States shall, in any event, not be entitled to bind the authorisation to criteria which give the competent authorities discretionary powers. The non-discriminatory criteria and procedures for the granting of authorisations shall be made public. Member States shall ensure that authorisation procedures for facilities, pipelines and associated equipment take into account the importance of the project for the internal market in energy.*”

Amendment 52
Proposal for a directive – amending act
Article 1 – point 3
Directive 2003/55/EC
Article 5a – paragraph 1

Text proposed by the Commission

Amendment

1. In order to safeguard a secure supply on the internal market of natural gas, Member States shall cooperate in order to promote regional and bilateral solidarity.

1. In order to safeguard a secure supply on the internal market of natural gas, Member States shall, ***without imposing a disproportionate burden on market participants***, cooperate in order to promote regional and bilateral solidarity.

Amendment 53
Proposal for a directive – amending act
Article 1 – point 3
Directive 2003/55/EC
Article 5a – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be kept informed of *this* cooperation.

3. The Commission, ***the other Member States and the market participants*** shall be kept informed of *such* cooperation.

Amendment 54
Proposal for a directive – amending act
Article 1 – point 3
Directive 2003/55/EC
Article 5a – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may adopt guidelines for regional solidarity cooperation. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30 (3).

deleted

Amendment 55
Proposal for a directive – amending act
Article 1 – point 3
Directive 2003/55/EC
Article 5b

Text proposed by the Commission

Member States shall cooperate among themselves for the purpose of integrating their national markets at least at **the regional level**. In particular, *Member States* shall promote the cooperation of network operators at a regional level, and **foster the consistency** of their legal and regulatory framework. **The geographical area covered by regional cooperations shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No1775/2005.**"

Amendment

1. National regulatory authorities shall cooperate among themselves for the purpose of **harmonising the market design and** integrating their national markets at least at **one or more regional levels, as a first and intermediate step towards a fully liberalised internal market for gas**. In particular, **they** shall promote the cooperation of network operators at a regional level and **facilitate their integration at regional level with the aim of creating a competitive internal market, facilitating the harmonisation** of their legal, regulatory **and technical** framework **and, above all, integrating the gas islands that persist in the European Union**. **Member States shall also promote cross-border and regional cooperation among national regulatory authorities.**

2. The Agency shall cooperate with national regulatory authorities and transmission system operators in accordance with Chapters III and IV to ensure the convergence of regulatory frameworks between the regions with the aim of creating a competitive internal market. Where the Agency considers that binding rules on such cooperation are required, it shall make appropriate recommendations. In regional markets, the Agency shall be deemed to be the competent authority in the areas specified in Article 24d.

Amendment 56
Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/55/EC
Article 7 – paragraph 1 – point b - introductory part

Text proposed by the Commission

Amendment

(b) the same person or the same persons are not entitled:

(b) the same person or the same persons are not entitled, ***either individually or jointly***:

Amendment 57
Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/55/EC
Article 7 – paragraph 1 – point b - point i

Text proposed by the Commission

Amendment

(i) *to* directly or indirectly exercise control over an undertaking performing any of the functions of production or supply, and *to* directly or indirectly exercise control or hold any interest in or exercise any right over a transmission system operator ***or over a transmission system***,

(i) directly or indirectly *to* exercise control over an undertaking performing any of the functions of production or supply, and directly or indirectly *to* exercise control or hold any interest in or exercise any right over a transmission system operator,

Amendment 58
Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/55/EC
Article 7 – paragraph 1 – point b - point ii

Text proposed by the Commission

Amendment

(ii) *to* directly or indirectly exercise control over a transmission system operator ***or over a transmission system***, and *to* directly or indirectly exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of production or supply;

(ii) directly or indirectly *to* exercise control over a transmission system operator and directly or indirectly *to* exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of production or supply;

Amendment 59
Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/55/EC
Article 7 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the same person or *the same* persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator ***or a transmission system***, and to directly or indirectly exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of production or supply;

(c) the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator and directly or indirectly *to* exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of production or supply;

Amendment 60
Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/55/EC
Article 7 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the same person or persons are not entitled to operate the transmission system via management contract or exercise influence in any other way of non-ownership, and directly or indirectly to exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of production or supply.

Amendment 61
Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/55/EC
Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall monitor the process of unbundling vertically integrated undertakings and shall submit a report to the Commission on the progress achieved.

Amendment 62
Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/55/EC
Article 7 – paragraph 5

Text proposed by the Commission

Amendment

5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned. ***No other undertaking may be part of the joint venture, unless it has been approved under Article 9a as an independent system operator.***

5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned.

Amendment 63
Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/55/EC
Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Where a person referred to in paragraph 1(b) to (d) is the Member State or another public body, two separate public bodies exercising control over either a transmission system operator or a transmission system on the one hand and an undertaking performing any of the functions of production or supply on the other shall be deemed not to be the same person or persons.

Amendment 64
Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/55/EC
Article 7 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Where on the date of entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas], the transmission system belongs to a vertically integrated undertaking, Member States may decide not to apply paragraph 1.

In such a case, Member States shall either:

(a) designate an independent system operator in accordance with Article 9; or

(b) comply with the provisions of Chapter IVa.

Vertically integrated undertakings that own a transmission system may not in any event be prevented from taking steps to comply with paragraph 1.

Amendment 65
Proposal for a directive – amending act
Article 1 – point 5
Directive 2003/55/EC
Article 7a – paragraph 2

Text proposed by the Commission

Amendment

2. An agreement concluded with one or several third countries to which the Community is a party may allow for a derogation from paragraph 1.

2. An agreement ***aimed at establishing a common framework for investing in the energy sector and opening the energy market of a third country, including as regards undertakings established within the European Union***, concluded with one or several third countries to which the Community is a party may allow for a derogation from paragraph 1.

Amendment 66
Proposal for a directive – amending act
Article 1 – point 5
Directive 2003/55/EC
Article 7b – paragraph 13

Text proposed by the Commission

Amendment

13. The Commission shall adopt guidelines setting out the details of the procedure to be followed for the application of paragraphs 6 to 9. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

deleted

Amendment 67
Proposal for a directive – amending act
Article 1 – point 5
Directive 2003/55/EC
Article 7b – paragraph 13 a (new)

Text proposed by the Commission

Amendment

13a. The procedures set out in this Article with particular reference to the limitations set out in paragraph 2, shall not apply to upstream pipelines solely aimed at directly connecting gas supply networks of countries of origin to a landing point within the territory of the Community, and to their upgrades.

Amendment 68
Proposal for a directive – amending act
Article 1 – point 6
Directive 2003/55/EC
Article 8 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment, ***and promote energy efficiency and research and innovation notably with respect to ensuring penetration of renewables and dissemination of low carbon technology.***

(a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities ***to secure an open market for new entrants***, with due regard to the environment.

Amendment 118
Proposal for a directive – amending act
Article 1 – point 6 a (new)
Directive 2003/55/EC
Article 8 - paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(6a) In Article 8(1) the following point shall be inserted:

“(ba) build sufficient interconnection capacity linking their transmission infrastructure in order to meet all reasonable demands for capacity, facilitate an efficient overall market, and fulfil the criteria for security of supply of gas;”

Amendment 69
Proposal for a directive – amending act
Article 1 – point 6 b (new)
Directive 2003/55/EC
Article 8 – paragraph 3

Text proposed by the Commission

Amendment

(6b) Article 8(3) shall be replaced by the following:

"3. Member States may, through their national regulatory authorities, require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity. National regulatory authorities should be given broader powers for the purpose of ensuring consumer protection within the European Union."

Amendment 120
Proposal for a directive – amending act
Article 1 – point 6 c (new)
Directive 2003/55/EC
Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(6c) In Article 8, the following paragraph shall be added:

"4a. While carrying out their tasks, transmission system operators shall take into account the codes adopted by the European Network of Transmission System Operators for Gas."

Amendment 70
Proposal for a directive – amending act
Article 1 – point 8
Directive 2003/55/EC
Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

Independent system operators

1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive, Member States may grant derogations from Article 7(1), provided that an independent system operator is designated by the Member State upon a proposal from the transmission system owner and subject to approval of such designation by the Commission. Vertically integrated undertakings which own a transmission system may not in any event be prevented from taking steps to comply with Article 7(1).

2. The Member State may approve and designate an independent system operator only where:

(a) the candidate operator has demonstrated that it complies with the requirements of Article 7(1)(b) to (d);

(b) the candidate operator has demonstrated that it has at its disposal the required financial, technical and human resources to carry out its tasks under Article 8;

(c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority;

(d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 6. To this effect, it shall provide all the draft contractual arrangements with the candidate undertaking and any other relevant entity;

(e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EC) No 1775/05 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission network* including the cooperation of transmission system operators at European and regional level.

3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Articles 7a and 9(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 7b shall be applicable.

4. Where the Commission has taken a decision in accordance with the procedure in Article 7b and finds that the regulatory authority has not complied with its decision within two months, it shall, within a period of six months, designate, on a proposal from the Agency and after having heard the views of the transmission system owner and the transmission system operator, an independent system operator for a period of 5 years. At any time, the transmission system owner may propose to the regulatory authority the designation of a new independent system operator pursuant to the procedure in Article 9(1).

5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges and congestion rents, for operating, maintaining and developing the transmission system, as well as for ensuring the long term ability of the system to meet reasonable demand through investment planning. When developing the network the independent system operator is responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, it shall act as a transmission system operator in accordance with this Chapter. Transmission system owners may not be responsible for granting and managing third party access, nor for investment planning.

6. Where an independent system operator has been designated, the transmission system owner shall:

(a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;

(b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority. Prior to this approval, the Regulatory Authority shall consult the asset owner together with other interested parties;

(c) provide for the coverage of liability relating to the network assets that it owns and are managed by the independent system operator, excluding the liability relating to the tasks of the independent system operator;

(d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to paragraph b, it has given its agreement to financing by any interested party including the independent system operator.

7. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 6.

Amendment 71
Proposal for a directive – amending act
Article 1 – point 8
Directive 2003/55/EC
Article 9a

Text proposed by the Commission

Amendment

Article 9a

deleted

***Unbundling of transmission system owner
and storage system operator***

1. Transmission system owners, where an independent system operator has been appointed, and storage system operators which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission and storage. This Article shall only apply to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 19.

2. In order to ensure the independence of the transmission system owner and storage system operator referred to in paragraph 1, the following minimum criteria shall apply:

(a) those persons responsible for the management of the transmission system owner and storage system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas;

(b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner and storage system operator are taken into account in a manner that ensures that they are capable of acting independently;

(c) the storage system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 24c(4) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument;

(d) the transmission system owner and storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner and of the storage operator with paragraph 2 of this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

Amendment 72

Proposal for a directive – amending act

Article 1 – point 9

Directive 2003/55/EC

Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Commercially sensitive information shall be determined by using objective and transparent criteria.

Amendment 73
Proposal for a directive – amending act
Article 1 – point 9 a (new)
Directive 2003/55/EC
Article 12 – paragraph 1

Text proposed by the Commission

Amendment

(9a) Article 12(1) shall be replaced by the following:

"1. Each distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas, and for operating, maintaining and developing under economic conditions a secure, reliable and efficient distribution system in its area with due regard for the environment, and for promoting energy efficiency."

Amendment 74
Proposal for a directive – amending act
Article 1 – point 9 b (new)
Directive 2003/55/EC
Article 12 – paragraph 4

Text proposed by the Commission

Amendment

(9b) Article 12(4) shall be replaced by the following:

"4. Each distribution system operator shall provide system users with the information they need for efficient access to and use of the system."

Amendment 75
Proposal for a directive – amending act
Article 1 – point 9 c (new)
Directive 2003/55/EC
Article 12 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(9c) In Article 12, the following paragraph shall be inserted:

"4a. The distribution system operator shall submit to the relevant regulatory authority, within one year of the entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas], a proposal describing the appropriate information and communication systems to be implemented in order to provide the information referred to in paragraph 4. That proposal shall facilitate, inter alia the use of bi-directional electronic meters, which shall be rolled out to all customers within 10 years after entry into force of that Directive, the active participation of final customers and distributed producers in system operation and the flow of real-time information between distribution and transmission system operators with the aim of optimising the use of all available production, network and demand resources."

Amendment 76
Proposal for a directive – amending act
Article 1 – point 9 d (new)
Directive 2003/55/EC
Article 12 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

(9d) In Article 12, the following paragraph shall be inserted:

"4b. Within two years of the entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas], national regulatory authorities shall approve or reject the proposals referred to in paragraph 4a. National regulatory authorities shall ensure full interoperability of the information and communication systems to be implemented. For this purpose, they may issue guidelines and may call for the amendment of the proposals referred to in paragraph 4a."

Amendment 77
Proposal for a directive – amending act
Article 1 – point 9 e (new)
Directive 2003/55/EC
Article 12 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

(9e) In Article 12, the following paragraph shall be inserted:

"4c. Prior to notification to the distribution system operator of its decision concerning the proposal referred to in paragraph 4a, the national regulatory authority shall inform the Agency or, if the Agency is not yet in operation, the Commission thereof. The Agency or the Commission shall ensure that the information and communication systems to be implemented facilitate the development of the internal market for gas and do not introduce any new technical barriers."

Amendments 78, 125/rev, 135/rev and 138/rev
Proposal for a directive – amending act
Article 1 – point 9 f (new)
Directive 2003/55/EC
Chapters IV a and IV b (new)

Text proposed by the Commission

Amendment

(9f) The following chapters shall be inserted:

"CHAPTER IVa

Independent transmission system operators

Article 12a

Scope

The provisions of this Chapter shall apply when a Member State decides not to apply Article 7(1) in accordance with Article 7(6a) and does not designate an independent system operator in accordance with Article 9, subject to approval by the Commission.

Article 12b

Assets, equipment, staff and identity

1. Transmission system operators shall be equipped with all human, physical and financial resources necessary for fulfilling their obligations under this Directive and carrying out the business of gas transmission, provided that:

(a) assets that are necessary for the business of gas transmission, including the transmission network, shall be owned by the transmission system operator;

(b) personnel necessary for the business of gas transmission, including the performance of all corporate tasks, shall be employed by the transmission system operator;

(c) leasing of personnel and rendering of services, to and from any other parts of the vertically integrated undertaking shall be prohibited;

(d) appropriate financial resources for future investment projects and/or for the replacement of existing assets shall be kept available notably by the vertically integrated undertaking following an appropriate request from the transmission system operator in the framework of the annual financial plan referred to in Article 12f;

(e) transmission system operators shall not use the same external contractors or consultants as the vertically integrated undertaking and they must not share information technology systems or equipment, physical premises and security access systems.

2. The business of gas transmission shall at least include the following activities in addition to those listed in Article 8:

(a) representation of the transmission system operator and contacts in relation to third parties and the regulatory authorities;

(b) representation of the transmission system operator within the European network of transmission system operators;

(c) granting and managing third-party access;

(d) collection of all charges related to the transmission system including the access charges, balancing charges for ancillary services such as gas treatment, purchasing of services (balancing costs, energy for losses);

(e) operation, maintenance and development of the transmission system;

(f) investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;

(g) setting up appropriate joint ventures, including with one or more transmission system operators, gas exchanges, pursuing the objective to develop the creation of regional markets or to facilitate the liberalisation process;

(h) all corporate services, including legal services, accountancy and IT services.

3. Transmission system operators shall be organised in the legal form of a limited liability company as referred to in Article 1 of Directive 68/151/EEC.

4. The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion in respect of the separate identity of the vertically integrated undertaking.

5. The accounts of transmission system operators shall be audited by an auditor other than the one auditing the vertically integrated undertaking or any part of it.

Article 12c

Independence of the transmission system operator

1. Without prejudice to the powers of the members of the supervisory body appointed by the vertically integrated undertaking under Article 12f, the transmission system operator shall have effective decision-making rights, independent from the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the network. The transmission system operator shall have the power to raise money on the capital market in particular through borrowing and capital increase in the framework of the annual financial plan referred to in Article 12f.

2. Subsidiaries of the vertically integrated undertaking performing functions of production or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither hold direct or indirect shares in any subsidiary of the vertically integrated undertaking performing functions of production or supply, nor receive dividends or any other financial benefit from such a subsidiary except for the revenues derived from the use of the network.

3. The overall management structure and the corporate statutes of the transmission system operator shall ensure effective independence of the transmission system operator as referred to in this Chapter. The vertically integrated undertaking shall not determine, whether directly or indirectly, the competitive behaviour of the transmission system operator in relation to the day-to-day activities of the transmission system operator and management of the network, or in relation to activities necessary for the preparation of the 10-year investment plan developed pursuant to Article 12h.

4. Any commercial and financial relations between the vertically integrated undertaking and the transmission system operator, including loans from the transmission system operator to the vertically integrated undertaking, shall be subject to market conditions. The transmission system operator shall keep detailed records of such commercial and financial relations and make them available to the regulatory authority on request.

5. The transmission system operator shall submit to the regulatory authority all commercial and financial agreements with the vertically integrated undertaking.

6. The transmission system operator shall inform the regulatory authority of the available financial resources referred to in Article 12b(1)(d).

7. An undertaking which has been certified by the regulatory authority as complying with the requirements of this Chapter shall be approved and designated as a transmission system operator by the Member State concerned. The certification procedure in Article 7b shall be applicable.

8. Transparency shall be mandatory to ensure non-discrimination, in particular in relation to references for tariffs, third-party access services, capacity allocation and balancing. Vertically integrated undertaking shall be required to refrain from any activities that impede the transmission system operators in fulfilment of those obligations.

Article 12d

Independence of staff and management of the transmission system operator

1. Decisions regarding appointment and renewal, working conditions including remuneration and termination of the term of office of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator shall be taken by the supervisory body of the transmission system operator appointed in accordance with Article 12f.

2. The identity and the conditions governing the term, the duration and the termination of office of the persons nominated by the supervisory body for appointment or renewal as persons responsible for the management and/or as members of the administrative bodies of the transmission system operator, and the reasons for any proposed decision terminating such term of office, shall be notified to the regulatory authority. Those conditions and the decisions referred to in paragraph 1 shall become binding only if, within a period of three weeks after notification, the regulatory authority has not objected to them. The regulatory authority may object if serious doubts arise as to the professional independence of a nominated person responsible for the management and/or member of the administrative bodies, or in the case of premature termination of his/her term of office, if serious doubts exist regarding its justification.

3. The persons responsible for the management and/or the members of the administrative bodies of the transmission system operator appointed by the supervisory body shall hold no professional position or responsibility, interest or business relationship, directly or indirectly, in or with the vertically integrated undertaking or any part of it or its controlling shareholders other than the transmission system operator for a period of five years before their appointment.

4. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall hold no other professional position or responsibility, interest or business relationship, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.

5. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall hold no interest in or receive financial benefit from any part of the vertically integrated undertaking, whether directly or indirectly, other than the transmission system operator. Their remuneration shall not depend on activities or results of the vertically integrated undertaking other than those of the transmission system operator.

6. Effective rights of appeal to the regulatory authority shall be guaranteed for any complaints by the persons responsible for the management and/or members of the administrative bodies of the transmission system operator against premature terminations of their term of office.

7. After termination of their term of office in the transmission system operator, the persons responsible for its management and/or members of its administrative bodies shall have no professional position or responsibility, interest or business relationship, directly or indirectly, in or with any part of the vertically integrated undertaking other than the transmission system operator, or its controlling shareholders for a period of no less than five years.

Article 12e

Trustee

1. An independent Trustee shall be appointed by the regulatory authority on the proposal and at the expense of the vertically integrated undertaking. The Trustee shall act exclusively in the legitimate interest of the vertically integrated undertaking in the preservation of the asset value of the transmission system operator, while safeguarding the independence of the transmission system operator from the vertically integrated undertaking. In the exercise of its functions, the Trustee shall have no regard to the interest of the production and supply business of the vertically integrated undertaking.

2. The Trustee shall have no professional position or responsibility, interest or business relationship, directly or indirectly, in or with the vertically integrated undertaking or any part thereof, its controlling shareholders, or any undertaking performing functions of production or supply, for a period of 5 years before its appointment.

The terms of the mandate of the Trustee, including the duration, the conditions for termination and the financial conditions, shall be subject to approval by the national regulatory authority.

During its mandate, the Trustee may have no other professional position or responsibility, interest or business relationship, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.

Following termination of the mandate, the Trustee shall have no professional position or responsibility, interest or business relationship, directly or indirectly, in or with any part of the vertically integrated undertaking or its controlling shareholders for a period of no less than five years.

3. The Trustee shall be responsible for:

(a) the appointment, renewal and dismissal of the members, other than those referred to in Article 12f(2)(a), of the supervisory body of the transmission system operator; and

(b) the exercise of its voting rights in the supervisory body.

Article 12f

Supervisory body

1. The transmission system operator shall have a supervisory body which shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the transmission system operator, in particular decisions regarding the approval of the annual financial plan, the level of indebtedness of the transmission system operator and the amount of dividends distributed to shareholders.

2. The supervisory body shall be composed of:

(a) members representing the vertically integrated undertaking,

(b) members representing third-party shareholders,

(c) members representing the transmission system operator,

(d) the Trustee, and

(e) where the relevant legislation of a Member State so provides, members representing other interested parties such as employees of the transmission system operator.

3. The Trustee shall have the right of veto with respect to decisions that in his/her view may significantly reduce the asset value of the transmission system operator. When assessing whether a decision may significantly reduce the value of the assets, the annual financial plan and the amount of debts of the transmission system operator shall be of particular importance. In the event that two thirds of the members of the supervisory body overrule such veto, Article 12h(7) shall apply.

4. Article 12d(2) to (7) shall apply to the members of the supervisory body.

Article 12g

Compliance programme and compliance officer

1. Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that the compliance with this programme is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. It shall be subject to approval by the regulatory authority. Without prejudice to the powers of the national regulatory authority, compliance with the programme shall be independently monitored by the compliance officer.

2. The supervisory body shall appoint a compliance officer. The compliance officer may be a natural or legal person. Article 12d(2) to (7) shall apply to the compliance officer. The regulatory authority may object to the appointment of a compliance officer for reasons of lack of independence or professional capacity.

3. The compliance officer shall be in charge of:

(a) monitoring the implementation of the compliance programme;

(b) elaborating an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority;

(c) reporting to the supervisory body and issuing recommendations on the compliance programme and its implementation;

(d) reporting to the national regulatory authority on any commercial and financial relations between the vertically integrated undertaking and the transmission system operator.

4. The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the network to the national regulatory authority. Such decisions shall be submitted no later than when the management and/or the competent administrative body of the transmission system operator submit them to the supervisory body.

5. The compliance officer shall notify the national regulatory authority in the event that the vertically integrated undertaking, in the general assembly or through the vote of the members of its supervisory body, has prevented the adoption of a decision with the effect of preventing or delaying investments in the network.

6. The conditions governing the mandate or the employment conditions of the compliance officer shall be subject to the approval of the regulatory authority and shall ensure the independence of the compliance officer.

7. The compliance officer shall regularly report, either orally or in writing, to the national regulatory authority and shall have the right regularly to report, either orally or in writing, to the supervisory body of the transmission system operator.

8. The compliance officer may attend all meetings of the management or administrative bodies of the transmission system operator and those of the supervisory body and the general assembly. The compliance officer shall attend all meetings that address the following matters:

(a) conditions for access to the network, as defined in Regulation (EC) No 1775/2005, in particular regarding tariffs, third-party access services, capacity allocation and congestion management, transparency, balancing and secondary markets;

(b) projects undertaken in order to operate, maintain and develop the transmission grid system, including investments in new transport connections, in expansion of capacity and in optimisation of existing capacity;

(c) energy purchases or sales necessary for the operation of the transmission system.

9. The compliance officer shall monitor the compliance of the transmission system operator with Article 10.

10. The compliance officer shall have access to all relevant data and to the offices of the transmission system operator and to all the information necessary for the fulfilment of its task.

11. After prior approval by the regulatory authority, the supervisory body may dismiss the compliance officer.

12. Obligations of the transmission system operator and vertically integrated undertaking in particular for commercial and financial agreements between transmission system operator and vertically integrated undertaking should only be notified to the national regulatory authority without the need for approval. The appointment and working conditions of management and of the compliance officer shall be notified to the regulatory authority without the need for approval.

Article 12h

Network development and powers to make investment decisions

1. Every year, transmission system operators shall submit to the regulatory authority a 10-year network development plan based on existing and forecast supply and demand after having consulted all the relevant stakeholders. The plan shall contain efficient measures in order to guarantee the adequacy of the system and the security of supply.

2. The 10-year network development plan shall in particular:

(a) indicate to market participants the main transmission infrastructures that need to be built or upgraded over the next ten years;

(b) contain all the investments already decided and identify new investments which have to be executed in the next three years;

(c) provide for a time frame for all investment projects.

3. When elaborating the 10-year network development plan, the transmission system operator shall make reasonable assumptions about the evolution of its production, supply, consumption and exchanges with other countries, taking into account investment plans for regional and EU-wide networks, as well as investment plans for storage and LNG regasification facilities.

4. The national regulatory authority shall consult all actual or potential network users on the 10-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential users may be required to substantiate such claims. It shall publish the result of the consultation process, in particular possible needs for investments.

5. The national regulatory authority shall examine whether the 10-year network development plan covers all investment needs identified during the consultation process, and whether it is consistent with the Community-wide 10-year network development plan referred to in Article 2c(1) of Regulation (EC) No 1775/2005. If any doubt arises as to the consistency with the Community-wide 10-year network development plan, the regulatory authority shall consult the Agency. The regulatory authority may require the transmission system operator to amend its plan.

6. The regulatory authority shall monitor and evaluate the implementation of the 10-year network development plan.

7. In circumstances where the transmission system operator, other than for overriding reasons beyond its control, does not execute an investment, which, according to the 10-year network development plan, was supposed to be executed in the following three years, Member States shall ensure that the regulatory authority has the obligation to take at least one of the following measures to ensure that the investment in question is made:

(a) require the transmission system operator to execute the investments in question in coherence with the annual financial plan referred to in Article 12f, or,

(b) organise a tender procedure open to any investors for the investment in question.

When the regulatory authority has made use of its powers under point (b), it may require the transmission system operator to accept the following:

- third-party financing,*
- third-party construction,*
- building the respective new assets,*
- operating the respective new asset.*

The transmission system operator shall provide the investors with all information needed to realise the investment, connect new assets to the transmission network and generally make its best efforts to facilitate the implementation of the investment project.

The relevant financial arrangements shall be subject to approval by the national regulatory authority.

8. In the event that the national regulatory authority makes use of its powers under paragraph 7, the relevant tariff regulations shall cover the costs of the investments in question.

Article 12i

Decision-making powers regarding the connection of storage facilities, LNG regasification facilities and industrial consumers to the transmission network

1. Transmission system operators shall be required to establish and publish transparent and efficient procedures and tariffs for non-discriminatory connection of storage facilities, LNG regasification facilities and industrial consumers to the network. The procedures shall be subject to approval by the regulatory authority.

2. Transmission system operators shall not be entitled to refuse the connection of a new storage facility, LNG regasification facility or industrial consumer on the grounds of possible future limitations to available network capacities or additional costs linked with necessary capacity increase. The transmission system operator shall be required to ensure sufficient entry and exit capacity for the new connection.

3. Transmission system operators shall grant and manage third-party access to the grid, especially the access for new market operators and producers of biogas with respect to the safety rules of the network.

CHAPTER IVb

Article 12j

Revision Clause

1. The Agency shall, no later than [five years after entry into force of Directive .../.../EC], submit to the European Parliament and Council, a detailed report outlining the extent to which the unbundling requirements under this Directive have been successful in ensuring full and effective independence of transmission system operators.

2. For the purpose of its assessment under paragraph 1, the Agency shall take into account in particular the following criteria: fair and non-discriminatory network access, effective regulation, the development of the network, investments and undistorted incentives to invest, the development of interconnection infrastructure, and the security of supply situation in the Community.

3. The Commission shall, no later than [five years after entry into force of Directive .../.../EC], submit to the European Parliament and the Council, a detailed report outlining the feasibility of creating a single European transmission system operator and analyse the costs and benefits with respect to, notably, property rights, market integration as well as the effective and secure operation of the transmission network. The report shall be drafted in consultation with the stakeholders in particular the transmission system operators and the Agency.

4. Where appropriate, and in particular in the event that the detailed report referred to in paragraph 1 determines that the conditions referred to in paragraph 2 have not been guaranteed in practice, the Commission shall submit proposals to the European Parliament and the Council to ensure full and effective independence of transmission system operators by [seven years after entry into force of Directive .../.../EC]."

Amendment 79
Proposal for a directive – amending act
Article 1 – point 10 – point c
Directive 2003/55/EC
Article 13 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may adopt guidelines to ensure full and effective compliance of the distribution system operator with paragraph 2 as regards the full independence of the distribution system operator, the absence of discriminatory behaviour, and that supply activities of the vertically integrated undertaking cannot take unfair advantage of its vertical integration. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3). *deleted*

Amendment 126
Proposal for a directive – amending act
Article 1 – point 11 a (new)
Directive 2003/55/EC
Article 18 a (new)

Text proposed by the Commission

Amendment

(11a) The following article shall be inserted:

"Article 18a

1. For the organisation of access to LNG facilities either the regulated access procedure, or the negotiated access procedure referred to in paragraph 2 shall apply. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria. National regulatory authorities shall observe compliance with these criteria.

Member States shall decide on the applicable access procedure based on defined and published criteria. These criteria will notably address if competition between LNG facilities takes place in the relevant market, and if the access to LNG is arranged through an independent infrastructure operator that provides open access. National regulatory authorities shall monitor compliance with these criteria and make public, or require LNG operators to make public which LNG facilities, or which parts thereof, are offered under the procedure referred to in paragraph 2.

2. In the case of negotiated access, Member States shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to LNG facilities. The parties shall be required to negotiate access to LNG facilities in good faith."

Amendment 80

Proposal for a directive – amending act

Article 1 – point 12

Directive 2003/55/EC

Article 19

Text proposed by the Commission

(12) *In Article 19(1), the following subparagraph is added:*

Amendment

(12) *Article 19 shall be replaced by the following:*

"Article 19

Access to storage

Member States shall define and publish criteria according to which *it may be determined whether* access to storage facilities *and linepack is technically and/or economically necessary in order to provide efficient access to the system for the supply of customers. Member States shall* make public, or oblige storage *and transmission system* operators to make public, which storage facilities, or which parts of those storage facilities, *and which linepack is* offered under the different procedures referred to in paragraphs 3 and 4.

1. For the organisation of access to storage facilities [...] when technically and/or economically necessary for providing efficient access to the system for the supply of customers [...], Member States shall decide if they choose either the regulated access procedure as described in paragraph 4, or the negotiated access procedure referred to in paragraph 3. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria. National regulatory authorities shall observe compliance with these criteria.

National regulatory authorities shall define and publish criteria according to which *the access regime* to storage facilities *may be determined, notably addressing if competition between storage facilities takes place in the relevant market, and if such organisation is arranged through an independent infrastructure operator that provides open access. National regulatory authorities shall monitor compliance with these criteria and* make public, or oblige storage operators to make public which storage facilities, or which parts of those storage facilities *are* offered under the different procedures referred to in paragraphs 3 and 4.

2. The provisions of paragraph 1 shall not apply to ancillary services and temporary storage that are related to LNG facilities and are necessary for the regasification process and subsequent delivery to the transmission system.

3. In the case of negotiated access, national regulatory authorities shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to storage [...], when technically and/or economically necessary for providing efficient access to the system [...]. The parties shall be obliged to negotiate access to storage [...] in good faith.

Contracts for access to storage [...] shall be negotiated with the relevant storage system operator [...]. National regulatory authorities shall require storage system operators [...] to publish their main commercial conditions for the use of storage [...] within the first six months following implementation of this Directive and on an annual basis every thereafter. *The development of these conditions shall take into consideration the views of system users, who have the right to object to them to the national regulatory authority.*

4. In the case of regulated access, national regulatory authorities shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right to access to storage [...] on the basis of published tariffs and/or other terms and obligations for use of that storage [...], when technically and/or economically necessary for providing efficient access to the system [...]. The development of these tariffs and other terms and obligations shall take into consideration the views of system users, who have the right to object to them to the national regulatory authority. This right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking."

Amendment 81

Proposal for a directive – amending act

Article 1 – point 13

Directive 2003/55/EC

Article 22 – paragraph 1 – introductory part

Text proposed by the Commission

1. Major new gas infrastructures, i.e. interconnectors between Member States, LNG and storage facilities, may, upon request, be exempted, for a *limited* period of time, from the provisions of Articles 7, 18, 19, 20, and 24c(4), (5) and (6) under the following conditions:

Amendment

1. Major new gas infrastructures, i.e. interconnectors between Member States, LNG and storage facilities, may, upon request, be exempted, for a *defined* period of time, from the provisions of Articles 7, 18, 19, 20, and *Article* 24c(4), (5) and (6) under the following conditions:

Amendment 82
Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the project is of an European interest and crosses at least one national border within the European Union.

Amendment 83
Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 2

Text proposed by the Commission

Amendment

2. Paragraph 1 shall apply also to significant increases of capacity in existing infrastructures and to modifications of such infrastructures which enable the development of ***new sources of gas supply***.

2. Paragraph 1 shall apply also to ***all*** significant increases of capacity in existing infrastructures and to modifications of such infrastructures which enable the development of ***increased and additional quantities***.

Amendment 84
Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. The regulatory authority referred to in Chapter VIa may, on a case by case basis, decide on the exemptions referred to in paragraphs 1 and 2. Where the infrastructure in question is located in the territory of more than one Member State, the Agency shall exercise the tasks conferred on the regulatory authority by the present Article.

3. The regulatory authority referred to in Chapter VIa may, on a case by case basis, decide on the exemptions referred to in paragraphs 1 and 2. Where the infrastructure in question is located in the territory of more than one Member State, the Agency shall exercise the tasks conferred on the regulatory authority by the present Article. ***The Agency's decision shall be subject to prior consultation of the relevant regulatory authorities and the applicant.***

Amendment 85
Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 3 – subparagraph 2

Text proposed by the Commission

An exemption may cover all or *part* of, the capacity of the new infrastructure, or of the existing infrastructure with significantly increased capacity.

Amendment

An exemption may cover all or *only certain specific parts* of the capacity of the new infrastructure, or of the existing infrastructure with significantly increased capacity.

Amendment 86
Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 3 – subparagraph 4

Text proposed by the Commission

Before granting an exemption the regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity. The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place. The regulatory authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the facility to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in paragraph 1(a), (b) and (e) of this Article, the regulatory authority shall take into account the results of that capacity allocation procedure.

Amendment

Before granting an exemption the regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity, *which may, if necessary, be amended during the period in which the infrastructure is exempted from the above-mentioned provisions, in order to make adjustments to economic and market-relevant needs.* The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place. The regulatory authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the facility to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in paragraph 1(a), (b) and (e) of this Article, the regulatory authority shall take into account the results of that capacity allocation procedure, *where third parties have indicated a firm commitment.*

Amendment 87
Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 4 – point a

Text proposed by the Commission

(a) the detailed reasons on the basis of which the regulatory authority granted the exemption, including the financial information justifying the need for the exemption;

Amendment

(a) the detailed reasons on the basis of which the regulatory authority granted ***or refused*** the exemption ***together with the reference to the specific Article on which such decision is based***, including the financial information justifying the need for the exemption;

Amendment 88
Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 5 – subparagraph 4

Text proposed by the Commission

The Commission's ***approval of an*** exemption decision shall lose its effect ***after two years from its adoption if construction of the infrastructure has not yet started, and after five years*** if the infrastructure has not become operational.

Amendment

The Commission's exemption decision shall lose its effect if the infrastructure has not become operational ***five years after all national and regional decisions and authorisations have been issued, unless the delay is due to circumstances beyond control of the person to whom the exemption has been granted.***

Amendment 89
Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The exemptions referred to in paragraph 1 shall automatically apply to exemptions granted pursuant to this Article at the date of entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas]. The conditions of an exemption approval granted under this Article shall not be changed retrospectively without the agreement of all parties concerned.

Amendment 90
Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission may adopt guidelines for the application of the conditions mentioned in paragraph 1 and to set out the procedure to be followed for the application of paragraphs 4 and 5. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30 (3).

deleted

Amendment 91
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24a

Text proposed by the Commission

1. Each Member State shall designate a single national regulatory authority.
2. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive, the regulatory authority is legally distinct and functionally independent from any other public or private entity, and that its staff and the persons responsible for its management act independently from any market interest and shall not seek or take instructions from any government or other public or private entity.
3. In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:
 - (a) the regulatory authority has legal personality, **budgetary** autonomy, and adequate human and financial resources to carry out its duties;

Amendment

1. Each Member State shall designate a single national regulatory authority.
2. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive **and other relevant legislation**, the regulatory authority is legally distinct and functionally independent from any other public or private entity, and that its staff and the persons responsible for its management act independently from any market interest and shall not seek or take **direct** instructions from any government or other public or private entity **when carrying out the regulatory tasks**.
3. In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:
 - (a) the regulatory authority has legal personality, **financial** autonomy, and adequate human and financial resources to carry out its duties;

(b) *its management is* appointed for a *non-renewable* fixed term of at least five years, *and may only* be relieved from office during *its* term if *it* no longer *fulfills* the conditions set out in this Article or *it* has been guilty of serious misconduct.

(b) *the members of the board of the regulatory authority are* appointed for a *non-renewable* fixed term of at least five years *but no more than seven years and that for the first mandate, that term shall be two-and-a-half years for half of the members. The members shall* be relieved from office during *their* term *only if they* no longer *fulfil* the conditions set out in this Article or *have* been guilty of serious misconduct *under national law; and*

(ba) the budgetary needs of the regulatory authority are covered by the direct revenues from energy market operations.

Amendment 92

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24b

Text proposed by the Commission

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures to achieve the following objectives:

(a) the promotion, in close cooperation with the Agency, regulatory authorities of other Member States *and the Commission*, of a competitive, secure and environmentally sustainable internal gas market within the Community, and effective market opening for all consumers and suppliers in the Community;

Amendment

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures to achieve the following objectives:

(a) the promotion, in close cooperation with the *Commission, the Agency, and the* regulatory authorities of other Member States, of a competitive, secure and environmentally sustainable internal gas market within the Community, and effective market opening for all consumers and suppliers in the Community, *and ensuring that energy supply networks operate in an effective, reliable way, taking in to account long term objectives;*

(b) the development of competitive and properly functioning **regional** markets within the Community in view of the achievement of the objective mentioned in point (a);

(c) the suppression of restrictions to natural gas trade between Member States, including the development of appropriate cross border transmission capacities to meet demand, enhance integration of national markets **and to enable** unrestrained natural gas flow across the Community;

(d) ensuring the development of secure, reliable and efficient systems, promoting **energy efficiency, system adequacy and research and innovation to meet demand and the development of innovative renewable and low carbon technologies,** in both **short and long term**;

(e) ensuring that network operators are granted adequate incentives, in both the short and the long term, to increase efficiencies in network performance and foster market integration;

(f) ensuring the efficient functioning of their national market, **and to** promote effective competition in cooperation with competition authorities.

(b) the development of competitive and properly functioning markets within the Community in view of the achievement of the objective mentioned in point (a);

(c) the suppression of **any** restrictions to electricity trade between Member States, including the development of appropriate cross border transmission capacities to meet demand **and enhance the** integration of national markets to **facilitate** unrestrained natural gas flow across the Community;

(d) ensuring, **in the most cost effective way,** the development of **customer orientated,** secure, reliable and efficient **grid** systems, promoting system adequacy **whilst ensuring energy efficiency and integration of large and small-scale renewable energy (e.g. biogas) and distributed production** in both **transmission and distribution grids**;

(da) facilitating the access to the grid, in particular removing barriers that could prevent access for new market entrants and renewable energies;

(e) ensuring that network operators are granted adequate incentives, in both the short and the long term, to increase efficiencies in network performance and foster market integration;

(f) ensuring **customer benefits through** the efficient functioning of their national market, promote effective competition in cooperation with competition authorities, **and ensuring consumer protection**;

(fa) contributing to high standards of public service for natural gas, to the protection of vulnerable customers, and helping to ensure that consumer protection measures set out in Annex A are effective;

(fb) harmonisation of necessary data exchange processes.

Amendments 93 and 129
Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24c – paragraph 1

Text proposed by the Commission

Amendment

1. The regulatory authority shall have the following duties:

(a) ensuring compliance of transmission **and** distribution system operators, and where relevant system owners, as well as of any natural gas undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross border issues;

(b) cooperating on cross-border issues with the regulatory authority or authorities of *those* Member States;

1. The regulatory authority shall have the following duties ***to be carried out where appropriate in close consultation with other relevant Community or national bodies, transmission system operators and other market stakeholders and without prejudice to their specific competencies:***

(a) ensuring compliance of transmission, distribution system operators, and where relevant system owners, as well as of any natural gas undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross border issues;

(b) cooperating on cross-border issues with the regulatory authority or authorities of *other* Member States ***and the Agency, including ensuring that there is sufficient interconnection capacity between transmission infrastructure to satisfy an efficient overall market assessment and security of supply criteria, without discrimination between supply undertakings in different Member States;***

(c) complying with, and implementing, decisions of the Agency *and of the Commission*;

(d) reporting *on a yearly basis* on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Agency *and the Commission*. *This report* shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;

(e) ensuring that there are no *cross subsidies* between transmission, distribution, storage, LNG and supply activities;

(f) reviewing investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plan of the transmission system operators as regards its consistency with the European wide 10-year network development plan mentioned in Article 2c of Regulation (EC) No 1775/2005;

(c) complying with, and implementing, ***any relevant binding*** decisions of the *Commission and the Agency*;

(d) reporting *annually* on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the *Commission and the Agency*. *Such reports* shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;

(e) ***monitoring compliance with unbundling requirements under this Directive and other relevant Community legislation and*** ensuring that there are no *cross-subsidies* between transmission, distribution, storage, LNG and supply activities ***as well as ensuring that distribution and transmission tariffs are set well in advance of the relevant periods during which they apply***;

(f) reviewing *the* investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plan of the transmission system operators as regards its consistency with the European wide 10-year network development plan mentioned in Article 2c of Regulation (EC) No 1775/2005; ***the investment plans of transmission system operators shall ensure that the skills and number of the staff are sufficient to meet the service obligations; failure to honour the investment plan shall result in proportionate sanctions imposed on the transmission system operator in accordance with the guidelines issued by the Agency***;

(g) monitoring network security and reliability, and reviewing network security and reliability rules;

(h) monitoring the level of transparency, ensuring compliance of **natural gas undertakings** with transparency obligations;

(i) monitoring the level of market opening and competition at wholesale and retail levels, including on natural gas exchanges, household prices, switching rates, disconnection rates and household complaints in an agreed format, as well as any distortion or restriction of competition in cooperation with competition authorities, including providing any relevant information, bringing any relevant cases to the attention of the relevant competition authorities;

(fa) approving the annual investment plans of the transmission system operators;

(g) monitoring **compliance with** network security and reliability, **setting or approving standards and requirements for quality of service and supply** and reviewing **performances for quality of service and supply**, network security and reliability rules;

(h) monitoring the level of transparency, ensuring compliance of **network operators** with transparency obligations;

(i) monitoring the level of market opening and competition at wholesale and retail levels, including on natural gas exchanges, household prices, switching rates, disconnection rates and household complaints in an agreed format, as well as any distortion or restriction of competition in cooperation with competition authorities, including providing any relevant information, bringing any relevant cases to the attention of the relevant competition authorities;

(ia) monitoring the occurrence of restrictive contractual practices, including exclusivity provisions, which may prevent or restrain the choice of non-household customers from contracting simultaneously with more than one supplier and, where appropriate, informing the national competition authorities of such practices;

(j) monitoring the time taken by transmission and distribution undertakings to make connections and repairs;

(k) monitoring **and reviewing** the access conditions to storage, linepack and other ancillary services as provided for in Article 19;

(l) without prejudice to the competence of other national regulatory authorities, ensuring high standards of public service for natural gas, the protection of vulnerable customers, and that consumer protection measures set out in Annex A are effective;

(m) publishing recommendations, at least on a yearly basis, on compliance of supply tariffs with Article 3;

(ib) with full regard to the provisions of the EC Treaty, promoting agreements on a long-term basis between energy consumers and suppliers that contribute to the improvement of the energy production and distribution and, at the same time, allow consumers to share the resulting benefits, provided that such agreements can contribute to an optimal level of investment in the energy sector;

(j) monitoring the time taken by transmission and distribution undertakings to make connections and repairs **and imposing sanctions in accordance with the guidelines issued by the Agency if these time periods are exceeded without due cause;**

(k) monitoring the access conditions to storage, linepack and other ancillary services as provided for in Article 19;

(l) without prejudice to the competence of other national regulatory authorities, ensuring high standards of public service for natural gas, the protection of vulnerable customers, and that consumer protection measures set out in Annex A are effective **and enforced;**

(m) publishing recommendations, at least on yearly basis, on compliance of supply tariffs with Article 3; **due attention shall be paid in those recommendations to the impact on the functioning of the market of regulated prices (wholesale and end-users' prices);**

(n) ensuring access to customer consumption data, the application of *a* harmonised format for consumption data and *the* access to data under *paragraph* (h) of Annex A;

(o) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Article 8b of Regulation (EC) No 1775/2005;

(p) monitoring the correct application of the criteria that determine whether a storage facility falls under Article 19(3) or 19(4).

(n) ensuring *effective and equal* access to customer consumption data *including data on prices and any related expenditure for all market participants*, the application of *an easily understandable* harmonised format for *such* consumption data, *adequate prepayment that reflects the actual consumption* and *prompt* access *for all customers to such* data under *point* (h) of Annex A;

(o) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Article 8b of Regulation (EC) No 1775/2005;

(oa) fixing or approving network access tariffs and publishing the methodology used to set the tariffs;

(ob) ensuring the transparency of wholesale fluctuations in prices;

(p) monitoring the correct application of the criteria that determine whether a storage facility falls under Article 19(3) or 19(4).

Amendment 94

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24c – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1 and 2 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

Amendment

3. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1 and 2 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

(a) to issue binding decisions on gas undertakings;

(b) to carry out in cooperation with the national competition authority investigations of the functioning of gas markets, and to decide, *in the absence of violations of competition rules,, of* any appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market, including gas release *programs*;

(c) to request any information from natural gas undertakings relevant for the fulfilment of its tasks;

(d) to impose effective, appropriate and dissuasive sanctions to natural gas undertakings not complying with their obligations under this Directive or any decisions of the regulatory authority or of the Agency;

(e) to have appropriate rights of investigations, and relevant powers of instructions for dispute settlement under paragraphs 7 and 8;

(f) to approve safeguards measures as referred to in Article 26.

(a) to issue binding decisions on gas undertakings;

(b) to carry out in cooperation with the national competition authority investigations of the functioning of gas markets, and to decide *on* any appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market, including gas release *programmes*;

(c) to request any information from natural gas undertakings relevant for the fulfilment of its tasks;

(d) to impose effective, appropriate and dissuasive sanctions to natural gas undertakings not complying with their obligations under this Directive or any decisions of the regulatory authority or of the Agency, *or to propose to a competent body to impose such sanctions; furthermore, to impose, or to propose to impose fines of up to 10 % of the yearly turnover of the transmission system operator on the transmission system operator or on the vertically integrated undertaking, as the case may be, for non-compliance with their respective obligations pursuant to this Directive*;

(e) to have appropriate rights of investigations, and relevant powers of instructions for dispute settlement under paragraphs 7 and 8;

(f) to approve safeguards measures as referred to in Article 26.

3a. In addition to the tasks and powers conferred on it under paragraphs 1 and 3, when a transmission system operator has been designated in accordance with Chapter IVa, the regulatory authority shall be granted at least the following tasks and powers:

(a) to impose sanctions including fines accordance with paragraph 3(d) for discriminatory behaviour in favour of the vertically integrated undertaking;

(b) to monitor communications between the transmission system operator and the vertically integrated undertaking so as to ensure compliance of the transmission system operator with its obligations;

(c) to act as a dispute settlement authority between the vertically integrated undertaking and the transmission system operator in respect of any complaint submitted pursuant to paragraph 7;

(d) to monitor commercial and financial relations including loans between the vertically integrated undertaking and the transmission system operator,

(e) to monitor all commercial and financial agreements on the condition that they comply with market conditions;

(f) to request justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article 12g(4). Such justification shall in particular include evidence to the end that no discriminatory behaviour to the advantage of the vertically integrated undertaking has occurred;

(g) to carry out inspections on the premises of the vertically integrated undertaking and the transmission system operator;

(h) to assign all or specific tasks of the transmission system operator to an independent system operator appointed in accordance with Article 9 in case of a persistent breach by the transmission system operator of its obligations under this Directive, in particular in case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking;

(i) to request any information from the transmission system operator and to directly contact all staff of the transmission system operator; if doubts remain, the same rights shall apply for the vertically integrated undertaking and its subsidiaries;

(j) to conduct all necessary inspections of the transmission system operator and, if doubts remain, of the vertically integrated undertaking and its subsidiaries; the rules of Article 20 of Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty shall apply;

(k) to impose effective, appropriate and dissuasive sanctions to the transmission system operator and/or the vertically integrated undertaking not complying with their obligations under this Article or any decisions of the national regulatory authority; that power shall include the right to:

(i) impose effective, appropriate and dissuasive fines related to the turnover of the transmission system operator or the vertically integrated undertaking;

(ii) issue orders to remedy discriminatory behaviour;

(iii) withdraw, at least partly, the licence of the transmission system operator in case of repeated breach of the unbundling provisions set out in this Article.

Amendment 95
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 4

Text proposed by the Commission

4. The regulatory authorities shall be responsible for fixing or approving prior to their entry into force the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. These tariffs shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing these investments to ensure the viability of the networks and LNG facilities;

(b) the provision of balancing services.

Amendment

4. The regulatory authorities shall be responsible for fixing or approving prior to their entry into force the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs ***and their methodologies, or alternatively, the methodologies and their monitoring for setting or approving the transmission and distribution tariffs***, and terms, conditions and tariffs for access to LNG facilities ***including their methodologies, or alternatively, the methodologies and their monitoring for setting or approving the tariffs for access to LNG facilities***. These tariffs shall ***reflect the actual costs incurred, insofar as such costs correspond to those of an efficient operator and shall be transparent***. They shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing these investments to ensure the viability of the networks and LNG facilities. ***These tariffs shall not discriminate against new entrants***;

(b) the provision of balancing services ***which shall reflect the cost and shall be revenue neutral to the extent possible, whilst providing appropriate incentives for network users to balance their input and offtakes; they shall be fair and non-discriminatory and based on objective criteria***;

(ba) the access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management. They shall have the authority to require the transmission system operators, to modify those terms and conditions.

Amendment 96
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 5

Text proposed by the Commission

5. In fixing or approving the tariffs, the regulatory authorities shall ensure that network operators are granted adequate incentive, over both the short and long term, to increase efficiencies, foster market integration and support the related research activities.

Amendment

5. In fixing or approving ***the terms and conditions or methodologies of the tariffs, and the balancing services***, the regulatory authorities shall ensure that network operators are granted adequate incentive, over both the short and long term, to increase efficiencies, foster market integration, ***ensure security of supply***, and support the related research activities.

5a. The regulatory authorities shall monitor congestion management within national gas transmission networks.

Transmission system operators shall submit their congestion management procedures, including capacity allocation, to the national regulatory authorities for approval. National regulatory authorities may request amendments to those procedures before approving them.

Amendment 97
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 6

Text proposed by the Commission

6. Regulatory authorities shall have the authority to require transmission, **storage**, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner.

Amendment

6. Regulatory authorities shall have the authority to require transmission, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner.

Amendment 98
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 7

Text proposed by the Commission

7. Any party having a complaint against a transmission, LNG or distribution system operator may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

Amendment

7. Any party having a complaint against a transmission, LNG, **storage** or distribution system operator may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

Amendment 99
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 8

Text proposed by the Commission

8. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

Amendment

8. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed **tariffs and** methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

Amendment 100
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 9

Text proposed by the Commission

9. Member States shall create appropriate and efficient mechanisms for **regulation**, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

Amendment

9. Member States shall create appropriate and efficient mechanisms for control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

Amendment 136
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 9 a (new)

Text proposed by the Commission

Amendment

9a. The national regulatory authorities shall put in place independent complaints services and alternative redress schemes such as an independent energy ombudsman or a consumer body. Those services or schemes shall be responsible for the efficient treatment of complaints and shall comply with best practice criteria. The national regulatory authorities shall set standards and guidelines on how complaints will be handled by producers and network operators.

Amendment 101
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 12

Text proposed by the Commission

Amendment

12. Decisions taken by regulatory authorities shall be ***motivated***.

12. Decisions taken by regulatory authorities shall be ***fully reasoned and available to the public to allow for legal scrutiny***.

Amendment 102
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 13

Text proposed by the Commission

Amendment

13. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a body independent of the parties involved.

13. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a ***national judicial body or other independent national authority*** independent of the parties involved ***and of any government.***

Amendment 103
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 14

Text proposed by the Commission

Amendment

14. The Commission may adopt guidelines on the implementation by the regulatory authorities of the powers described in this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

deleted

Amendment 104
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24d – paragraph 2

Text proposed by the Commission

Amendment

2. **Regulatory authorities shall cooperate** at least *on* a regional level to foster the creation of operational arrangements in order to ensure an optimal management of the network, develop joint gas exchanges and the allocation of cross-border capacity, and to ensure **a minimum** level of interconnection capacity within the region to allow for effective competition **to develop**.

2. In order to ensure that where regional gas markets occur integration is mirrored by adequate regulatory structures, the national regulatory authorities concerned shall ensure, in close cooperation with and under the guidance of the Agency, that at least the following regulatory tasks are performed in relation to their regional markets:

(a) cooperation at least *at* a regional level to foster the creation of operational arrangements in order to ensure an optimal management of the network, develop joint gas exchanges and the allocation of cross-border capacity, and to ensure **an adequate** level of interconnection capacity **including through new interconnection**, within the region **and between regions** to allow for **the development of** effective competition **and the improvement of security of supply;**

(b) harmonisation at least at the relevant regional level of all technical and market codes for the relevant transmission system operators and other market actors;

(c) harmonisation of the rules governing the management of congestion;

(d) adoption of rules to ensure that the owners and/or managers of gas exchange(s) which operate the relevant regional pool markets are fully independent of the owners and/or managers of production assets.

Regulatory authorities shall have the right to enter into agreements with each other to foster regulatory cooperation and the actions referred to in first subparagraph shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competencies.

Amendment 105
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24d – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may adopt guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency, and on the situations in which the Agency becomes competent to decide upon the regulatory regime for infrastructures connecting at least two Member States. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

deleted

Amendment 106
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24e – paragraph 2

Text proposed by the Commission

Amendment

2. The Agency shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within **four months**.

2. The Agency shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within **two months**.

Amendment 107
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24f – paragraph 1

Text proposed by the Commission

1. Member States shall require supply undertakings to keep at the disposal of the ***national regulatory authority, the national competition authority and the Commission***, for at least five years, the relevant data relating to all transactions in gas supply contracts and gas derivatives with wholesale customers and transmission system operators as well as storage and LNG operators.

Amendment

1. Member States shall require supply undertakings to keep at the disposal of the ***competent authorities, to enable them to fulfil their duties***, for at least five years, the relevant data relating to all transactions in gas supply contracts and gas derivatives with wholesale customers and transmission system operators as well as storage and LNG operators.

Amendment 108
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24f – paragraph 2

Text proposed by the Commission

2. The data ***shall*** include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives.

Amendment

2. The data ***may*** include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives.

Amendment 109
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24f – paragraph 4

Text proposed by the Commission

Amendment

4. To ensure the uniform application of this Article, the Commission may adopt guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3). *deleted*

Amendment 110
Paul Rübiger
Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24f – paragraph 5

Text proposed by the Commission

Amendment

5. With respect to transactions in gas derivatives of supply undertakings with wholesale customers and transmission system operators as well as storage and LNG operators, this Article shall only apply once the Commission has adopted the guidelines referred to in paragraph 4. *deleted*

Amendment 128
Proposal for a directive – amending act
Article 1 – point 15 a (new)
Directive 2003/55/EC
Article 26 a (new)

Text proposed by the Commission

Amendment

(15a) The following article shall be inserted:

"Article 26a

1. Member States may exempt industrial sites from Articles 4 and, Article 7, Article 8(1) and (2), Articles 9 and 11, Article 12(5), Articles 13, 17 and 18, Article 23(1) and/or Article 24 of this Directive.

2. Third-party access shall not be affected by the exemptions referred to in paragraph 1. Customers on industrial sites shall be able freely to choose their energy supplier, having resort to the national regulator in the event of a disagreement with the network operator."

Amendment 111
Proposal for a directive – amending act
Article 1 – point 17
Directive 2003/55/EC
Annex A

Text proposed by the Commission

Amendment

(17) In Annex A, the following paragraphs shall be added:

(17) Annex A shall be replaced by the following:

"Without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC of the European Parliament and of the Council and Council Directive 93/13/EC, the measures referred to in Article 3 are to ensure that customers:

(a) have a right to a contract with their gas service provider that specifies:

- the identity and address of the supplier;**
- the services provided, the service quality levels offered, as well as the time for the initial connection;**
- [...] the types of maintenance service offered;**
- the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;**
- the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal *without charge*;**
- any compensation and the refund arrangements which apply if contracted service quality levels are not met *including inaccurate and delayed billing*;
[...]**
- the method of initiating procedures for settlement of disputes in accordance with point (f);**
- *information on consumer rights, including all of the above, clearly communicated through billing and electricity company web sites; and***
- *details concerning the competent appeals authority and of the procedure to be followed by customer in case of dispute.***

Conditions shall be fair and well known in advance. In any case, this information should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract;

(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into *effect in a transparent and comprehensible manner*. Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their gas service provider;

(c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services;

(d) are offered a wide choice of payment methods, *which shall not discriminate between customers*. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. Customers shall be protected against unfair or misleading selling methods *including non-contractual barriers imposed by the trader, for example excessive contractual documentation*;

(e) shall not be charged for changing supplier;

(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. *In particular, all consumers shall have the right to service delivery and complaint handling by their gas service provider.* Such procedures shall enable disputes to be settled fairly and promptly, *and within three months*, with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC;

(g) connected to the gas system are informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices;

(h) have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any undertaking *with a supply license* access to its metering data. The party responsible for data management is obliged to give *these* data to the undertaking. Member States shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs can be charged to the consumer for this service;

(h) *are easily able to switch to a new supplier and* have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any *authorised supply* undertaking access to its metering data. The party responsible for data management is obliged to give *this* data to the undertaking. Member States shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs can be charged to the consumer for this service;

(i) shall be properly informed *every month* of actual gas consumption and costs. No additional costs can be charged to the consumer for this service;

(i) shall be properly informed *at least quarterly* of actual gas consumption and costs. No additional costs can be charged to the consumer for this service. *The Member States shall ensure that roll-out of smart meters is completed with minimum disruption to consumers within 10 years after the entry into force of the Directive .../...EC which shall be the responsibility of the distribution system operator or supply undertakings. National regulatory authorities shall be responsible for monitoring the process of such development and for laying down common standards for that purpose. Member States shall ensure that standards establishing the minimum technical design and operational requirements for meters address interoperability issues to provide maximum benefit at minimum cost to consumers;*

(j) can change supplier at any time in the year, and a customer's account with the previous supplier shall not be settled later than one month following the last supply by this previous supplier.

(ja) shall receive a final closure account bill following switching of supply undertaking no later than one month after informing the relevant supply undertaking.

Amendment 112
Proposal for a directive – amending act
Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Member States shall repeal any laws, regulations and administrative provisions which prevent any natural gas undertaking, regulatory or other authority from complying with their duties or fulfilling their powers or obligations under this Directive.

Amendment 113
Proposal for a directive – amending act
Article 2 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The Commission shall report to the European Parliament and the Council annually on the formal and practical implementation of this Directive in each Member State.

Amendment 114
Proposal for a directive – amending act
Article 2 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Where a publicly controlled entity is directly or indirectly involved in the acquisition of parts of a vertically integrated undertaking, the price in relation to the arrangement of such a transaction shall be notified to the Commission. Such notification shall include certification of the underlying asset value by an international auditing company. The Commission shall use such information solely to exercise control over State aid.