



**COUNCIL OF
THE EUROPEAN UNION**

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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject : Common position adopted by the Council on ... with a view to the adoption of a Regulation of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005

- Draft statement of the Council's reasons

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1. On 19 September 2007, the Commission presented a 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, based on Article 95 of the Treaty, together in a package with four other proposals concerning the internal energy market.
2. The Committee of the Regions and the European Economic and Social Committee delivered their opinions on the complete package on 10¹ and 22 April 2008² respectively.
3. The European Parliament adopted its Opinion³ at first reading on 9 July 2008, approving 47 amendments. The Commission did not present a modified proposal.
4. On , the Council adopted its Common Position in accordance with Article 251 of the Treaty, in the form of a recast Regulation.

II. OBJECTIVE OF THE PROPOSAL

5. The proposal is part of the third internal energy market package, together with the Directive concerning common rules for the internal market in natural gas, the Regulation on conditions for access to the network for cross-border exchanges in electricity, the Directive concerning common rules for the internal market in electricity, and the Regulation establishing an Agency for the Cooperation of Energy Regulators. It aims at contributing to achieving the objective of a well functioning internal gas market by introducing in particular:
 - provisions aiming at an increased cooperation and coordination among transmission system operators, *inter alia* through the establishment of a European Network of the Transmission Operators for Gas (ENTSO for Gas);
 - improved transparency requirements;

¹ OJ C 172, 5.7.2008, p. 55.

² OJ C 211, 19.8.2008, p. 23.

³ OJ C....

- provisions aiming at improving access to gas storage and LNG facilities.

III. ANALYSIS OF THE COMMON POSITION

6. **General Remarks**

6.1. The Council has considered it more effective, more transparent and coherent with Regulation (EC) N° 1775/2005 as well as more reader friendly to recast the provisions of the Regulation. However, in doing this, the Council has as a general principle fully respected the amending proposal of the Commission in the sense that it has not opened any other provision not being part of the Commission proposal, unless changes were necessary following from the changes introduced by the Council to the proposal, changed references resulting from the renumbering of the Articles etc. To the extent possible, the Council has followed the Commission's approach regarding an identical treatment of the electricity and gas sectors.

The Commission has accepted all the changes introduced by the Council to its proposal.

6.2. Concerning the *47 amendments adopted by the European Parliament*, the Council has followed the Commission in

- accepting the following seven amendments partly/in principle: 12, 14, 16, 19, 50, 51, and 44;

and

- rejecting the following six amendments: 4, 7, 13, 15, 23 and 28, on grounds of substance and/or of form.

6.3. The Council has deviated from the Commission position in

- accepting three amendments: 40 (in principle), 42 (in spirit), and 45 (partially)

and

- rejecting the following 31 amendments: 1 - 3, 5, 6, 8 - 11, 17, 18, 49, 22, 24 - 27, 29 - 31, 47, 33 - 39, 41, 43, and 46.

7. Specific Remarks:

7.1. Regarding the *EP amendments* where the Council has deviated from the *Commission position*:

a) The Council has accepted

- amdt 40 in principle because it considers that a reference to a "group of storage facilities" is necessary, but that also a condition needs to be added;
- amdt 42 in spirit because it considers that on certain conditions and with certain limits, confidential treatment of data related to storage may be necessary;
- amdt 45 partially in deleting a limited number of issues for which the Commission had proposed the possibility of adopting guidelines through committee procedure.

b) The Council has rejected the 31 amendments listed above (point 6.3.) on the following grounds:

- i) The amendments concern provisions which are not part of the Commission proposal; those amendments have been rejected as a question of principle (see above under 6.1): amdts 24, 25, and 31.
- ii) The amendments are not necessary or do not have added value, mainly because the issues are partly/sufficiently covered by other parts of the text: amdt 2; amdt 3 is sufficiently covered by recital 14; amdts 5, 6, 8, 11, 17; amdt 49 is covered by Art. 8(8+9); amdt 27 is sufficiently covered by Art. 13(1); amdt. 30; amdt 33 is sufficiently covered by Art. 1(c); amdt 34 is partly covered by Art. 16(5); amdts 36, 37 and 38(first part); amdt 43: the principle is covered by Art. 1.
- iii) The amendments are not clear: amdts 1 and 29.
- iv) The amendment is introducing text which is not appropriate, *i.a.* because the tasks and powers of the regulatory authorities are set in the gas Directive: amdts 9, 10 (in addition, the Council has transferred the Article on retail markets to the gas Directive), 38(2nd part), 39, 46.
- v) The amendments are not appropriate: amdt 26 because Art. 13 is dealing with tariffs, not with access rules; amdt 47 in particular because of the deletion of point b of Art. 16(3).

- vi) Amendment 18 introduces text which does not correspond to the role which the Council is giving to the Agency; it is, for legal reasons, not appropriate that the Agency adopts or approves network codes or takes decisions with a general scope.
- vii) Amdt 22 because the consultations (Art. 10) should be carried out by ENTSO; consultation which the Agency has to do is covered by Art. 6.
- viii) Amdt 35 is not appropriate because it could lead to overregulation, and the text introduced by amdt 41 is not necessary for the functioning of the Regulation.

7.2 Concerning the *Commission proposal*, the Council has introduced certain other modifications (of substance and/or of form); the main ones are set out below.

a) *Certification of TSOs:*

The Council has considered it appropriate to transfer the part of the certification procedure which sets out the role of the Commission in this procedure from the gas Directive to a new Article 3 of this Regulation.

b) *Establishment and modification of network codes:*

The Council has considered it appropriate to set out more in detail the procedure for the *establishment* of network codes (Art. 6) and another - shorter - procedure for the *modification* of network codes (Art. 7). These Articles have replaced Art. 2e of the Commission proposal. The Council has given a clear role to the Agency which should develop *non-binding framework guidelines* as a basis for the network codes to be established by ENTSO, review the draft network codes and assess proposed modifications to the network codes. If necessary, the Commission may adopt those codes through the committee procedure in order to make them binding (see also recital 14).

c) *Monitoring by the Agency*

The Council has introduced two paragraphs setting out the monitoring role of the Agency with respect to the implementation of the network codes by ENTSO (Art. 9(1)(subparas 2+3))

d) *Transparency / confidentiality requirements*

The Council considered it important that confidentiality for commercially sensitive data regarding storage can be ensured, subject to approval by the regulatory authority (recital 23 and Art. 19(4)(2nd subpara)).

e) *Retail markets:*

The Council has considered it appropriate to redraft the Article on retail markets, taking *i.a.* out the cross border reference, and transfer it from the Regulation (Art. 8a of the Commission proposal) to the gas Directive (new Article 44).

f) *Other points:*

- The Council has reinserted the last subparagraph of Article 1 which is stemming from the current gas Regulation and which is in line with the spirit of the Commission proposal.
- The Council has considered it appropriate to use the term "*network development* plan" instead of "investment plan" and to clarify that these plans are of a *non-binding* nature (Art. 8(3)(a)).
- In line with the recast format, the Council has introduced a new Article to *repeal* the current legislative act (Art. 31).
