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28 April 2003

**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the Council common position for adopting a European Parliament and Council directive on common rules for the internal market in natural gas and repealing Directive 98/30/EC  
(15531/2/2002 – C5-0035/2003 – 2001/0077A(COD))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Bernhard Rapkay

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

At the sitting of 13 March 2002 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive on common rules for the internal market in natural gas and repealing Directive 98/30/EC (COM(2001) 125 - 2001/0077A (COD)).

At the sitting of 13 February 2003 the President of Parliament announced that the common position had been received and referred to the Committee on Industry, External Trade, Research and Energy (15531/2/2002 – C5-0035/2003).

The committee had appointed Bernhard Rapkay rapporteur at its meeting of 29 May 2001.

It considered the common position and draft recommendation for second reading at its meetings of 27 January, 19 February, 25 March, 23 and 24 April 2003.

At the last meeting it adopted the draft legislative resolution by 40 votes to 7 with 2 abstentions.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Peter Michael Mombaur and Jaime Valdivielso de Cué, vice-chairman; Bernhard Rapkay, rapporteur; Gordon J. Adam (for Gary Titley), Per-Arne Arvidsson (for Christian Foldberg Rovsing), Danielle Auroi (for Yves Piétrasanta), Luis Berenguer Fuster, Ward Beysen (for Marco Cappato), Felipe Camisón Asensio (for Umberto Scapagnini), Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Marie-Hélène Descamps (for Guido Bodrato), Harlem Désir, Concepció Ferrer, Francesco Fiori (for Paolo Pastorelli), Colette Flesch, Neena Gill (for Myrsini Zorba), Norbert Glante, Alfred Gomolka (for Werner Langen), Michel Hansenne, Malcolm Harbour (for Sir Robert Atkins), Philippe A.R. Herzog (for Fausto Bertinotti), Hans Karlsson, Bashir Khanbhai, Dimitrios Koulourianos (for Konstantinos Alyssandrakis), Rolf Linkohr, Caroline Lucas, Erika Mann, Eryl Margaret McNally, Elizabeth Montfort, Bill Newton Dunn (for Willy C.E.H. De Clercq), Angelika Niebler, Giuseppe Nisticò (for Marjo Matikainen-Kallström), Josu Ortuondo Larrea (for Nuala Ahern), Reino Paasilinna, John Purvis, Godelieve Quisthoudt-Rowohl, Bernhard Rapkay, Imelda Mary Read, Paul Rübig, Gilles Savary (for Mechtild Rothe), Esko Olavi Seppänen, Patsy Sörensen (for Elly Plooi-j-van Gorsel, pursuant to Rule 153(2)), Roseline Vachetta, W.G. van Velzen, Alejo Vidal-Quadras Roca, Dominique Vlasto and Olga Zrihen Zaari.

The recommendation for second reading was tabled on 28 April 2003.

## DRAFT LEGISLATIVE RESOLUTION

### **European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on common rules for the internal market in natural gas and repealing Directive 98/30/EC (15531/2/2002 – C5-0035/2003 – 2001/0077A(COD))**

#### **(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (15531/2/2002 – C5-0035/2003),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2001) 125)<sup>2</sup>
  - having regard to the Commission's amended proposal (COM(2002) 304)<sup>3</sup>,
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Industry, External Trade, Research and Energy (A5-0135/2003),
1. Amends the common position as follows;
  2. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 47, 27.02.2003, p. 88.

<sup>2</sup> OJ C 240 E, 28.8.2001, p. 60.

<sup>3</sup> OJ C 227 E, 24.9.2002, p. 393.

## Amendment 1

## Recital 2

Experience in implementing this Directive shows the benefits that may result from the internal market in gas, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness. However, significant shortcomings and possibilities for improving the functioning of the market remain, notably in **ensuring** a level playing field in addressing the risks of predatory behaviour, ensuring non-discriminatory transmission and distribution tariffs, through access to the network on the basis of tariffs published prior to their entry into force, and ensuring that the rights of small and vulnerable customers are protected.

Experience in implementing this Directive shows the benefits that may result from the internal market in gas, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness. However, significant shortcomings and possibilities for improving the functioning of the market remain, notably in **taking concrete measures to ensure** a level playing field **and reduce the risk of market domination and** predatory behaviour, ensuring non-discriminatory transmission and distribution tariffs, through access to the network on the basis of tariffs published prior to their entry into force, and ensuring that the rights of small and vulnerable customers are protected.

*Justification*

*Based on the amendment at first reading and seeking to align the electricity and gas directives.*

## Amendment 2

## Recital 13 a (new)

***The Commission has notified its intention to establish a European Regulators' Group, which would constitute a suitable mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for natural gas, and to seek to achieve consistent application, in all Member States, of the provisions set out in this directive, particularly in areas where national legal provisions on the implementation of Community law leave the national regulatory authorities considerable discretion in the application of such provisions.***

*Justification*

*The Commission has already agreed to the establishment of a European Regulators' Group, but this agreement should also be reflected in the text of the directive itself, as was also the case in the field of telecommunications.*

Amendment 3  
Article 3, paragraph 1

1. Member States shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive and sustainable market in natural gas, and shall not discriminate between these undertakings as regards either rights or obligations.

Member States shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive and sustainable market ***and a secure and environmentally sustainable supply and retail*** in natural gas, and shall not discriminate between these undertakings as regards either rights or obligations.

Or. de

*Justification*

*Based on the amendment at first reading and seeking to align the electricity and gas directives.*

Amendment 4  
Article 3, paragraph 2

2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on natural gas undertakings, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency and climate protection. Such

2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on natural gas undertakings, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency and climate protection. Such

obligations shall be clearly defined, transparent, non-discriminatory and verifiable. In relation to security of supply, and the fulfilment of environmental goals, including energy efficiency, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

obligations shall be clearly defined, transparent, non-discriminatory and verifiable **and shall guarantee equality of access for EU gas companies to national consumers**. In relation to security of supply, and the fulfilment of environmental goals, including energy efficiency, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

### *Justification*

*All EU energy providers must have non-discriminatory access to national consumers.*

*A situation needs to be avoided whereby public service provision is defined in terms which can only be met by national EU electricity and gas companies, amounting in practice to a distortion of competition.*

### Amendment 5 Article 5

Member States shall **ensure the monitoring of** security of supply issues. **Where Member States consider it appropriate, they may delegate this task to the regulatory authorities referred to in Article 25(1).** This **monitoring** shall, in particular, **cover** the supply/demand balance on the national market, the level of expected future demand and available supplies, envisaged additional capacity being planned or under construction, and the **quality and level of maintenance of the networks, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers.** **The competent authorities** shall publish, by 31 July each year at the latest a report outlining **the findings resulting from the monitoring of** these issues, as well as any measures taken or envisaged to **address them** and shall forward this report to the Commission forthwith.

Member States shall **appoint a body, which may be the same as the independent regulatory authority referred to in Article 22, to deal with** security of supply issues. This **body** shall, in particular, **monitor** the supply/demand balance on the national market, the level of expected future demand and envisaged additional capacity being planned or under construction, and the **state of the networks and of their maintenance, and shall assess the potential transmission capacity.** **This body** shall publish **annually**, by 31 July at the latest, a report outlining **its** findings, on these issues, as well as any measures taken or envisaged to **resolve them**, and shall forward this report to the Commission forthwith.

***This body shall contribute to the development of the internal market for gas***



*and to the promotion of harmonisation and the creation of a level playing field for gas at the European level by co-operating with other such bodies and with the Commission in a transparent manner to ensure the consistent application, in all Member States, of the provisions of this Directive for gas..*

*To this end, this body shall, in particular, seek to agree on the types of instruments and remedies best suited to address particular types of situations in the European marketplace for gas.*

*Where the Commission issues recommendations to Member States on the harmonised application of the provisions in this Directive in order to further the achievement of the objectives set out in this Directive, Member States shall ensure that national regulatory authorities take the utmost account of those recommendations in carrying out their tasks.*

*2. Cooperation will take place, inter alia, in a Committee or in a group comprising European regulators for the gas sector. The Commission shall set up a European Regulators Group for the European gas market which would constitute a suitable mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for gas, and to seek to achieve consistent application of the regulations, in all Member States. The secretariat of this committee or group shall be supplied by the European Commission. Member States shall decide which bodies are national regulatory authorities for the purposes of this Directive.*

*3. On the basis of the estimates drawn up by each Member State, the Commission shall launch a comprehensive survey of demand satisfaction across the whole of the internal market, taking into account the physical capacity for exchanges within the*

*system between areas that are in surplus and areas that are in deficit. On the basis of this comprehensive survey and the national reports referred to in paragraph 1 the Commission shall, on an annual basis, forward a Communication to the European Parliament and the Council examining issues relating to security of supply of gas in the Community, and in particular the existing and projected balance between demand and supply. Where appropriate, the Commission shall issue recommendations.*

#### *Justification*

*The objective is to complete the internal market for gas in the EU. Each Member State has a body with a supervisory function. In order to achieve a level playing field within Europe, procedures should be established which take account of national market aspects as well as ensuring the completion of the EU internal market. Close cooperation is therefore necessary between the Commission and national supervisory bodies.*

*The secretariat of this committee or group must be provided by the European Commission.*

#### Amendment 6 Article 9, paragraph 1

1. Where the transmission system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission. This requirement ***imply or result in the requirement*** to separate the ownership of assets of the transmission network from the vertically integrated undertaking.

1. Where the transmission system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission. This requirement ***and the provisions of paragraph 2*** shall not, ***however, create a legal obligation*** to separate the ownership of assets of the transmission network from the vertically integrated undertaking.

#### *Justification*

*After legal unbundling, TSOs may well, for their own commercial and/or strategic reasons, opt for ownership unbundling. The wording should therefore merely state that legal unbundling does not imply a legal requirement on the TSO to carry out ownership*

*unbundling.*

*This amendment should be seen in conjunction with the amendment to paragraph 2 of this article.*

#### Amendment 7

##### Article 9, paragraph 2, sub-paragraph c

(c) the transmission system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent 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 in a subsidiary are protected;

(c) the transmission system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of ***the*** return on assets ***invested*** in a subsidiary, ***as determined by the supervisory body***, are protected. ***An external audit will be carried out each year to ensure that no cross-subsidies are being paid.***

Or. nl

#### *Justification*

*The aim is to ensure that the parent company has no other hold over its subsidiary than a reasonable return on investment, as determined by the supervisory authority. What needs to be avoided is the subsidiary company subsidising the parent company by means of prohibited cross-subsidies. For this purpose an annual external audit is necessary.*

#### Amendment 8

##### Article 13, paragraph 1

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. This requirement ***shall not imply or result in the requirement*** to separate the ownership of assets of the distribution network from the vertically integrated undertaking.

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. This requirement ***and the provisions of paragraph 2*** shall not, ***however, create an obligation*** to separate the ownership of assets of the distribution network from the vertically integrated undertaking.

*Justification*

*This amendment should be seen in conjunction with the amendment to paragraph 2 of this article (q.v. for justification).*

Amendment 9  
Article 13, paragraph 2 c

(c) the distribution system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network. ***This should 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 in a subsidiary are protected;***

(c) the distribution system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network.

*Justification*

*The independence of transmission system operators or inter-transmission system generators is an essential precondition for the success of the directive. The common position restricts this independence above all by its vague wording.*

Amendment 10  
Article 15, introductory paragraph

The rules in Articles 9(1) and Article 13(1) shall not prevent the operation of a combined transmission, LNG, storage and distribution system operator, which is independent in terms of its legal form, organisation and decision making from other activities not relating to transmission LNG, storage and distribution system operations and which meets the ***following*** requirements:

The rules in Articles 9(1) and Article 13(1) shall not prevent the operation of a combined transmission, LNG, storage and distribution system operator, which is independent in terms of its legal form, organisation and decision making from other activities not relating to transmission LNG, storage and distribution system operations and which meets the requirements ***set out in subparagraphs (a) to (d). These shall, however, not create an obligation to separate the ownership of assets of the***

*combined system from the vertically integrated undertaking.*

Or. de

*Justification*

*This amendment should be seen in conjunction with the other amendments.*

Amendment 11  
Article 15(c)

(c) the combined system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the system. ***This should 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 in a subsidiary are protected;***

(c) the combined system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the system.

*Justification*

*The independence of transmission system operators or inter-transmission system generators is an essential precondition for the success of the directive. The common position restricts this independence above all by its vague wording.*

Amendment 12  
Article 19, paragraph 1

1. For the organisation of access to storage facilities ***and*** linepack when technically and/or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to ancillary services, Member States may choose either or both of the

1. For the organisation of access to storage facilities, linepack ***and LNG facilities*** when technically and/or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to ancillary services, Member States may choose either

procedures referred to in paragraphs 3 and 4. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

or both of the procedures referred to in paragraphs 3 and 4. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

*Justification*

*For clarification. If paragraph 2 excludes particular functions of an LNG facility from the scope of this article, as defined in paragraph 1, LNG facilities must first be covered by the latter.*

Amendment 13  
Article 21, paragraph 2 a (new)

***(2a) Access may be refused only in the cases listed in paragraph 1. Member States shall ensure that, within the safety limits of the system, the full available capacity of the networks and, where necessary, of the storage facilities, is made accessible to system users.***

***For that purpose, the authorities referred to in Article 25 shall request transmission system and storage facility operators to notify them of available capacity on a regular basis and whenever additional capacity becomes available. Information on available capacity shall be published.***

*Justification*

*This reinstates Amendment 146 of the first reading of the European Parliament. This provision ensures the optimal usage of transmission and storage resources; it prevents system and storage facility operators leaving transmission and storage facilities wholly or partly unused.*

Amendment 14  
Article 22, paragraph 1, subparagraph 1

1. Major new gas infrastructures, *i.e.* interconnectors between Member States, LNG and storage facilities, may, upon request, be exempted from the provisions of articles 18, 19, 20, and 25(2), (3) and (4) under the following conditions:

1. Major new gas infrastructures, ***such as*** interconnectors between Member States, LNG and storage facilities, may, upon request, be exempted from the provisions of articles 18, 19, 20, and 25(2), (3) and (4) under the following conditions:

#### *Justification*

*The current text is very restrictive and will have a negligible impact on the desired result. In fact, transport systems designed to convey gas on long distance include interconnectors between Member States as well as upstream and downstream transport pipelines from exporting country to importing country.*

*The fact that the exemption regime is only applicable to interconnectors will solve only one component of the whole transport problem. Not only is it ineffective, but this limitation will generate distortions in competition conditions among Member States. Remote Member States situated far from supply sources are disadvantaged compared to Member States situated close to supply sources, since the latter are less affected by upstream transport facilities.*

#### Amendment 15 Article 22, paragraph 3 a

(a) The regulatory authority referred to in Article 25 may, on a case-by-case basis, decide on the exemption referred to in paragraphs 1 and 2. ***However, Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State its opinion on the request for an exemption. This opinion shall be published together with the decision.***

(a) The regulatory authority referred to in Article 25 may, on a case-by-case basis, decide on the exemption referred to in paragraphs 1 and 2.

#### *Justification*

*The regulatory authorities should be independent as far as possible. We should not insist on the wording adopted at first reading 'the highest possible degree of independence from the Governments of Member States'. However, the wording in the common position 'Member*

*States shall designate one or more competent bodies with the function of regulatory authorities' offers sufficient scope to do justice to the intention of this paragraph. The wording adopted here, on the other hand, leads to lack of clarity as to competences and responsibilities.*

Amendment 16  
Article 25, paragraph 1

1) Member States shall designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent of the interests of the gas industry. They shall at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market, **by** at least monitoring in particular:

- a) the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority of those Member States with which interconnection exists;
- b) any mechanisms to deal with congested capacity within the national gas system;
- c) the time taken by transmission and distribution system operators to make connections and repairs;
- d) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;
- e) the effective unbundling of accounts as referred to in Article 17, to ensure there are no cross-subsidies between transmission and distribution, storage, LNG and supply activities;
- f) the access conditions to storage linepack and to other ancillary services as provided for in Article 19.

1) Member States shall designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent of the interests of the gas industry **and the government**. They shall at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market **and** at least monitoring in particular:

- a) the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority of those Member States with which interconnection exists;
- b) any mechanisms to deal with congested capacity within the national gas system;
- c) the time taken by transmission and distribution system operators to make connections and repairs;
- d) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;
- e) the effective unbundling of accounts as referred to in Article 17, to ensure there are no cross-subsidies between transmission and distribution, storage, LNG and supply activities;
- f) the access conditions to storage linepack and to other ancillary services as provided for in Article 19.



- f (a) the level of transparency and competition.*  
*f (b) the extent to which transmission and distribution system operators are fulfilling their tasks as in accordance with Articles 8 and 12.*

*Justification*

*The Council text implies that the power of the regulatory authorities could be restricted to monitoring only. This amendment ensures that regulatory authorities shall have a responsibility to ensure competition, in addition to monitoring the market.*

*The level of transparency and competition are important indicators, to show whether the measures implemented as a result of this directive are effective.*

*The regulatory authorities must ensure that network operators perform the tasks assigned to them in this directive. The regulatory authority has the duty to uphold competition. It may not be dependent on industry nor may it be an instrument of government.*

*This amends the new Council text that was not included in the proposal submitted to Parliament for the first reading.*

Amendment 17

Article 25, paragraph 2, sub-paragraph a

- |   |   |
|---|---|
| <p>(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities;</p> | <p>(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities, <b><i>which should be set at a level such that the system operators are able to make the necessary investments to ensure the viability of the networks;</i></b></p> |
|---|---|

*Justification*

*It is extremely important to set tariffs at such a level that operators can make investments to ensure that the stability of networks is guaranteed.*

Amendment 18

***11a. Member States shall ensure that the regulatory authorities have the power to require the release of gas or gas transportation capacity from long-term contracts at market prices where in the view of the regulatory authority this is necessary for the development of sustainable competition***

*Justification*

*See Amendment 152 at first reading.*

*Where energy supplies or transportation are reserved under long-term agreements this might be a barrier to competition.*

Amendment 19  
Article 29

In the event that the report referred to in Article 31(3) reaches the conclusion whereby, given the effective manner in which network access has been carried out ***in*** a Member State – which ***gives rise*** to fully effective, non-discriminatory and unhindered network access –, the Commission concludes that ***certain obligations*** imposed by this Directive on ***undertakings (including those with respect to legal unbundling for distribution system operators)*** are not proportionate to the objective pursued, the Member State in question may submit a request to the Commission for exemption from ***the requirement in question***.

The request shall be notified, without delay, by the Member State to the Commission, together with all the relevant information necessary to demonstrate that

In the event that the report referred to in Article 31(3) reaches the conclusion whereby, given the effective manner in which network access has been carried out ***throughout the territory of*** a Member State – which ***has given*** rise to fully effective, non-discriminatory and unhindered network access –, the Commission concludes that ***legal unbundling*** imposed by this Directive on ***distribution system operators*** is not proportionate to the objective pursued, the Member State in question may submit a request to the Commission for exemption from ***Article 13(1)***.

The request shall be notified, without delay, by the Member State to the Commission, together with all the relevant information necessary to demonstrate that

the conclusion reached in the report on effective network access being *ensured* will be maintained.

Within three months of its receipt of a notification, the Commission shall adopt an opinion with respect to the request by the Member State concerned, and where appropriate, submit proposals to the European Parliament and to the Council to amend the relevant provisions of the Directive *or provide for other appropriate means*.

the conclusion reached in the report on effective network access being *achieved* will be maintained.

Within three months of its receipt of a notification, the Commission shall adopt an opinion with respect to the request by the Member State concerned, and where appropriate, submit proposals to the European Parliament and to the Council to amend the relevant provisions of the Directive.

#### *Justification*

*If this exemption is to be accepted, it should apply only to legal unbundling of distribution companies. In addition it should be dependent on alternative measures to achieve the same effect having already been implemented and shown to be effective throughout the Member State and not just by one or two distribution system operators. The use of the term "certain obligations" is too wide and could potentially be used to obtain derogation from other important provisions of this directive.*

*What are the 'appropriate means' in question? Parliament has legislative powers; i.e. it can amend a directive in the codecision procedure. This possibly has already been mentioned. There are no other 'appropriate measures' for Parliament to decide on.*

#### Amendment 20 Article 32, paragraph 1

1. Directive 91/296/EEC shall be repealed with effect from 1 July 2004, without prejudice to contracts concluded pursuant to Article 3(1) of Directive 91/296/EEC, which shall continue to be valid and to be implemented under the terms of the said Directive.

1. Directive 91/296/EEC shall be repealed with effect from 1 July 2004, without prejudice to contracts concluded pursuant to Article 3(1) of Directive 91/296/EEC, which shall continue to be valid and to be implemented under the terms of the said Directive. ***The repeal of Directive 91/296/EEC does not call into question the legal framework of long-term contracts, important to ensure European security of supply.***

### *Justification*

*It is not at all certain that regulated TPA will be sufficient to perpetuate long-term transits, which are an essential element for guaranteeing security of supply.*

*Nevertheless, these contracts are vital for ensuring security of supply for countries producing little or no gas.*

## EXPLANATORY STATEMENT

In response to the desire of the Lisbon European Council in March 2000 for completion of the internal markets in gas and electricity and Parliament's urging that a timetable be adopted, the Commission submitted proposals in March 2001 for amendments to Directives 96/92/EC (internal market in electricity) and 98/30/EC (internal market in natural gas).

Parliament concluded its first reading on 13 March 2002, making a number of amendments to the Commission proposal. The Council, which had hoped for an early decision, was not itself able to act speedily and did not reach a political agreement until considerably later, at the end of November 2002. The common position that was concluded on this basis was submitted to Parliament in February 2003.

Five years after the first gas directive was adopted, the EU is now in sight of the goal of a completely open market in the energy sector through the introduction of competition, thus improving efficiency in the energy sector and the competitiveness of the European economy.

The main factors that must be borne in mind for the gas directive (and also for the electricity directive) are as follows:

- setting a timetable for full opening of the market,
- legal unbundling,
- regulating access to the network by third parties,
- the regulatory authority,
- monitoring security of supply, including the incorporation of biogas and gas from biomass, investment obligations and
- reporting obligations,
- impact on employment,
- security of provision.

Your rapporteur does not consider that the common position is the optimal solution. It falls significantly short of the text that emerged from the first reading in Parliament. Many points are too half-hearted and unspecific in relation to the political aim. Nonetheless it is going in the right direction. Your rapporteur therefore recommends that amendments at second reading be kept to a few important additions and clarifications, consistent with the outcome of the first reading.

### **Opening the market**

The common position sets 1 July 2007 as the date for full opening of the market. At first reading Parliament proposed 1 January 2005. Your rapporteur however recommends accepting this delay for the sake of overall agreement. What is important is that the directive sets a date for the market to be open to all customers with no strings attached.

### **Guaranteeing the independence of the regulators**

The Member States must designate one or more competent bodies as regulatory authorities, and these must be completely independent of the interests of the gas industry. Parliament's first reading also called for the greatest possible independence from governments.

The regulatory authorities must at least ensure non-discriminatory and effective competition and efficient functioning of the market and must lay down or approve, prior to their entry into force, the conditions for access by third parties to transmission and distribution networks and to LNG facilities.

The wording that the Council has chosen for Article 25 is vague as to powers and responsibilities, consequently providing significantly less independence and decision-making power, and it must therefore be clarified to give a greater measure of independence.

### **Ensuring effective competition**

Your rapporteur takes the view that one of the obstacles to the development of effective competition in the natural gas sector in Europe may be the scope of long-term supply and transportation contracts. They should not be called into question. However the power under the regulation to require the release of gas or gas transportation capacity from long-term contracts, where the regulatory authority considers this necessary for the development of sustainable competition, is very important. Amendment 152 from the first reading should therefore be reinstated.

Strict and restrictive conditions should govern the granting of an exemption from the rule of non-discriminatory access to the network by third parties. Competition in the gas market and security of supply must be improved by investment.

### **Clarifying unbundling**

Under Article 33(2) of the common position, the Member States can delay implementation of legal unbundling for distribution system operators until 1 July 2007.

In addition the Member States can apply for overall exemption if they have alternative instruments which have the same aim as legal unbundling, have already been implemented and have been shown to be effective overall.

Under Article 29 the Commission must adopt an opinion on a Member State's application for exemption from the provisions of the directive (including the provisions on legal unbundling of distribution system operators). If appropriate it can then 'submit proposals to Parliament and to the Council to amend the relevant provisions of the directive or provide for other appropriate means'.

Once more on the grounds of willingness to compromise, your rapporteur is not against this option. It must however be made clear that exemption applies only to legal unbundling of distribution system operators and that notification to the Commission is not sufficient.

In this instance therefore the proposed directive must be amended! If it is to be consistent with the outcome of the first reading, Parliament can agree only under this condition. What does 'other appropriate means' mean? Parliament has the legislative power under Article 251 of the EC Treaty to amend a directive. There are no other 'appropriate means' for a decision by Parliament. This part should therefore be deleted for the sake of clarity.