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*Committee on Industry, Research and Energy*

**2007/0195(COD)**

18.3.2008

## **AMENDMENTS 226 - 313**

**Draft report**  
**Eluned Morgan**  
(PE402.516v01-00)

Common rules for the internal market in electricity

Proposal for a directive – amending act  
(COM(2007)0528 – C6-0316/2007 – 2007/0195(COD))

AM\_Com\_LegReport

## **Amendment 226**

**Norbert Glante, Robert Goebbels, Edit Herczog, Atanas Papparizov, Anni Podimata, Bernhard Rapkay, Hannes Swoboda, Catherine Trautmann**

### **Proposal for a directive – amending act**

#### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 - introductory part

#### *Text proposed by the Commission*

1. Member States shall ensure that as from [date of transposition plus one year]:

#### *Amendment*

1. ***In order to ensure the independence of transmission system operators***, Member States shall ensure that as from [date of transposition plus one year] ***vertically integrated undertakings have to comply either with the following points (a) to (d) or with Article 10 or with the provisions of Article 10b:***

Or. en

#### *Justification*

*This amendment introduces effective and efficient legal unbundling as alternative to ownership unbundling and ISO. It ensures effective separation of the TSO without infringing ownership and without causing the sale of either the transmission system or the production of energy.*

## **Amendment 227**

**Jorgo Chatzimarkakis, Anne Laperrouze**

### **Proposal for a directive – amending act**

#### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 - introductory part

#### *Text proposed by the Commission*

1. Member States shall ensure that as from [date of transposition plus one year]:

#### *Amendment*

1. ***In order to ensure the independence of transmission system operators***, Member States shall ensure that as from [date of transposition plus one year] ***vertically integrated undertakings have to comply:***

*-either with the provisions of this Article, and Articles 8a and 8b; or  
-with the provisions of Articles 8a, 8b and 8ba.*

*In the case of compliance with the provisions of this Article and Articles 8a and 8b, Member States shall ensure that as from [date of transposition plus one year]:*

Or. en

#### *Justification*

*This change enables Member States to choose between ownership unbundling and effective and efficient unbundling. It is tied to the AMD on Art. 28, in which the Commission is asked to review whether effective and efficient unbundling is sufficient to attain effective competition and report back to the European Parliament and the Council.*

#### **Amendment 228** **Šarūnas Birutis**

#### **Proposal for a directive – amending act**

#### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point (a)

#### *Text proposed by the Commission*

(a) each undertaking which owns a transmission system acts as a transmission system operator;

#### *Amendment*

(a) each undertaking which owns a transmission system acts as a transmission system operator ***or has an associated transmission system operator***;

Or. en

#### *Justification*

*The directive should be flexible enough to allow pragmatic regional and/or interim solutions: This would allow delegation of system operation to trans-national units.*

**Amendment 229**  
**Miloslav Ransdorf**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point (a)

*Text proposed by the Commission*

*Amendment*

*(a) each undertaking which owns a transmission system acts as a transmission system operator;* **deleted**

Or. en

*Justification*

*The deletion of this letter in Article 8 implies that the transmission system operator could be not only the owner of the transmission assets as a whole, but also could have no assets at all or could be the owner of part of transmission assets. Nevertheless, and in any case, the same requirements would apply.*

**Amendment 230**  
**Reino Paasilinna**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point (b)

*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***:

Or. en

**Amendment 231**  
**Miloslav Ransdorf**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point (b) - point (i)

*Text proposed by the Commission*

(i) to directly or indirectly exercise control over an undertaking performing any of the functions of generation 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,***

*Amendment*

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

Or. en

*Justification*

*The amendment to this letter is justified by the fact that its wording appears unclear and not sufficiently precise and could lead to uncertainty.*

**Amendment 232**  
**Reino Paasilinna**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point (b) - point (i)

*Text proposed by the Commission*

(i) to directly or indirectly exercise control over an undertaking performing any of the functions of generation 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,

*Amendment*

(i) to directly or indirectly exercise control over an undertaking performing any of the functions of generation or supply, and to directly or indirectly exercise control over a transmission system operator or over a transmission system,

Or. en

## **Amendment 233**

**Manuel António dos Santos**

### **Proposal for a directive – amending act**

#### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point (b) - point (i)

#### *Text proposed by the Commission*

(i) to directly or indirectly exercise control over an undertaking performing any of the functions of generation 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,

#### *Amendment*

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

Or. en

#### *Justification*

*It is understood that is not necessary to prevent minority shares as long as they do not interfere with the activity control. The existence of minority shares does not compromise the operators' independence.*

## **Amendment 234**

**Miloslav Ransdorf**

### **Proposal for a directive – amending act**

#### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point (b) - point (ii)

#### *Text proposed by the Commission*

(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 generation or supply;

#### *Amendment*

(ii) to directly or indirectly exercise control over a transmission system operator, 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 generation or supply;

*Justification*

*The amendment to this letter is justified by the fact that its wording appears unclear and not sufficiently precise and could lead to uncertainty.*

**Amendment 235**  
**Reino Paasilinna**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 1 – point (b) - point (ii)

*Text proposed by the Commission*

(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 generation or supply;

*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 over an undertaking performing any of the functions of generation or supply;

**Amendment 236**  
**Manuel António dos Santos**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 1 – point (b) - point (ii)

*Text proposed by the Commission*

(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

*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 exercise any right over an undertaking performing any of the functions of generation or



functions of generation or supply;

supply;

Or. en

*Justification*

*It is understood that is not necessary to prevent minority shares as long as they do not interfere with the activity control. The existence of minority shares does not compromise the operators' independence.*

**Amendment 237**

**Reino Paasilinna**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – 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 generation or supply;***

***deleted***

Or. en

**Amendment 238**

**Miloslav Ransdorf**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point (c)

*Text proposed by the Commission*

*Amendment*

c) the same person or the same persons are

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 generation or supply;

not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator, 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 generation or supply;

Or. en

*Justification*

*The amendment to this letter is justified by the fact that its wording appears unclear and not sufficiently precise and could lead to uncertainty.*

**Amendment 239**  
**Angelika Niebler**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 1 – point (d a) (new)

*Text proposed by the Commission*

*Amendment*

***"(da) the same person or the same persons are not entitled to operate the transmission system via management contract or exercise influence in any other way of non-ownership, 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 generation or supply."***

Or. en

*Justification*

*This amendment aims to strengthen the ownership unbundling provisions.*

**Amendment 240**  
**Reino Paasilinna**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 2

*Text proposed by the Commission*

**2. The interests and rights referred to in paragraphs 1(b) shall include, in particular:**

***(a) the ownership of part of the capital or of the business assets, or***

***(b) the power to exercise voting rights, or***

***(c) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, or***

***(d) the right to obtain dividends or other shares of the benefits.***

*Amendment*

**2. Provided that the requirements in point (b) of paragraph 1 are respected, two distinct public bodies can control, on one hand, generation and supply activities and, on the other, transmission activities.**

Or. en

**Amendment 241**  
**Manuel António dos Santos**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 2

*Text proposed by the Commission*

**2. The *interests and* rights referred to in paragraphs 1(b) shall include, in particular:**

***(a) the ownership of part of the capital or of the business assets, or***

***(b) the power to exercise voting rights, or***

*Amendment*

**2. The rights referred to in *paragraph 1, point (b)* shall include, in particular:**

***(a) the power to exercise voting rights, or***

(c) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, *or*

***(d) the right to obtain dividends or other shares of the benefits.***

(b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking.

Or. en

### *Justification*

*The operator's independence is not compromised with the ownership of part of the capital, of the business assets or with the right to obtain dividends or other shares of the benefits. In return the power to exercise voting rights or the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking is decisive for the control of the operator.*

## **Amendment 242**

**Lena Ek**

### **Proposal for a directive – amending act**

#### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 2

#### *Text proposed by the Commission*

2. The ***interests and*** rights referred to in *paragraphs* 1(b) shall include, in particular:

***(a) the ownership of part of the capital or of the business assets, or***

***(b) the power to exercise voting rights, or***

***(c) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, or***

***(d) the right to obtain dividends or other shares of the benefits.***

#### *Amendment*

2. The rights referred to in *paragraph* 1, ***points*** (b) ***and*** (c) shall include, in particular:

***(a) the power to exercise voting rights, or***

***(b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking.***

Or. en

**Amendment 243**  
**Eugenijus Maldeikis**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***‘3a. With regard to the specific characteristics of national and regional electricity markets, the Commission shall lay down the economic, financial, supply-security and other criteria in accordance with which compulsory and justified unbundling of vertically integrated companies is carried out.***

***The obligations imposed on vertically integrated companies under the Directive shall be proportionate to the objective pursued.’***

Or. It

**Amendment 244**  
**Eugenijus Maldeikis**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

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

Or. It

**Amendment 245**  
**Eugenijus Maldeikis**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 3 c (new)

*Text proposed by the Commission*

*Amendment*

***‘3c. Unbundling of vertically integrated companies must not give rise to an increase in electricity tariffs for customers or other negative social consequences.’***

Or. en

**Amendment 246**  
**Reino Paasilinna**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***4. Member States may allow for derogations from paragraphs 1(b) and 1(c) until [date of transposition plus two years], provided that transmission system operators are not part of a vertically integrated undertaking.***

***deleted***

Or. en

**Amendment 247**  
**Šarūnas Birutis**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – 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 10 as an independent system operator.**

**5. With respect to their obligation to achieve regional cooperation as laid down in Article 5, Member States shall endeavour to designate a transmission system operator to cover several national territories in accordance with Article 2h(3) of Regulation (EC) No 1228/2003. Member States shall take proper measures to ensure that this transmission system operator complies with this Article and Article 10a. Member States shall make use of economic incentives to promote the creation of regional system operators.**

Or. en

*Justification*

*To build larger and liquid markets stronger guidance is required for TSOs. Grid planning or operational coordination can likely not be harmonised by voluntary cooperation of TSOs. We should allow the setting up of a TSO at regional and EU level. Inter-regional cooperation is essential to enable a truly pan-European market to emerge.*

*Regional system operation should be aimed at incentivising regional operation in a cost efficient way, facilitate cross-border trade and market integration and provide investments that best fit regional needs taking into account inter-regional aspects.*

**Amendment 248**  
**Dominique Vlasto**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – 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**

**5. In order to ensure regional cooperation as laid down in Article 5a, the Member States shall encourage and support all collaboration and/or cooperation between transmission system operators and regulatory authorities aimed at**

*for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 10 as an independent system operator.*

*harmonising access and balancing rules (in favour of the integration of balancing areas) within and across several neighbouring Member States in accordance with Article 2h(3) of Regulation (EC) No 1228/2003. This cooperation may take the form of a common structure for all transmission system operators concerned, so as to cover several neighbouring territories. In this case, Member States shall ensure that this common structure of transmission system operators complies with the principles laid down in this article and in Article 10a.*

Or. fr

#### *Justification*

*Although voluntary cooperation among transmission system operators at regional level has delivered some results, a better-defined framework is needed for the regional management of networks. The Member States should give preference to regional arrangements over purely national solutions. This directive should favour the creation of a regional, or even European, system operator to allow the emergence of a genuinely pan-European market.*

#### **Amendment 249**

**Lambert van Nistelrooij**

#### **Proposal for a directive – amending act**

#### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 5

#### *Text proposed by the Commission*

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 10 as an independent system***

#### *Amendment*

5. The obligation set out in paragraph 1 *point* (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.



**operator.**

Or. en

*Justification*

*Ownership unbundling of national transport grids is the only possibility to guarantee the independence of administrators of national transport grids and to enhance transparency. It also would enable administrators of national transport grids to become more effective market facilitators. In an ISO system, the ownership of national transport grids and commercial activities remains in the same hands. Although national transport activities are strictly regulated, this results in a multitude of rules.*

**Amendment 250**

**Lena Ek**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***"5a. For the implementation of this Article, where the person referred to in points (b) to (d) of paragraph 1 is the Member State or another public body, two separate public bodies exercising control, on one hand, over a transmission system operator or over a transmission system and, on the other hand, over an undertaking performing any of the functions of generation or supply, are deemed not to be the same person or the same persons."***

Or. en

**Amendment 251**  
**Jan Březina**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***"5a. For the implementation of this Article, where the person referred to in points (b) to (d) of paragraph 1 is the Member State or another public body, two separate public bodies exercising control, on one hand, over a transmission system operator or over a transmission system and, on the other hand, over an undertaking performing any of the functions of generation or supply, are deemed not to be the same person or the same persons."***

Or. en

*Justification*

*A similar provision was suggested in the recital 12. For legal certainty it is however necessary to have this provision in legal text.*

**Amendment 252**  
**Manuel António dos Santos**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***"5a. Where the shareholder of an undertaking referred to in point (a) of paragraph 1 is the Member State, the obligations set out in points (b) and (c) of paragraph 1 are deemed to be fulfilled if the undertaking performing any of the***

*functions of generation or supply and the transmission system operator or transmission system are legally separate state entities and they behave in accordance with points (b) and (c) of paragraph 1."*

Or. en

*Justification*

*The networks separation does not imply the privatization of the activities. The public sector should be given the same opportunity to assure the generation or supply and the transmission as long as the separation of the two networks is assured.*

**Amendment 253**  
**Angelika Niebler**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 6 a-ac (new)

*Text proposed by the Commission*

6. Member States shall ensure that commercially sensitive information referred to in Article 12 held by a transmission system operator which was part of a vertically integrated undertaking, and the staff of such a transmission system operator, are not transferred to undertakings performing any of the functions of generation and supply.

*Amendment*

6. Member States shall ensure:

*(a) that commercially sensitive information referred to in Article 12 held by a transmission system operator which was part of a vertically integrated undertaking, and the staff of such a transmission system operator, are not transferred to undertakings performing any of the functions of generation and supply;*  
*(aa) that transmission system operators establish and implement a compliance programme which sets out measures to be*

*taken to ensure that discriminatory conduct is excluded and transparency obligations are respected; the programme shall also set out the specific obligations of employees of the transmission system operator to meet this objective; compliance with these obligations shall be independently monitored by the compliance officer; the national regulatory authority shall have the power to impose sanctions on transmission system operators in case of inappropriate implementation of the compliance program;*

*(ab) that transmission system operators appoint a person or a body in a function of a compliance officer who shall be responsible for:*

*(i) monitoring the implementation of the compliance programme;*

*(ii) elaborating an annual compliance report and submitting it to the national regulatory authority;*

*(iii) issuing recommendations on the compliance programme and its implementation;*

*(ac) that the independence of the compliance officer is guaranteed, in particular by terms of the employment contract, and that the compliance officer has access to all relevant books, records and offices of the transmission system operators and to all necessary information for the proper fulfilment of the tasks.*

Or. en

#### *Justification*

*This amendment aims to strengthen the ownership unbundling provisions.*

**Amendment 254**  
**Angelika Niebler**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***"6a. Member States shall ensure that the transmission system operator and its shareholders refrain from any activities impairing its financial ability to fulfil its obligations despite efficient network operations (financial ring fencing)."***

Or. en

*Justification*

*This amendment aims to strengthen the ownership unbundling provisions.*

**Amendment 255**  
**Angelika Niebler**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 6 b (new)

*Text proposed by the Commission*

*Amendment*

***"6b. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system operator with paragraph 6, points (b) and (c). That measure designed to amend the non-essential elements of this Directive, inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)."***

Or. en

*Justification*

*Commission should have the possibility to adopt guidelines that ensure the compliance with the obligations in Article 8 paragraph 6 (new).*

**Amendment 256**

**Jorgo Chatzimarkakis, Anne Laperrouze**

**Proposal for a directive – amending act**

**Article 1 – point 5 – introductory part**

Directive 2003/54/EC

*Text proposed by the Commission*

(5) The following Articles 8a **and** 8b are inserted:

*Amendment*

(5) The following Articles 8a, 8b **and 8c** are inserted:

Or. en

**Amendment 257**

**Paul Rübzig**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8a

*Text proposed by the Commission*

*Article 8a*

***Control over transmission system owners and transmission system operators***

***1. Without prejudice to the international obligations of the Community, transmission systems or transmission system operators shall not be controlled by a person or persons from third countries.***

***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.***

*Amendment*

***deleted***

*Justification*

*In connection with ownership unbundling and the ISO-model, mechanisms against investment by integrated undertakings from third countries were required in order to insure that also third country undertakings are bound to ownership unbundling and ISO. Since ownership unbundling and the ISO-model should no be longer the only options, such mechanisms are not necessary any longer.*

**Amendment 258**  
**Herbert Reul**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
 Directive 2003/54/EC  
 Article 8a

*Text proposed by the Commission*

*Amendment*

*Article 8a*

*deleted*

***Control over transmission system owners and transmission system operators***

***1. Without prejudice to the international obligations of the Community, transmission systems or transmission system operators shall not be controlled by a person or persons from third countries.***

***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.***

Or. de

*Justification*

*The inflow of capital in the form of direct investment is economically desirable and strengthens EU economies. The so-called third-country clause, intended to protect European TSOs from takeovers by third-country companies, is protectionist, legally questionable and difficult to enforce.*

**Amendment 259**  
**Gunnar Hökmark**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8a – paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

2. An agreement, ***based on the ratified European Energy Charter***, concluded with one or several third countries to which the Community is party may allow for a derogation from paragraph 1.

Or. en

**Amendment 260**

**Paul Rübig**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8b

*Text proposed by the Commission*

*Article 8b*

***Designation and certification of transmission system operators***

***1. Undertakings which own a transmission system and which have been certified by the national regulatory authority as having complied with the requirements of Article 8(1) and 8a, pursuant to the certification procedure below, shall be approved and designated as transmission system operators by Member States. The designation of transmission system operators shall be notified to the Commission and published in the Official Journal of the European Union.***

*Amendment*

*deleted*



***2. Without prejudice to the international obligations of the Community, where certification is requested by a transmission system owner or transmission system operator controlled by a person or persons from third countries in compliance with Article 8a, it shall be denied unless the transmission system owner or transmission system operator demonstrate that there is no possibility for the entity concerned to be influenced, in violation of Article 8(1), directly or indirectly by any operator active in the production or supply of gas or electricity or by a third country.***

***3. Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with Articles 8(1) or 8a.***

***4. Regulatory authorities shall monitor the continuing compliance of transmission system operators with Articles 8(1) and 8a. They shall open a certification procedure to ensure such compliance:***

***(a) upon notification by the transmission system operator pursuant to paragraph 3;***

***(b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Articles 8(1) or 8a, or where they have reason to believe that such an infringement may have occurred; or***

***(c) upon reasoned request from the Commission.***

***5. The regulatory authorities shall adopt a decision on the certification of a transmission system operator within four months from the date of the notification***

*by the transmission system operator or from the date of the Commission request. After expiry of this period, the certification is deemed to be granted. The explicit or tacit decision of the regulatory authority may become effective only after the conclusion of the procedure set out in paragraphs 6 to 9 and only if the Commission fails to raise objections against it.*

*6. The explicit or tacit decision on the certification of a transmission system operator shall be notified without delay to the Commission by the regulatory authority, together with all the relevant information with respect to the decision.*

*7. The Commission shall examine the notification as soon as it is received. Within two months after receiving a notification, where the Commission finds that the decision of the regulatory authority raises serious doubts as to its compatibility with Articles 8(1), 8a or 8b(2), it shall decide to initiate proceedings. In such a case, it shall invite the regulatory authority and the transmission system operator concerned to submit comments. Where additional information is sought by the Commission, the two-month-period may be extended by two additional months starting from the receipt of the complete information.*

*8. Where the Commission has decided to initiate proceedings, it shall, within not more than four months of the date of such decision, issue a final decision*

*(a) not to raise objections against the decision of the regulatory authority; or.*

*(b) requiring the regulatory authority concerned to amend or withdraw its decision if it considers that Articles 8(1), 8a or 8b(2) have not been complied with.*

*9. Where the Commission has not taken a*

*decision to initiate proceedings or a final decision within the time-limits set in paragraphs 7 and 8 respectively, it shall be deemed not to have raised objections against the decision of the regulatory authority.*

*10. The regulatory authority shall comply with the Commission decision to amend or withdraw the certification decision within a period of four weeks and shall inform the Commission accordingly.*

*11. Regulatory authorities and the Commission may request from transmission system operators and undertakings performing any of the functions of generation of supply any information relevant for the fulfilment of their tasks under this Article.*

*12. Regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.*

*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 27b(3)*

Or. en

#### *Justification*

*The Commission's proposal for a certification procedure for ownership unbundled transmission system operators and independent system operators is too onerous and bureaucratic. Due implementation of the unbundling rules can also be safeguarded through ongoing monitoring and supervision of the TSOs by regulatory authorities.*

## Amendment 261

Lena Ek

### Proposal for a directive – amending act

#### Article 1 – point 5

Directive 2003/54/EC

Article 8b – paragraph 6

*Text proposed by the Commission*

6. The explicit or tacit decision on the certification of a transmission system operator shall be notified without delay to the Commission by the regulatory authority, together with all the relevant information with respect to the decision.

*Amendment*

6. The explicit or tacit decision on the certification of a transmission system operator shall be notified without delay to the Commission by the regulatory authority, together with all the relevant information with respect to the decision.

***The Commission shall act in accordance with the procedure laid down in Article x of Regulation (EC) No. 1228/2003.***

Or. en

## Amendment 262

Lena Ek

### Proposal for a directive – amending act

#### Article 1 – point 5

Directive 2003/54/EC

Article 8 b – paragraphs 7 to10

*Text proposed by the Commission*

***7. The Commission shall examine the notification as soon as it is received. Within two months after receiving a notification, where the Commission finds that the decision of the regulatory authority raises serious doubts as to its compatibility with Articles 8(1), 8a or 8b(2), it shall decide to initiate proceedings. In such a case, it shall invite the regulatory authority and the transmission system operator concerned to submit comments. Where additional information is sought by the Commission, the two-month-period may be extended by***

*Amendment*

***deleted***

*two additional months starting from the receipt of the complete information.*

**8. Where the Commission has decided to initiate proceedings, it shall, within not more than four months of the date of such decision, issue a final decision**

**(a) not to raise objections against the decision of the regulatory authority; or**

**(b) requiring the regulatory authority concerned to amend or withdraw its decision if it considers that Articles 8(1), 8a or 8b(2) have not been complied with.**

**9. Where the Commission has not taken a decision to initiate proceedings or a final decision within the time-limits set in paragraphs 7 and 8 respectively, it shall be deemed not to have raised objections against the decision of the regulatory authority.**

**10. The regulatory authority shall comply with the Commission decision to amend or withdraw the certification decision within a period of four weeks and shall inform the Commission accordingly.**

Or. en

#### *Justification*

*It is suggested to transfer, for legal reasons, at least paragraphs 7 to 10 and 13 to Regulation 1228/2003; paras 11 and 12 have to be in both the Directive and the Regulation*

**Amendment 263**

**Lena Ek**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8b – paragraph 13

**13. The Commission shall adopt guidelines setting out the details of the procedure to be followed for the**

*deleted*

***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 27b(3)."***

Or. en

*Justification*

*It is suggested to transfer, for legal reasons, at least paragraphs 7 to 10 and 13 to Regulation 1228/2003; paras 11 and 12 have to be in both the Directive and the Regulation*

**Amendment 264  
Paul Rübzig**

**Proposal for a directive – amending act  
Article 1 – point 5  
Directive 2003/54/EC  
Article 8b – 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 27b(3).***

***deleted***

Or. de

*Justification*

*Rules, including procedural rules, on the designation of transmission system operators affect property rights and constitute an intervention in the Member States' economic and legal structures. It is quite clear that it is not a non-essential matter at stake here.*

**Amendment 265**  
**Gunnar Hökmark**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8b – 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 27b(3)***

***deleted***

Or. en

*Justification*

*Deletion of comitology procedure.*

**Amendment 266**  
**Herbert Reul**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8b – 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 27b(3).***

***deleted***

*Justification*

*The designation and certification of transmission system operators is a key part of the directive and should be central to the directive's regulatory framework, which should be determined by the Member States themselves. Comitology, a procedure lacking in transparency, is not the right instrument in this case.*

**Amendment 267**

**Jorgo Chatzimarkakis, Anne Laperrouze**

**Proposal for a directive – amending act****Article 1 – point 5 a (new)**

Directive 2003/54/EC

Article 8b a (new)

*Text proposed by the Commission*

*Amendment*

***(5a) The following article shall be inserted:***

***"Article 8ba***

***I. Effective and efficient unbundling of transmission systems***

***1. Transmission system operators shall be equipped with all human, physical and financial resources of the vertically integrated undertaking which are required for the regular business of electricity transmission, in particular:***

***(a) transmission system operator shall own assets necessary for the regular business of electricity transmission;***

***(b) transmission system operator shall employ personnel required for the regular business of electricity transmission;***

***(c) the leasing of personnel and provision of services to and from any branch of the vertically integrated undertaking performing functions of generation or supply shall be limited to cases with no discriminatory potential and be subject to approval by national regulatory***



*authorities in order to exclude competition concerns and conflicts of interest;*

*(d) appropriate financial resources for future investment projects shall be made available in due time.*

*2. The activities deemed necessary for the regular business of electricity transmission referred to in paragraph 1 shall include at least:*

*- representation of the transmission system operator, contacts with third parties and the regulatory authorities;*

*- granting and managing third party access to the grid;*

*- collection of access charges;*

*- congestion rents and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003;*

*- operation, maintenance and development of the transmission system;*

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

*- legal services;*

*- accountancy and IT services.*

*3. The transmission system operator shall have its own corporate identity, significantly different from the vertically integrated undertaking with separate branding, communication and premises.*

*4. The accounts of transmission system operators shall be audited by a different auditor than the one auditing the vertically integrated undertaking and all its affiliated companies.*

*II. Independence of the transmission system operator management, chief*

*executive officer/executive board*

***5. Decisions on the appointment and on any early termination of the employment of the chief executive officer and other members of the executive board of the transmission system operator and on the conclusion and early termination of the respective employment agreements with such persons shall be notified to the national regulatory authority or another competent national public authority. These decisions and agreements become binding unless the regulatory authority or any other competent national public authority uses its right of veto within a period of 3 weeks following the notification. A veto may be issued in case of appointment and conclusion of an agreement posing serious doubts as to the professional independence of the nominated chief executive officer or the member of the executive board; in the case of early termination of employment of those persons, the veto may be used if serious doubts exist as regards the basis for such termination.***

***6. An effective right of appeal to the national regulatory authority or any other competent national public authority or court shall be guaranteed for chief executive officer or the member of the executive board of the transmission system operator regarding the early termination of their employment.***

***7. After termination of employment by the transmission system operator, the relevant former chief executive officers and members of the executive board shall not work in any capacity in any branch of the vertically integrated undertaking performing functions of generation or supply for a period of not less than 3 years.***

***8. The chief executive officer and members of the executive board of the transmission system operator shall not***

*hold any interest in, or receive any compensation from, any undertaking of the vertically integrated company other than the transmission system operator. Remuneration of the chief executive officer and members of the executive board shall in no part depend on activities of the vertically integrated undertaking other than those of the transmission system operator.*

*9. The chief executive officer or the members of the executive board of the transmission system operator shall not bear responsibility, directly or indirectly, for the day-to-day operation of any other branch of the vertically integrated undertaking.*

*10. Without prejudice to the provisions of this Article, the transmission system operator shall have effective decision-making powers independent from the integrated electricity 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 are protected in respect of a return on assets in a subsidiary, as indirectly regulated in accordance with Article 22c. In particular, this shall enable the parent company to approve the annual financial plan or any equivalent instrument of the transmission system operator and to set overall limits on the level of indebtedness of its subsidiary. If the annual financial plan, or any equivalent financial plan, is not approved or changed by the parent company, the case shall be referred to the regulatory authority for a decision. The parent company shall not be permitted to give instructions in day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission lines that do not exceed*

*the terms of the approved financial plan or any equivalent instrument.*

*11. Chairmen of the supervisory board or the board of directors of the transmission system operator shall not work in any capacity in any part of the vertically integrated undertaking performing functions of generation or supply.*

*12. The supervisory boards or boards of directors of transmission system operator shall consist of independent members, appointed for a term of at least 5 years. Their appointment shall be notified to the national regulatory authority or any other competent national public authority and become binding under the conditions laid down in paragraph 5.*

*13. For the purposes of paragraph 12, a member of the supervisory board or board of directors of a transmission system operator shall be deemed independent if he/she is free of any business or other relationship within the vertically integrated undertaking, its controlling shareholders or the management of either that creates a conflict of interest, in particular:*

*(a) has not been an employee of any branch of the vertically integrated undertaking performing functions of generation and supply in five years prior to his/her appointment to the supervisory board or board of directors;*

*(b) does not hold any interest in and does not receive any compensation from the vertically integrated undertaking or any of its affiliates except the transmission system operator;*

*(c) does not hold any relevant business relationship with any branch of the vertically integrated company performing functions of electricity supply during his/her appointment to the supervisory board or board of directors;*

*(d) is not a member of the executive board of a company in which the vertically integrated undertaking appoints members of the supervisory board or board of directors.*

*14. Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out measures to be taken to ensure that discriminatory conduct does not occur. The programme shall also set out specific obligations of employees to meet this objective. It shall be subject to the approval of the national regulatory authority or any other competent national public authority. Compliance with the program shall be independently monitored by the compliance officer. The national regulatory authority shall have the power to impose sanctions on transmission system operator in case of inappropriate implementation of the compliance program.*

*15. The chief executive officer or executive board of the transmission system operator shall appoint a person or a body in a function of a compliance officer who shall be responsible for:*

*(a) monitoring the implementation of the compliance programme;*

*(b) producing an annual report which sets out the measures to be taken in order to implement the compliance programme and submitting it to the national regulatory authority;*

*(c) issuing recommendations on the compliance programme and its implementation.*

*16. The independence of the compliance officer shall be guaranteed in particular by the terms of his employment contract.*

*17. The compliance officer shall have the opportunity to regularly address the supervisory board or board of directors of the transmission system operator of the*

*vertically integrated undertaking and the national regulatory authorities.*

*18. The compliance officer shall participate in all meetings of the supervisory board or board of directors of the transmission system operator that address the following issues:*

*(a) conditions for access and connection to the grid, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003;*

*(b) projects undertaken in order to operate, maintain and develop the transmission grid system, including interconnection and connection investments;*

*(c) balancing rules, including reserve power rules;*

*(d) energy purchases in order to cover energy losses.*

*19. During these meetings, the compliance officer shall prevent information about generation or supply activities which may be commercially sensitive from being disclosed in a discriminatory manner to the supervisory board or board of directors.*

*20. The compliance officer shall have access to all relevant books, records and offices of the transmission system operator, as well as to all information required for proper performance of his/her duties.*

*21. The compliance officer shall be nominated and removed by the chief executive officer or executive board after the prior approval by the national regulatory authority.*

*22. Transmission system operators shall draw up a 10-year network development plan at least every two years. They shall*

*provide efficient measures in order to guarantee system adequacy and security of supply.*

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

*(a) indicate to market participants the main transmission infrastructures that should preferably be built over the next ten years;*

*(b) contain all the investments already decided on and identify new investments for which an implementation decision has to be taken in the next three years.*

**24. In order to draw up this 10-year network development plan, each transmission system operator shall make a reasonable hypothesis as to the evolution of generation, consumption and exchanges with other countries, and shall take into account regional and European-wide existing network investment plans. The transmission system operator shall submit in due time the draft of this plan to the national regulatory authority.**

**25. The national regulatory authority shall consult all relevant network users on the basis of such draft in an open and transparent manner and may publish the result of the consultation process, in particular the possible investment needs.**

**26. The national regulatory authority shall examine whether the draft 10-year network development plan covers all investment needs identified in the consultation. The authority may oblige the transmission system operator to amend its draft.**

**27. If the transmission system operator rejects the implementation of a specific investment listed in the 10-year network development plan to be undertaken in the next three years, Members States shall ensure that the national regulatory authority or any other competent national public authority have the necessary**

*powers to implement one of the two following measures:*

*(a) request the transmission system operator to undertake, by all legal means, its investment obligations using its own financial means;*

*(b) invite independent investors to a tender for the necessary investment in a transmission system and, in so doing, may oblige the transmission system operator:*

*- to agree to financing by any third party;*

*- to agree to the provision of construction works by any third party and to the construction of the new assets;*

*- to agree to operate the new assets.*

*The relevant financial arrangements shall be subject to the approval of the national regulatory authority or any other competent national authority. In both cases, tariff regulation shall allow for revenues that cover the costs of such investments.*

*28. The competent national public authority shall monitor and evaluate the implementation of the investment plan.*

*29. Transmission system operators shall be obliged to establish and publish transparent and efficient procedures for the non-discriminatory connection of new power plants to the grid. Those procedures shall be subject to the approval of national regulatory authorities or any other competent national public authority.*

*30. Transmission system operators shall not be entitled to refuse the connection of a new power plant on the grounds of possible future limitations to available network capacities, e.g. congestion in remote parts of the transmission grid. The transmission system operators shall be obliged to supply the necessary information.*



***31. Transmission system operators shall not be entitled to refuse a new connection point on the sole basis that this new connection would lead to additional costs because of the required capacity increase of grid elements within close range of that new connection point."***

Or. en

*Justification*

*Member States that have not implemented ownership unbundling are given the opportunity to further liberalise their markets without having to resort to ownership unbundling.*

**Amendment 268**  
**Nicole Fontaine**

**Proposal for a directive – amending act**  
**Article 1 – point 5 a (new)**  
Directive 2003/54/EC  
Article 8b a (new)

*Text proposed by the Commission*

*Amendment*

***(5a) The following article shall be inserted:***

***"Article 8ba***

***Effective and efficient unbundling of transmission systems***

***I. Assets, equipment, staff and identity***

***1. Transmission system operators shall be equipped with all human, physical and financial resources of the vertically integrated undertaking necessary for the regular business of electricity transmission, in particular:***

***(a) transmission system operator shall own assets that are necessary for the regular business of electricity transmission ;***

*(b) transmission system operator shall employ personnel necessary for the regular business of electricity transmission;*

*(c) leasing of personnel and rendering of services, from and to any branch of the vertically integrated undertaking performing functions of generation or supply, shall be limited to cases with no discriminatory potential and be subject to approval by national regulatory authority in order to exclude competition concerns and conflicts of interest;*

*(d) appropriate financial resources for future investment projects shall be available in due time.*

*2. The activities deemed necessary for the regular business of electricity transmission mentioned in paragraph 1 shall at least include :*

- representation of the transmission system operator and contacts with third parties and national regulatory authorities,*
- granting and managing third party access to the grid,*
- collection of the access charges, congestion rents and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No. 1228/2003,*
- operation, maintenance and development of the transmission system,*
- investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply,*
- legal services,*
  
- accountancy and IT services.*

*3. Transmission system operators shall have a legal form of a joint-stock company.*

*4. The transmission system operator shall have its own corporate identity, significantly different from the vertically*

*integrated undertaking with separate branding, communication and premises.*

*5. Transmission system operators' accounts shall be audited by another auditor than the one auditing the vertically integrated undertaking and all its affiliated companies.*

*II. Independence of the TSO management, chief executive officer / executive board*

*6. Decisions on the appointment and on early termination of the employment of the chief executive officer and members of the executive board of the transmission system operator and on conclusion or early termination of the respective employment contracts with these persons shall be notified to the national regulatory authority or any other competent national public authority. These decisions and agreements become binding only if, within a period of 3 weeks after the notification, the national regulatory authority or any other competent national public authority has not used its right of veto. A veto may be used if an appointment and conclusion of respective agreement poses serious doubts as to the professional independence of the nominated chief executive officer or member of the executive board; in the case of early termination of employment and of respective agreements of these persons, the right of veto may be used by the national regulatory authority or any other competent national public authority if serious doubts exist regarding the basis and justification of such termination.*

*7. Right to appeal to the national regulatory authority or another competent national public authority or to a court shall be guaranteed to the chief executive officer and member of the executive board of the transmission system operator in case of early terminations of their employment.*

*8. After termination of employment in the*

*transmission system operator, chief executive officers / members of the executive board shall not participate in any branch of the vertically integrated undertaking performing functions of generation or supply for a period of not less than 3 years.*

*9. The chief executive officer / members of the executive board shall not hold any interest in or receive any compensation from any undertaking of the vertically integrated company other than the transmission system operator.*

*Remuneration of the chief executive officer / members of the executive board shall in no part depend on activities of the vertically integrated undertaking other than those of the transmission system operator.*

*10. The chief executive officer or the members of the executive board of the transmission system operator shall not bear responsibility, directly or indirectly, for the day-to-day operation of any other branch of the vertically integrated undertaking.*

*11. Without prejudice to the provisions above, the transmission system operator shall have effective decision-making rights, independent from the integrated electricity 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, regulated indirectly in accordance with Article 22c, 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 transmission 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 transmission lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument.*

### *III. Supervisory board / Board of directors*

*12. Chairmen of the supervisory board/board of directors of the transmission system operator shall not participate in any branch of the vertically integrated undertaking performing functions of generation or supply.*

*13. The supervisory boards / boards of directors of transmission system operator shall consist of independent members, appointed for a term of at least 5 years. Their number is set up by the competent authority in a way of ensuring that electricity generators or suppliers shall not have, solely or collectively, the majority of the seats in the transmission system operator 's Supervisory Board/Board of directors. Appointment of the members of the supervisory board / board of directors shall be notified to the national regulatory authority/ or any other competent national public authority and become binding under the conditions described in paragraph 6.*

*14. For the purpose of paragraph 13, a member of the supervisory board / board of directors of a transmission system operator shall be deemed independent if he is free of any business, or other relationship with the vertically integrated undertaking, its controlling shareholders or the management of either, that creates a conflict of interest, in particular:*

*(a) has not been an employee of any branch of the vertically integrated*

*undertaking performing functions of generation and supply in five years prior to their appointment as a member of the supervisory board / board of directors;*

*(b) does not hold any interest in and does not receive any compensation from the vertically integrated undertaking or any of its affiliates except the transmission system operator;*

*(c) does not hold any relevant business relationship with any branch of the vertically integrated company performing functions of energy supply during his/her appointment as a member of the supervisory board / board of directors;*

*(d) is not a member of the executive board of a company in which the vertically integrated undertaking appoints members of the supervisory board / board of directors.*

#### *IV. Compliance officer*

*15. Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out measures to be taken to ensure that discriminatory conduct is excluded and to assess the users' satisfaction with the quality of the provided service, its cost and the fulfilment of the contractual commitments of the transmission system operator. The programme shall also set out specific obligations of transmission system operator's employees to meet this objective. The programme shall be subject to approval of the national regulatory authority or any other competent national public authority. Compliance of the program shall be independently monitored by the compliance officer. The national regulatory authority shall have the power to impose sanctions in case of inappropriate implementation of the*

*compliance program by the transmission system operator.*

*16. The chief executive officer / executive board of the transmission system operator shall appoint a person or a body in a function of a compliance officer who shall be responsible for :*

*(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 national regulatory authority;*

*(c) issuing recommendations on the compliance programme and its implementation.*

*17. The independence of the compliance officer shall be guaranteed in particular by the terms of his/her employment contract.*

*18. The compliance officer shall have the opportunity to regularly address the supervisory board/board of directors of the transmission system operator and, of the vertically integrated undertaking and national regulatory authorities.*

*19. The compliance officer shall participate at all meetings of the supervisory board / board of directors of the transmission system operator that address the following issues :*

*(a) conditions for access and connection to the grid, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003;*

*(b) projects undertaken in order to*

*operate, maintain and develop the transmission grid system, including interconnection and connection investments;*

*(c) balancing rules, including reserve power rules;*

*(d) energy purchases in order to cover energy losses.*

*20. During these meetings, the compliance officer shall prevent information about generation or supply activities which may be commercially advantageous from being disclosed in a discriminatory manner to the supervisory board/board of directors.*

*21. The compliance officer shall have access to all relevant books, records and offices of the transmission system operator and to all necessary information for proper fulfilment of his/her tasks.*

*The compliance officer shall be nominated and removed by the chief executive officer / executive board only after the prior approval by the national regulatory authority.”*

Or. en

#### *Justification*

*This amendment takes up the alternative solution of ‘effective and efficient unbundling’. It is proposed that the number of independent members appointed to the supervisory board or board of directors of a TSO should be determined by the competent authority to ensure that no electricity producer or supplier can occupy more than half the seats on the board. The role of the compliance officer is strengthened to ensure that TSOs can meet their customers’ needs at the best cost.*



**Amendment 269**

**Herbert Reul, Nicole Fontaine, Erna Hennicot-Schoepges, Nikolaos Vakalis, Angelika Niebler, Ján Hudacký, Vladimir Urutchev, Werner Langen, Paul Rübig, Dominique Vlasto**

**Proposal for a directive – amending act**

**Article 1 – point 5 a (new)**

Directive 2003/54/EC

Article 8b a (new)

*Text proposed by the Commission*

*Amendment*

***(5a) The following article shall be inserted:***

***"Article 8ba***

***Effective and efficient unbundling of transmission systems***

***I. Assets, equipment, staff and identity***

***Transmission system operators shall be equipped with all human, physical and financial resources of the vertically integrated undertaking necessary for the regular business of electricity transmission, in particular:***

***(a) transmission system operator shall own assets that are necessary for the regular business of electricity;***

***(b) transmission system operator shall employ personnel necessary for the regular business of electricity transmission;***

***(c) leasing of personnel and rendering of services, from and to any branch of the vertically integrated undertaking performing functions of generation or supply, shall be limited to cases with no discriminatory potential and be subject to approval by national regulatory authorities in order to exclude competition concerns and conflicts of interest;***

*(d) appropriate financial resources for future investment projects shall be available in due time.*

*2. The activities deemed necessary for the regular business of electricity transmission mentioned in paragraph 1 shall at least include :*

*(a) representation of the transmission system operator and contacts with third parties and national regulatory authorities;*

*(b) granting and managing third party access to the grid;*

*(c) collection of the access charges, congestion rents and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No. 1228/2003;*

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

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

*(f) legal services;*

*(g) accountancy and IT services.*

*3. Transmission system operators shall have a legal form of a joint-stock company.*

*4. The transmission system operator shall have its own corporate identity, significantly different from the vertically integrated undertaking with separate branding, communication and premises.*

*5. Transmission system operators' accounts shall be audited by another auditor than the one auditing the*

*vertically integrated undertaking and all its affiliated companies.*

***II. Independence of the transmission system operator management, chief executive officer / executive board***

***6. Decisions on the appointment and on any early termination of the employment of the chief executive officer / members of the executive board of the transmission system operator and the conclusion or early termination of respective employment contracts with these persons shall be notified to the national regulatory authority or any other competent national public authority. These decisions and agreements become binding only if, within a period of 3 weeks after the notification, the national regulatory authority or any other competent national public authority has not used its right of veto. A veto may be used in the case of appointment and conclusion of respective contractual agreements if serious doubts arise as to the professional independence of the nominated chief executive officer / member of the executive board; in the case of early termination of employment and respective employment contracts with the chief executive officer / member of the executive board, the national regulatory authority or any other competent national public authority may use its right of veto if serious doubts exist regarding the basis and justification for such termination.***

***7. Right of appeal to the regulatory authority or another competent national public authority or to a court shall be guaranteed to the chief executive officer or the member of the executive board of the transmission system operator in case of early terminations of their employment.***

***8. After termination of employment in the transmission system operator, chief executive officers / members of the***

*executive board shall not participate in any branch of the vertically integrated undertaking performing functions of generation or supply for a period of not less than 3 years.*

*9. The chief executive officer / members of the executive board shall not hold any interest in or receive any compensation from any undertaking of the vertically integrated company other than the transmission system operator. His/their remuneration shall in no part depend on activities of the vertically integrated undertaking other than those of the transmission system operator.*

*10. The chief executive officer or the members of the executive board of the transmission system operator shall not bear responsibility, directly or indirectly, for the day-to-day operation of any other branch of the vertically integrated undertaking.*

*11. Without prejudice to the provisions above, the transmission system operator shall have effective decision-making rights, independent from the integrated electricity 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, regulated indirectly in accordance with Article 22c, 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 transmission 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 transmission lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument.*

### *III. Supervisory board / Board of directors*

*12. Chairmen of the supervisory board/board of directors of the transmission system operator shall not participate in any branch of the vertically integrated undertaking performing functions of generation or supply.*

*13. The supervisory boards / boards of directors of transmission system operator shall consist of independent members, appointed for a term of at least 5 years. Their appointment shall be notified to the national regulatory authority/ or any other competent national public authority and become binding under the conditions described in paragraph 6.*

*14. For the purpose of paragraph 13, a member of the supervisory board / board of directors of a transmission system operator shall be deemed independent if he is free of any business, or other relationship with the vertically integrated undertaking, its controlling shareholders or the management of either, that creates a conflict of interest, in particular:*

*(a) has not been an employee of any branch of the vertically integrated undertaking performing functions of generation and supply in five years prior to their appointment as a member supervisory board / board of directors;*

*(b) does not hold any interest in and does not receive any compensation from the vertically integrated undertaking or any of its affiliates except the transmission system operator;*

*(c) does not hold any relevant business relationship with any branch of the vertically integrated company performing functions of energy supply during his/her*

*appointment as a member supervisory board / board of directors;*

*(d) is not a member of the executive board of a company in which the vertically integrated undertaking appoints members of the supervisory board / board of directors.*

#### *IV. Compliance officer*

*15. Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out measures to be taken to ensure that discriminatory conduct is excluded. The programme shall also set out specific obligations of employees of the transmission system operator to meet this objective. The programme shall be subject to approval of the national regulatory authority or any other competent national public authority. Compliance of the program shall be independently monitored by the compliance officer. The national regulatory authority shall have the power to impose sanctions in case of inappropriate implementation of the compliance program by the transmission system operator.*

*16. The chief executive officer / executive board of the transmission system operator shall appoint a person or a body in a function of a compliance officer who shall be responsible for :*

*(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 national regulatory authority;*

*(c) issuing recommendations on the compliance programme and its implementation.*

*17. The independence of the compliance*

*officer shall be guaranteed in particular by the terms of his/her employment contract*

*18. The compliance officer shall have the opportunity to regularly address the supervisory board/board of directors of the transmission system operator and of the vertically integrated undertaking and the national regulatory authorities.*

*19. The compliance officer shall participate at all meetings of the supervisory board / board of directors of the transmission system operator that address the following issues:*

*(a) conditions for access and connection to the grid, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003;*

*(b) projects undertaken in order to operate, maintain and develop the transmission grid system, including interconnection and connection investments;*

*(c) balancing rules, including reserve power rules;*

*(d) energy purchases in order to cover energy losses.*

*20. During these meetings, the compliance officer shall prevent information about generation or supply activities which may be commercially advantageous from being disclosed in a discriminatory manner to the supervisory board/board of directors.*

*21. The compliance officer shall have access to all relevant books, records and offices of the transmission system operator and to all necessary information for the proper fulfilment of the tasks.*

*22. The compliance officer shall be nominated and removed by the chief*

*executive officer / executive board only  
after prior approval by the national  
regulatory authority."*

Or. en

*Justification*

*This ensures effective separation without infringing ownership. Structural and financial independence of TSO from the production of vertically integrated companies will be ensured. The neutrality of TSO will be controlled by the national regulatory authority, the compliance officer and the auditor. As a second pillar of this option effective sanctions for regulators are introduced which guarantee that TSO is no more in a position that enables it to prevent investments into the grid or non-discriminatory access of new power plant projects to the grid (see amendment 4, Art. 9 below).*

**Amendment 270**

**Mechtild Rothe**

**Proposal for a directive – amending act**

**Article 1 – point 6**

Directive 2003/54/EC

Article 9 – point (a)

*Text proposed by the Commission*

*(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems 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.***

*Amendment*

*(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems with due regard to the environment, and promote energy efficiency and research and innovation, notably with respect to ensuring penetration of renewables.*

Or. en

*Justification*

*The EU has set itself a binding target of 20% renewable energy by 2020. In order to meet this target exclusively renewable energy must be promoted and not be watered down by an undefined "low carbon technology" concept.*



**Amendment 271**

**Rebecca Harms, Claude Turmes**

**Proposal for a directive – amending act**

**Article 1 – point 6**

Directive 2003/54/EC

Article 9 – point (a)

*Text proposed by the Commission*

(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems 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**.

*Amendment*

(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems with due regard to the environment, and promote energy efficiency and research and innovation with respect to **integrating renewables and embedded generation in the grid system**.

Or. en

*Justification*

*The function of the TSO is to ensure the long term ability of the system to meet the demands placed upon it by both economic and environmental conditions and not to research specific supply side technologies.*

**Amendment 272**

**Hannes Swoboda**

**Proposal for a directive – amending act**

**Article 1 – point 6**

Directive 2003/54/EC

Article 9 – point (a)

*Text proposed by the Commission*

(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under

*Amendment*

(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under

economic conditions secure, reliable and efficient transmission systems 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.

economic conditions secure, reliable and efficient transmission systems with due regard to the environment, and **promotion of** energy efficiency and research and innovation notably with respect to ensuring penetration of renewables and dissemination of low carbon technology; ***working towards the development of smart grids with special use of information technologies within 10 years to be set against an incremental time table in consultation with the national regulatory authorities and the Agency; when developing the grids, the transmission system operator shall be responsible for planning, (including authorisation procedure) construction and commissioning of the new infrastructure.***

Or. en

#### *Justification*

*The development of Smart Grids will encourage environmentally conscious behaviour and improve consumers' role in positively influencing the market. Clear lines of demarcation need to be drawn to ensure that everyone knows where the responsibility lies.*

#### **Amendment 273**

**Rebecca Harms, Claude Turmes**

**Proposal for a directive – amending act**

**Article 1 – point 6 a (new)**

Directive 2003/54/EC

Article 9 – point (c)

*Text proposed by the Commission*

*Amendment*

***(6a) In Article 9, point (c) shall be replaced by the following:***

**"(c) managing energy flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient**

**electricity system and, in that context, for ensuring the availability of all necessary ancillary services, *including those provided by demand response*, insofar as this availability is independent from any other transmission system with which its system is interconnected;”**

Or. en

*(Adding the concept of "demand response" to Article 9 point (c) of Directive 2003/54/EC)*

*Justification*

*In order to improve energy efficiency, it is important that consumers actively participate in ancillary services markets, particularly when they are able to reduce demand, thus avoiding generation increases.*

**Amendment 274**

**Šarūnas Birutis**

**Proposal for a directive – amending act**

**Article 1 – point 6 a (new)**

Directive 2003/54/EC

Article 9 – point (c)

*Text proposed by the Commission*

*Amendment*

***(6a) In Article 9, point (c) shall be replaced by the following:***

***"(c) managing energy flows on the system on the basis of common regional standards, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability and procurement of all necessary ancillary services at regional level based on common standards, insofar as this availability is independent from any other transmission system with which its system is interconnected;"***

*(Same wording as that of Article 9 point c) of Directive 2003/54/EC, changing elements to existing text)*

*Justification*

*More should be done to ensure efficient cooperation between TSOs at regional level. These should agree common standards at regional level. This would eliminate current inefficiencies related to the existence of national standards and to facilitate market activities.*

**Amendment 275**

**Šarūnas Birutis**

**Proposal for a directive – amending act**

**Article 1 – point 6 b (new)**

Directive 2003/54/EC

Article 9 – point (d)

*Text proposed by the Commission*

*Amendment*

***(6b) In Article 9, point (d) shall be replaced by the following:***

***"(d) providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation and the interoperability of the interconnected system, making common use of this information and agreeing common standards to operate, maintain and develop the system;"***

*(Same wording as that of Article 9 point d) of Directive 2003/54/EC, changing elements to existing text)*

*Justification*

*More should be done to ensure efficient cooperation between TSOs at regional level. These should agree common standards at regional level. This would eliminate current inefficiencies related to the existence of national standards and to facilitate market activities.*

**Amendment 276**  
**Šarūnas Birutis**

**Proposal for a directive – amending act**

**Article 1 – point 6 c (new)**

Directive 2003/54/EC

Article 9 – point (f)

*Text proposed by the Commission*

*Amendment*

***(6c) In Article 9, point (f) shall be replaced by the following:***

***"(f) providing system users with the information they need for efficient access to the system, on the basis of common standards."***

Or. en

*(Same wording as that of Article 9 point f) of Directive 2003/54/EC, changing elements to existing text)*

*Justification*

*More should be done to ensure efficient cooperation between TSOs at regional level. These should agree common standards at regional level. This would eliminate current inefficiencies related to the existence of national standards and to facilitate market activities.*

**Amendment 277**  
**Mechtild Rothe**

**Proposal for a directive – amending act**

**Article 1 – point 6 d (new)**

Directive 2003/54/EC

Article 9 – point (f a) (new)

*Text proposed by the Commission*

*Amendment*

***(6d) In Article 9, the following point shall be added:***

***"(fa) ensuring the development of a well interconnected European grid, notably with respect to the building of a smart European offshore grid."***

*(Adding new point fa) to Article 9 of Directive 2003/54/EC)*

*Justification*

*Besides smoothing variability, interconnection can reduce balancing costs, encourage true competition, and support the development of a smart European grid. With regard to EU's TEN-E priority project of the offshore wind power connection in Baltic and North Sea and the potential of Europe's offshore wind energy resources, TSO's have to ensure the development of a smart European offshore grid.*

**Amendment 278**

**Nicole Fontaine, Dominique Vlasto**

**Proposal for a directive – amending act**

**Article 1 – point 6 d (new)**

Directive 2003/54/EC

Article 9 – point (f a) (new)

*Text proposed by the Commission*

*Amendment*

***(6d) In Article 9, the following point shall be inserted:***

***"(fa) drawing up an estimate of the adequacy of the electricity system, the results of which should be taken into account in the European estimate referred to in Regulation (EC) No 1228/2003."***

Or. fr

*(Adding new point fa) to Article 9 of Directive 2003/54/EC)*

*Justification*

*Estimates of the supply-demand balance should be drawn up by the TSOs in order to monitor the adequacy of generation capacity in relation to growing demand. This task is necessary so that, at European level, the group of TSOs can produce an estimate for the whole Union.*

## **Amendment 279**

**Rebecca Harms, Claude Turmes**

### **Proposal for a directive – amending act**

#### **Article 1 – point 6 d (new)**

Directive 2003/54/EC

Article 9 – point (f a) (new)

*Text proposed by the Commission*

*Amendment*

***(6d) In Article 9, the following point shall be inserted:***

***“(fa) maximising the transmission capacity offered to the market and shall not discriminate between suppliers inside and outside their home country when allocating and interrupting capacity on both sides of the border.”***

Or. en

*(Adding a new point (fa) to Article 9 of Directive 2003/54/EC)*

#### *Justification*

*The tasks of TSOs need to be strengthened to ensure that use of existing capacity is maximized on a non-discriminatory basis and new infrastructure is built where there is a market demand. These changes are essential for the integration of the European energy market.*

## **Amendment 280**

**Nicole Fontaine, Dominique Vlasto**

### **Proposal for a directive – amending act**

#### **Article 1 – point 6 e (new)**

Directive 2003/54/EC

Article 9 – point (f b) (new)

*Text proposed by the Commission*

*Amendment*

***(6e) In Article 9, the following point shall be inserted:***

***“(fb) creating a TSO maintenance programme to ensure adequate supply quality. Compliance with this maintenance programme should be***

***monitored by the competent national public authority.”***

Or. fr

*(Adding new point fb) to Article 9 of Directive 2003/54/EC)*

*Justification*

*TSOs should be required to formalize a network maintenance programme, under the control of the competent public authority. This programme would ensure that the infrastructure was well maintained and remained in good condition.*

**Amendment 281**  
**Dominique Vlasto**

**Proposal for a directive – amending act**

**Article 1 – point 6 f (new)**

Directive 2003/54/EC

Article 9 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(6f) In Article 9, the following paragraph shall be inserted:***

***"In carrying out its tasks, each transmission system operator shall ensure that the benefit of the region it is operating in is duly taken into account. Without prejudice to the shareholders' rights related to investment profitability and equity needs, operational and investment decisions taken by a transmission system operator shall be consistent with the Community-wide and regional investment plans pursuant to Articles 2c and 2d of the Regulation (EC) No 1228/2003 and shall facilitate market development, market integration and optimize socio-economic welfare gains at least at regional level."***

Or. en



*(Adding a new paragraph 1a in Article 9 of Directive 2003/54/EC)*

*Justification*

*This new provision aims at ensuring that transmission system operators always consider as first priority the needs of the region they operate in. In particular, they should ensure that the socio-economic welfare is improved inside their region and even beyond (across regions).*

**Amendment 282**

**Herbert Reul, Nicole Fontaine, Erna Hennicot-Schoepges, Nikolaos Vakalis, Angelika Niebler, Ján Hudacký, Vladimir Urutchev, Werner Langen, Paul Rübzig, Dominique Vlasto**

**Proposal for a directive – amending act**

**Article 1 – point 6 g (new)**

Directive 2003/54/EC

Article 9 – paragraphs 1a to 1 k (new)

*Text proposed by the Commission*

*Amendment*

***(6g) In Article 9, the following paragraphs shall be inserted:***

***"Transmission system operators shall elaborate a 10-year network development plan at least every two years. They shall provide efficient measures in order to guarantee system adequacy and security of supply.***

***The 10-year network development plan shall in particular :***

***a) indicate to market participants the main transmission infrastructures that ought to be built over the next ten years,***

***b) contain all the investments already decided and identify new investments for which an implementation decision has to be taken in the next three years.***

***In order to elaborate this 10-year network development plan, each transmission system operator shall make reasonable hypothesis about the evolution of generation, consumption and exchanges with other countries, and shall take into account regional and European-wide***

*existing network investment plans. Transmission system operators shall submit in due time the draft of this plan to the competent national body.*

*The competent national body shall consult all relevant network users on the basis of such draft in an open and transparent manner and may publish the result of the consultation process, in particular possible needs for investments.*

*The competent national body shall examine whether the draft 10-year network development plan covers all investment needs identified in the consultation. The competent national body may oblige the transmission system operator to amend its draft of the plan.*

*Competent national body may be the national regulatory authority, any other competent national public authority or a network development trustee constituted by transmission system operators. In the latter case, transmission system operators shall submit the drafts of the statutes, the list of members and of the rules of procedure to the approval of the competent national public authority.*

*If the transmission system operator rejects to implement a specific investment listed in the 10-year network development plan to be executed in the next three years, Members States shall ensure that the national regulatory authority or any other competent national public authority have the competence to take one of the following measures:*

*a) request by all legal means the transmission system operator to execute its investment obligations by using its financial capacities or,*

*b) invite independent investors to participate in a tender for necessary investment in a transmission system and may at the same time oblige the transmission system operator:*

*(i) to agree to financing by any third party,*

*(ii) to agree to building by any third party or to build the respective new assets and*

*(iii) to operate the respective new asset.*

*The relevant financial arrangements shall be subject to the approval of the national regulatory authority or any other competent national public authority. In both cases, tariff regulation shall allow for revenues that cover the costs of such investments.*

*Competent national public authority shall monitor and evaluate the implementation of the investment plan.*

*Transmission system operators shall be obliged to establish and publish transparent and efficient procedures for non-discriminatory connection of new power plants to the grid. Those procedures shall be subject to the approval of national regulatory authorities or any other competent national public authority*

*Transmission system operators shall not be entitled to refuse the connection of a new power plant on the grounds of possible future limitations to available network capacities, e.g. congestion in distant parts of the transmission grid. The transmission system operator shall be obliged to supply necessary information.*

*Transmission system operators shall not be entitled to refuse a new connection point on the sole ground that it will lead to additional costs linked with necessary capacity increase of grid elements in the close-up range to the connection point."*

Or. en

## *Justification*

*This guarantees that TSO cannot prevent investments into the grid or non-discriminatory access of new power plant projects. This shall be applied to all TSOs. They prevent discriminatory influence on the TSO, be it via ownership measures inside a vertically integrated undertaking or via other forms not based on ownership.*

*The amendment ascertains necessary investments. If the TSO rejects a specific investment, either the authority requests the TSO to invest or launches a tendering procedure.*

### **Amendment 283**

**Lambert van Nistelrooij**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 8**

Directive 2003/54/EC

Articles 10 and 10a

*Text proposed by the Commission*

*Amendment*

***(8) The following Articles 10 and 10a are inserted:*** ***deleted***

***"Article 10***

#### ***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 8(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 8(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 8(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 9;***

***(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 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity\* 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 8a and 10(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 8b shall be applicable.***

***4. Where the Commission has taken a decision in accordance with the procedure in Article 8b 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 for the Cooperation of Energy Regulators 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 10(1).*

*5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003, as well as for operating, maintaining and developing the transmission system, and 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, 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.*

#### *Article 10a*

##### *Unbundling of transmission system owners*

*1. Transmission system owners, where an independent system operator has been appointed, 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.*

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

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

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

***(c) transmission system owner 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 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 27b(3)."***

Or. en

#### *Justification*

*Ownership unbundling of national transport grids is the only possibility to guarantee the independence of administrators of national transport grids and to enhance transparency. It also would enable administrators of national transport grids to become more effective market facilitators. In an ISO system, the ownership of national transport grids and commercial activities remains in the same hands. Although national transport activities are strictly regulated, this results in a multitude of rules.*



**Amendment 284**  
**Miloslav Ransdorf**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10 – paragraph 1

*Text proposed by the Commission*

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 8(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 8(1).

*Amendment*

1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive ***or where a Member State considers as appropriate in a view to ensure the conditions for effective functioning of the European Network for Electricity Transmission System Operators or the creation of a supra-national transmission system operator***, Member States may grant derogations from Article 8(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 8(1).

Or. en

*Justification*

*The objective of this amendment is to bring the TSO and ISO models on the same footing as a way to provide a coherent model for system operation throughout Europe and to facilitate the establishment of regional or pan-European system operators. The Member States should have the possibility to choose between two equal options (ownership unbundling and creation of the independent system operator).*

**Amendment 285**  
**Giles Chichester**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10 – paragraph 1

*Text proposed by the Commission*

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 8(1), provide 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 8(1).

*Amendment*

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 8(1), provide that an independent system operator **for that Member State** 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 8(1).

Or. en

*Justification*

*Amendment clarifies that only one ISO can be designated within a Member State. The development of regional markets would not be helped by the creation of multiple ISOs within a single Member State.*

**Amendment 286**

**Patrizia Toia, Vittorio Prodi, Pia Elda Locatelli**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***“1a. In order to allow a gradual transformation, the derogation shall be a temporary measure of no more than 4***

***years of duration. The result shall be the ownership unbundling.***

Or. en

*Justification*

*If this alternative derogation remains unchanged, it will require a set of complex governance rules and a problematic coordination between the owners of the grid and its management under ISO. Indeed, the ISO solution presents criticalities regarding the development/maintenance of the grid and the definition roles and responsibilities in the operation activity. It could create an adverse environment for investments with a negative impact on the system adequacy and the security of supply.*

**Amendment 287**

**Patrizia Toia, Vittorio Prodi**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10 – paragraph 2 – point (b)

*Text proposed by the Commission*

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

*Amendment*

(b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner are taken into account in a manner that ***eliminates any factor that might discourage*** acting independently;

Or. it

*Justification*

*This is intended to take account of the system of incentives to ensure the independence of the transmission system owner.*

## Amendment 288

Lena Ek

### Proposal for a directive – amending act

#### Article 1 – point 8

Directive 2003/54/EC

Article 10 – paragraph 3

#### *Text proposed by the Commission*

3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Articles 8a and 10(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 8b shall be applicable.

#### *Amendment*

3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Articles 8a and 10(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 8b **and in Article x of Regulation (EC) No 1228/2003** shall be applicable.

Or. en

## Amendment 289

Lena Ek

### Proposal for a directive – amending act

#### Article 1 – point 8

Directive 2003/54/EC

Article 10 – paragraph 4

#### *Text proposed by the Commission*

4. Where the Commission has taken a decision ***in accordance with the procedure in Article 8b*** 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 for the Cooperation of Energy Regulators 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***

#### *Amendment*

4. Where the Commission has taken a decision ***as referred to in Article x of Regulation (EC) No 1228/2003 (former Article 8b (8)(b) of Directive xx)*** and finds that the regulatory authority has not complied with its decision within two months, it shall designate an ***independent system operator as provided for in Article xx of Regulation (EC) No 1228/2003.***

*regulatory authority the designation of a new independent system operator pursuant to the procedure in Article 10(1).*

Or. en

**Amendment 290**  
**Catherine Stihler, David Martin**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/54/EC  
Article 10 – paragraph 5

*Text proposed by the Commission*

5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003, as well as for ***operating, maintaining and developing the transmission system, and 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.***

*Amendment*

5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003, as well as for ***system operation including real time configuration of the network, balancing and operational security. Each independent system operator shall, in cooperation with affected transmission system owners, develop arrangements for ensuring the long-term ability of the system to meet reasonable demand through investment planning.***

Or. en

## Justification

*Preferential commercial arrangements that vertically integrated companies grant to affiliates or to punitive charges for competitors all contribute to the failure of the internal market in electricity. This amendment strengthens the Commissions proposals for an ISO model.*

### **Amendment 291**

**Alyn Smith**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 8**

Directive 2003/54/EC

Article 10 – paragraph 5

#### *Text proposed by the Commission*

5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003, as well as for ***operating, maintaining and developing the transmission system, and 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.***

#### *Amendment*

5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003, as well as for ***system operation including real time configuration of the network, balancing and operational security. Each independent system operator shall, in cooperation with affected transmission system owners, develop arrangements for ensuring the long-term ability of the system to meet reasonable demand through*** investment planning.

Or. en

**Amendment 292**

**Alyn Smith**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10 – paragraph 6 – point (a a) (new)

*Text proposed by the Commission*

*Amendment*

***(aa) enter into an agreement, approved by the national regulatory authority, with the independent system operator to ensure their effective cooperation in maintaining and developing the transmission system;***

Or. en

**Amendment 293**

**Catherine Stihler, David Martin**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10 – paragraph 6 – point (b)

*Text proposed by the Commission*

*Amendment*

(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;

(b) ***carry out*** the investments decided ***in cooperation with*** the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party. 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;

Or. en

*Justification*

*This amendment strengthens the Commissions proposals for an ISO model.*

**Amendment 294**  
**Alyn Smith**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10 – paragraph 6 – point (b)

*Text proposed by the Commission*

(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;

*Amendment*

(b) **carry out** the investments decided **in cooperation with** 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;

Or. en

**Amendment 295**  
**Catherine Stihler, David Martin**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10 – paragraph 6 – point (d a) (new)

*Text proposed by the Commission*

*Amendment*

**(da) enter into an agreement, approved by the regulatory authority, with the independent system operator to ensure their effective cooperation in maintaining and developing the transmission system.**

Or. en



### *Justification*

*Preferential commercial arrangements that vertically integrated companies grant to affiliates or to punitive charges for competitors all contribute to the failure of the internal market in electricity. This amendment strengthens the Commissions proposals for an ISO model.*

#### **Amendment 296**

**Giles Chichester**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 8**

Directive 2003/54/EC

Article 10 a – paragraph 2 – point (c)

#### *Text proposed by the Commission*

(c) transmission system owner 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.

#### *Amendment*

(c) transmission system owner shall establish a compliance programme, which sets out measures taken to **provide fair access and** ensure that discriminatory conduct is excluded. 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.

Or. en

### *Justification*

*Extends the compliance provisions to be applied to distribution system operators.*

#### **Amendment 297**

**Giles Chichester**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 8**

Directive 2003/54/EC

Article 10 a – paragraph 2 – point (c a) (new)

*Text proposed by the Commission*

*Amendment*

***(ca) new compliance with the programme shall be adequately monitored by a designated person or body, hereinafter referred to as a ‘compliance officer’, who shall be fully independent and have access to all the necessary information of the transmission system owner and any affiliated companies to fulfil his/her task;***

Or. en

*Justification*

*Introduces the concept of a compliance board to oversee at a senior level the work of the compliance office/officer.*

**Amendment 298  
Giles Chichester**

**Proposal for a directive – amending act  
Article 1 – point 8  
Directive 2003/54/EC  
Article 10 a – paragraph 2 – point (c b) (new)**

*Text proposed by the Commission*

*Amendment*

***(cb) compliance shall be overseen by a compliance board comprising a majority of members independent of the vertically integrated undertaking. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the national regulatory authority and shall be published.***

Or. en

*Justification*

*Introduces the concept of a compliance board to oversee at a senior level the work of the*

*compliance office/officer.*

**Amendment 299**  
**Paul Rübiger**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/54/EC  
Article 10 a – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner 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 27b(3).** *deleted*

Or. de

*Justification*

*Unbundling provisions are a key part of the liberalisation of the electricity market and therefore can in no way be regarded as ‘non-essential’. Company law is also affected, and, given the importance of company law for the economy, this fact cannot be described as ‘non-essential’.*

**Amendment 300**  
**Herbert Reul**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/54/EC  
Article 10 a – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner with** *deleted*

***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 27b(3).***

Or. de

*Justification*

*Comitology, with its associated lack of democratic legitimacy, should not be used to determine the content of the unbundling provisions for the ISO model. It should be left to the Member States that choose or have chosen the ISO model to determine the substance of the provisions.*

**Amendment 301  
Gunnar Hökmark**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/54/EC  
Article 10 a – paragraph 3

*Text proposed by the Commission*

*Amendment*

***3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner 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 27b(3).***      ***deleted***

Or. en

*Justification*

*Deletion of comitology procedure.*

**Amendment 302**  
**Angelika Niebler**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/54/EC  
Article 10 a – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***"3a. In case a vertical integration is maintained through a Member State being in control of both the transmission system operator and undertakings performing the functions of generation or supply, paragraphs 2 and 3 shall apply."***

Or. en

*Justification*

*It is essential that there is a real level-playing field between state-owned and private-owned companies.*

**Amendment 303**  
**Norbert Glante, Robert Goebbels, Edit Herczog, Atanas Paparizov, Anni Podimata, Bernhard Rapkay, Hannes Swoboda, Catherine Trautmann**

**Proposal for a directive – amending act**  
**Article 1 – point 8 a (new)**  
Directive 2003/54/EC  
Article 10 b (new)

*Text proposed by the Commission*

*Amendment*

***(8a) The following Article shall be inserted:***

***"Article 10b***

***Effective and efficient legal unbundling of transmission systems***

***I. Assets, equipment, staff and identity***

***1. Transmission system operators shall be equipped with all human, physical and financial resources of the vertically***

*integrated undertaking necessary for the regular business of electricity transmission, in particular:*

*(i) transmission system operator shall own assets that are necessary for the regular business of electricity transmission;*

*(ii) transmission system operator shall employ personnel necessary for the regular business of electricity transmission;*

*(iii) appropriate financial resources for future investment projects shall be available in the annual financial plan.*

*The activities deemed necessary for the regular business of electricity transmission mentioned in previous subparagraph shall at least include:*

- representation of the transmission system operator and contacts with third parties and national regulatory authorities,*
- granting and managing third party access to the grid, especially the access for new market operators and producers of renewable energies,*
- collection of the access charges, congestion rents and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003,*
- operation, maintenance and development of the transmission system,*
- investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply,*
- legal services,*
- accountancy and IT services.*

*2. Leasing of personnel and rendering of services, from and to any branch of the vertically integrated undertaking performing functions of generation or*

*supply, shall be prohibited.*

*3. The transmission system operator shall not engage in any business or activity outside transmission which could be in conflict with its tasks, including the holding of shares or interests in any undertaking or part of the vertically integrated company or in any other electricity and gas company. Exceptions require the prior consent of the national regulatory authority and shall be restricted to shares and interests in other network businesses.*

*4. The transmission system operator shall have its own legal identity, significantly different from the vertically integrated undertaking with separate branding, communication and premises.*

*5. The transmission system operator shall not share any commercially advantageous and sensitive information with any undertaking of the vertically integrated undertaking unless it does so with all market participants in a non-discriminatory way. The transmission system operator shall in cooperation with the national regulatory authority define this information.*

*6. Transmission system operators' accounts shall be audited by another auditor than the one auditing the vertically integrated undertaking and all its affiliated companies.*

*II. Independence of the transmission system operator management, chief executive officer / executive board*

*7. Decisions on the appointment and on any early termination of the employment of the chief executive officer / members of the executive board of the transmission system operator and the conclusion or early termination of the respective employment agreements with these persons shall be notified to the national regulatory authority. These decisions and*

*agreements become binding only if, within a period of 3 weeks after notification, the national regulatory authority has not used its right of veto. A veto may be issued in cases of appointment and conclusion of respective agreements if serious doubts arise as to the professional independence of the nominated chief executive officer / member of the executive board; in the case of early termination of employment and of respective agreements of the chief executive officer / member of the executive board, the veto may be used if serious doubts exist regarding the basis and justification of such termination.*

*8. Right of appeal to the national regulatory authority or to a court shall be guaranteed to the chief executive officer / member of the executive board of the transmission system operator in the case of early terminations of their employment.*

*9. The national regulatory authority shall decide on the appeal within six months. Exceptions shall be justified.*

*10. After termination of employment in the transmission system operator, former chief executive officers / members of the executive board shall not participate in any branch of the vertically integrated undertaking performing functions of generation or supply for a period of not less than 3 years.*

*11. The chief executive officer / members of the executive board shall not hold any interest in or receive any compensation from any undertaking of the vertically integrated company other than the transmission system operator. His/their remuneration shall in no part depend on activities of the vertically integrated undertaking other than those of the transmission system operator.*

*12. The chief executive officer or the members of the executive board of the transmission system operator shall not*



*bear responsibility, directly or indirectly, for the day-to-day operation of any other branch of the vertically integrated undertaking.*

*13. Without prejudice to the provisions above, the transmission system operator shall have all effective decision-making rights, independent from the integrated electricity 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 parent company is able 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 transmission lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument.*

### ***III. Supervisory board / Board of directors***

*14. The chairman of the supervisory board/board of directors of the transmission system operator and all of its members shall not participate in any branch of the vertically integrated undertaking. They shall also not be members of the supervisory board/board of directors of any undertaking of the vertically integrated company.*

*15. The supervisory boards / boards of directors of transmission system operators shall consist of independent members, appointed for a term of at least 5 years. Their appointment shall be notified to the regulatory authority and become binding under the conditions described in paragraph 6.*

*16. For the purpose of paragraph 15, a member of the supervisory board / board of directors of a transmission system operator shall be deemed independent if*

*he is free of any business, or other relationship with the vertically integrated undertaking, its controlling shareholders or the management of either, that creates a conflict of interest, in particular:*

*(a) has not been an employee of any branch of the vertically integrated undertaking performing functions of generation and supply in five years prior to their appointment as supervisory board / board of directors member;*

*(b) does not hold any interest in and does not receive any compensation from the vertically integrated undertaking or any of its affiliates except the transmission system operator;*

*(c) does not hold any relevant business relationship with any branch of the vertically integrated company performing functions of energy supply during his/her appointment as supervisory board / board of directors member;*

*(d) is not a member of the executive board of a company in which the vertically integrated undertaking appoints members of the supervisory board /board of directors.*

#### ***IV. Compliance officer***

*17. Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out measures to be taken to ensure that discriminatory conduct is excluded. The programme shall also set out the specific obligations of employees of the transmission system operator to meet this objective. It shall be subject to approval of the national regulatory authority. Compliance of the program shall be independently monitored by the compliance officer. The national regulatory authority shall have the power to impose sanctions in case of inappropriate implementation of the compliance program by the transmission*

*system operator.*

***18. The chief executive officer/ executive board of the transmission system operator shall appoint a person or a body in a function of a compliance officer who shall be responsible for:***

***(i) monitoring the implementation of the compliance programme;***

***(ii) elaborating an detailed annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the national regulatory authority; definition of measures for the implementation of the compliance program and presentation of the report to the regulatory authority;***

***(iii) issuing recommendations on the compliance programme and its implementation.***

***19. The independence of the compliance officer shall be guaranteed in particular by the terms of his/her employment contract.***

***20. The compliance officer shall have the opportunity to regularly address the supervisory board/board of directors of the transmission system operator and of the vertically integrated undertaking and the national regulatory authorities.***

***21. The compliance officer shall participate at all meetings of the supervisory board / board of directors of the transmission system operator that address the following issues:***

***(i) conditions for access and connection to the grid, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003;***

***(ii) projects undertaken in order to operate, maintain and develop the transmission grid system, including***

*interconnection and connection investments;*

*(iii) balancing rules, including reserve power rules;*

*(iv) energy purchases in order to cover energy losses.*

*22. During these meetings, the compliance officer shall prevent information about generation or supply activities which may be commercially advantageous from being disclosed in a discriminatory manner to the supervisory board/board of directors.*

*23. The compliance officer shall have access to all relevant books, records and offices of the transmission system operator and to all the necessary information for the fulfilment of his/her tasks.*

*24. The compliance officer shall be nominated and removed by the chief executive officer / executive board only after prior approval by the national regulatory authority.*

*25. Following revocation of his/her mandate, the compliance officer should be barred from having business relations with the vertical integrated undertaking for a period of not less than five years.*

*V. Grid development and powers to make investment decisions*

*26. Transmission system operators shall elaborate a 10-year network development plan at least every two years. They shall provide efficient measures in order to guarantee system adequacy and security of supply.*

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

- (a) indicate to market participants the main transmission infrastructures that ought to be built over the next ten years,*
- (b) contain all the investments already*

*decided and identify new investments for which an implementation decision has to be taken in the next three years.*

*28. In order to draw up this 10-year network development plan, each transmission system operator shall make reasonable hypothesis about the evolution of generation, consumption and exchanges with other countries, and take into account regional and European-wide existing network investment plans. Transmission system operator shall submit in due time the draft of this plan to the national regulatory authority.*

*29. The national regulatory authority shall consult all relevant network users on the basis of a draft for the 10-year network development plan in an open and transparent manner and may publish the result of the consultation process, in particular possible needs for investments.*

*30. The regulatory authority shall examine whether the draft 10-year network development plan covers all investment needs identified in the consultation. This authority may oblige the transmission system operator to amend its draft.*

*31. If the transmission system operator rejects to implement a specific investment listed in the 10-year network development plan to be executed in the next three years, Members States shall ensure that the national regulatory authority has the competence to take one of the following measures:*

*(a) request by all legal means the transmission system operator to execute its investment obligations using its financial capacities, or*

*(b) invite independent investors to participate in a tender for a necessary investment in a transmission system and at the same time may oblige the transmission system operator:*

- to agree to financing by any third party,
- to agree to building by any third party or to build the respective new assets,
- to operate the respective new asset and
- to oblige transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.

*The relevant financial arrangements shall be subject to the approval of the national regulatory authority. In both cases, tariff regulation shall allow for revenues that cover the costs of such investments.*

*32. The national regulatory authority shall monitor and evaluate the implementation of the investment plan.*

#### ***VI. Decision-making powers regarding the connection of new power plants to the transmission grid***

*33. Transmission system operators shall be obliged to establish and publish transparent and efficient procedures for non-discriminatory connection of new power plants to the grid. Those procedures shall be subject to the approval of national regulatory authorities.*

*34. Transmission system operators shall not be entitled to refuse the connection of a new power plant on the grounds of possible future limitations to available network capacities, e.g. congestion in distant parts of the transmission grid. The transmission system operators shall be obliged to supply necessary information.*

*35. Transmission system operators shall not be entitled to refuse a new connection point on the sole ground that it will lead to additional costs linked with necessary capacity increase of grid elements in the close-up range to the connection point.*

#### ***VII. Regional cooperation***

***36. Member States choosing this path must place precise obligations on transmission system operators within a clearly defined time frame and progressively leading to the creation of a common regional dispatching centre responsible for security issues within six years after the entry into force of this Directive.***

***37. In case of a cooperation between several Member States at a regional level and following the joint request of these Member States, the Commission may designate a regional coordinator.***

***38. The regional coordinator shall promote, at a regional level, the cooperation of regulatory authorities and any other competent public authorities, network operators, power exchanges, grid users and market parties. In particular, the regional coordinator shall:***

***(a) promote new efficient investments in interconnections. To this end, the regional coordinator shall assist transmission system operators by elaborating their regional interconnection plan and shall contribute to the coordination of their investments decisions and, where appropriate, of their open season procedure;***

***(b) promote the efficient and safe use of the networks. To this end, the regional coordinator shall contribute to the coordination between transmission system operators, national regulatory authorities and other competent national public authorities with the elaboration of common allocation and common safeguard mechanisms;***

***(c) annually submit a report to the Commission and Member States concerned on the progress achieved in the region and on any difficulty or obstacle that may hinder the progress.***

## ***VIII. Sanctions***

***39. In order to carry out the duties assigned to it by this Article, the national regulatory authority:***

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

***(ii) may conduct all necessary inspections of the transmission system operators 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.***

***40. In order to carry out its duties assigned to it by this Article, the national regulatory authority shall have the power to impose effective, appropriate and dissuasive sanctions to the transmission system operator and/or the vertically integrated undertaking not complying with its obligations under this Article or any decisions of the national regulatory authority. This power shall include the right to:***

***(i) impose effective, appropriate and dissuasive fines related to the turnover of the network company;***

***(ii) issue orders to remedy a 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."***

Or. en



## *Justification*

*Member States are given the opportunity to further liberalise their markets without having to resort to ownership unbundling.*

### **Amendment 304**

**Rebecca Harms, Claude Turmes**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 8 b (new)**

Directive 2003/54/EC

Article 11 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***(8b) In Article 11, paragraph 2 shall be replaced by the following:***

**“2. The dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which may be approved by the Member State and which must be objective, published and applied in a non discriminatory manner which ensures the proper functioning of the internal market in electricity. They shall take into account the economic precedence of electricity *from demand side options and from available generating installations or interconnector transfers and the technical constraints on the system.*”**

Or. en

*(Adding one element to Article 11(2) of Directive 2003/54/EC)*

## *Justification*

*Demand-side options such as tenders, automatic dispatch of industrial equipment, or smart meters at the DSO scale, should always be confronted to supply side options on equal footing. These options may be more economic and are generally better for the minimization of emissions at peaks. TSOs should be in charge of assessing such resource and ranking their merit order, under rules set by regulators.*

**Amendment 305**  
**Gunnar Hökmark**

**Proposal for a directive – amending act**

**Article 1 – point 8 c (new)**

Directive 2003/54/EC

Article 11 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(8c) In Article 11, paragraph 3 shall be replaced by the following:***

***"3. A national regulatory authority shall require the system operator, when dispatching generating installations, to give priority to new generating installations using nuclear power, renewable energy sources or waste or producing combined heat and power except when technical balancing requirements or the safety and reliability of the grid is compromised."***

Or. en

*(Adding new elements to Article 11(3) of Directive 2003/54/EC)*

*Justification*

*New generating installations using nuclear power and renewable energy must be given priority access to the grid, providing there are no balancing issues associated with this. This will allow Member States an opportunity to reach their targets for renewable energy.*

**Amendment 306**  
**Rebecca Harms, Claude Turmes**

**Proposal for a directive – amending act**

**Article 1 – point 8 c (new)**

Directive 2003/54/EC

Article 11 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(8c) In Article 11, paragraph 3 shall be replaced by the following:***

**“3. A Member State shall require the system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources [...] or producing combined heat and power.”**

Or. en

*(Amending one word of and deleting two other words from Article 11(3) of Directive 2003/54/EC)*

*Justification*

*In order to achieve the target that 20% of the EU's energy should come from renewable energy sources by 2020, priority access to the grids for renewable energy must be guaranteed.*

**Amendment 307**  
**Mechtild Rothe**

**Proposal for a directive – amending act**  
**Article 1 – point 8 c (new)**  
Directive 2003/54/EC  
Article 11 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(8c) In Article 11, paragraph 3 shall be replaced by the following:***

**“3. A Member State shall require the system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power.”**

Or. en

*(Same wording as that of Article 11, paragraph 3 of Directive 2003/54/EC, changing the word "may" into "shall")*

*Justification*

*The EU has set itself a binding target of 20% renewable energy by 2020. In order to meet this target existing significant variation between Member States in the degree of integration has to be overcome by guaranteeing priority access to the grid for renewable energy.*

**Amendment 308**

**Britta Thomsen**

**Proposal for a directive – amending act**

**Article 1 – point 8 c (new)**

Directive 2003/54/EC

Article 11 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(8c) In Article 11, paragraph 3 shall be replaced by the following:***

**"3. A Member State shall require the system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power."**

Or. en

*(Same wording as that of Article 11, paragraph 3 of Directive 2003/54/EC, changing the word "may" into "shall")*

*Justification*

*As progress is made in developing regional energy markets it is essential that efforts are made to ensure that there is no 'regulation' gap between the national and regional market. This requires that the powers of the national regulator be specified in these areas.*

**Amendment 309**  
**Rebecca Harms, Claude Turmes**

**Proposal for a directive – amending act**  
**Article 1 – point 8 d (new)**  
Directive 2003/54/EC  
Article 11 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***(8d) Article 11, paragraph 4 shall be deleted.***

Or. en

*(Deletion of Article 11(4) of Directive 2003/54/EC)*

*Justification*

*There is no reason to give priority to energy fuel sources.*

**Amendment 310**  
**Rebecca Harms, Claude Turmes**

**Proposal for a directive – amending act**  
**Article 1 – point 8 e (new)**  
Directive 2003/54/EC  
Article 11 – paragraph 5

*Text proposed by the Commission*

*Amendment*

***(8e) In Article 11, paragraph 5 shall be replaced by the following:***

***“5. Member States or regulatory authorities shall require transmission system operators to comply with minimum standards for the operation, maintenance and development of the transmission system, including interconnection capacity.”***

Or. en

*(Most of the wording as in Article 11(5) of Directive 2003/54/EC, changing and adding few elements to the existing text)*

*Justification*

*Agreed and public standards, rules and procedures for network operation, maintenance and development are essential for the proper functioning of the internal market. Therefore, all transmission system operators should be mandated to comply with such standards. This technical task is better performed by regulatory authorities who have the duty to ensure non-discriminatory transmission access and to establish transmission network tariffs.*

**Amendment 311**

**Rebecca Harms, Claude Turmes**

**Proposal for a directive – amending act**

**Article 1 – point 8 f (new)**

Directive 2003/54/EC

Article 11 – paragraph 6

*Text proposed by the Commission*

*Amendment*

***(8f) In Article 11, paragraph 6 shall be replaced by the following:***

***“6. Transmission system operators shall procure the energy they use to cover energy losses and reserve capacity in their system according to transparent, non-discriminatory and market-based procedures, whenever they have this function. The energy purchased should not comprise a percentage of renewable energy inferior to the commitments of the Member(s) State(s) concerned.”***

Or. en

*(Adding one element to Article 11(6) of Directive 2003/54/EC)*

*Justification*

*TSOs should contribute to the objectives of each Member State in term of RE consumption. Regulators should be in the position to request the rate of RE purchase applicable to the TSOs.*

**Amendment 312**  
**Rebecca Harms, Claude Turmes**

**Proposal for a directive – amending act**

**Article 1 – point 8 g (new)**

Directive 2003/54/EC

Article 11 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(8g) In Article 11, the following paragraph shall be added:***

***"7a. Transmission system operators shall facilitate participation of large final customers and final customers' aggregators in reserve and balancing markets. Whenever generation and demand bids have the same price, priority shall be given to demand."***

Or. en

*(Adding a new paragraph 7a to Article 11 of Directive 2003/54/EC)*

*Justification*

*To improve energy efficiency, it is important that consumers actively participate in ancillary services markets, particularly when they are able to reduce demand at certain critical moments (peak load, emergencies). Large final consumers may participate directly or indirectly in such markets. Small consumers cannot participate directly in such markets unless if someone (e.g. the supplier) is able to aggregate a large number of them and is able to effectively control part of their demand.*

**Amendment 313**  
**Rebecca Harms, Claude Turmes**

**Proposal for a directive – amending act**

**Article 1 – point 8 h (new)**

Directive 2003/54/EC

Article 11 – paragraph 7 b (new)

*Text proposed by the Commission*

*Amendment*

***(8h) In Article 11, the following***

*paragraph shall be added:*

***"7b. National regulatory authorities shall ensure that balancing rules and tariffs are appropriately harmonized throughout all Member States by ... \*. In particular, they shall ensure that large final customers, final customers' aggregators and distributed generators are able to effectively contribute to balancing and other relevant ancillary services.***

***\* Two years after the entry into force of this Directive."***

Or. en

*(Adding a new paragraph 7b to Article 11 of Directive 2003/54/EC)*

*Justification*

*According to Article 23, regulatory authorities are responsible for "fixing or approving (...) at least the methodologies used to calculate or establish the terms and conditions for (..) the provision of balancing services". Since harmonisation of balancing services is a crucial element for the proper functioning of the internal market, regulatory authorities, in close cooperation with transmission system operators, shall enforce the appropriate degree of harmonisation.*