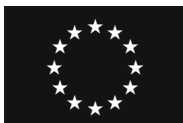


EUROPEAN PARLIAMENT

2004



2009

Committee on Industry, Research and Energy

2007/0196(COD)

12.2.2008

*****I**

DRAFT REPORT

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

Committee on Industry, Research and Energy

Rapporteur: Romano Maria La Russa

Symbols for procedures

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

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

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

| | Page |
|--|-------------|
| DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION | 5 |
| EXPLANATORY STATEMENT | 30 |

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on amending Directive 2003/55/EC concerning common rules for the internal market in natural gas

(COM2007 – C6-0317/2007 – 2007/0196(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0529),
 - having regard to Articles 251(2), 47(2), 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0317/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a directive – amending act

Article 1 – point 1 – point b

Article 2 – point 36 – second subparagraph (new)

Text proposed by the Commission

Amendment

For the avoidance of doubt the holding of a long term transport contract by an undertaking that holds interests in production or supply activities shall not of itself imply control of a transmission system.

Or. en

Justification

The amendment seeks to exclude from the concept of ‘control’ any long-term contracts concerning supply or production, since it is deemed necessary to protect such multi-annual contracts that are typical of the gas sector and not of the electricity sector.

Amendment 2

Proposal for a directive – amending act

Article 1 – point 1 – point a (new)

Directive 2003/55/EC

Article 3 – paragraph 3

Text proposed by the Commission

Amendment

(1a) In Article 3, paragraph 3 shall be replaced by the following:

"3. Member States shall take appropriate measures to ensure that all household customers and small enterprises enjoy the benefit of a universal service, in particular the right to be supplied with gas of a specified quality at affordable, easily comparable, transparent and non-discriminatory prices and the right to choice, fairness, representation and redress. They shall ensure that quality of service is a central responsibility of gas companies. Member States shall take appropriate measures to protect final customers and to ensure high levels of consumer protection, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers, including appropriate measures to help them avoid disconnection. In this context, they may take appropriate measures to protect customers in remote areas who are connected to the gas system and energy-intensive businesses, as defined in Article 17(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity¹. Member States may appoint a supplier of last resort for customers connected to the gas

network. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding general contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is effectively able to switch to a new supplier. As regards at least household customers, these measures shall include those set out in Annex A to this Directive.

¹ OJ L 283, 31.10.2003, p. 51".

Or. en

Justification

It is important for companies to provide an adequate quality of service when they are fulfilling obligations relating to consumer protection and public service. Consumers must, moreover, be ensured supply also in remote areas and in the case of businesses with high energy consumption.

Amendment 3

Proposal for a directive – amending act

Article 1 – point 1 – point b (new)

Directive 2003/55/EC

Article 3 – paragraph 4

Text proposed by the Commission

Amendment

(1b) In Article 3, paragraph 4 shall be replaced by the following:

"4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection, which may include means to combat climate change, and security of supply. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for the maintenance and construction of necessary network infrastructure,

including interconnection capacity. Member States may, having full regard to the EC Treaty, promote long term agreements between customers and supply undertakings that contribute to improving the production and distribution of natural gas while allowing customers a fair share of the resulting benefits, provided that such contracts are capable of contributing to an optimal level of investment in the sector."

Or. en

Justification

The existence of multi-annual contracts in the gas sector, in the light of the new Treaty, must not harm the final consumer.

Amendment 4

Proposal for a directive – amending act

Article 1 – point 3

Directive 2003/55/EC

Article 5 a – paragraph 3

Text proposed by the Commission

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

Amendment

3. The Commission **and the Member States** shall be kept informed of this cooperation

Or. it

Justification

In the context of regional solidarity it is important for the Commission to act in agreement with the Member States.

Amendment 5

Proposal for a directive – amending act

Article 1 – point 3

Directive 2003/55/EC

Article 5 a – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

These measures exceed the scope of comitology. The issue is neither a simple implementation measure, nor does it concern "non-essential elements". It is the role of the Commission to develop the appropriate regulatory framework concerning regional solidarity cooperation under the adequate decision-making procedure.

Amendment 6

Proposal for a directive – amending act

Article 1 – point 3

Directive 2003/55/EC

Article 5 b

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

It is important to give long-term objectives to make the regional cooperation more operational and to ensure technical convergence, in coordination with the provisions of the Regulation 1775/2005.

Amendment 7

Proposal for a directive – amending act

Article 1 – point 6 a (new)

Directive 2003/55/EC

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

(6a) In Article 8, paragraph 2 shall be replaced by the following:

"2. Rules adopted by transmission system operators for balancing the gas transmission system shall be objective, transparent and non - discriminatory including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 25(2) in a non-discriminatory and cost-reflective way and shall be published. Transmission system operators shall make public the measure they take for balancing the gas transmission system as well as costs incurred and revenues generated as a result of such measures."

Or. en

Justification

Transmission system operators might decide to publish also the data concerning the balancing of the system, thereby giving customers greater knowledge of how energy prices are established.

Amendment 8

Proposal for a directive – amending act

Article 1 – point 6 b (new)

Directive 2003/55/EC

Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(6b) In Article 8, the following paragraph shall be inserted:

"4a. Transmission system operators shall build sufficient interconnection capacity between their transmission infrastructure to meet all reasonable demands for capacity as established by an open season procedure."

Or. en

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 9

Proposal for a directive – amending act

Article 1 – point 6 c (new)

Directive 2003/55/EC

Article 8 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

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

"4b. Transmission system operators shall maximise the transmission capacity offered to the market and in the allocation and interruption of capacity on both sides of a national border shall not discriminate between suppliers inside and outside their home country."

Or. en

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 10

Proposal for a directive – amending act

Article 1 – point 10 – point c

Directive 2003/55/EC

Article 13 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The scope of the comitology process is too broadly defined.

Amendment 11

Proposal for a directive – amending act

Article 1 – point 11 a (new)

Directive 2003/55/EC

Article 19 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(11a) In Article 19, paragraph 1 shall be replaced by the following:

"1. For the organisation of access to storage facilities and linepack when technically and/or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to ancillary services, Member States shall use the regulated access procedure. This procedure shall operate in accordance with objective, transparent and non-discriminatory criteria."

Or. en

Justification

Since gas storage remains in the hand of few incumbents, negotiated access does not lead to competitive access to storage. Regulated access should therefore be preferred.

Amendment 12

Proposal for a directive – amending act

Article 1 – point 12

Directive 2003/55/EC

Article 19 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

"Member States shall define and publish criteria according to which it may be determined whether access to storage facilities and linepack is technically and/or economically necessary in order to provide efficient access to the system for the supply of customers. Member States shall make

"Member States shall define and publish criteria according to which it may be determined whether access to storage facilities and linepack is technically and/or economically necessary in order to provide efficient access to the system for the supply of customers. Member States shall make

public, or oblige storage and transmission system operators to make public, which storage facilities, or which parts of those storage facilities, and which linepack is offered *under the different procedures referred to in paragraphs 3 and 4.*"

public, or oblige storage and transmission system operators to make public, which storage facilities, or which parts of those storage facilities, and which linepack is offered."

Or. en

Justification

Since gas storage remains in the hand of few incumbents, negotiated access does not lead to competitive access to storage. Regulated access should therefore be preferred.

Amendment 13

Proposal for a directive – amending act

Article 1 – point 12 a (new)

Directive 2003/55/EC

Article 19 – paragraph 3

Text proposed by the Commission

Amendment

(12a) Article 19 paragraph 3 is deleted.

Or. en

Justification

Since gas storage remains in the hand of few incumbents, negotiated access does not lead to competitive access to storage. Regulated access should therefore be preferred.

Amendment 14

Proposal for a directive – amending act

Article 1 – point 13

Directive 2003/55/EC

Article 22 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Major new gas infrastructures, i.e. interconnectors between Member States, LNG and storage facilities, may, upon request, be exempted, for a limited period

1. Major new gas infrastructures, i.e. interconnectors between Member States, LNG and storage facilities, may, upon request, be exempted, for a limited period

of time, from the provisions of Articles 7, 18, 19, 20, and 24c(4), (5) and (6) under the following conditions:

of time, from the provisions of Articles 7, **9**, 18, 19, 20, and 24c(4), (5) and (6) under the following conditions:

Or. en

Justification

It needs to be clarified what kind of infrastructure may be exempted whilst at the same time specifying that the Agency is responsible where the exemption granted involves more than two Member States.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 13

Directive 2003/55/EC

Article 22 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It needs to be clarified what kind of infrastructure may be exempted whilst at the same time specifying that the Agency is responsible where the exemption granted involves more than two Member States.

Amendment 16

Proposal for a directive – amending act

Article 1 – point 13

Directive 2003/55/EC

Article 22 – paragraph 3 – subparagraph 4

Text proposed by the Commission

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

Amendment

When granting an exemption the regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity ***insofar as this does not prevent the implementation of long term contracts.***

Or. en

Justification

It needs to be clarified what kind of infrastructure may be exempted whilst at the same time specifying that the Agency is responsible where the exemption granted involves more than two Member States. The granting of an exemption, moreover, must not prevent long-term contracts from being drawn up.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 13

Directive 2003/55/EC

Article 22 – paragraph 5 – subparagraph 4

Text proposed by the Commission

Amendment

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

The regulatory authority may evaluate the need to review an exemption decision two years after its adoption if construction of the infrastructure has not yet started, and five years after if the infrastructure has not become operational, or at such later time as it considers appropriate.

Or. en

Justification

The regulatory authority could decide to assess the need to renew the exemption decision for a period longer than that which was established, or to change the time-limit regarding the effect of the exemption itself.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 13

Directive 2003/55/EC

Article 22 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The derogations referred to in paragraph 1 shall automatically apply to derogations granted pursuant to this Article at the date of entry into force of Directive .../.../EC of the European Parliament and of the Council of ... [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas]¹.

¹ OJ L ...

Or. en

Justification

With this amendment new investments are not discriminated against.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 a – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate a single national regulatory authority.

Amendment

1. Each Member State shall designate a single national regulatory authority **for electricity and gas**.

Or. en

Justification

It is better to avoid confusion considering the representative duty of this body in the Agency.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 a – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

A 5-year term of office of the national regulator should be renewable once, given the long-term nature and need for stability in the energy market; longer appointments should be non-renewable.

Amendment 21

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 b – point f a (new)

Text proposed by the Commission

Amendment

(fa) ensuring, in cooperation with the relevant national authorities, consumer protection based on quality of service, access to reliable and clear information and an effective right of appeal.

Or. en

Amendment 22

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 1 – point g

Text proposed by the Commission

Amendment

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

(g) monitoring network security and reliability, ***setting standards and requirements for quality of service and supply*** and reviewing ***the quality of service and supply achieved***, network security and reliability rules;

Or. en

Justification

Some national regulatory authorities already have this duty to monitor the functioning of the natural gas market also in terms of quality of supply and services to consumers, who will see then, a real benefit from more consistent and transparent regulation.

It is also appropriate to ensure that national regulatory authorities responsible for setting or approving the tariffs will be also responsible for setting the underlying methodologies to set transmission and distribution tariff to have a more stable and transparent regulatory framework

Amendment 23

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 1 – point k

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The difference between “monitoring” and “reviewing” is unclear and the reference to “reviewing” tends to create a legal basis for specific new ex ante powers on storage, linepack and other ancillary services.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 1 – point l

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It is very important to achieve an effective opening of the gas market for all participants.

Amendment 25

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 1 – point m

Text proposed by the Commission

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

Amendment

(m) publishing recommendations, at least on yearly basis, on compliance of supply tariffs **with actual developments in the market and** with Article 3;

Or. en

Justification

It is very important to achieve an effective opening of the gas market for all participants.

Amendment 26

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 1 – point n

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It is very important to achieve an effective opening of the gas market for all participants.

Amendment 27

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 1 – point p

Text proposed by the Commission

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

Amendment

(p) monitoring the correct application of the criteria *according to which it may be determined whether access to storage facilities and linepack is technically and/or economically necessary in order to provide efficient access to the system for the supply of customers*.

Or. en

Justification

Consistency with new provisions of article 19 paragraph 1 of the current proposal.

Amendment 28

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

(b) to carry out in cooperation with the national competition authority, *whilst respecting each other's remits, fact-finding* investigations of the functioning of gas markets, and to decide, in the absence of violations of competition rules, on any appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market, including gas release programs, *since these are compatible with the need to secure supply*;

Or. it

Justification

It is vital to respect the relevant remits of the two Authorities and to clarify that the Energy Authority is to be responsible for carrying out ex ante evaluation, while the Antitrust Authority will be in charge of ex post monitoring.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 3 – point d

Text proposed by the Commission

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

Amendment

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

Or. it

Justification

As well as being effective and dissuasive, the sanctions must also be ‘uniform’ in the various Member States.

Amendment 30

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

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

facilities;

to ensure the viability of the networks and LNG facilities;

Or. en

Justification

The regulatory authority must be kept informed also of the methodology used for setting tariffs.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 6

Text proposed by the Commission

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

Amendment

6. Regulatory authorities shall have the authority to require operators **of infrastructures submitted to regulated third party access under the provisions of Articles 18, 19(4) and 20**, if necessary, to modify the terms and conditions, including tariffs referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner.

Or. en

Justification

This is to take account of the fact that the Directive allows for access to infrastructures not to be regulated in certain circumstances.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 13

Text proposed by the Commission

13. Member States shall ensure that suitable mechanisms exist at national level

Amendment

13. Member States shall ensure that suitable mechanisms exist at national level

under which a party affected by a decision of the national regulatory authority has a right of appeal to a body independent of the parties involved.

under which a party affected by a decision of the national regulatory authority has a right of appeal to a ***national judicial body or other national authority*** independent of the parties involved ***and of the government of that Member State.***

Or. en

Justification

In order to ensure the independence and integrity of national regulatory decisions, appeals should be undertaken by an independent and neutral body, such as the Courts, which is not subject to private or political influence in line also with Article 22a par 2 which sets out the independence of regulatory authorities from any other public or private entity, market interests or governments. Having appeals go through the Courts helps to establish the independence of regulatory decisions from political interference. This is also necessary given that in some countries local municipalities are involved in these decisions.

Amendment 33

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 c – paragraph 14

Text proposed by the Commission

Amendment

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

Or. en

Justification

The definition of the prerogatives of the national regulators goes far beyond the scope of measures that could be adopted by comitology procedure.

Amendment 34

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 d – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Regulatory authorities may enter into agreements with other regulatory authorities within the Union to foster regulatory cooperation.

Or. en

Justification

Regulatory authorities need to be empowered under their national legislation to establish agreements with other EU regulatory authorities in order to foster greater regulatory cooperation and consistency.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 d – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

The regulatory regime for cross-border issues, which implies defining the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency, is too fundamental to be simply determined by comitology process which only concerns "non-essential elements". The powers conferred on the Agency need a legal basis under the framework of classical decision-making process.

Amendment 36

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 f – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The circumstances for collection of data related to wholesale contracts should be clearly defined and related to specific tasks of the competent authorities. Competent authorities may include other bodies than those mentioned in the Directive proposal. As regards the NRAs, article 24c §3 (c) of the Commission's proposal also allows regulatory authorities "to request any information from natural gas undertakings relevant for the fulfilment of its tasks". Record-keeping requirements should be consistent with this provision.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24 f – paragraph 3

Text proposed by the Commission

3. The regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC.

Amendment

3. The regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC, ***nor to long-term contracts for the importation of gas from third countries.***

Or. en

Justification

Publication of data must be necessary and proportionate. The EU gas market is highly dependant on imports from third countries, which are generally based on bilateral long term contracts negotiated between EU gas importers, on the one hand, and non EU producers. In this context the publication of strategic data related to such contracts, especially prices, even in aggregated form, would obviously be against the interest of EU gas importers (for instance average price of gas imports), because it would give non-EU gas producers information on their competitors' sales conditions.

EXPLANATORY STATEMENT

INTRODUCTION

The gas and electricity markets are of vital importance to the European Union, which on several occasions has said that it wants to speak with a single voice as far as energy matters are concerned.

In order for the European Union to be able to achieve its objective of establishing an internal energy market, it is essential that it create a level playing field, in terms of competition, for all companies operating in the gas and electricity sectors.

To that end, the Commission has launched its 3rd energy package, which should implement that market liberalisation that previous packages have hitherto failed to do¹.

THE SPECIFIC FEATURES OF THE GAS SECTOR

The Commission proposal intends to take the same approach to both the gas and electricity sectors.

The proposal is certainly a valid one, in that it will establish a symmetrical, harmonised energy market, thereby helping to overcome the high concentration which still exists in a number of countries; it will make it easier for new companies to enter the market and will ensure conditions of competition which, in the long term, will lead to a reduction in prices to the benefit of the final consumer.

However, your rapporteur considers that, given the structural diversity of the two markets, the not inconsiderable dependence on non-EU countries in the gas sector, the different ways in which the Member States are implementing existing legislation and the existence of multi-annual supply contracts in the gas sector, a distinction should be made between the gas sector and the electricity sector.

In this regard, your rapporteur maintains that long-term supply contracts should be protected, in that they do not actually mean that the operator involved in the supply 'controls' the network. The Member States can therefore be free, in complying with their obligations under the Treaty, to promote agreements which help to improve the production and distribution of energy whilst ensuring that final consumers benefit and investments are profitable.

UNBUNDLING

The key part of the package undoubtedly concerns the separation of ownership, which expressly prevents vertically integrated companies from holding an interest in both the supply and transmission of gas.

Existing legislation, which provides for the functional and legal separation of transmission

¹ The liberalisation process for the gas market began in 1999, although a landmark in the establishment of the European energy market was the introduction of the June 2003 directive.

system operators and supply operators, has not helped to resolve the conflict of interests in vertically integrated companies which use the network to maintain their dominant position on the market, since they have no incentive to invest in new networks and allow access to new operators.

Your rapporteur therefore takes the view that *the separation of ownership* is surely the best way of ensuring that transmission operators and supply operators are fully independent of each other; it is certainly also the most viable and efficient option compared with that of the independent system operator (ISO), which would require unwieldy and complex governance structures and strong regulatory control. It should also be remembered that in several Member States the ISO experiment has certainly not turned out to be a success.

Of equal urgency is the need to actually *separate storage and transmission system operators* from supply activities depending on vertically integrated companies, in order to ensure the transparent management of gas capacities and greater security of supply. Your rapporteur believes that in order to limit discriminatory behaviour towards new system operators, access to storage should be regulated rather than negotiated.

It is, however, vital that the liberalisation of the gas market be conducted symmetrically, providing for a harmonisation of the degree of openness of the national markets. Reciprocity should to a certain extent be applied also to third countries; in this regard, while your rapporteur approves of the safeguard clause laid down by the Commission, he considers it important for the agreements between the EU and non-EU countries, as potential investors, to be *better regulated* in both form and substance.

INDEPENDENCE OF NATIONAL REGULATORS

With its third package, the Commission intends to give the national regulatory authorities a key role; they are to have legal personality, budgetary autonomy and will have to prove that they are totally independent in their management.

Your rapporteur **welcomes the Commission's proposals seeking to harmonise and strengthen the role of the national regulators.**

The national regulatory authorities should **also be given adequate powers of dissuasion and powers to impose sanctions, which should be uniform for all regulators.**

Your rapporteur believes that in carrying out fact-finding investigations on the functioning of the markets, the regulatory authorities should respect the remit of the Antitrust authorities.

Your rapporteur also agrees with the need to formalise cooperation obligations among regulators, leaving it up to the Commission, through the Agency, to ensure that such cooperation actually takes place.

INFRASTRUCTURE

The role of infrastructure is certainly paramount in the establishment of an integrated European energy market.

We must not forget the circumstances of the new Member States which, having inadequate, or sometimes non-existent, infrastructure, are totally dependent on third-country operators for their gas supplies.

The current legislation provides for a range of suggestions designed to encourage investments in infrastructure by new operators, by exempting them from the regulated third party access rules (TPA).

Your rapporteur is of the opinion that the ultimate aim of the exemptions granted should be to boost investment in infrastructure of vital importance for the establishment of an integrated European market, meaning not only cross-border investment but also investment in ***regasification plants and gas storage plants***.

In relation to the new proposal, which has been slightly modified in order to adapt it to the provisions on separation of ownership, your rapporteur believes that in order to avoid any ambiguous interpretations, the granting of exemptions should be based on full respect for the market, from a pro-competition standpoint, and on ***clear rules which have been laid down in advance*** in accordance with a specific time-frame. Your rapporteur also considers it necessary to protect investments that are in the process of being implemented, by extending the TPA exemption scheme to cover them.

While your rapporteur welcomes the Commission proposal providing for systematic cooperation between network operators, at least on a regional basis, he believes it is necessary to bring that cooperation into effect by making provision for the establishment of a single structure for managing the network on a regional basis. The Commission will have to be kept informed of that cooperation, in agreement with the Member States.

POWERS OF THE COMMISSION

The directive on common rules for the market in gas provides for an extension of the Commission's powers regarding the adoption of binding guidelines through the so-called ***comitology*** procedure, in a wide range of cases from the designation and certification of transmission operators to monitoring compliance with obligations, implementing regulatory powers, granting exemptions for new infrastructure, and so on.

Although your rapporteur welcomes the fact that the Commission is ultimately responsible, should it have serious doubts, for settling disputes and conflicts of competence, and for imposing binding technical decisions, he nevertheless takes the view that in some parts of the directive the Commission is exceeding its powers; in particular, when it is called on to adopt the guidelines through the comitology procedure with right of scrutiny, a procedure which is actually envisaged for the adoption of general measures designed to amend ***non-essential*** elements of the directive.

TRANSPARENCY AND CONSUMER PROTECTION

The internal markets in electricity and gas are suffering from a lack of transparency which hampers the efficient allocation of resources and prevents new operators from entering the market.

Bills are often illegible and in most cases consumers have no access to data concerning their own consumption or to the tariffs applied by operators. Your rapporteur therefore stresses the need to increase confidence in the market, by giving consumers (also via specific websites) the greatest possible amount of information relating to supply contracts or derivatives, and making provision for the right of appeal.

Greater transparency would benefit not only consumers, who would have access to information, but also operators themselves, since they will be able to acquire information on the market interests of third-country operators, who will be subject to the same transparency obligations as European operators.

Your rapporteur deems it necessary to make operators more responsible with regard to the public service offered to consumers, so that, with the aim of assessing their quality of service, they provide for 'social' tariffs to protect vulnerable consumers.