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*Committee on Industry, Research and Energy*

**2007/0199(COD)**

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**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks  
(COM(2007)0532 – C6-0319/2007 – 2007/0199(COD))

Committee on Industry, Research and Energy

Rapporteur: Atanas Paporizov

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

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

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

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

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

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	23
ANNEX: GENERAL CONTEXT OF THE GAS SECTOR IN EU .....	27



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on amending Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks  
(COM(2007)0532 – C6-0319/2007 – 2007/0199(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0532),
  - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0319/2007),
  - 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.

Text proposed by the Commission

Amendments by Parliament

### Amendment 1

#### ARTICLE 1, POINT (3)

#### Article 2a (Regulation (EC) No 1775/2005)

All transmission system operators shall cooperate at Community level through establishing the European Network of Transmission System Operators for Gas in order to ensure the optimal management and sound technical evolution of the European gas transmission network

All transmission system operators shall cooperate at Community level through establishing the European Network of Transmission System Operators for Gas in order to ***promote the completion of the internal market for gas*** and to ensure the optimal management and sound technical evolution of the European gas transmission network.

*Justification*

*In order to underline that TSO's major task is to facilitate market integration, the realization of the internal market for gas should be established as an explicit task of the ENTSO.*

Amendment 2

ARTICLE 1, POINT (3)

Article 2b, paragraph 2 (Regulation (EC) No 1775/2005)

2. Within six weeks from receipt, the Agency shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

2. Within six weeks from receipt, the Agency, **after consulting the organisations representing all stakeholders**, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

*Justification*

*The agency should allow system users and customers the opportunity to submit their views on the statutes, members and rules of procedure for the ENTSOG.*

Amendment 3

ARTICLE 1, POINT (3)

Article 2c, paragraph 1 (Regulation (EC) No 1775/2005)

1. **The** European Network of Transmission System Operators for Gas shall **adopt**:

1. **In order to achieve its objectives referred to in Article 2a, the** European Network of Transmission System Operators for Gas shall **prepare**:

*Justification*

*In order to clarify the scope of the codes, a clear link with the objectives of Article 2a must be established.*

Amendment 4

ARTICLE 1, POINT (3)

Article 2c, paragraph 1, point a) (Regulation (EC) No 1775/2005)

(a) **technical and market** codes in the areas mentioned in paragraph 3;

(a) codes **related to the network operations** in the areas mentioned in paragraph 3;

*Justification*

*Deletion of technical and market codes would help underline that the ENTSOG deals mainly*

*with issues of the network and not with broad commercial issues.*

Amendment 5  
ARTICLE 1, POINT (3)  
Article 2c, paragraph 2 (Regulation (EC) No 1775/2005)

2. The annual work programme referred to in paragraph 1(d) shall contain a list and description of the ***technical and market*** codes, a plan on coordination of operation of the network and research and development activities, to be drawn up in that year and an indicative calendar.

2. The annual work programme referred to in paragraph 1(d) shall contain a list and description of the codes ***related to network operations***, a plan on coordination of operation of the network and research and development activities, to be drawn up in that year and an indicative calendar.

*Justification*

*See justification to the amendment on ARTICLE 1, POINT (3) (Article 2c, paragraph 3 (Regulation (EC) No 1778/2005)).*

Amendment 6  
ARTICLE 1, POINT (3)  
Article 2c, paragraph 3 (Regulation (EC) No 1775/2005)

3. The detailed ***technical and market*** codes shall cover the following areas, according to the priorities defined in the annual work programme:

3. The detailed codes ***related to transmission network operations*** shall cover the following areas, according to the priorities defined in the annual work programme:

*Justification*

*The scope of the codes has to be clearly defined in relation to the tasks actually ensured by transmission system operators. The "market" codes that are to be drafted by TSOs should only concern rules that are connected with TSOs technical responsibilities and operations.*

Amendment 7  
ARTICLE 1, POINT (3)  
Article 2c, paragraph 3, point g) (Regulation (EC) No 1775/2005)

(g) rules for trading;

(g) rules for trading ***related to technical and operational provision of network access services and system balancing***;

*Justification*

*The cooperation of TSOs should be limited mainly to network issues and market rules directly*

*linked to transmission networks (network balancing, secondary market, etc.).*

Amendment 8

ARTICLE 1, POINT (3)

Article 2c, paragraph 3, point 3a (new) (Regulation (EC) No 1775/2005)

***3a. The detailed codes referred to in paragraph 3 shall be drafted in accordance with the relevant guidelines referred to in Article 9.***

*Justification*

*There needs to be an explicit link between the codes related to the transmission network and the guidelines under Article 9 in order to achieve consistency of intention and outcome.*

Amendment 9

ARTICLE 1, POINT (3)

Article 2c, paragraph 4 (Regulation (EC) No 1775/2005)

4. The European Network of Transmission System Operators for Gas shall ***monitor*** the implementation of the ***technical and market*** codes and include the results of ***its monitoring activities*** in the annual report referred to in paragraph 1(e).

4. The European Network of Transmission System Operators for Gas shall ***analyse*** the implementation of the codes ***and their effect on the harmonisation of applicable rules aimed at facilitating market integration*** and include the results of ***these analyses*** in the annual report referred to in paragraph 1(e).

*Justification*

*The status of the ENTSO for gas has no institutionalized regulatory functions so “analyse” describes its role more appropriately. In the second place, the main purpose of the codes, to harmonize the rules with the view to facilitate market integration, is underlined.*

Amendment 10

ARTICLE 1, POINT (3)

Article 2c, paragraph 5 (Regulation (EC) No 1775/2005)

5. The European Network of Transmission System Operators for Gas shall publish a Community-wide 10-year network investment plan every two years. The investment plan shall include the modelling of the integrated network, scenario

5. The European Network of Transmission System Operators for Gas shall ***draft*** a Community-wide 10-year network investment plan every two years ***and publish it***. The ***draft*** investment plan shall include the modelling of the integrated



development, a supply and demand adequacy report and an assessment of the resilience of the system. The investment plan shall, in particular, build on national investment plans and on the Guidelines for Trans-European energy networks in accordance with Decision No 1364/2006/EC of the European Parliament and of the Council. **The investment plan shall** identify investment gaps, notably with respect to cross border capacities.

network, scenario development, a supply and demand adequacy report and an assessment of the resilience of the system. The **draft** investment plan shall, in particular:

**(a)** build on national investment plans and on the Guidelines for Trans-European energy networks in accordance with Decision No 1364/2006/EC of the European Parliament and of the Council.

**(b) regarding cross-border interconnections, build on the proposals of network users, including traders, distribution system operators, LNG and storage system operators and integrate long-term commitments from investors other than the transmission system operators, interested in the development of the transmission network.**

**(c)** identify investment gaps, notably with respect to cross border capacities.

#### *Justification*

*The terms "prepare" and "draft" are introduced so as to make clearer that:*

- (i) the establishment of a 10-year plan is a prospective tool that will mainly provide orientations and give a European framework but that doesn't need to be formally "adopted" as such (precise plans on a shorter term-notice would have to be developed, submitted to the regulator's approval and made binding, that's the purpose of the proposal on Directive),*
- (ii) it is a basis for consultation with all interested parties, the Agency and if need be the national regulatory authorities.*

#### Amendment 11

#### ARTICLE 1, POINT (3)

#### Article 2c, paragraph 6 (Regulation (EC) No 1775/2005)

6. Upon request of the Commission, the European Network of Transmission System Operators for Gas shall **advise** the

6. Upon request of the Commission, the European Network of Transmission System Operators for Gas shall **give its**

Commission on the adoption of Guidelines as laid down in Article 9.

*views to* the Commission on the adoption of Guidelines as laid down in Article 9.

#### *Justification*

*Paragraph 6 gives the TSOs a direct advisory role to the Commission in proposing the adoption of obligatory guidelines. The advisory role to the Commission should be entrusted to the Agency.*

#### Amendment 12

##### ARTICLE 1, POINT (3)

Article 2d, paragraph 2, subparagraph 1 (Regulation (EC) No 1775/2005)

2. The European Network of Transmission System Operators for Gas shall submit the draft ***technical and market*** codes, the draft 10-year investment plan and the draft annual work programme, including the information regarding the consultation process, to the Agency.

2. The European Network of Transmission System Operators for Gas shall submit the draft codes ***related to network operations***, the draft 10-year investment plan and the draft annual work programme, including the information regarding the consultation process, to the Agency.

#### Amendment 13

##### ARTICLE 1, POINT (3)

Article 2d, paragraph 2, subparagraph 3 (Regulation (EC) No 1775/2005)

The Agency shall provide a duly justified opinion to the ***Commission*** where it considers that the draft annual work programme or the draft 10-year investment plan do not ensure non-discrimination, effective competition and the efficient functioning of the market.

The Agency shall provide a duly justified opinion ***as well as recommendations*** to the ***European Network of Transmission System Operators for Gas***, where it considers that the draft annual work programme or the draft 10-year investment plan do not ensure non-discrimination, effective competition, efficient functioning of the market ***or a sufficient level of cross-border interconnection available to third party access, and inform the Commission thereof***

#### *Justification*

*This amendment aims at strengthening the advisory power of the Agency, and the continuous process of interaction with the ENTSOG when defining the general framework (annual working programme and 10-year investment plan).*

*Regarding the codes, the advisory power is defined in the article 2e of the current proposal. See Amendment on ARTICLE 1, POINT 3), Article 2e, paragraph 2.*

Amendment 14  
ARTICLE 1, POINT (3)  
Article 2d, paragraph 2, subparagraph 3 a (new) (Regulation (EC) No 1775/2005)

***The Agency shall provide recommendations to the European Network of Transmission System Operators on the draft 10-year investment plan, taking into account the potential socio-economic benefits for the region and the Community. For that purpose, it may consult national regulators when appropriate.***

***The Agency shall ensure the compliance of the 10-year investment plan with the annual working programme and with the relevant guidelines referred to in Article 9.***

*Justification*

*This amendment also emphasizes the role of coordination of the Agency for the drafting of the 10-year investment plan.*

*The Regulation shall make clear that regional/EU-wide planning of transmission network structure should be driven by the socio-economic benefits that investments bring for the whole region. Community and regional planning should thus take into account the complete energy system, not only the transmission network, for which the Agency should be empowered to ensure the consistency.*

Amendment 15  
ARTICLE 1, POINT (3)  
Article 2d, paragraph 2a (new) (Regulation (EC) No 1775/2005)

***2a. The Agency shall approve the annual work programme prepared by the European Network of Transmission System Operators for Gas.***

***Without prejudice to the provisions of Article 2e(2), the Agency shall endorse the draft codes.***

### *Justification*

*In addition to codes, working programme and investment plan are important documents that will define the overall framework and key strategic issues of the tasks undertaken by the ENTSOG and will determine the degree of harmonisation of national rules. It is important that the Agency should play a role through:*

- (i) the approval of the ENTSOG annual work programme,*
- (ii) the endorsement, e.g. validation, of the codes prepared by the ENTSOG.*

#### Amendment 16

#### ARTICLE 1, POINT (3)

Article 2e, Title (Regulation (EC) No 1775/2005)

Establishment and evaluation of ***technical and market*** codes

Establishment and evaluation of codes

### *Justification*

*See justifications of amendment on ARTICLE 1, POINT 3), Article 2c, paragraph 1, point a) (Regulation (EC) No 1775/2005) and amendment on ARTICLE 1, POINT 3), Article 2c, paragraph 3 (Regulation (EC) No 1775/2005).*

#### Amendment 17

#### ARTICLE 1, POINT (3)

Article 2e, paragraph 2, points a)- c) (Regulation (EC) No 1775/2005)

(a) a ***technical or market*** code ***adopted*** by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;

(b) the European Network of Transmission System Operators for Gas fails to agree within a reasonable period of time on a ***technical or market*** code in the areas listed in Article 2c(3);

(c) the transmission system operators fail to implement a ***technical or market*** code ***adopted by the European Network of Transmission System Operators for Gas*** in the areas listed in Article 2c(3).

(a) a code ***related to network operations prepared*** by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;

(b) the European Network of Transmission System Operators for Gas fails to agree within a reasonable period of time on a ***draft code related to network operations*** in the areas listed in Article 2c(3);

(c) the transmission system operators fail to implement a code ***related to network operations prepared by the European Network of Transmission System Operators for Gas*** in the areas listed in Article 2c(3) ***and endorsed by the Agency***;

### *Justification*

*In parallel with the opinion provided on working programme and investment plan (see Amendment on ARTICLE 1, POINT 3), Article 2d, paragraph 2, subparagraph 3 (Regulation (EC) No 1775/2005), the Agency shall also intervene at an early stage in the preparation of the codes and refer to the Commission in precise circumstances.*

#### Amendment 18 ARTICLE 1, POINT (3)

Article 2e, paragraph 3, subparagraph 1 (Regulation (EC) No 1775/2005)

3. The Commission **may adopt**, on its own initiative or upon recommendation of the Agency, guidelines on the areas listed in Article 2c(3) when it considers that:

3. The Commission **shall**, on its own initiative or upon recommendation of the Agency, **take measures with a view to adopting** guidelines on the areas listed in Article 2c(3) when it considers that:

### *Justification*

*The model of developing codes presupposes an obligation for the Commission to act immediately when these codes do not ensure non-discrimination, effective competition and the efficient functioning of the market or when they are not implemented.*

#### Amendment 19 ARTICLE 1, POINT (3)

Article 2e, paragraph 3, point a), b), c) (Regulation (EC) No 1775/2005)

(a) a **technical or market** code **adopted** by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;

(b) the European Network of Transmission System Operators for Gas fails to agree within a reasonable period of time on a **technical or market** code in the areas listed in Article 2c(3);

(c) the transmission system operators fail to implement a **technical or market** code **adopted by the European Network of Transmission System Operators for Gas** in the areas listed in Article 2c(3).

(a) a code **related to network operations prepared** by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;

(b) the European Network of Transmission System Operators for Gas fails to agree within a reasonable period of time on a **draft code related to network operations** in the areas listed in Article 2c(3);

(c) the transmission system operators fail to implement a code **related to network operations prepared by the European Network of Transmission System Operators for Gas** in the areas listed in Article 2c(3) **and endorsed by the Agency**;

Amendment 20  
ARTICLE 1, POINT (3)  
Article 2f, paragraph 1 (Regulation (EC) No 1775/2005)

1. In carrying out its tasks, the European Network of Transmission System Operators for Gas shall consult extensively, at an early stage and in an open and transparent manner, ***in particular*** while preparing the ***technical and market*** codes and its annual work programme referred to in Article 2c(1) and (3), with all appropriate market participants; the consultation shall include supply undertakings, customers, system users, distribution system operators, LNG system operators and storage system operators, including relevant (industry) associations, technical bodies and stakeholder platforms.

1. In carrying out its tasks, the European Network of Transmission System Operators for Gas shall consult extensively, at an early stage and in an open and transparent manner, ***in accordance with the Rules of Procedure referred to in Article 2b***, while preparing the codes, ***the draft 10-year network investment plan*** and its annual work programme referred to in Article 2c(1) and (3), with all appropriate market participants, ***and in particular with the organisations representing all stakeholders***. ***The*** consultation shall include supply undertakings, customers, system users, distribution system operators, LNG system operators and storage system operators, including relevant (industry) associations, technical bodies and stakeholder platforms, ***and shall aim at identifying the views and proposals of all relevant parties in the decision-making process***.

*Justification*

*The preparation of codes, annual working programme and investment plan, initiated by the ENTSOG, must include a structured consultation process of all market stakeholders. To re-balance the power of the ENTSOG, market players should have a formally defined role in commenting and in participating in the development of any proposed codes.*

*The consultations on the codes shall be conducted under procedures ensuring maximum transparency and guarantees for taking into account of the interests of producers, suppliers and end-users.*

Amendment 21  
ARTICLE 1, POINT (3)  
Article 2f, paragraph 3 (Regulation (EC) No 1775/2005)

3. Before ***adopting*** the annual work programme and the ***technical and market***

3. Before ***approving*** the annual work programme and ***endorsing*** the codes

codes referred to in Article 2c(1) and (3), the European Network of Transmission System Operators for Gas shall indicate the observations received in the consultation and how these observations have been taken into consideration. It shall provide reasons where observations have not been taken into account.

referred to in Article 2c(1) and (3), the **Agency shall, where appropriate, consult extensively all relevant parties on the draft prepared by the** European Network of Transmission System Operators for Gas. **The Agency** shall indicate the observations received in the consultation and how these observations are taken into consideration. It shall provide reasons where observations have not been taken into account.

#### *Justification*

*At the stage of the approbation and endorsement, a further round of consultation under the aegis of the Agency might be needed.*

#### Amendment 22

##### ARTICLE 1, POINT (3)

Article 2h, paragraph 1, subparagraph 2 (Regulation (EC) No 1775/2005)

The regional investment plan may not be contradictory to the 10 year investment plan referred to in Article 2c(1)(c).

The regional investment plan may not be contradictory to the 10 year investment plan referred to in Article 2c(1)(c). **The Agency shall ensure the coordination and consistency across the different regions and shall formulate recommendations in this respect.**

#### *Justification*

*Through its recommendations to TSOs, the Agency should be empowered to monitor and review the TSOs' regional initiatives regarding regional cooperation so as to ensure the coordination and consistency across the different regions.*

#### Amendment 23

##### ARTICLE 1, POINT (3)

Article 2h, paragraph 2 a (new) (Regulation (EC) No 1775/2005)

**2a. Member States and regulators shall cooperate among themselves for the purpose of integrating their national markets at the regional level. In particular, Member States shall ensure the cooperation of transmission network operators at a regional level with the aim of creating a competitive EU-wide market.**

*Justification*

*ENTSOG alone could not manage to establish a single interface to commercial functions in the name of several TSOs at the regional level. For this reason the involvement of the Member states is needed so as to stimulate or create adequate incentives for regional market integration.*

Amendment 24

ARTICLE 1, POINT (3)

Article 2h, paragraph 2 b (new) (Regulation (EC) No 1775/2005)

***2b. With respect to their obligation to achieve regional cooperation as laid down in Article 5b of Directive 2003/55/EC, Member States shall encourage the transmission system operators, in compliance with Articles 8 and 10 of that Directive, to create a single user interface to cover national territories of several Member States in accordance with paragraph 3 of this article.***

*Justification*

*ENTSOG alone could not manage to establish a single interface to commercial functions in the name of several TSOs at the regional level. For this reason the involvement of the Member states is needed so as to stimulate or create adequate incentives for regional market integration.*

Amendment 25

ARTICLE 1, POINT (3)

Article 2h, paragraph 2 c (new) (Regulation (EC) No 1775/2005)

***2c. In promoting operational arrangements at regional level, transmission system operators shall :***

***a) within two years after the Commission has defined the relevant geographical areas in accordance with paragraph 3, harmonise their commercial offers and sales conditions through an alignment of adjacent transmission system operators' commercial capacities, and adopt a common coordination of the consultation***



*processes run by adjacent transmission system operators for new investments at interconnection points within the same regional area;*

*b) within three years after the Commission has defined the relevant geographical areas, set-up common "bundled offers" for the shippers at interconnection points between adjacent transmission system operators within the same regional area,;*

*c) within four years after the Commission has defined the relevant geographical areas, set-up "bundled offers" for all interconnection points in the concerned regional area and set-up regional platforms (e.g. single user interfaces) that will provide centralised information for shippers on interconnection capacities in the whole regional area and will facilitate their booking of capacities via direct links with the commercial services of the transmission system operators involved.*

#### *Justification*

*The achievement of regional cooperation is a complex and long process that implies that Regulation should develop the necessary steps and define concrete measures to be progressively implemented by TSOs at regional level so as to achieve a technical convergence between TSOs. The long-term objective would be to complete a single user interface in each region defined by the Commission in accordance with the amendment on ARTICLE 1, POINT 3), Article 2h, paragraph 3, subparagraph 1.*

#### Amendment 26

#### ARTICLE 1, POINT (3)

Article 2h, paragraph 3, subparagraph 1 (Regulation (EC) No 1775/2005)

3. The geographical area covered by each regional cooperation structure may be defined by the Commission. That measure, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(2).

3. The geographical area covered by each regional cooperation structure may be defined by the Commission. ***The Commission may pay particular attention to "energy islands" within the EU or geographically limited areas where there is a need to develop connections to the gas transmission grid.*** That measure, designed to amend non-essential elements of this Regulation by supplementing it, shall be

adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(2).

*Justification*

*The aim of establishing regional cooperation is also to link "energy islands" within the EU.*

Amendment 27

ARTICLE 1, POINT (3)

Article 2h, paragraph 3 a (new) (Regulation (EC) No 1775/2005)

***3a. The Agency shall cooperate with national regulators and transmission system operators in achieving the convergence of regulatory frameworks between the regions with the aim of achieving a competitive EU-wide market. Where the Agency considers that binding rules on such cooperation are required, it shall make appropriate recommendations.***

Amendment 28

ARTICLE 1, POINT (8)

Article 5a, paragraph 3, point a) (Regulation (EC) No 1775/2005)

(a) the system operator shall offer unused LNG facility and storage capacity on the primary market; for storage facilities this shall be at least on a day-ahead and interruptible basis,

(a) the system operator shall offer unused LNG facility and storage capacity on the primary market; for storage facilities this shall be at least on a day-ahead and interruptible basis, ***and shall respect national security of supply requirements and those laid down in Directive 2003/55/EC and Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply\****,

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\* OJ L 127, 29.4.2004, p. 92.

Amendment 29

ARTICLE 1, POINT (9)

Article 6, paragraph 7, subparagraph 1 (Regulation (EC) No 1775/2005)

"7. Transmission system operators shall make public ex-ante and ex-post supply and demand information, based on nominations, forecasts and realised flows in and out of the system. The level of detail of the information that is made public shall reflect the information available to the transmission system operator.

"7. Transmission system operators shall make public ex-ante and ex-post supply and demand information, based on nominations, forecasts and realised flows in and out of the system. The level of detail of the information that is made public shall reflect the information available to the transmission system operator. ***Commercial sensitive data related to individual contracts do not need to be disclosed in this information.***

Amendment 30

ARTICLE 1, POINT (10)

Article 6a, paragraph 3 (Regulation (EC) No 1775/2005)

3. LNG and storage system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.

3. LNG and storage system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis. ***Commercial sensitive data related to individual contracts do not need to be disclosed.***

Amendment 31

ARTICLE 1, POINT (14)

Article 9, paragraph 1 a (new) (Regulation (EC) No 1775/2005)

***1a. Before drawing up the guidelines and without prejudice to the procedure under paragraph 2, the Commission, in close cooperation with the Agency, shall draw up at an early stage and on an annual basis, a list of priorities and proposed measures of prime importance for the development of the EU-wide market in gas.***

*Justification*

*Given the wide range of issues where the adoption of guidelines is set-out, this procedure (from art. 1a (new) to 1e (new)) would be developed "ex-ante" the comitology process, governed by its own rules under the Interinstitutional Agreement.*

*This mechanism would aim to:*

*(i) Developing a prospective approach of measures to be adopted by comitology and their regular assessment;*

*(ii) Recognising the role of the Agency which could prepare and consult on proposed measures;*

*(ii) Ensuring a prior and transparent consultation of the relevant stakeholders who have the technical expertise.*

Amendment 32

ARTICLE 1, POINT (14)

Article 9, paragraph 1 b (new) (Regulation (EC) No 1775/2005)

***1b. Having regard to the priority list, the Commission shall mandate the Agency to develop within no more than six months a proposal for draft guidelines setting basic, clear and objective principles for the harmonisation of rules such as will enable the development of a competitive and integrated market in gas.***

*Justification*

*Idem as justification on ARTICLE 1, POINT 14), Article 9, paragraph 1 a (new) (Regulation (EC) No 1775/2005)*

Amendment 33

ARTICLE 1, POINT (14)

Article 9, paragraph 1 c (new) (Regulation (EC) No 1775/2005)

***1c. In the drafting of these guidelines, the Agency shall consult extensively, for a period of no less than 2 months, in an open and transparent manner all interested stakeholders and in particular the organisations representing the grid users.***

*Justification*

*Idem as justification on ARTICLE 1, POINT 14), Article 9, paragraph 1 a (new) (Regulation (EC) No 1775/2005)*

Amendment 34

ARTICLE 1, POINT (14)

Article 9, paragraph 1 d (new) (Regulation (EC) No 1775/2005)

***1d. The Agency shall finalise the draft guidelines on the basis of the consultations no later than two months after the end of the consultation period. It shall make public all the observations received, unless otherwise indicated by the author of these observations, and explain how these observations have been taken into consideration in the final draft or justify their rejection.***

*Justification*

*Idem as justification on ARTICLE 1, POINT 14), Article 9, paragraph 1 a (new) (Regulation (EC) No 1775/2005)*

Amendment 35

ARTICLE 1, POINT (14)

Article 9, paragraph 1 e (new) (Regulation (EC) No 1775/2005)

***1e. The Commission, upon receipt of the proposal for draft guidelines, shall assess if they establish basic, clear and objective principles for the harmonisation of rules rules such as will enable the development of a competitive and integrated marketin gas, and the fairness of the consultation process. If the Commission concludes that the final draft guidelines presented by the Agency constitute an appropriate basis, it shall submit them to the Committee referred to in Article 14(1) for their final adoption in accordance with the procedure referred to in Article 14(2).***

*Justification*

*Idem as justification on ARTICLE 1, POINT 14), Article 9, paragraph 1 a (new) (Regulation (EC) No 1775/2005)*

Amendment 36

ARTICLE 1, POINT (14)

Article 9, paragraph 2, subparagraph 2 (Regulation (EC) No 1775/2005)

The Commission may amend the guidelines referred to in the first subparagraph and adopt guidelines on the issues listed in paragraph 1. Those measures designed to amend non-essential elements of this Regulation inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(2)."

The Commission may amend the guidelines referred to in the first subparagraph and adopt guidelines on the issues listed in paragraph 1 ***in accordance with the procedure laid down in paragraphs 1a to 1e.*** Those measures designed to amend non-essential elements of this Regulation inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(2)."

Amendment 37

ARTICLE 1, POINT (14)

Article 9, paragraph 2 a (new) (Regulation (EC) No 1775/2005)

***2a. The Commission, in cooperation with the Agency, shall regularly assess the adequacy of the guidelines. Whenever deemed necessary, the Agency shall consult the European Network for Transmission System Operators for Gas and the appropriate market participants, consumers and end-users to ensure that the guidelines adequately achieve the minimum degree of harmonisation in the areas they cover.***

*Justification*

*It is necessary to set-out a regular assessment of the adequacy of the guidelines (beyond the monitoring of their implementation by Member States as set-out in article 24e of the proposal of Directive). A further round of Agency's and ENTSOG's consideration might be needed, including the formal consultation of stakeholders.*

## EXPLANATORY STATEMENT

### Regulation amending Regulation n°1775/2005 on conditions for access to the natural gas transmission networks

#### General evaluation

- The whole provisions aim at introducing European tools to improve cooperation and to strengthen the functioning of the internal market via the coordination of the transmission system operators and the harmonisation of the rules for storage system operators. The aim of the proposal is also to increase transparency and long-term perspectives, so as to secure gas supply, investment planning and prevent from severe disruptions. The Rapporteur can generally adhere at the level of principles to those objectives.
- When examining the whole set of proposals related to the gas market in the 3<sup>rd</sup> energy package, the Rapporteur is convinced that one has to bear in mind the protection of consumers by adopting transparent and socially adequate measures. The Regulation, however, is related to technical measures aiming at creating the technical regulatory framework for access to networks. The Directive should be adequately used as the correct legislative vehicle for addressing consumer concerns at EU level. (Article 3 on public service obligations). Alternatively consumers can be protected or by the means of specific national measures which have to be compatible with EU competition law.
- The Commission is also concerned about the level of concentration in wholesale and retail activities, but it fails to address the feature of the market, integration of retail with gas wholesale and electricity generation, which is likely to cement the positions of the dominant companies. Increasingly across Europe, markets are being dominated by integrated wholesale retail companies active in both electricity and gas markets. Access of the SMEs to the networks has to improve significantly.
- Finally, one of the major concerns is that the different stages of implementation between Member States of the present 2<sup>nd</sup> energy package are not duly taken into account. The conditions to ensure the implementation of the third package present more of a challenge since the 2nd round of liberalisation has not been fully enforced yet. Adopting additional measures could be therefore a source of legal uncertainty. Practical remedies would have to be found to ensure implementation in addition to legal infringement procedures.

**I. Cooperation between transmission system operators:** the creation of the European Network of transmission system operators for gas (ENTSOG) as a structure in charge of compulsory tasks is an important step forward.

*(i) balance of powers between the ENTSOG, national regulators and the Agency:* The Rapporteur considers that the area of cooperation of the ENTSOG is too broadly defined (adoption of harmonised technical and market codes covering security rules but also rules for trading, coordination of grid operations, adoption of a 10-year investment plan, publication of network development plans). He believes that the action of ENTSOG - as a form of co-regulation parallel to the activity of the European Commission - should be limited to technical issues related to network third party access, security and reliability and interoperability rules, operational procedures. The Rapporteur suggests a more stringent scope for the codes and rules to be drafted by the ENTSOG, limited to transmission network operations.

In this context, the Rapporteur considers that the establishment of the Agency being a vital step forward to an integrated market, its powers could be strengthened to approve the working programme developed by ENTSOG, to monitor and review TSO's initiatives regarding regional cooperation and to coordinate the drafting of the 10-year investment plan. The Rapporteur suggests also that the Agency endorses the codes drafted by the ENTSOG.

*(ii) involvement of other operators and stakeholders in gas market:* Additional provisions ensuring the proper mechanism of prior consultation of the stakeholders should be envisaged with the involvement amongst others of the EASEE-gas association. The full range of interested parties shall be consulted, including producers, network operators, suppliers and consumers.

The Agency should also have the responsibility to consult all stakeholders when it makes proposals and recommendations.

**II. Integration of the market through regional initiatives:** the new regulatory framework promotes regional initiatives between transmission system operators and regulatory authorities, so as to ensure optimum management of the network and appropriate investment planning and delivery.

*(i) a necessary step towards an internal integrated market:* The Rapporteur considers that the dimension of the regional cooperation is not clearly defined in the proposal, though it is an important step to an internal integrated market. It is essential to link up "energy islands" like the Baltic States or the Iberian peninsula.

The Rapporteur therefore suggests that the gas Regulation should impose on the TSOs a precise calendar coupled with concrete objectives to be implemented at regional level, so as to achieve the setting-up of single user interfaces. The Rapporteur is also concerned by the role of the Agency on the TSOs' initiatives regarding regional cooperation and would empower the Agency to ensure the necessary convergence of the technical and regulatory frameworks between the regions as well as the supervision of the regional investment plan.

*(ii) how can the Regulation make "regional initiatives" practically operational?* The Commission's proposals could be strengthened through: the set up of single user interfaces (e.g. one stop shop), ensuring commercial functions in the name of several TSOs, at the regional level. Areas should be more clearly identified in which TSOs are obliged to cooperate. The TSOs could consider setting up regional entities with defined responsibilities.

**III. Security of supply:** For the Rapporteur, it is imperative that the provisions of the Regulation are examined from the perspective of security of supply.

**- Planning of the investments:** according to the draft Regulation, the 10 year - voluntary - network development scheme would be drawn up at the EU level by the ENTSOG.

*(i) Necessity to reinforce investment development plan:* Planning of investment will need to be driven by the viewpoints and needs of market users, at national level where TSOs plan their independent investment and also at European level. The Rapporteur is of the opinion that those plans would have to be approved by national regulators - and not only submitted for advice to the Agency - and strictly monitored if we want them to become effective; the coordination between national, regional, and European plans should be clarified.

*(ii) Investments plans must be equally developed by all TSOs regardless of the structures of the market finally adopted in the Directive (ownership unbundling, ISO and other solutions).*



The investment plan should be monitored by the Agency and the NRA to ensure that the needed investment is carried out on a timely basis. However, at his stage, the Rapporteur considers that his Report has to progress in parallel with the parliamentary works on the relevant provisions of the proposed Directive on natural gas market. He deemed too early to introduce specific mechanism about the implementation of the investments, the link between national plans and European plans and the approval mechanisms of investments by national regulators. For the time being, the Rapporteur proposes additional measures to involve at least the Agency in the preparation of the European 10-year investment plans.

- **Access to storage:** The regulatory framework for storage system operators would be harmonised according to good practices and guidelines already established by the ERGEG. The existing provisions of the current Regulation concerning TSO would be extended to storage operators and extensively to LNG terminals so as to create a common approach to third party access.

*(i) The Rapporteur considers that the rules for access to storage must not jeopardize the long-term security of supply.* A clause introducing some safeguards has been added to the provisions of Art. 5a, in relation to Directive 2004/67/EC concerning security of gas supply.

*(ii) Rules on congestion management applied by TSO, storage and LNG operators (on the basis of interruptible capacity and on a day-to-day access) should be firmly defined and should at least take into account the existence of long-term contracts and flexibility mechanisms.*

**IV. Transparency requirements:** the proposed regulation extends the transparency requirements already existing for TSO to cover commercial gas stocks, forecasts of demand on and availability of capacities, costs for balancing the network and trading capacity. New provisions also apply to TSO with regards to ex-ante and ex-post supply and demand information and to measures taken to balance the system.

Though those provisions are an important milestone on the way to increase operational transparency benefiting all market players and though the right of access is legitimate, the Rapporteur estimates that provided the appropriate commercial confidentiality is guaranteed the publication of such data will generally strengthen the market. It must, however, be recalled that certain gas transactions are very commercially sensitive. Some safeguards have been introduced when deemed necessary.

**V. Institutional aspects:** The Regulation is not clear enough regarding comitology process as for prerogatives of the ENTSOG:

(i) on the one hand, if ENTSOG has the task to elaborate codes, the Commission can intervene under precise circumstances via a comitology procedure when it is deemed that technical or market codes adopted by the ENTSOG will not ensure non-discrimination, effective competition and the efficient functioning of the service;

(ii) on the other hand, the Commission can take the initiative under Article 9 and adopt "guidelines" in the same area, whatever the circumstances are, in order to specify details on third party access services, capacity allocation mechanisms, congestion management procedure, etc.

Taking into account the wide range of subjects where the adoption of Guidelines is envisaged, the Rapporteur proposes that a clear and robust "ex-ante" procedure should frame and prepare the comitology process, in cooperation with the Agency and in consultation with stakeholders.

The Commission should define and prioritize the list of subjects in cooperation with the proposed Agency (ACER) and the draft Guidelines should be subject to public consultation or if appropriate regular assessments by the Commission and ACER.

## **ANNEX: GENERAL CONTEXT OF THE GAS SECTOR IN EU**

(i) The place of gas in the European energy mix is crucial:

- from 23% of the European energy mix today, gas will amount to 28% in 2030;
- gas accounts for one-fifth of all electricity generated,
- no alternative to gas demand growth: gas demand has increased by 35% in 10 years;

(ii) The specific issue for gas is to ensure security of supply:

- domestic production is declining and gas is mainly purchased from a few and powerful leading extra EU producers under long-term contracts: gas is mostly imported from third countries (62% in 2006),
- Europe's dependency on imports will increase to more than 80% in 2030;

(iii) Energy security should be achieved in the context of a competitive market based on transparent rules taking into account the basic interests of the consumers:

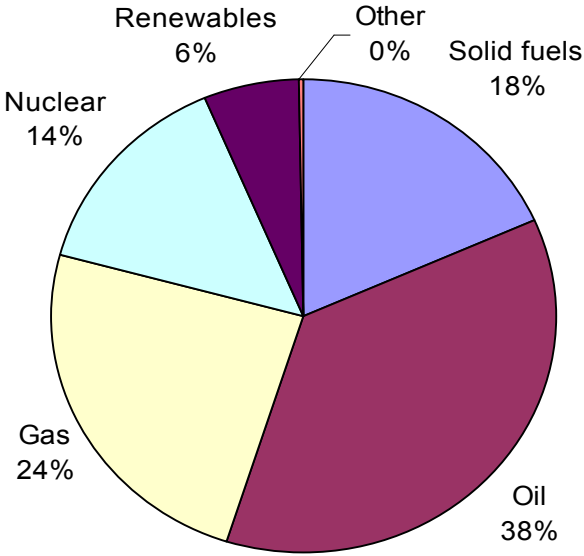
(iv) a significant need of investments:

according to IEA Europe should invest 400 billion \$ for the period 2005 – 2030 so as to ensure security of supply, from which around 160 billion \$ in the transmission and distribution networks, 20 billion \$ in LNG facilities and 220 billion \$ in upstream operations.

(iii) Technical problems to overcome in the gas sector:

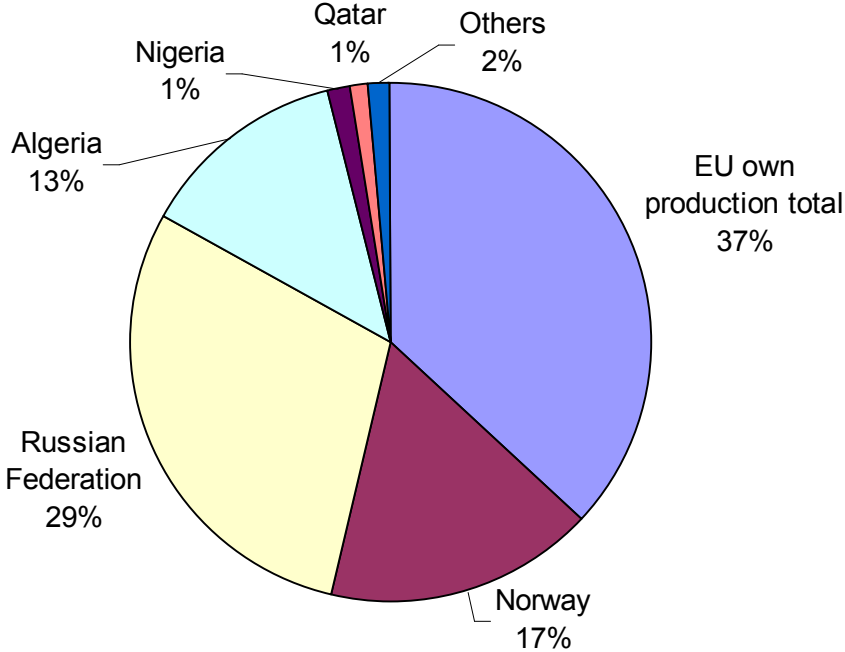
- lack of harmonisation of technical standards and of national regulator prerogatives;
- lack of prospective vision at the EU level to forecast investment needs: exploration and production of new gas fields, pipeline networks, tankers and LNG terminals as well as underground storage facilities;
- insufficient coordination, especially on cross-border issues.

**EU-27 Total Primary Energy Supply (2004): about 1 800 Mtoe**



Source: European Commission DG TREN, Eurostat

**EU-27 Origin of Natural Gas (2004)**



Source: European Commission DG TREN, Eurostat