

# EUROPEAN PARLIAMENT

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*Committee on Economic and Monetary Affairs*

**2007/0199(COD)**

8.5.2008

## **OPINION**

of the Committee on Economic and Monetary Affairs

for the Committee on Industry, Research and Energy

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))

Draftsman: Christian Ehler

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## SHORT JUSTIFICATION

The Commission justifies and explains the proposals it has put forward to amend the legislation in connection with the internal market package on the grounds that the current legislation on the internal market in energy, despite the progress that can be observed, does not seem sufficient to complete the internal market.

The Commission proposal amending Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks aims to extend the objectives of the legal framework to include:

- setting non-discriminatory rules for access conditions to LNG facilities and storage facilities,
- facilitating the emergence of a well-functioning and transparent cross-border retail market, and
- facilitating the emergence of a well-functioning and transparent wholesale market.

This opinion explicitly supports the call to complete the internal market as soon as possible. The internal market serves to increase security of supply at affordable prices. However, the instruments and rules that the Commission proposes in the draft regulation cannot be comprehensively endorsed.

Criticism can be directed in particular at:

- the impact assessments submitted,
- the failure at times to observe the subsidiarity principle,
- the inconsistent allocation of powers between the European structures, and
- extension of the powers of the Commission and the comitology procedures to set guidelines.

Without going into the detail of your draftsman's amendments, it should be noted that the open questions with regard to the plausibility of the impact assessments, which in particular were formulated by the Committee on Industry, Research and Energy, have not been answered satisfactorily. When legislation is proposed in future it is essential to ensure that if the investigations and analyses do not withstand critical inspection, the impact assessment and thus the Commission proposal will not be recognised.

There is a failure to observe the subsidiarity principle, particularly with regard to the proposed rules on retail markets. The proposed harmonisation makes substantial inroads into the Member States' areas of competence. Instead of aspiring to harmonisation at European level, the aim of improved cross-border access to transparent retail markets should be achieved through national regulation. The opinion introduces a new legislative obligation to encourage and ensure cross-border access to customers through provisions in various areas of the law.

A further focus of this opinion is to show the costs of the proposed rules more transparently and to clarify divisions of responsibilities and tasks in new European structures. Thus an amendment has been formulated to the effect that funding should come not from uncontrollable price rises but directly from the EU budget. With regard to the division of tasks, duplication of responsibilities has been replaced by clear attributions to the Commission, national regulatory authorities, the Agency and the Network of Transmission System Operators for Gas that is to be set up.

A third focus of these amendments is to set legal limits for the Commission's action. The former procedure under this Regulation, that guidelines were adopted by Parliament and the Council and could be adjusted later by the Commission using a standard procedure, should not be abandoned. These amendments create the conditions that the Commission needs for technical issues. For issues of great social and political interest, however, the normal legislative procedure must apply. So as not to hinder ongoing legislative consultation, the Commission must be enabled to introduce further provisions or to seek to adopt guidelines as amendments to the new regulation in a further procedure.

The opinion also aims to indicate a new approach to a more rapid development of network capacities. It is important to note that, in addition to more investment by network operators, simpler and cheaper authorisation procedures could clear bottlenecks rapidly. For a better overview of the time taken by authorisation procedures and their associated costs throughout Europe, and also to identify regulations that hinder the development of the cross-border network, the Network of Transmission System Operators for Gas that is to be set up should be given a monitoring function in this area. In the form of best practice or legislative provisions, efforts should be made to work towards improved framework conditions for the authorisation procedure.

## AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a regulation – amending act

##### Article 1 – point 3

Regulation (EC) No 1775/2005

Article 2c – paragraph 1 – subparagraph 1 – point a

*Text proposed by the Commission*

*Amendment*

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

(a) **network-related** technical and market codes in the areas referred to in paragraph 3;

*Justification*

*Rules more focused on the network.*

**Amendment 2**

**Proposal for a regulation – amending act**

**Article 1 – point 3**

Regulation (EC) No 1775/2005

Article 2c – paragraph 1 – subparagraph 1 – point c

*Text proposed by the Commission*

*Amendment*

(c) a 10-year investment plan every **two** years;

(c) a 10-year investment **plan for network development** every **three** years;

*Justification*

*Rules more focused on the network.*

**Amendment 3**

**Proposal for a regulation – amending act**

**Article 1 – point 3**

Regulation (EC) No 1775/2005

Article 2c – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Within the first year and every three years thereafter, the European Network of Transmission System Operators for Gas shall conduct a survey of the duration of authorisation procedures in the network area and of the national rules or the different national formulations of rules which delay or hinder cross-border network development or increase its cost.***

*Justification*

*The addition of point fa serves to take account of the problem that cross-border network development is hindered by differing national rules on authorisation procedures. The existing situation must be monitored in order to develop the necessary solutions or bring about improvements through identifying best practice.*

## Amendment 4

### Proposal for a regulation – amending act

#### Article 1 – point 3

Regulation (EC) No 1775/2005

Article 2 c – paragraph 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

2. The annual work programme referred to in paragraph 1(d) shall contain a list and description of the **network-related** 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.

#### *Justification*

*Clarification of the fact that the tasks concern network-related aspects.*

## Amendment 5

### Proposal for a regulation – amending act

#### Article 1 – point 3

Regulation (EC) No 1775/2005

Article 2c – paragraph 3 – introductory wording

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

*Clarification of the fact that the tasks concern network-related aspects.*

## Amendment 6

### Proposal for a regulation – amending act

#### Article 1 – point 3

Regulation (EC) No 1775/2005

Article 2c – paragraph 3 – point a

*Text proposed by the Commission*

*Amendment*

(a) security and reliability rules;

(a) **energy network** security and reliability rules;

*Justification*

*Clarification of the fact that the tasks concern network-related aspects.*

## **Amendment 7**

**Proposal for a regulation – amending act**

**Article 1 – point 3**

Regulation (EC) No 1775/2005

Article 2c – paragraph 3 – point g

*Text proposed by the Commission*

*Amendment*

(g) rules for trading;

(g) rules for **capacity** trading;

*Justification*

*Clarification of the fact that the tasks concern network-related aspects.*

## **Amendment 8**

**Proposal for a regulation – amending act**

**Article 1 – point 3**

Regulation (EC) No 1775/2005

Article 2c – paragraph 3 – point h

*Text proposed by the Commission*

*Amendment*

(h) transparency rules;

(h) **network-related** transparency rules;

*Justification*

*Clarification of the fact that the tasks concern network-related aspects.*

## Amendment 9

### Proposal for a regulation – amending act

#### Article 1 – point 3

Regulation (EC) No 1775/2005

Article 2c – paragraph 5

#### *Text proposed by the Commission*

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 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.

#### *Amendment*

5. The European Network of Transmission System Operators for Gas shall publish a Community-wide 10-year investment plan *for network development* every **three** years. The investment plan shall include the modelling of the integrated network, scenario 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. ***An annex to the investment plan shall summarise the obstacles to cross-border network development caused by differing authorisation procedures or practices.***

#### *Justification*

*Updating the investment plan every three years should enable the required information to be provided without creating unnecessary bureaucracy.*

*The addition of article 2c, paragraph 1, point fa serves to take account of the problem that cross-border network development is hindered by differing national rules on authorisation procedures. The existing situation must be monitored in order to develop the necessary solutions or bring about improvements through identifying best practice.*

## Amendment 10

### Proposal for a regulation – amending act

#### Article 1 – point 3

Regulation (EC) No 1775/2005

Article 2c – paragraph 6



*Text proposed by the Commission*

*Amendment*

6. Upon request of the Commission, the European Network of Transmission System Operators for Gas shall advise the Commission on the **adoption** of Guidelines as laid down in Article 9.

6. Upon request of the Commission, the European Network of Transmission System Operators for Gas shall advise the Commission on the **amendment** of Guidelines as laid down in Article 9.

*Justification*

*To bring the regulation into line with the amendments proposed for Article 9.*

**Amendment 11**

**Proposal for a regulation – amending act**

**Article 1 – point 3**

Regulation (EC) No 1775/2005

Article 2e – paragraph 3 – introductory wording

*Text proposed by the Commission*

*Amendment*

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 may adopt, upon recommendation of the Agency, guidelines on the areas listed in Article 2c(3) when it considers that:

*Justification*

*To ensure an unambiguous division of responsibilities.*

**Amendment 12**

**Proposal for a regulation – amending act**

**Article 1 – point 3**

Regulation (EC) No 1775/2005

Article 2e – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. Paragraph 3 shall be without prejudice to the Commission's right to **adopt and** amend guidelines as laid down in Article 9.

4. Paragraph 3 shall be without prejudice to the Commission's right to amend guidelines as laid down in Article 9.

*Justification*

*To bring the text of the regulation into line with the proposed amendments to Article 9.*

**Amendment 13**

**Proposal for a regulation – amending act**

**Article 1 – point 3**

Regulation (EC) No 1775/2005

Article 2e – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. The Commission shall notify the European Parliament and the Council when it intends to adopt guidelines pursuant to paragraph 3.***

*Justification*

*Commission action pursuant to article 2e, paragraph 3 of the regulation suggests that the Network of Transmission System Operators for Gas, which is financed from public funds, is not adequately fulfilling its obligations under this regulation. In this event the European Parliament and the Council should receive comprehensive information so that they can introduce any necessary amendments.*

**Amendment 14**

**Proposal for a regulation – amending act**

**Article 1 – point 3**

Regulation (EC) No 1775/2005

Article 2g

*Text proposed by the Commission*

*Amendment*

The costs related with the activities of the European Network of Transmission System Operators for Gas mentioned in Articles 2a to 2h shall be borne by the ***transmission system operators and shall be taken into account in the calculation of tariffs.***

The costs related with the activities of the European Network of Transmission System Operators for Gas mentioned in Articles 2a to 2h shall be borne by the ***general budget of the European Union.***

*Justification*

*The newly inserted Articles 2a to 2h are intended to create a new structure that requires*

*funding. As the new network will be linked up at EU level, this must be financed from the EU budget. Financing from tariffs would not make it possible to monitor costs or eventually to evaluate the new structure.*

## **Amendment 15**

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

#### **Article 1 – point 3**

Regulation (EC) No 1775/2005

Article 2h – paragraph 3

*Text proposed by the Commission*

*Amendment*

**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).** **deleted**

***For that purpose, the Commission may consult the European Network of Transmission System Operators for Gas and the Agency.***

*Justification*

*Regional cooperation will be organised within the network. How cooperation is organised and at what organisational levels it takes place must be laid down in the articles of association of the Network. A special decree from the Commission is not necessary or appropriate.*

## **Amendment 16**

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

#### **Article 1 – point 7**

Regulation (EC) No 1775/2005

Article 5 – paragraph 3 – point a

*Text proposed by the Commission*

*Amendment*

(a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible

(a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible

basis;

basis, *insofar as this does not prevent the implementation of a long-term supply contract*;

*Justification*

*The design of congestion management rules should take account of shippers' commitments towards final customers and security of supply (existence of long term supply contracts).*

**Amendment 17**

**Proposal for a regulation – amending act**

**Article 1 – point 8**

Regulation (EC) No 1775/2005

Article 5a – paragraph 3 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Those measures shall take into account the integrity of the system concerned as well as security of supply.***

*Justification*

*As already recognized in the guidelines on congestion management principles for transmission networks, the design of congestion management rules should take account of shippers' commitments towards final customers and the physical specificities of infrastructures.*

**Amendment 18**

**Proposal for a regulation – amending act**

**Article 1 – point 10**

Regulation (EC) No 1775/2005

Article 6a – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. All LNG and storage system operators shall make public the amount of gas in each storage or LNG facility, inflows and outflows, and the available storage and LNG facility capacities, including for those facilities exempted from third party access. The information shall also be communicated to the transmission system

4. All LNG and storage system operators shall make public the amount of gas in each storage ***facility or group of storage facilities in a same balancing zone*** or LNG facility, inflows and outflows, and the available storage and LNG facility capacities, including for those facilities exempted from third party access. The

operator who shall make it public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least every day.

information shall also be communicated to the transmission system operator who shall make it public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least every day.

#### *Justification*

*Shippers expect the publication of data corresponding to the commercial offers. Storage operators may sale their storage capacities by site (physical facility) or by group of storage sites. In the latter case the publication “by site” is generally not relevant for users. This was recognized in the GGSSO.*

*A publication of storage volumes by site tends to foster short-term trading behaviours, by providing information on the system internal fine tuning. This leads to an increased price volatility.*

### **Amendment 19**

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

##### **Article 1 – point 10**

Regulation (EC) No 1775/2005

Article 6 b

#### *Text proposed by the Commission*

Transmission system operators, storage system operators and LNG system operators shall keep at the disposal of the national regulatory authority, the national competition authority and the Commission all information referred to in Article 6 and 6a, and in part 3 of the Annex for a period of **five years**.

#### *Amendment*

Transmission system operators, storage system operators and LNG system operators shall keep at the disposal of the national regulatory authority, the national competition authority and the Commission all information referred to in Article 6 and 6a, and in part 3 of the Annex for a period of **three years**.

#### *Justification*

*A three-year period seems sufficient for the objective of better control.*

### **Amendment 20**

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

##### **Article 1 – point 10**

Regulation (EC) No 1775/2005

Article 6 c (new)

*Text proposed by the Commission*

*Amendment*

**Article 6c**

***Restriction on the publication of information***

***If the operator of a transmission network, storage facility or LNG facility considers that for reasons of confidentiality it does not have the right to publish all the required data, it shall apply to the relevant authorities to authorise a restriction of the publication of the data concerned.***

***The relevant authorities shall grant or refuse authorisation on a case-by-case basis, taking account of the need to protect legitimate trade secrets on the one hand and the aim of creating a natural gas market that is open to competition on the other.***

***Authorisation within the meaning of this Article shall not be granted where three or more users have contracted capacity at the same point.***

*Justification*

*In certain cases, publication may contravene national data protection rules or counteract the objective of a natural gas market that is open to competition. It therefore seems appropriate in exceptional cases to allow individual circumstances to be examined .*

**Amendment 21**

**Proposal for a regulation – amending act**

**Article 1 – point 13**

Regulation (EC) No 1775/2005

Article 8a – subparagraph 2

*Text proposed by the Commission*

*Amendment*

These rules shall be ***made public, be*** designed with the aim of ***harmonising*** access to customers across borders ***and be subject to*** review by the regulatory authorities.

These rules shall be designed with the aim of ***promoting and ensuring*** access to customers across borders. ***They shall be published after*** review by the regulatory authorities.

### *Justification*

*The Member States remain responsible for the retail markets and for framework conditions, including those for transmission system operators. As in the services market, cross-border access to customers can be ensured even without European harmonisation.*

### **Amendment 22**

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

##### **Article 1 – point 14**

Regulation (EC) No 1775/2005

Article 9 – paragraph 1 – point g

*Text proposed by the Commission*

*Amendment*

***(g) details on the retail market issues covered by Article 8a;*** ***deleted***

### *Justification*

*The Member States should retain responsibility for the necessary regulation of retail markets.*

### **Amendment 23**

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

##### **Article 1 – point 14**

Regulation (EC) No 1775/2005

Article 9 – paragraph 1 – point h

*Text proposed by the Commission*

*Amendment*

***(h) details on the topics listed in Article 2c(3).*** ***deleted***

### *Justification*

*The power to adopt guidelines for Article 2c(3) is laid down in Article 2e(3). As the other guidelines listed in Article 9(1) may be amended, but not adopted, by the Commission, a reference to them in Article 9 should be deleted, on the grounds of consistency.*

### **Amendment 24**

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

##### **Article 1 – point 14**

Regulation (EC) No 1775/2005

Article 9 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

2. Guidelines on the issues listed in paragraph 1(a) to (c) are laid down in the Annex with respect to transmission system operators.

*Amendment*

2. Guidelines on the issues listed in paragraph 1(a) to (c) with respect to transmission system operators are laid down in the Annex. **The guidelines on the issues listed in paragraph 1(a) to (c) with respect to storage facility operators and LNG facility operators, and guidelines on the issues listed in paragraph 1(d) to (f), shall be adopted at a later date by the ordinary procedure and shall be set out in a supplemental Annex to this Regulation.**

*Justification*

*This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary. The Commission describes the guidelines as necessary to achieve the aims of the regulation, therefore they should be laid down within the framework of the regulation. The Commission is free to propose any necessary additions during the current procedure.*

**Amendment 25**

**Proposal for a regulation – amending act**

**Article 1 – point 14**

Regulation (EC) No 1775/2005

Article 9 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

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).

*Amendment*

The Commission may amend the guidelines referred to in the first subparagraph. 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).



### *Justification*

*This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary. The Commission describes the guidelines as necessary to achieve the aims of the regulation, therefore they should be laid down within the framework of the regulation.*

### **Amendment 26**

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

#### **Article 1 – point 14**

Regulation (EC) No 1775/2005

Article 9 – paragraph 2 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***Before the Commission amends the guidelines, as provided for in the second subparagraph, or before proposing to adopt the guidelines referred to in the first subparagraph, it shall ensure that impact assessments have been carried out and that all the relevant parties have been consulted, including, as appropriate, supply undertakings, customers, system users, transmission system operators, distribution system operators, LNG system operators and storage system operators, relevant (industry) associations, technical bodies and stakeholder platforms. The Commission shall also ask the Agency for its opinion.***

### *Justification*

*If the Commission's power of execution is extended to the entire scope of the Regulation, it is preferable to also introduce some transparency and consultation mechanisms, as it is the case for ENTSOG, especially when it is about very technical issues, for instance related to access to infrastructures. .*

## PROCEDURE

<b>Title</b>	Conditions for access to the natural gas transmission networks		
<b>References</b>	COM(2007)0532 – C6-0319/2007 – 2007/0199(COD)		
<b>Committee responsible</b>	ITRE		
<b>Opinion by</b> Date announced in plenary	ECON 11.10.2007		
<b>Drafts(wo)man</b> Date appointed	Christian Ehler 23.10.2007		
<b>Discussed in committee</b>	29.1.2008	26.2.2008	1.4.2008
<b>Date adopted</b>	6.5.2008		
<b>Result of final vote</b>	+: 28	–: 1	0: 7
<b>Members present for the final vote</b>	Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, Manuel António dos Santos, Jonathan Evans, Elisa Ferreira, Jean-Paul Gauzès, Robert Goebbels, Donata Gottardi, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Florencio Luque Aguilar, Gay Mitchell, John Purvis, Alexander Radwan, Bernhard Rapkay, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg, Cornelis Visser		
<b>Substitute(s) present for the final vote</b>	Valdis Dombrovskis, Harald Ettl, Ján Hudacký, Alain Lipietz, Diamanto Manolakou, Gianni Pittella, Bilyana Ilieva Raeva, Andreas Schwab		