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*Committee on Economic and Monetary Affairs*

**2007/0195(COD)**

22.4.2008

## **OPINION**

of the Committee on Economic and Monetary Affairs

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity  
(COM(2007)0528 – C6-0316/2007 – 2007/0195(COD))

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## SHORT JUSTIFICATION

### Current situation

The European legislator decided in 1996, in its first "energy package", to gradually liberalise the then monopoly-based European energy system. In its 2003 "second package" Parliament and Council decided to extend market opening to all consumers by mid-2007, thereby giving detailed provisions on the regulatory approach. However, the European markets for gas and electricity still show dysfunctions concerning fair access to transmission grids, interconnection between national energy markets (cross border interconnections) and the maintenance of security of supply.

The current Commission proposal, the "third energy package", therefore suggests several measures as to how to overcome these dysfunctions and to move forward in the creation of a fully integrated internal market.

### Unbundling provisions

It goes without saying that legal, functional and management unbundling provisions, as provided by the "second energy package", are of fundamental importance and must be implemented effectively in all Member States. However, the discussion on the future design of the internal market sometimes seems to be centred too exclusively on the possible merits of unbundling provisions. It is doubtful if ownership unbundling (OU) as practiced in certain Member States, where it has been developed as part of national competition law, can be used as a model for the whole of the EU. In fact, the Commission impact assessment does not provide enough evidence to conclude that OU is really the *most appropriate* measure to both, increase competition and to create a functioning internal market. Furthermore, it could cause problems in Member States concerning the protection of property rights as laid down in their respective constitutions. That is why we suggest giving Member States the option to choose a regulatory model which is most appropriate to their own economy. Apart from OU and Independent Systems Operators (ISO), the two models contained in the original Commission proposal, a comprehensive *third option*, elaborated by several Member States, is proposed.

This should lead to an internal market where different models could coexist. All models would be subject to strict regulation at EU level through the Agency for the Cooperation of Energy Regulators (ACER) in close cooperation with the National Regulatory Agencies (NRAs) as well as the national and EU competition authorities. This approach could ensure transparent and fair access to the grid and provide a liberalized EU energy market.

### Transparent access to the transmission networks and investment opportunities

Transmission System Operators (TSOs) should be responsible for transparent non-discriminatory procedures for connection to the grids. These procedures should be approved by NRAs. TSOs should be obliged to provide all necessary information to all interested companies seeking to connect new power plants (including nuclear ones), transport the electricity through the TSO's grids or invest in the transmission systems interconnections (thereby enhancing security of supply). Regional cooperation could be promoted for better and smoother coordination within and between the regions by NRAs and ACER.

## **A balanced regulatory approach: ENTSO, NRAs, ACER, Commission**

The right regulatory balance, in particular if Member States opt for models other than OU, plays the most important role in the creation of an internal energy market. In order to protect the public interest it seems crucial that the NRAs as well as ACER dispose of the highest degree possible of independence, bereft of any political or business interference.

Furthermore, it must be guaranteed that the regulatory model is coherent, disposing of a clear-cut repartition of competencies and responsibilities. It is in this regard that the Commission proposal does not give a satisfactory answer: It foresees, on the one hand, to assign ACER an almost purely advisory role, leaving it very limited scope to take individual decisions which are legally binding on third parties. On the other hand however, very wide scope is given to the European Network of Transmission System Operators (ENTSO), which means that TSOs are assigned a role of "para self-regulation", a role which TSOs, following their various position papers, are not inclined to assume. The entire approach leads to a regulatory framework which is unclear and unbalanced, leaving ACER in a very weak position vis-à-vis both, the Commission and ENTSO.

Finally, it is questionable from Parliament's point of view whether, as foreseen by the Commission, such a big number of key regulatory issues should be dealt with by Comitology procedure.

### **The Regional Approach**

In its proposal the Commission does not seem to back the idea of Regional markets wholeheartedly. However, regional markets could be a viable *intermediary* step to the creation of a fully integrated European energy market. The creation of Regional Systems Operators (RSOs) would be a strong vector to provide investment for transmission systems and, in particular, cross border interconnections, thereby improving security of supply. RSOs should provide regional investment plans which should be monitored by NRAs and ACER to guarantee effective coordination.

In order to enhance the role of Regional Markets, ACER could establish "regional committees" (similar to the ones of the Agency's forerunner, ERGEG) which could be responsible for "Regional regulatory supervision".

## **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 directive – amending act Recital 7

#### *Text proposed by the Commission*

(7) Only the removal of the inherent incentive for vertically integrated companies to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the network owner being appointed as the network operator and being independent from any supply and production interests, is **clearly the most** effective and stable way to solve the inherent conflict of interest and to ensure security of supply. For this reason, the European Parliament in its Resolution on *Prospects* for the internal gas and electricity market adopted on 10 July 2007 referred to ownership unbundling at transmission level as the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market. Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control, including through minority blocking rights on decisions of strategic importance such as investments, over a production or supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. Conversely, control over a transmission system operator should preclude the possibility of holding any interest in or exercising any right over a supply undertaking.

#### *Amendment*

(7) Only the removal of the inherent incentive for vertically integrated companies to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the network owner being appointed as the network operator and being independent from any supply and production interests, is **an** effective and stable way to solve the inherent conflict of interest and to ensure security of supply. For this reason, the European Parliament in its Resolution on *prospects* for the internal gas and electricity market adopted on 10 July 2007 referred to ownership unbundling at transmission level as the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market. Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control, including through minority blocking rights on decisions of strategic importance such as investments, over a production or supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. Conversely, control over a transmission system operator should preclude the possibility of holding any interest in or exercising any right over a supply undertaking.

#### *Justification*

*It is not correct to say that ownership unbundling is the simplest and quickest way to bring about security of supply, which depends on a much wider variety of conditions, including for example a proper degree of regulation. Even after its ownership has been unbundled, a*

*network remains a natural monopoly that has to be regulated.*

## **Amendment 2**

### **Proposal for a directive – amending act Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) Assuming that they comply with the provisions on effective and efficient corporate unbundling, vertically integrated companies can continue to own network assets while ensuring an effective separation of interests, provided that the network company performs all the functions of a network operator and necessary provision is made for detailed regulation and comprehensive regulatory oversight mechanisms.***

*Justification*

*Member States must be allowed a third practicable option which, without encroaching massively on their ownership structures, would enable vertically integrated companies, assuming that they satisfied stringent conditions and requirements, to continue operating their networks within their integrated set-up.*

## **Amendment 3**

### **Proposal for a directive – amending act Recital 11**

*Text proposed by the Commission*

*Amendment*

***(11) Where the undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling and, as a derogation, setting up system operators which are independent from supply and generation interests. The full effectiveness of the independent system operator solution needs to be assured by way of specific additional rules. To preserve fully the interests of the shareholders of vertically integrated companies, Member***

***(11) Where the undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between different options.***

***States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated company into shares of the network company and shares of the remaining supply and generation business, provided that the requirements resulting from ownership unbundling are complied with.***

*Justification*

*Introduction of new measures to complete the internal market in energy.*

**Amendment 4**

**Proposal for a directive – amending act  
Recital 20**

*Text proposed by the Commission*

(20) Prior to adoption **by the Commission** of guidelines defining further the *record keeping* requirements, the Agency for the Cooperation of Energy Regulators and the Committee of European Securities Regulators (CESR) should cooperate to investigate **and advise the Commission on** the content of the guidelines. The Agency and the Committee should also cooperate to further investigate and advise on the question whether transactions in electricity supply contracts and electricity derivatives should be subject to *pre* and/or post-trade transparency requirements and if so what the content of those requirements should be.

*Amendment*

(20) Prior to the adoption of guidelines defining further the *record-keeping* requirements, the Agency for the Cooperation of Energy Regulators and the Committee of European Securities Regulators (CESR) should cooperate to investigate the content of the guidelines **and act in an advisory capacity**. The Agency and the Committee should also cooperate to further investigate and advise on the question whether transactions in electricity supply contracts and electricity derivatives should be subject to *pre-* and/or post-trade transparency requirements and if so what the content of those requirements should be.

*Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the normal procedure by Parliament and the Council. Powers should be conferred on the Commission solely for the purposes of any necessary adjustments.*

**Amendment 5**

**Proposal for a directive – amending act  
Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) Regional cooperation should be developed further in order to achieve a fully integrated European electricity grid, enabling the national electricity markets in the European Union to be joined together.***

*Justification*

*A truly European electricity network should be the goal of this Directive and as such the linking up of these regions is a vital step.*

**Amendment 6**

**Proposal for a directive – amending act  
Recital 27**

*Text proposed by the Commission*

*Amendment*

***(27) In particular power should be conferred on the Commission to adopt the guidelines necessary for providing the minimum degree of harmonisation required to achieve the aim of Directive 2003/54/EC. Since those measures are of general scope and are designed to supplement Directive 2003/54/EC by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.***

***deleted***

*Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the normal procedure by Parliament and the Council. Powers should be conferred on the Commission solely for the purposes of any necessary adjustments.*

**Amendment 7**



**Proposal for a directive – amending act**

**Article 1 – point 2**

Directive 2003/54/EC

Article 3 – paragraph 10

*Text proposed by the Commission*

*Amendment*

**2. In Article 3, the following paragraph 10 is added:** **deleted**

**“10. The Commission may adopt guidelines for the implementation of this Article. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)”**

*Justification*

*Public interest obligations are already dealt with in the directive currently in force. In this context Commission guidelines would not be appropriate.*

**Amendment 8**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/54/EC

Article 5a

*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) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges**

**1. Member States’ authorities and regulators** shall cooperate among themselves for the purpose of integrating their national markets at least at the regional level. In particular, **they** shall **ensure** the cooperation of network operators at a regional level, and foster the **convergence and** consistency of their legal and regulatory frameworks.

*in electricity.*

*Justification*

*The Directive should promote regional initiatives for market integration as an indispensable intermediary step in achieving a single European energy market.*

*Initiatives such as the coupling of electricity markets between Belgium, the Netherlands, Luxembourg, France and Germany, favour competition and security of supply, by optimising the use of infrastructure, greater transparency and market liquidity. The objective is ultimately to establish a single European energy market.*

**Amendment 9**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/54/EC

Article 5a – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(1a) On the joint request of Member States between which significant difficulties have arisen in the course of cooperation at a regional level, the Commission may designate a regional coordinator, in agreement with all Member States concerned.***

*Justification*

*Regional coordinators could play an important role in facilitating the dialogue between Member States, notably as regards cross-border investments.*

**Amendment 10**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/54/EC

Article 5a – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***(1b) The regional coordinator shall promote, at a regional level, the cooperation of regulatory authorities and any other competent public authorities, network operators, power exchanges, grid***

*users and market parties. In particular, he or she shall:*

*(a) promote new efficient investment in interconnections. To this end, he or she shall assist transmission system operators in elaborating their regional interconnection plans and contribute to the coordination of their investment decisions and, where appropriate, of their open-season procedure.*

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

*(c) submit an annual report to the Commission and the Member States concerned on the progress achieved in the region and on any difficulties or obstacles that may hinder progress.*

#### *Justification*

*This constitutes an additional way to achieve the goal of a single market. Regional coordinators could play an important role in facilitating the dialogue between Member States, notably as regards cross-border investments.*

#### **Amendment 11**

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

##### **Article 1 – point 3 a (new)**

Directive 2003/54/EC

Article 7a (new)

*Text proposed by the Commission*

*Amendment*

*(3a) The following Article 7a shall be inserted:*

*“Article 7a*

*In order to ensure the independence of transmission system operators, Member States shall ensure that from ... \*, vertically*

*integrated undertakings must comply either with the provisions of Article 8(1)(a) to (d) on ownership unbundling (OU) and Article 10 on independent system operators (ISO) or with Article 10b on effective and efficient unbundling (EEU).*

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*\* One year after the date of transposition."*

## **Amendment 12**

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

#### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point b – point i

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

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

## **Amendment 13**

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

#### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point b – point ii

#### *Text proposed by the Commission*

(ii) to directly or indirectly exercise control over a transmission system operator or over a transmission system, and to directly or indirectly exercise control ***or hold any interest in*** or exercise any right over an

#### *Amendment*

(ii) to directly or indirectly exercise control over a transmission system operator or over a transmission system, and to directly or indirectly exercise control or exercise any right over an undertaking performing

undertaking performing any of the functions of generation or supply;

any of the functions of generation or supply;

#### *Justification*

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

### **Amendment 14**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 2

#### *Text proposed by the Commission*

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

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

(b) the power to exercise voting rights, or

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

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

#### *Amendment*

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

(b) the power to exercise voting rights, or

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

#### *Justification*

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

### **Amendment 15**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

**deleted**

*Justification*

*While ownership unbundling is a desirable goal in the long run, full OU can cause considerable delays in adopting the new directive as it faces constitutional obstacles in many member states. The amendment would allow avoiding these problems while still achieving a working separation of functions and internal market through banning the control over the transmission network system to any undertakings performing functions of generation or supply.*

## **Amendment 16**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 10 as an independent system operator.**

**5. With respect to the goal of achieving regional cooperation as laid down in Article 5a, Member States shall favour and support any collaboration or cooperation between transmission system operators and regulators aiming to harmonise the access and balancing rules (favouring the integration of balancing zones) within and across several neighbouring Member States, in accordance with Article 2h(3) of Regulation (EC) No 1228/2003. Such cooperation may take the form of a common structure between transmission system operators concerned to cover several neighbouring territories. In such a case, Member States shall ensure that the common structure of the transmission system operators concerned complies with Articles 8 and 10a.**

### *Justification*

*The challenge of building larger and more liquid markets necessitates strong guidance. Whereas voluntary cooperation of system operators at regional level may in some case give results, we consider however that a more robust framework on regional system operation is therefore needed.*

*The possibility to set up ultimately a regional/European system operator should be given by the Directive. It is also essential to ensure inter-regional cooperation to enable a truly pan-European market to emerge.*

### **Amendment 17**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. Where the shareholder of an undertaking referred to in 1(a) is a Member State, the obligations set out in paragraph 1(b) and (c) shall be deemed to be fulfilled provided that the undertaking performing any of the functions of generation or supply and the transmission system operator or transmission system are legally separate state entities and comply with paragraph 1(b) and (c).***

### *Justification*

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

### **Amendment 18**

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

##### **Article 1 – point 5**

Directive 2003/54/EC

Article 8a – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. An agreement concluded with one or several third countries to which the

2. An agreement concluded with one or several third countries to which the

Community is a party may allow for a derogation from paragraph 1.

Community is a party may allow for a derogation from paragraph 1 ***in accordance with the provisions of the Treaty.***

*Justification*

*Since they relate to the Community's economic policy and internal security, these agreements need to be communicated to and approved by the Union's legislative bodies, pursuant to the provisions of the Treaty.*

**Amendment 19**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8b – paragraph 13

*Text proposed by the Commission*

13. The Commission ***shall adopt*** guidelines setting out the details of the procedure to be followed for the application of paragraphs 6 to 9. This measure designed to amend non-essential elements of this Directive by supplementing it shall be ***adopted*** in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

*Amendment*

13. The Commission ***may amend*** guidelines setting out the details of the procedure to be followed for the application of paragraphs 6 to 9. This measure designed to amend non-essential elements of this Directive by supplementing it shall be ***amended*** in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

*Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the normal procedure by Parliament and the Council. Powers should be conferred on the Commission solely for the purposes of any necessary adjustments.*

**Amendment 20**

**Proposal for a directive – amending act**

**Article 1 – point 6 a**

Directive 2003/54/EC

Article 9 – paragraph 1 – point f a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) In Article 9(1), the following point shall be added:***

***"(fa) ensuring that the benefit to the***



*region in which it is operating is duly taken into account. Without prejudging shareholders' rights as regards investment profitability and equity needs, operational and investment decisions taken by a transmission system operator shall be consistent with the Community-wide and regional investment plans pursuant to Articles 2c and 2d of Regulation (EC) No 1228/2003 and shall facilitate market development, market integration and optimise socio-economic welfare gains at least at regional level."*

*Justification*

*Article 9(1)(f a) (new) to ensure that transmission system operators always consider as first priority the needs of the region they operate in. In particular, they should ensure that the socio-economic welfare is improved inside their region and even beyond (across regions).*

**Amendment 21**

**Proposal for a directive – amending act**

**Article 1 – point 6 b (new)**

Directive 2003/54/EC

Article 9 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(6b) In Article 9, the following paragraph shall be added:***

***“1a. Each transmission system operator shall elaborate a ten-year network development plan at least every two years. It shall provide efficient measures in order to guarantee system adequacy and security of supply. That development plan shall, in particular:***

***(a) indicate to market participants the main transmission infrastructures to be built over the next ten years.***

***(b) include all the investments already decided upon and identify new investments for which an implementation decision has to be taken during the***

*following three years.*

*In order to elaborate its ten-year network development plan, each transmission system operator shall make reasonable estimates about the evolution of generation, consumption and exchanges with other countries, taking into account regional and European-wide existing network investment plans. A transmission system operator shall submit its estimates to the national regulatory authority within a reasonable time period.*

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

*The national regulatory authority shall examine whether the ten-year network development plan covers all investment needs identified in the consultation and may require that the transmission system operator amend its plan.*

*If a transmission system operator refuses to implement a specific investment that is listed in the ten-year network development plan for execution during the following three years, Member States shall ensure that the regulatory authority has the competence to:*

*(a) request the transmission system operator to execute its investment obligations using its financial capacities;  
or*

*(b) invite independent investors to tender for a necessary investment in a transmission system, possibly requiring the transmission system operator to agree to:*

*- third-party financing;*

*- a third party building a new asset;*

**- a third party operating a new asset;  
and/or**

**- a capital increase to finance the necessary investments and allow independent investors to participate in the capital.**

**The relevant financial arrangements shall be subject to the approval of the regulatory authority.**

**Whether the transmission system operator or a third party makes a specific investment, tariff regulation shall allow for revenue that covers the costs of such investment.**

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

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

**Transmission system operators shall not be entitled to refuse the connection of new power plants on the grounds of possible future limitations to available network capacities, such as congestion in distant parts of the transmission grid.**

**Transmission system operators shall be required to supply necessary information.**

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

#### *Justification*

*Even though the Effective and Efficient Legal Unbundling option already contains several strict provisions for those TSOs, a big part of these provisions need to be valid for ownership unbundled TSOs and TSOs under the ISO-option as well. Anti-discriminatory access of new power plants and necessary investments in the grid always need to be guaranteed, regardless of who is the owner of the grid.*

## Amendment 22

### Proposal for a directive – amending act

#### Article 1 – point 8

Directive 2003/54/EC

Article 10a – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner with paragraph 2 of this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).”**

**deleted**

#### *Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the normal procedure by Parliament and the Council. Powers should be conferred on the Commission solely for the purposes of any necessary adjustments.*

## Amendment 23

### Proposal for a directive – amending act

#### Article 1 – point 8

Directive 2003/54/EC

Article 10 b (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 10b**

***Effective und efficient corporate unbundling of transmission systems***

***Assets, plant, staff, and identity***

***1. Transmission system operators shall be equipped with all the human, material, and financial resources of the vertically integrated company necessary in order to carry on the proper business of electricity transmission. The following in particular shall be ensured:***

***(a) All assets necessary for the proper business of electricity transmission shall be owned by the transmission system operator;***

***(b) All staff necessary for the proper business of electricity transmission shall be employed directly by the transmission system operator;***

***(c) Sufficient funds for future investment projects shall remain available as provided for in the annual financial planning.***

***The fields of activity covered by points (a) to (c) shall encompass at least:***

***(i) representation of transmission system operators and contacts with third parties and regulatory authorities;***

***(ii) guaranteeing and regulating third-party access, in particular for new market entrants from the renewable energy sector;***

***(iii) collection of access charges, revenue from congestion management, and payments under the inter-transmission system operator compensation mechanism in accordance with Article 3 of Regulation (EC) No 1228/2003;***

***(iv) operation, maintenance, and development of the transmission grid;***

***(v) investment planning to guarantee the long-term ability of the grid to meet commensurate demand and ensure security of supply;***

***(vi) legal advice and representation;***

***(vii) accounting and IT services.***

***2. The transmission system operator may not carry on any businesses or activities other than transmission likely to be incompatible with its tasks, including ownership of shares or interests in a company belonging to, or a part of, the vertically integrated company or in any other electricity or gas undertaking.***

*Exceptions to the above shall require the prior consent of the national regulatory authority and shall be confined to ownership of shares and interests in other network companies.*

*3. The transmission system operator shall have its own corporate identity, which shall be clearly distinct from the vertically integrated company, with separate branding, communication, and business premises.*

*4. The transmission system operator may not supply the vertically integrated company with any sensitive information or information constituting a competitive advantage unless it has shared that information with all market participants, on an equal footing and without discrimination. The types of information covered by this provision shall be determined by the transmission system operator together with the national regulatory authority.*

*5. The account books of transmission system operators shall be inspected by an auditor other than the one who inspects the vertically integrated company and all of its affiliated companies.*

*Independence of the management, the chief executive, or the board of executive directors of the transmission system operator*

*6. Decisions concerning the appointment or any early termination of the employment of the chief executive or of members of the board of executive directors of the transmission system operator and the contractual agreements to that effect for the purposes of employment or termination thereof shall be notified to the national regulatory authority. Such decisions and agreements shall not be binding unless the regulatory body has refrained from exercising its right to object in the three weeks following the notification. The regulatory authority may object to appointments and*

*contractual agreements to that effect if serious doubts arise as to the professional independence of the chief executive appointed, or of the member of the board of executive directors, or, where employment and the contractual agreements to that effect have been terminated before the scheduled date, there are serious doubts about the justification for that measure.*

*7. The chief executive, and members of the board of executive directors, of the transmission system operator shall be allowed an effective right to appeal to the regulatory authority or a court if their employment has been terminated before the scheduled date.*

*8. The regulatory authority must rule on any appeal within six months. That time limit may not be exceeded without factual justification.*

*9. For no less than three years after they have ceased to be employed with the transmission system operator, the chief executive concerned, or the members of the board of executive directors, may not work in any establishment of the vertically integrated company performing the functions of generation or supply.*

*10. The chief executive and members of the board of executive directors shall not hold any shares in, or receive any form of payment from, any undertaking belonging to the vertically integrated company apart from the transmission system operator. No portion of the salary paid to the chief executive or members of the board of executive directors shall depend on fields of activity in which the vertically integrated company operates, apart from those of the transmission system operator.*

*11. The chief executive or members of the board of executive directors shall not be empowered to assume direct or indirect responsibility in the routine operations of any other establishment of the vertically*

*integrated company.*

*12. Notwithstanding the above provisions, the transmission system operator, independent from the integrated electricity undertaking, shall have full decision-making powers regarding the assets necessary for the operation, maintenance, and development of the grid. The foregoing shall apply without prejudice to appropriate coordination procedures enabling the parent company to lay down general limits on the amount of debt that its subsidiary may incur. The parent company may not give any instructions exceeding the scope of the approved budget or any equivalent arrangement as regards routine operations or individual decisions to construct or modernise transmission lines.*

*Supervisory board/Administrative board*

*13. A Chairperson of the transmission system operator's supervisory board or board of directors shall not participate in any branch of the vertically integrated undertaking performing functions of generation or supply*

*14. The transmission system operator's supervisory board or board of directors shall include independent members, appointed for a term of at least five years. Their appointment shall be notified to the regulatory authority or any other competent national public authority and shall become binding subject to the conditions set out in paragraph 6.*

*15. For the purposes of paragraph 14, a member of the supervisory board/administrative board shall be deemed to be independent if he or she does not stand in any business or other relationship to the vertically integrated company or its majority shareholders or the board of executive directors of the vertically integrated company or its majority shareholders of a nature likely to influence his or her power of judgement. The following conditions in particular*



*must be satisfied:*

*(a) within the five years preceding his/her appointment to the supervisory board/administrative board he or she must not have been employed in an establishment of the vertically integrated company performing the functions of generation and supply;;*

*(b) he or she must not hold any shares in or receive any form of payment from the vertically integrated company or any of its affiliates apart from the transmission system operator;*

*(c) while serving on the supervisory board /administrative board, he or she must not stand in any relevant business relationship to any establishment of the vertically integrated company performing energy supply functions;*

*(d) he or she must not serve on the board of executive directors of an undertaking in which the vertically integrated company appoints members of the supervisory board/administrative board.*

*Compliance (unbundling) officer*

*16. Member States shall ensure that transmission system operators draw up a compliance programme laying down measures serving to rule out discriminatory conduct. The programme shall set out the specific obligations of employees to attain that objective. It shall be subject to approval of the regulatory authority. Compliance with the programme shall be independently monitored by the compliance officer. The regulatory authority shall have the power to impose sanctions if the compliance programme is not properly implemented.*

*17. The chief executive or board of executive directors of the transmission system operator shall appoint a person or body to be a compliance officer responsible for:*

*(a) monitoring implementation of the*

*compliance programme;*

*(b) drawing up a detailed annual report, the criteria for which shall be laid down by the regulatory authority in agreement with the European Agency for the Cooperation of Energy Regulators; laying down the measures to implement the compliance programme and submitting the report to the regulatory authority;*

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

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

*19. The compliance officer shall have the opportunity to regularly approach the supervisory boards/administrative boards of the transmission system operator and the vertically integrated company, and the regulatory authorities.*

*20. The compliance officer shall attend all meetings of the supervisory board/administrative board of the transmission system operator given over to the following areas:*

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

*(b) projects undertaken in order to operate, maintain, and develop the transmission system, including investment in interconnection infrastructure and connections;*

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

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

*21. At those meetings, the compliance officer shall prevent information about generator or supplier activities that might prove economically advantageous from being disclosed in a discriminatory manner to the supervisory board/administrative board.*

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

*23. The compliance officer shall be appointed or dismissed by the chief executive/ board of executive directors only after prior approval by the regulatory authority.*

*24. The compliance officer may not have any form of business dealings with the vertically integrated company for at least five years after the termination of his or her appointment.*

*25. Transmission system operators shall draw up a ten-year network development plan at least every two years. They shall provide for efficient measures in order to guarantee that the grid will be adequate and ensure security of supply.*

*26. The ten-year network development plan shall, in particular:*

*(a) draw the attention of market participants to the main transmission infrastructure to be built in the next ten years;*

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

*27. In order to draw up that ten-year network development plan, each transmission system operator shall make reasonable assumptions as to the trend in generation, consumption, and exchanges with other countries, and shall take into*

*account regional and Europe-wide investment plans for the existing network. The transmission system operator shall submit the draft in due time to the national regulatory authority.*

*28. The regulatory authority shall consult all relevant network users on the basis of a draft text of the ten-year network development plan in an open and transparent manner and may publish the outcome of the consultation procedure, in particular the possible investment needs.*

*29. The regulatory authority shall examine whether the ten-year network development plan fully covers the investment needs identified in the consultations. The authority may oblige the transmission system operator to alter its plan.*

*30. If the transmission system operator refuses to implement a specific investment listed in the ten-year network development plan to be undertaken in the next three years, the Member State concerned shall ensure that the regulatory authority has the necessary powers to implement one of the following measures:*

*(a) oblige the transmission system operator, by all legal means, to fulfil its investment obligations using its own financial resources,*

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

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

*- to agree to construction works by any third party or build the necessary new assets;*

*- to agree to operate the new assets.*

*The relevant financial arrangements shall be subject to the approval of the regulatory authority. In both cases, tariff*

*regulation shall be such as to enable revenue to cover the investment costs.*

*31. The regulatory authority shall monitor and assess the implementation of the investment plan.*

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

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

*34. Transmission system operators shall not be entitled to refuse a new connection point solely on the grounds that the new connection would entail additional costs because of the need to increase the capacity of grid elements within close range of the new connection point.*

#### *Regional cooperation*

*35. If Member States opt to pursue regional cooperation, they must impose specific obligations on the transmission system operator, to be reflected in a clearly defined time-frame. Those obligations must, in addition, serve gradually to establish a common regional dispatching centre, which shall assume responsibility for security matters no later than...<sup>+</sup>.*

*36. Where several Member States cooperate at regional level, they shall designate a regional coordinator in agreement with the Commission.*

*37. The regional coordinator shall promote cooperation at regional level*

*among regulatory authorities and any other appropriate authorities, network operators, power exchanges, network users, and market participants. In particular he shall: be called upon to*

*(a) promote efficient new investment in interconnection infrastructure. To that end, he or she shall help transmission system operators to draw up their regional interconnection infrastructure plans and assist in the coordination of their investment decisions and, where applicable, their open-season procedure;*

*(b) encourage efficient and safe use of the grid. To that end, he or she shall help transmission system operators, national regulatory authorities, and other national authorities concerned to coordinate their activities by devising joint allocation procedures and safeguards;*

*(c) report every year to the Commission and the Member States concerned on the progress achieved in the region and on such difficulties or obstacles as might impede progress.*

#### ***Sanctions***

*38. To enable them to fulfil the obligations imposed on it by this Article, the national regulatory authority shall be accorded the following rights:*

*(a) the right to demand any information from the transmission system operator and to approach all of the operator's staff directly; in case of doubt this right shall likewise be enforceable in relation to the vertically integrated company and its establishments;*

*(ii) the right to conduct all necessary investigations concerning the transmission system operator and, in case of doubt, the vertically integrated company and its establishments; the provisions applicable shall be those set out in Article 20 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on*

*competition laid down in Articles 81 and 82 of the Treaty\*.*

*39. To enable it to fulfil its obligations within the meaning of this Article, the national regulatory authority shall be given the right to impose effective, appropriate, and dissuasive sanctions on a transmission system operator and/or a vertically integrated company should they fail to comply with their obligations under this Article or with decisions of the national regulatory authority. This right shall comprise:*

*(i) the right to impose effective, appropriate, and dissuasive fines, the amount of which shall be determined according to the turnover of the transmission system operator;*

*(ii) the right to issue orders to refrain from discriminatory conduct.*

*+ OJ : Six years after the entry into force of this Directive of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity.*

*\* OJ L 1, 4.1.2003, p. 1. Regulation as last amended by Regulation (EC) No 1419/2006 (OJ L 269, 28.9.2006, p. 1).*

#### *Justification*

*Member States must be allowed a third practicable option which, without encroaching massively on their ownership structures, would enable vertically integrated companies, assuming that they satisfied stringent conditions and requirements, to continue operating their networks within their integrated set-up.*

#### **Amendment 24**

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

##### **Article 1 – point 9 a (new)**

Directive 2003/54/EC

Article 14 – paragraph 4

*Text proposed by the Commission*

*Amendment*

*(9a) Article 14(4) shall be replaced by the*

*following:*

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

*Justification*

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

## **Amendment 25**

**Proposal for a directive – amending act**

**Article 1 – point 10**

Directive 2003/54/EC

Article 15 – paragraph 3

*Text proposed by the Commission*

“3. Where the distribution system operator is part of a vertically integrated undertaking, Member States shall ensure that the activities of the distribution system operator *is* monitored so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication **and branding**, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.

*Amendment*

“3. Where the distribution system operator is part of a vertically integrated undertaking, Member States shall ensure that the activities of the distribution system operator *are* monitored so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking

*Justification*

*Simplification.*

## **Amendment 26**

**Proposal for a directive – amending act**

**Article 1 – point 10**

Directive 2003/54/EC

Article 15 – paragraph 4



*Text proposed by the Commission*

*Amendment*

**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 27b(3).”**

**deleted**

*Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the normal procedure by Parliament and the Council. Powers should be conferred on the Commission solely for the purposes of any necessary adjustments.*

#### **Amendment 27**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22a – paragraph 3 – point b

*Text proposed by the Commission*

*Amendment*

(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.

(b) its management is appointed for a term of at least five years, **renewable only once (or up to ten years, non-renewable)** 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.

*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 28

### Proposal for a directive – amending act

#### Article 1 – point 12

Directive 2003/54/EC

Article 22c – paragraph 1 – point g

*Text proposed by the Commission*

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

*Amendment*

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

#### *Justification*

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

## Amendment 29

### Proposal for a directive – amending act

#### Article 1 – point 12

Directive 2003/54/EC

Article 22c – paragraph 1 – point m

*Text proposed by the Commission*

(m) 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*

(m) ensuring ***that all market participants have efficient*** access on ***equal terms*** to customer consumption data, the application of a harmonised format for consumption data and the access to data under paragraph (h) of Annex A;

#### *Justification*

*The wording needs to be more precise so as to enable the natural gas market to be opened up to all market players.*

## Amendment 30

### Proposal for a directive – amending act

#### Article 1 – point 12

Directive 2003/54/EC

Article 22c – paragraph 3 – point b

*Text proposed by the Commission*

*Amendment*

(b) to carry out in cooperation with the national competition authority investigations of the functioning of electricity 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 virtual power plants;

(b) to carry out in cooperation with the national competition authority investigations of the functioning of electricity markets, and, ***taking into account the authorities' respective powers and responsibilities***, to decide, in the absence of *any violation* of competition rules, *on any necessary and appropriate proportionate* measures to promote effective competition and ensure the proper functioning of the market, including virtual power plants;

*Justification*

*It is necessary to allow for the differences between the powers and responsibilities of energy and competition authorities.*

**Amendment 31**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 3 – point c

*Text proposed by the Commission*

*Amendment*

(c) to request any information from electricity undertakings relevant for the fulfilment of its tasks;

(c) to request any ***reasonable*** information from electricity undertakings relevant for the fulfilment of its tasks;

*Justification*

*The tasks and responsibilities of national regulators should not be confused with those of other relevant authorities and due attention should be paid to parties that may be affected by regulatory decisions. In this respect, far-reaching structural measures such as virtual power plants should only be considered in the context of EC competition law and should be applied with the necessary checks and balances put in place.*

**Amendment 32**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 3 – point d

*Text proposed by the Commission*

*Amendment*

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

(d) to impose, **where necessary, impartial, proportionate and consistent** sanctions to electricity undertakings not complying with their obligations under this Directive or any **binding** decisions of the regulatory authority or of the Agency;

*Justification*

*The tasks and responsibilities of national regulators should not be confused with those of other relevant authorities and due attention should be paid to parties that may be affected by regulatory decisions. In this respect, far-reaching structural measures such as virtual power plants should only be considered in the context of EC competition law and should be applied with the necessary checks and balances put in place.*

### **Amendment 33**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 4 – point a

*Text proposed by the Commission*

*Amendment*

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

(a) connection and access to national networks, including transmission and distribution tariffs, **or preliminary tariffs in case the methodology to fix the tariff is assessed during a regulatory period before fixing the final tariff. The regulatory period shall not exceed five years.** These tariffs shall allow the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks.

*Justification*

*The regulatory authorities can also fix the methodology for the tariffs. This can however only be accepted if this is a preliminary step, of maximum five years, before deciding on the tariffs themselves.*

### **Amendment 34**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 13

*Text proposed by the Commission*

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.

*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 ***national judicial*** body ***or other national independent authority***, independent of the parties involved ***and of any government***.

*Justification*

*Independence and integrity of NRA decisions 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 35**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 14

*Text proposed by the Commission*

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 27b(3).

*Amendment*

14. The Commission may ***amend*** 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 ***amended*** in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

*Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the normal procedure by Parliament and the Council. Powers should be conferred on the*

*Commission solely for the purposes of any necessary adjustments.*

### **Amendment 36**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22d – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Regulatory authorities shall have the right to enter into agreements with other EU regulatory authorities in order to foster regulatory cooperation.***

*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 37**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22d – 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 27b(3).

4. The Commission may ***amend*** 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 ***amended*** in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

*Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the normal procedure by Parliament and the Council. Powers should be conferred on the Commission solely for the purposes of any necessary adjustments.*

**Amendment 38**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22e – paragraph 2

*Text proposed by the Commission*

2. The Agency shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within **four months**.

*Amendment*

2. The Agency shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within **two months**.

*Justification*

*Shortens the time limit.*

**Amendment 39**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22e – paragraph 9

*Text proposed by the Commission*

**9. The Commission shall adopt guidelines setting out the details of the procedure to be followed for the application of this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).**

*Amendment*

**deleted**

*Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the normal procedure by Parliament and the Council. Powers should be conferred on the*

*Commission solely for the purposes of any necessary adjustments.*

#### **Amendment 40**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22f – paragraph 4

##### *Text proposed by the Commission*

4. To ensure the uniform application of this Article, the Commission may **adopt** guidelines which **define** the methods and arrangements for record keeping as well as the form and content of the data that **shall** be kept. 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 27b(3).

##### *Amendment*

4. To ensure the uniform application of this Article, the Commission may **amend the** guidelines which **have defined** the methods and arrangements for record keeping as well as the form and content of the data that **should** be kept. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be **amended** in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

##### *Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the normal procedure by Parliament and the Council. Powers should be conferred on the Commission solely for the purposes of any necessary adjustments.*

#### **Amendment 41**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22f – paragraph 5

##### *Text proposed by the Commission*

5. With respect to transactions in electricity derivatives of supply undertakings with wholesale customers and transmission system operators, this Article shall only apply once **the Commission has adopted** the guidelines referred to in paragraph 4. .

##### *Amendment*

5. With respect to transactions in electricity derivatives of supply undertakings with wholesale customers and transmission system operators, this Article shall only apply once the guidelines referred to in paragraph 4 **have been adopted**.

##### *Justification*

*The above proposal is intended to ensure that the guidelines have to be adopted under the*



*normal procedure by Parliament and the Council. Powers should be conferred on the Commission solely for the purposes of any necessary adjustments.*

#### **Amendment 42**

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

#### **Article 2 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The Commission shall report annually to the European Parliament and the Council on the progress of the practical and formal transposition of this Directive in the individual Member States.***

## PROCEDURE

<b>Title</b>	Internal market in electricity		
<b>References</b>	COM(2007)0528 – C6-0316/2007 – 2007/0195(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	Ján Hudacký 23.10.2007		
<b>Discussed in committee</b>	29.1.2008	26.2.2008	1.4.2008
<b>Date adopted</b>	21.4.2008		
<b>Result of final vote</b>	+: 18	–: 4	0: 10
<b>Members present for the final vote</b>	Gabriele Albertini, Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, Manuel António dos Santos, Christian Ehler, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Robert Goebbels, Donata Gottardi, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Christoph Konrad, Guntars Krasts, John Purvis, Bernhard Rapkay, Antolín Sánchez Presedo, Olle Schmidt, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg, Cornelis Visser, Sahra Wagenknecht		
<b>Substitute(s) present for the final vote</b>	Daniel Dăianu, Harald Ettl, Ján Hudacký, Alain Lipietz, Bilyana Ilieva Raeva, Gilles Savary, Donato Tommaso Veraldi		