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*Committee on Industry, Research and Energy*

**2007/0196(COD)**

10.4.2008

## **AMENDMENTS 178 - 274**

**Draft report**  
**Romano Maria La Russa**  
(PE400.700v01-00)

Common rules for the internal market in natural gas

Proposal for a directive – amending act  
(COM(2007)0529 – C6-0317/2007 – 2007/0196(COD))

AM\_Com\_LegReport

**Amendment 178**  
**Eugenijus Maldeikis**

**Proposal for a directive – amending act**  
**Article 1 – point 2 c (new)**  
Directive 2003/55/EC  
Article –5 a (new)

*Text proposed by the Commission*

*Amendment*

***(2c) The following article shall be inserted:***

***‘Article –5a***

***European solidarity***

***1. Member States shall coordinate their activities in order to ensure the secure, diversified and effective supply of gas to the European market. Member States shall cooperate in the following areas:***  
***(a) coordination of national emergency measures as mentioned by Article 8 of Directive 2004/67/EC;***  
***(b) identification and, where necessary, development or upgrading of electricity and natural gas interconnections;***  
***(c) conditions and practical modalities for mutual assistance.***  
***2. Member States shall cooperate in drawing up and implementing new projects relating to interconnections between Member States, LNG facilities and storage, with the objective of eliminating isolated markets, which will help create a single European gas market.***  
***3. Member States shall coordinate their activities relating to third country suppliers in order to ensure the implementation of a common European energy policy;***  
***4. The Commission shall draw up technical and economic measures for the creation, as a priority, of new infrastructure for isolated markets connecting Member States’ national transmission systems.’***

**Amendment 179**  
**Alyn Smith**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/55/EC  
Article 5a – paragraph 1

*Text proposed by the Commission*

1. In order to safeguard a secure supply on the internal market of natural gas, Member States shall cooperate in order to promote regional and bilateral solidarity.

*Amendment*

1. In order to safeguard a secure supply on the internal market of natural gas, Member States shall, ***without imposing a disproportionate burden on market participants***, cooperate in order to promote regional and bilateral solidarity.

Or. en

*Justification*

*Solidarity agreements should ensure that they do not distort the market and that pricing signals continue to be effective especially in periods of high demand.*

**Amendment 180**  
**Eugenijus Maldeikis**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/55/EC  
Article 5a – paragraph 1

*Text proposed by the Commission*

1. In order to safeguard a secure supply on the internal market of natural gas, Member States shall cooperate in order to promote regional and bilateral solidarity.

*Amendment*

1. In order to safeguard a secure supply on the internal market of natural gas, Member States shall cooperate in order to ***develop interconnections and to*** promote regional and bilateral solidarity.

Or. It

**Amendment 181**  
**Eugenijus Maldeikis**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/55/EC

Article 5a – paragraph 2

*Text proposed by the Commission*

2. This cooperation shall cover situations resulting or likely to result in the short term in a severe disruption of supply affecting a Member State. ***It shall include:***

***(a) coordination of national emergency measures as mentioned by Article 8 of Directive 2004/67/EC;***

***(b) identification and, where necessary, development or upgrading of electricity and natural gas interconnections;***

***(c) conditions and practical modalities for mutual assistance.***

*Amendment*

2. This cooperation shall cover situations resulting or likely to result in the short term in a severe disruption of supply affecting a Member State.

Or. It

**Amendment 182**  
**Alejo Vidal-Quadras**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/55/EC

Article 5a – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Amendment is intended to ensure principles of good regulatory practice and transparency regarding the rules/guidelines for such co-operation and mutual assistance.*

**Amendment 183**

**Angelika Niebler**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/55/EC

Article 5a – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

Or. de

*Justification*

*The Commission's proposal that the guidelines be adopted in accordance with the regulatory procedure with scrutiny significantly restricts the rights of the European Parliament and should be rejected.*

**Amendment 184**

**Paul Rübzig**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/55/EC

Article 5a – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. The Commission may adopt guidelines for regional solidarity cooperation. This measure, designed to amend non-essential elements of this Directive by** **deleted**

***supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30 (3).***

Or. de

*Justification*

*Guidelines relating to regional solidarity are, in our opinion, unnecessary, since the article already contains the crucial provisions.*

**Amendment 185**  
**Herbert Reul**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/55/EC  
Article 5a – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

Or. de

*Justification*

*The proposed comitology procedure seeks to restrict the influence of the European Parliament. This would remove essential decisions on the form of the internal market in energy from the scope of the democratic legislative procedure. Given that the outcome of a comitology procedure may have very wide-ranging consequences, and that such crucial guidelines affect the substance of the unbundling legislation to which transmission network operators are subject, the comitology procedure should be rejected on principle.*

**Amendment 186**  
**Toine Manders**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/55/EC  
Article 5a – paragraph 4

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 187**  
**Christian Ehler**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/55/EC  
Article 5a – paragraph 4

*Text proposed by the Commission*

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

*Amendment*

4. The Commission may **amend** guidelines for regional solidarity cooperation. 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 30 (3).

Or. de

*Justification*

*Seeks to ensure that the guidelines are adopted under the ordinary procedure by Parliament*

*and the Council. The transfer of powers to the Commission should remain confined to any necessary amendments.*

#### **Amendment 188**

**Dorette Corbey, Lambert van Nistelrooij**

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

##### **Article 1 – point 3**

Directive 2003/55/EC

Article 5a – paragraph 4

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. nl

#### *Justification*

*Solidarity is good, but every country must retain control over its own natural resources.*

#### **Amendment 189**

**Eugenijus Maldeikis**

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

##### **Article 1 – point 3**

Directive 2003/55/EC

Article 5a – paragraph 4

#### *Text proposed by the Commission*

4. The Commission may adopt guidelines for regional solidarity cooperation. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in

#### *Amendment*

4. The Commission may adopt guidelines for regional ***and European*** solidarity cooperation. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be

accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

Or. It

#### **Amendment 190**

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

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

##### **Article 1 – point 3**

Directive 2003/55/EC

Article 5b

#### *Text proposed by the Commission*

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 1775/2005.***

#### *Amendment*

***1. 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.***

***2. When the cooperation between several Member States at a regional level encounters significant difficulties, following the joint request of these Member States, the Commission may designate, in agreement with all Member States concerned, a regional coordinator.***

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

***(a) promote new efficient investments in***

*interconnections. To this end, the regional coordinator shall assist transmission system operators in drawing up their regional interconnection plan and shall contribute to the coordination of their investments decisions and, where appropriate, of their open season procedure;*

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

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

Or. en

#### *Justification*

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

#### **Amendment 191** **Alejo Vidal-Quadras**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/55/EC  
Article 5b

#### *Text proposed by the Commission*

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

#### *Amendment*

Member **States' competent authorities and national regulatory authorities** shall cooperate among themselves for the purpose of integrating their national markets at least at the regional level. In

network operators at a regional level, **and foster the consistency of** their legal and regulatory framework. **The geographical area covered by regional cooperations shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No1775/2005.**

particular, **they** shall promote the cooperation of network operators at a regional level **with the aim of creating a competitive internal market, and facilitate the harmonisation of** their legal and regulatory framework.

Or. en

#### *Justification*

*To ensure that regional cooperation leads to reconcilable and to a true pan-European market, inter-regional cooperation should also be required from regulators, TSOs and ACER. ACER should also be empowered to make appropriate recommendation to facilitate market integration.*

#### **Amendment 192 Hannes Swoboda**

#### **Proposal for a directive – amending act Article 1 – point 3 Directive 2003/55/EC Article 5b**

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

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

##### *Amendment*

Member States **and their national regulatory authorities** 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 **with the aim of creating a competitive internal market, and shall facilitate the harmonisation of** their legal and regulatory framework. The geographical area covered by regional cooperations shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No1775/2005.

Or. en

### *Justification*

*Regional cooperation could foster market integration and establish a competitive European market. To ensure that regional cooperation leads to reconcilable and to a true pan-European market, inter-regional cooperation should also be required from regulators, TSOs and ACER.. Any move towards regional markets must not become exclusive and there must be a clear regulatory framework for that market.*

### **Amendment 193**

**Claude Turmes, Rebecca Harms**

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

#### **Article 1 – point 3**

Directive 2003/55/EC

Article 5b

#### *Text proposed by the Commission*

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

#### *Amendment*

Member States ***and their national regulatory authorities*** 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 ***with the aim of creating a competitive internal market, and shall facilitate the harmonisation*** of their legal and regulatory framework. The geographical area covered by regional cooperations shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No1775/2005.

Or. en

### *Justification*

*Regional cooperation could foster market integration and establish a competitive European market. To ensure that cooperation leads to reconcilable and to a true pan-European market, inter-regional cooperation should also be required from regulators, TSOs and ACER. ACER should also be empowered to make appropriate recommendation to facilitate market integration. Any move towards regional markets must not become exclusive and there must be a clear regulatory framework for these markets.*

**Amendment 194**  
**Eugenijus Maldeikis**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/55/EC  
Article 5b

*Text proposed by the Commission*

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 1775/2005.

*Amendment*

Member States **and regulatory authorities** 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 **facilitate** the **harmonisation** of their legal and regulatory framework. The geographical area covered by regional *cooperation* shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No 1775/2005.

Or. It

**Amendment 195**  
**Toine Manders**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/55/EC  
Article 5b

*Text proposed by the Commission*

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

*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 **ensure** the consistency of their legal and regulatory framework. **Furthermore, the Member States shall ensure a minimum**

with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No1775/2005."

***level of interconnection between neighbouring Member States.*** The geographical area covered by regional cooperations shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No1775/2005."

Or. en

#### *Justification*

*In order to create a truly internal market for gas there needs to be enough interconnections between the Member States. More interconnections will furthermore also enhance the security of supply.*

#### **Amendment 196** **Anne Laperrouze**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/55/EC  
Article 5b – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. When the cooperation between several Member States at a regional level encounters significant difficulties, the Commission may designate, in agreement with the Member States concerned, a regional coordinator. The regional coordinator shall promote at a regional level the cooperation of regulatory authorities and other competent public authorities, network operators, power exchanges, grid users and market parties. In particular, the regional coordinator shall:***

***(a) promote new efficient investments in interconnections. To this end, the regional coordinator shall assist transmission system operators in drawing up their regional interconnection plan and shall contribute to the coordination of their***

*investments decisions and, where appropriate, of their open season procedure;*

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

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

Or. en

#### *Justification*

*The creation of regional coordinator would foster the regional cooperation.*

#### **Amendment 197**

**Giles Chichester**

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

##### **Article 1 – point 3**

Directive 2003/55/EC

Article 5b – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***"1a. The Agency shall cooperate with national regulatory authorities and unbundled transmission system operators, in accordance with Chapter III, to ensure the convergence of the regulatory frameworks of the regions with the aim of creating a competitive internal market. Where the Agency considers that binding rules on such cooperation are required, it shall make appropriate recommendations. In regional markets, the Agency shall***

*become the accountable regulatory authority. "*

Or. en

**Amendment 198**  
**Anne Laperrouze**

**Proposal for a directive – amending act**

**Article 1 – point 3 a (new)**

Directive 2003/55/EC

Article 6 a (new)

*Text proposed by the Commission*

*Amendment*

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

*"Article 6a*

*Vertically integrated undertakings*

*In order to ensure the independence of transmission system operators, Member States shall ensure that, as from [date of transposition plus one year], vertically integrated undertakings must comply either with the provisions of Article 7(1) (a) to (d) and Article 9 or with the provisions of Article 9b."*

Or. en

*Justification*

*An alternative way to ensure the independence of TSOs within integrated companies has to be introduced.*

## **Amendment 199**

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

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

#### **Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph –1 (new)

*Text proposed by the Commission*

*Amendment*

***"–1. In order to ensure the independence of transmission system operators, Member States shall ensure that, as from [date of transposition plus one year], vertically integrated undertakings must comply with the provisions of Article 7(1)(a) to (d) or Article 9 or Article 9b."***

Or. en

#### *Justification*

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

## **Amendment 200**

**Bernhard Rapkay, Hannes Swoboda, Norbert Glante, Robert Goebbels, Atanas Papanizov, Anni Podimata, Catherine Trautmann**

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

#### **Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph –1 (new)

*Text proposed by the Commission*

*Amendment*

***"–1. In order to ensure the independence of transmission system operators, Member States shall ensure that, as from [date of transposition plus one year], vertically integrated undertakings must comply with the provisions of Article 7(1)(a) to (d) and Article 9 or with the provisions of Article***

**9b."**

Or. en

*Justification*

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

**Amendment 201**  
**Angelika Niebler**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/55/EC  
Article 7 – paragraph 1 – point (d a) (new)

*Text proposed by the Commission*

*Amendment*

***"(da) the same person or the same persons are not entitled to operate the transmission system by way of management contract or exercise influence in any other way of non-ownership, or to directly or indirectly exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of generation or supply."***

Or. en

*Justification*

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

**Amendment 202**

**Claude Turmes, Rebecca Harms**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. Member States may allow for** *deleted*  
**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.**

Or. en

*Justification*

*This is not relevant in a system with full ownership unbundling.*

**Amendment 203**

**Dorette Corbey**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. Member States may allow for** *deleted*  
**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.**

Or. en

*Justification*

*This is not relevant in a system with full ownership unbundling.*

**Amendment 204**  
**Giles Chichester**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/55/EC  
Article 7 – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. en

*Justification*

*This is not relevant in a system with full ownership unbundling.*

**Amendment 205**  
**Dorette Corbey**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/55/EC  
Article 7 – 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 9a as an independent system***

**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 *complies fully with this Article*.**

**operator.**

Or. en

*Justification*

*All undertakings that are not fully unbundled shall not be permitted to act as a transmission system operator.*

**Amendment 206**  
**Giles Chichester**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph 5

*Text proposed by the Commission*

5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it ***has been approved under Article 9a as an independent system operator.***

*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 ***complies fully with this Article.***

Or. en

*Justification*

*All undertakings that are not fully unbundled shall not be permitted to act as a transmission system operator.*

## **Amendment 207**

**Claude Turmes, Rebecca Harms**

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

#### **Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph 5

#### *Text proposed by the Commission*

5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it *has been approved under Article 9a as an independent system operator*.

#### *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 *complies fully with this Article*.

Or. en

#### *Justification*

*All undertakings that are not fully unbundled shall not be permitted to act as a transmission system operator.*

## **Amendment 208**

**Angelika Niebler**

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

#### **Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph 6

#### *Text proposed by the Commission*

6. Member States shall ensure that commercially sensitive information referred to in Article 10(1) held by a transmission system operator which was part of a vertically integrated undertaking, and the staff of such a transmission system operator, are not transferred to

#### *Amendment*

6. Member States shall ensure:

undertakings performing any of the functions of production and supply.

*(a) that commercially sensitive information referred to in Article 10(1) held by a transmission system operator which was part of a vertically integrated undertaking, and the staff of such a transmission system operator, are not transferred to undertakings performing any of the functions of production and supply;*

*(b) that transmission system operators establish and implement a compliance programme which sets out measures to be taken to ensure that discriminatory conduct is excluded and transparency obligations are respected. Such programme shall also set out the specific obligations of employees of transmission system operator to meet this objective. Compliance with these obligations shall be independently monitored by the compliance officer. The national regulatory authority shall have the power to impose sanctions in the event of inappropriate implementation of the compliance programme by the transmission system operator;*

*(c) that transmission system operators appoint a person or a body as compliance officer who shall be responsible for:*

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

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

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

*(d) that the independence of the compliance officer is guaranteed in particular by the terms of the relevant employment contract and that the compliance officer has access to all relevant books, records and offices of the transmission system operator and to all*

*necessary information for the fulfilment of the assigned tasks."*

Or. en

*Justification*

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

**Amendment 209**

**Angelika Niebler**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

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

**Amendment 210**

**Eugenijus Maldeikis**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***‘6a. Unbundling of vertically integrated companies should not result in an increase in gas tariffs for customers or other negative social consequences.’***

Or. xm

**Amendment 211**

**Alyn Smith**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***"6a. The provisions of this Article shall apply equally to all transmission system owners/ operators regardless of their country of origin."***

Or. en

*Justification*

*All TSOs, when operating in the EU should be subject to the same business rules.*

**Amendment 212**

**Toine Manders**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/55/EC

Article 7 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***"6a. The provisions of this Article shall apply equally to all transmission system owners/ operators regardless of their***

*country of origin."*

Or. en

**Amendment 213**  
**Angelika Niebler**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/55/EC  
Article 7 – paragraph 6 b (new)

*Text proposed by the Commission*

*Amendment*

***"6b. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system operator with paragraph 6(b) and (c). That measure designed to amend the non-essential elements of this Directive, inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).***

Or. en

*Justification*

*Commission should have the possibility to adopt guidelines that ensure the compliance with the obligations in Article 7 paragraph 6 (new).*

**Amendment 214**  
**Eugenijus Maldeikis**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/55/EC  
Article 7 – paragraph 6 b (new)

*Text proposed by the Commission*

*Amendment*

***'6b. Member States shall monitor the process of unbundling vertically***

*integrated companies and shall submit a progress report to the Commission.'*

Or. lt

**Amendment 215**

**Paul Rübig**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/55/EC

Article 7a

*Text proposed by the Commission*

*Amendment*

**Article 7a**

**deleted**

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

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

***2. An agreement concluded with one or several third countries to which the Community is a party may allow for a derogation from paragraph 1.***

Or. en

*Justification*

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

**Amendment 216**  
**Toine Manders**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7a

*Text proposed by the Commission*

*Amendment*

**Article 7a**

**deleted**

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

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

**2. An agreement concluded with one or  
several third countries to which the  
Community is a party may allow for a  
derogation from paragraph 1.**

Or. en

*Justification*

*Any proposal that precludes investment by third countries will result in a reduction in investment diversity that may result in a lack of investment, a slowing of the pace at which an open functioning market is achieved and a reduction in system diversity and flexibility.*

**Amendment 217**  
**Alyn Smith**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7a

*Text proposed by the Commission*

*Amendment*

**Article 7a**

**deleted**

**Control over transmission system owners**

*and transmission system operators*

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

*2. An agreement concluded with one or several third countries to which the Community is a party may allow for a derogation from paragraph 1.*

Or. en

*Justification*

*Replaced by new paragraph 7 in Article 7. Any proposal that precludes investment by third countries will result in a reduction in investment diversity that may result in a lack of investment, a slowing of the pace at which an open functioning market is achieved and a reduction in system diversity and flexibility.*

**Amendment 218**  
**Erika Mann**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7a

*Text proposed by the Commission*

*Amendment*

*Article 7a*

*deleted*

*Control over transmission system owners and transmission system operators*

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

*2. An agreement concluded with one or several third countries to which the Community is a party may allow for a*

*derogation from paragraph 1.*

Or. en

*Justification*

*With regard to sinking gas production within the European Union and urgently needed investment into the gas infrastructure, foreign investors should not be excluded from investing in the European infrastructure.*

**Amendment 219**

**Constanze Angela Krehl**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/55/EC

Article 7a

*Text proposed by the Commission*

*Amendment*

**Article 7a**

**deleted**

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

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

***2. An agreement concluded with one or  
several third countries to which the  
Community is a party may allow for a  
derogation from paragraph 1.***

Or. de

*Justification*

*In view of falling gas production and the urgent need for investments in gas infrastructure, non-European producers should not be ruled out as investors. If producers were to be largely excluded from investing in Europe's gas infrastructure, this would rule out in advance any commitment by the producers – as evidenced by such investments – to European security of supply. These proposals also jeopardise the long-standing partnerships with the producer*

*countries.*

**Amendment 220**  
**Herbert Reul**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7a

*Text proposed by the Commission*

*Amendment*

**Article 7a**

***deleted***

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

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

***2. An agreement concluded with one or  
several third countries to which the  
Community is a party may allow for a  
derogation from paragraph 1.***

Or. de

*Justification*

*In view of falling gas production and the urgent need for investments in gas infrastructure, non-European producers should not be ruled out as investors. If producers were to be largely excluded from investing in Europe's gas infrastructure, this would rule out in advance any commitment by the producers – as evidenced by such investments – to European security of supply. These proposals also jeopardise the long-standing partnerships with the producer countries.*

**Amendment 221**  
**Eluned Morgan, Claude Turmes**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7a – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Gas storage facilities and hubs are as vital elements of gas infrastructure as transmission systems, therefore the third country provision should be extended to cover these facilities.*

**Amendment 222**  
**Gabriele Albertini**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7a – paragraph 2

*Text proposed by the Commission*

2. An agreement concluded with one or several third countries to which the Community is a party may allow for a derogation from paragraph 1.

*Amendment*

2. An agreement ***aimed at establishing a common framework for investments in the energy sector and opening of the energy market of a third country also for the companies established within the Union,*** concluded with one or several third countries to which the Community is a party may allow for a derogation from paragraph 1.

*Justification*

*The notion of agreement between Community and third Countries shall be clarified, in order for it to unequivocally refer to a specific agreement in energy matters, providing for correct rule of law in both European and external markets, reciprocity as and a comprehensive discipline for investment protection.*

**Amendment 223**

**Alejo Vidal-Quadras**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/55/EC

Article 7a – paragraph 2

*Text proposed by the Commission*

2. An agreement concluded with one or several third countries to which the Community is a party may allow for a derogation from paragraph 1.

*Amendment*

2. An agreement ***aimed at establishing a common framework for investments in the energy sector and opening of the energy market of a third country also for the companies established in the Union,*** concluded with one or several third Countries to which the Community is a party may allow for a derogation from paragraph 1.

*Justification*

*The notion of agreement between Community and third Countries shall be clarified, in order for it to unequivocally refer to a specific agreement in energy matters, providing for correct rule of law in both European and external markets and for reciprocity. To this extent, when allowing third Countries' companies to access the European market, the same right of access shall be granted to European companies willing to enter these third Countries' market.*

**Amendment 224**

**Paul Rübzig**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/55/EC

Article 7b

*Text proposed by the Commission*

*Amendment*

**Article 7b**

**deleted**

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

***1. Undertakings which own a transmission system and which have been certified by the national regulatory authority as having complied with the requirements of Article 7(1) and 7a, pursuant to the certification procedure below, shall be approved and designated as transmission system operators by Member States. The designation of transmission system operators shall be notified to the Commission and published in the Official Journal of the European Union.***

***2. Without prejudice to the international obligations of the Community, where certification is requested by a transmission system owner or transmission system operator controlled by a person or persons from third countries in compliance with Article 7a, it shall be denied unless the transmission system owner or transmission system operator demonstrate that there is no possibility for the entity concerned to be influenced, in violation of Article 7(1), directly or indirectly by any operator active in the production or supply of gas or electricity or by a third country.***

***3. Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with Articles 7(1) or 7a.***

***4. Regulatory authorities shall monitor the continuing compliance of transmission system operators with Articles 7(1) and 7a. They shall open a certification procedure to ensure such compliance:***

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

***(b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Articles 7(1) or 7a, or where they have reason to believe that such an infringement may have occurred; or***

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

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

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

***7. The Commission shall examine the notification as soon as it is received. Within two months after receiving a notification, where the Commission finds that the decision of the regulatory authority raises serious doubts as to its compatibility with Articles 7(1), 7a or***

*7b(2) it shall decide to initiate proceedings. In such a case, it shall invite the regulatory authority and the transmission system operator concerned to submit comments. Where additional information is sought by the Commission, the two-month-period may be extended by two additional months starting from the receipt of the complete information.*

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

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

*or*

*(b) requiring the regulatory authority concerned to amend or withdraw its decision if it considers that Articles 7(1), 7a or 7b(2) have not been complied with.*

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

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

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

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

*13. The Commission shall adopt*

*guidelines setting out the details of the procedure to be followed for the application of paragraphs 6 to 9. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).*

Or. en

*Justification*

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

**Amendment 225**  
**Herbert Reul**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7b – paragraph 13

*Text proposed by the Commission*

*Amendment*

**13. The Commission shall adopt guidelines setting out the details of the procedure to be followed for the application of paragraphs 6 to 9. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).**

**deleted**

Or. en

*Justification*

*This should not be decided by the Commission through the comitology process, but by codecision.*

**Amendment 226**  
**Paul Rübig**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7b – paragraph 13

*Text proposed by the Commission*

*Amendment*

**13. The Commission shall adopt guidelines setting out the details of the procedure to be followed for the application of paragraphs 6 to 9. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).**

**deleted**

Or. de

*Justification*

*The provisions on the appointment and certification of transmission network operators is already sufficiently covered in the directive. There is consequently no need to authorise the Commission to adopt guidelines.*

**Amendment 227**  
**Christian Ehler**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7b – paragraph 13

*Text proposed by the Commission*

*Amendment*

13. The Commission **shall adopt** guidelines setting out the details of the procedure to be followed for the application of paragraphs 6 to 9. This measure designed to amend non-essential elements of this Directive by

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 ***adopted*** in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

supplementing it shall be ***amended*** in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

Or. de

*Justification*

*Seeks to ensure that the guidelines are adopted under the ordinary procedure by Parliament and the Council. The transfer of powers to the Commission should remain confined to any necessary amendments.*

**Amendment 228**  
**Pia Elda Locatelli**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7b – paragraph 13 a (new)

*Text proposed by the Commission*

*Amendment*

***"13a. The procedures set out in this Article with particular reference to the limitations set out in paragraph 2, shall not apply to upstream pipelines solely aimed at directly connecting networks of countries of origin of gas supplies to a landing point within the territory of the Community, and to their upgrades."***

Or. en

*Justification*

*Upstream pipelines directly landing in the territory of the Community shall not undergo the certification procedure. Development of major gas production and transport project is generally carried out by international consortia to which foreign producing companies take part.*

**Amendment 229**  
**Hannes Swoboda**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7b – paragraph 13 a (new)

*Text proposed by the Commission*

*Amendment*

***"13a. The procedures set out in this Article with particular reference to limitations set out in paragraph 2, shall not apply to upstream pipelines solely aimed at directly connecting networks of countries of origin of gas supplies to a landing point within the territory of the Community, and to their upgrades."***

Or. en

*Justification*

*Upstream pipelines directly landing in the territory of the Community shall not undergo the certification procedure. Development of major gas production and transport project is generally carried out by international consortia to which foreign producing companies take part.*

**Amendment 230**  
**Gabriele Albertini**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7b – paragraph 13 a (new)

*Text proposed by the Commission*

*Amendment*

***"13a. The procedures set out in this Article with particular reference to limitations set out in paragraph 2, shall not apply to upstream pipelines solely aimed at directly connecting networks of countries of origin of gas supplies to a landing point within the territory of the Community, and to their upgrades."***

*Justification*

*Development of gas transport projects is often carried out by international consortia to which foreign producing companies take part: implementing the certification provision for pipelines directly landing in the territory of the Community would hinder gas import investments. Certification should be requested only to transit and internal gas transport infrastructure, to avoid the risk that control on them by foreign vertically integrated companies would impede correct market development.*

**Amendment 231****Alejo Vidal-Quadras****Proposal for a directive – amending act****Article 1 – point 5**

Directive 2003/55/EC

Article 7b – paragraph 13 a (new)

*Text proposed by the Commission**Amendment*

***"13a. The procedures set out in this Article with particular reference to limitations set out in paragraph 2, shall not apply to upstream pipelines solely aimed at directly connecting networks of countries of origin of gas supplies to a landing point within the territory of the Community, and to their upgrades."***

Or. en

*Justification*

*Upstream pipelines directly landing in the territory of the Community shall not undergo the certification procedure. Development of major gas production and transport project is generally carried out by international consortia to which foreign producing companies take part: in most cases some of the companies taking part in these projects are controlled or participated by third Countries'.*

**Amendment 232**  
**Teresa Riera Madurell**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/55/EC  
Article 7c

*Text proposed by the Commission*

*Amendment*

**Article 7c**

**deleted**

***Designation of storage and LNG system operators***

***Member States shall designate, or shall require natural gas undertakings which own storage or LNG facilities to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more system operators.***

Or. en

**Amendment 233**  
**Herbert Reul**

**Proposal for a directive – amending act**  
**Article 1 – point 6**  
Directive 2003/55/EC  
Article 8 – paragraph 1 – point (a)

*Text proposed by the Commission*

*Amendment*

a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment, ***and promote energy efficiency and research and innovation notably with respect to ensuring penetration of renewables and dissemination of low carbon technology.***

a) ) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment.

Or. de

### *Justification*

*The task of transmission network, storage and/or LNG system operators is to guarantee a safe, reliable and efficient infrastructure. Objectives over and above these tasks cannot be achieved by operators. They fall within the sphere of responsibility either of the relevant Member States or of other market participants.*

#### **Amendment 234**

**Claude Turmes, Rebecca Harms**

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

##### **Article 1 – point 6**

Directive 2003/55/EC

Article 8 – paragraph 1 – point (a)

#### *Text proposed by the Commission*

(a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment, and promote energy efficiency and research and innovation ***notably with respect to ensuring penetration of renewables and dissemination of low carbon technology.***

#### *Amendment*

(a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment, and promote energy efficiency and ***the proactive integration of both large scale renewables and decentralised energy generation and research and innovation to meet these objectives.***

Or. en

### *Justification*

*It is also the task of the system operators to proactively integrate renewables.*

#### **Amendment 235**

**Britta Thomsen**

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

##### **Article 1 – point 6 a (new)**

Directive 2003/55/EC

Article 8 – paragraph 1 – point (d a) (new)

*Text proposed by the Commission*

*Amendment*

***(6a) In Article 8(1), the following point shall be added:***

***"(da) be responsible for collecting congestion rents and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003, for granting and managing third party access and for giving substantiated explanations when access is denied, which shall be monitored by the national regulatory authorities; in carrying out their tasks under this Article, transmission system operators shall primarily consider the benefits of the region in which they operate."***

Or. en

*Justification*

*This details some of the activities which need to be carried out by TSOs, but also we need to ensure that reasons for failing to grant access are dealt with in a transparent way.*

#### **Amendment 236**

**Hannes Swoboda**

**Proposal for a directive – amending act**

**Article 1 – point 6 b (new)**

Directive 2003/55/EC

Article 8 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(6b) In Article 8, paragraph 3 shall be replaced by the following:***

***"3. Member States may, through their national regulatory authorities, require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including***

**interconnection capacity. *National regulatory authorities should be given broader powers for the purpose of ensuring consumers protection within the Union.***"

Or. en

*Justification*

*Consumer protection must be a priority when maintenance decisions are being taken to ensure that there are no detrimental effects for end users. Currently many National Regulatory Authorities have no remit to care for the European consumer so all decisions are taken only with the national consumer in mind, this will need to change if a truly European energy market is to succeed.*

**Amendment 237**

**Claude Turmes, Rebecca Harms**

**Proposal for a directive – amending act**

**Article 1 – point 6 b (new)**

Directive 2003/55/EC

Article 8 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(6b) In Article 8, paragraph 3 shall be replaced by the following:***

***"3. Member States may, through their national regulatory authorities, require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity. National regulatory authorities should be given broader powers for the purpose of ensuring consumers protection within the Union."***

Or. en

*(Adding some clarifications to Article 8 - paragraph 3 of Directive 2003/55/EC)*

### *Justification*

*Consumer protection must be a priority when maintenance decisions are being taken to ensure that there are no detrimental effects for end users. Currently many National Regulatory Authorities have no remit to care for the European consumer so all decisions are taken only with the national consumer in mind, this will need to change if a truly European energy market is to succeed.*

### **Amendment 238**

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

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

#### **Article 1 – point 6 c (new)**

Directive 2003/55/EC

Article 8 – paragraphs 4 a to 4 h (new)

*Text proposed by the Commission*

*Amendment*

***(6c) In Article 8, the following paragraphs shall be added:***

***"4a. Transmission system operators shall draw up a 10-year network development plan at least every two years. They shall take efficient measures to guarantee system adequacy and security of supply.***

***4b. The 10-year network development plan shall in particular:***

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

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

***4c. In order to draw up this 10-year network development plan, each transmission system operator shall make a hypothesis about the evolution of generation, consumption and exchanges with other countries, and shall take into account regional and European-wide existing network investment plans.***

*Transmission system operator shall submit in due time the draft of this plan to the competent national body.*

*4d. The competent national body shall consult the draft with all relevant network users in an open and transparent way, and may publish the result of such consultation, in particular possible investment need.*

*4e. The competent national body shall examine whether the draft 10-year network development plan covers all investment needs identified during the consultation. The competent national body may require the transmission system operator to amend this plan.*

*4f. The competent national body within the meaning of paragraphs 4c, 4d and 4e, may be the national regulatory authority, any other competent national public authority or a network development trustee established by transmission system operators. In the latter case, transmission system operators shall submit the drafts of their statutes, a list of their members and their rules of procedure to the competent national public authority for its approval.*

*4g. If the transmission system operator fails to implement a specific investment listed in the 10-year network development plan within the subsequent three years, Members States shall ensure that the national regulatory authority or any other competent national public authority has the necessary powers to take one of the following measures:*

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

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

- to agree to financing by any third party,
- to agree to building by any third party or to build the respective new assets and
- to operate the respective new asset.

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

**4h. The competent national public authority shall monitor and evaluate the implementation of the investment plan.**

Or. en

#### *Justification*

*The proposed amendments of Article 8 ascertain in particular that necessary investments in the grid will be made, even against the will of the TSO, and that connections to the grid cannot be refused. If the TSO rejects to implement a specific investment, two measures are foreseen: either the competent public authority requests the TSO to invest or it launches a tendering procedure.*

#### **Amendment 239**

**Toine Manders, Lambert van Nistelrooij, Dorette Corbey**

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

##### **Article 1 – point 6 c (new)**

Directive 2003/55/EC

Article 8 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

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

**"4a. While carrying out their tasks, transmission system operators shall take into account the technical and market codes adopted by the European Network of Transmission System Operators for**

**Gas."**

Or. en

*Justification*

*It is important that the Codes, adopted by the European Network of Transmission System Operators, will be implemented by all Transmission System Operators. By linking the Codes to the tasks of the Transmission System Operators, as defined in the Gas Directive, the legal position of the Codes is significantly strengthened, losing their complete voluntary character.*

**Amendment 240**

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

**Proposal for a directive – amending act**

**Article 1 – point 6 d (new)**

Directive 2003/55/EC

Article 8 a (new)

*Text proposed by the Commission*

*Amendment*

***(6d) The following Article shall be inserted:***

***"Article 8a***

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

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

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

***(i) transmission system operators shall own assets necessary for the regular business of gas transmission;***

***(ii) transmission system operators shall employ the staff necessary for the regular business of gas transmission;***

***(iii) the sharing of the staff and the***

*provision of services between branches of a vertically integrated undertaking performing functions of generation or supply shall be limited to cases where there is no possibility of discrimination and shall be subject to approval by national regulatory authorities in order to exclude competition concerns and conflicts of interest;*

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

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

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

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

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

*branding, communication and premises.*

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

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

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

*7. Right of appeal to the national regulatory authority or another competent national public authority or to a court shall be guaranteed to the management of the transmission system operator in the event of early terminations of their employment.*

*8. After termination of employment in the transmission system operator, the chief executive officers / members of the executive board shall not participate in*

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

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

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

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

*11. Without prejudice to the provisions above, the transmission system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 24c, in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the transmission system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission lines, that do not exceed the terms of the approved*

*financial plan, or any equivalent instrument.*

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

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

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

***14. For the purpose of paragraph 13, a member of the supervisory board / board of directors of a transmission system operator shall be deemed independent if he/she does not participate in any business with, or is no other relationship with the vertically integrated undertaking, its controlling shareholders or the management of either, that would create a conflict of interest, in particular:***

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

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

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

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

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

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

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

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

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

***(ii) preparing an annual report, setting out the measures to be taken in order to implement the compliance programme and submitting it to the national regulatory authority;***

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

***17. The independence of the compliance officer shall be guaranteed in particular***

*by the terms of the relevant employment contract.*

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

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

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

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

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

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

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

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

### *Justification*

*This amendment ensures effective separation without infringing ownership. By introducing the above mechanisms, structural and financial independence of the TSO from the production of vertically integrated companies will be ensured. The neutrality of the TSO will be controlled by the national regulatory authority, the compliance officer and the auditor. As a second pillar of this option effective sanctions for regulators are introduced which guarantee that TSO is no more in a position that enables it to prevent investments into the grid.*

## **Amendment 241**

### **Herbert Reul**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
 Directive 2003/55/EC  
 Article 9

*Text proposed by the Commission*

*Amendment*

**"Article 9**

***deleted***

#### ***Independent system operators***

***1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive, Member States may grant derogations from Article 7(1), provided that an independent system operator is designated by the Member State upon a proposal from the transmission system owner and subject to approval of such designation by the Commission. Vertically integrated undertakings which own a transmission system may not in any event be prevented from taking steps to comply with Article 7(1).***

***2. The Member State may approve and designate an independent system operator only where:***

***(a) the candidate operator has demonstrated that it complies with the requirements of Article 7(1)(b) to (d);***

***(b) the candidate operator has demonstrated that it has at its disposal the***

*required financial, technical and human resources to carry out its tasks under Article 8;*

*(c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority;*

*(d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 6. To this effect, it shall provide all the draft contractual arrangements with the candidate undertaking and any other relevant entity;*

*(e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EC) No 1775/05 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission network\* including the cooperation of transmission system operators at European and regional level.*

*3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Articles 7a and 9(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 7b shall be applicable.*

*4. Where the Commission has taken a decision in accordance with the procedure in Article 7b and finds that the regulatory authority has not complied with its decision within two months, it shall, within a period of six months, designate, on a proposal from the Agency and after having heard the views of the transmission system owner and the transmission system operator, an independent system operator for a period of 5 years. At any time, the transmission system owner may propose to the regulatory authority the designation of a new independent system operator*

*pursuant to the procedure in Article 9(1).*

***5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges and congestion rents, for operating, maintaining and developing the transmission system, as well as for ensuring the long term ability of the system to meet reasonable demand through investment planning. When developing the network the independent system operator is responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, it shall act as a transmission system operator in accordance with this Chapter. Transmission system owners may not be responsible for granting and managing third party access, nor for investment planning.***

***6. Where an independent system operator has been designated, the transmission system owner shall:***

***(a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;***

***(b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority Prior to this approval, the Regulatory Authority shall consult the asset owner together with other interested parties;***

***(c) provide for the coverage of liability relating to the network assets that it owns and are managed by the independent system operator, excluding the liability relating to the tasks of the independent***

*system operator;*

*(d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to paragraph b, it has given its agreement to financing by any interested party including the independent system operator.*

*7. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 6."*

Or. en

*Justification*

*The Independent System operator model implies bureaucracy and costly regulatory control and is therefore not a viable alternative to full ownership unbundling.*

**Amendment 242**

**Lambert van Nistelrooij, Dorette Corbey**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9

*Text proposed by the Commission*

*Amendment*

*Article 9*

*deleted*

*Independent system operators*

*1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive, Member States may grant derogations from Article 7(1), provided that an independent system operator is designated by the Member State upon a proposal from the transmission system owner and subject to approval of such designation by the*

*Commission. Vertically integrated undertakings which own a transmission system may not in any event be prevented from taking steps to comply with Article 7(1).*

*2. The Member State may approve and designate an independent system operator only where:*

*(a) the candidate operator has demonstrated that it complies with the requirements of Article 7(1)(b) to (d);*

*(b) the candidate operator has demonstrated that it has at its disposal the required financial, technical and human resources to carry out its tasks under Article 8;*

*(c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority;*

*(d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 6. To this effect, it shall provide all the draft contractual arrangements with the candidate undertaking and any other relevant entity;*

*(e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EC) No 1775/05 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission network\* including the cooperation of transmission system operators at European and regional level.*

*3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Articles 7a and 9(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 7b shall be applicable.*

*4. Where the Commission has taken a decision in accordance with the procedure in Article 7b and finds that the regulatory authority has not complied with its decision within two months, it shall, within a period of six months, designate, on a proposal from the Agency and after having heard the views of the transmission system owner and the transmission system operator, an independent system operator for a period of 5 years. At any time, the transmission system owner may propose to the regulatory authority the designation of a new independent system operator pursuant to the procedure in Article 9(1).*

*5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges and congestion rents, for operating, maintaining and developing the transmission system, as well as for ensuring the long term ability of the system to meet reasonable demand through investment planning. When developing the network the independent system operator is responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, it shall act as a transmission system operator in accordance with this Chapter. Transmission system owners may not be responsible for granting and managing third party access, nor for investment planning.*

*6. Where an independent system operator has been designated, the transmission system owner shall:*

*(a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;*

*(b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority Prior to this approval, the Regulatory Authority shall consult the asset owner together with other interested parties;*

*(c) provide for the coverage of liability relating to the network assets that it owns and are managed by the independent system operator, excluding the liability relating to the tasks of the independent system operator;*

*(d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to paragraph b, it has given its agreement to financing by any interested party including the independent system operator.*

*7. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 6.*

Or. en

#### *Justification*

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

**Amendment 243**  
**Giles Chichester**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/55/EC  
Article 9

*Text proposed by the Commission*

*Amendment*

**Article 9**

*deleted*

***Independent system operators***

***1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive, Member States may grant derogations from Article 7(1), provided that an independent system operator is designated by the Member State upon a proposal from the transmission system owner and subject to approval of such designation by the Commission. Vertically integrated undertakings which own a transmission system may not in any event be prevented from taking steps to comply with Article 7(1).***

***2. The Member State may approve and designate an independent system operator only where:***

***(a) the candidate operator has demonstrated that it complies with the requirements of Article 7(1)(b) to (d);***

***(b) the candidate operator has demonstrated that it has at its disposal the required financial, technical and human resources to carry out its tasks under Article 8;***

***(c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority;***

***(d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 6. To this effect, it shall provide all the draft***

*contractual arrangements with the candidate undertaking and any other relevant entity;*

*(e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EC) No 1775/05 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission network\* including the cooperation of transmission system operators at European and regional level.*

*3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Articles 7a and 9(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 7b shall be applicable.*

*4. Where the Commission has taken a decision in accordance with the procedure in Article 7b and finds that the regulatory authority has not complied with its decision within two months, it shall, within a period of six months, designate, on a proposal from the Agency and after having heard the views of the transmission system owner and the transmission system operator, an independent system operator for a period of 5 years. At any time, the transmission system owner may propose to the regulatory authority the designation of a new independent system operator pursuant to the procedure in Article 9(1).*

*5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges and congestion rents, for operating, maintaining and developing the transmission system, as well as for ensuring the long term ability of the system to meet reasonable demand through investment planning. When developing the network the independent*

*system operator is responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, it shall act as a transmission system operator in accordance with this Chapter. Transmission system owners may not be responsible for granting and managing third party access, nor for investment planning.*

*6. Where an independent system operator has been designated, the transmission system owner shall:*

*(a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;*

*(b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority Prior to this approval, the Regulatory Authority shall consult the asset owner together with other interested parties;*

*(c) provide for the coverage of liability relating to the network assets that it owns and are managed by the independent system operator, excluding the liability relating to the tasks of the independent system operator;*

*(d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to paragraph b, it has given its agreement to financing by any interested party including the independent system operator.*

*7. In close cooperation with the regulatory authority, the relevant national*

*competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 6.*

Or. en

*Justification*

*The Independent System operator model implies bureaucracy and costly regulatory control and is therefore not a viable alternative to full ownership unbundling.*

**Amendment 244**

**Claude Turmes, Rebecca Harms**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9

*Text proposed by the Commission*

*Amendment*

*Article 9*

*deleted*

*Independent system operators*

*1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive, Member States may grant derogations from Article 7(1), provided that an independent system operator is designated by the Member State upon a proposal from the transmission system owner and subject to approval of such designation by the Commission. Vertically integrated undertakings which own a transmission system may not in any event be prevented from taking steps to comply with Article 7(1).*

*2. The Member State may approve and designate an independent system operator only where:*

*(a) the candidate operator has demonstrated that it complies with the requirements of Article 7(1)(b) to (d);*

*(b) the candidate operator has demonstrated that it has at its disposal the required financial, technical and human resources to carry out its tasks under Article 8;*

*(c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority;*

*(d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 6. To this effect, it shall provide all the draft contractual arrangements with the candidate undertaking and any other relevant entity;*

*(e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EC) No 1775/05 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission network\* including the cooperation of transmission system operators at European and regional level.*

*3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Articles 7a and 9(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 7b shall be applicable.*

*4. Where the Commission has taken a decision in accordance with the procedure in Article 7b and finds that the regulatory authority has not complied with its decision within two months, it shall, within a period of six months, designate, on a proposal from the Agency and after having heard the views of the transmission system owner and the*

*transmission system operator, an independent system operator for a period of 5 years. At any time, the transmission system owner may propose to the regulatory authority the designation of a new independent system operator pursuant to the procedure in Article 9(1).*

*5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges and congestion rents, for operating, maintaining and developing the transmission system, as well as for ensuring the long term ability of the system to meet reasonable demand through investment planning. When developing the network the independent system operator is responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, it shall act as a transmission system operator in accordance with this Chapter.*

*Transmission system owners may not be responsible for granting and managing third party access, nor for investment planning.*

*6. Where an independent system operator has been designated, the transmission system owner shall:*

*(a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;*

*(b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority. Prior to this approval, the Regulatory Authority shall consult the asset owner together with*

*other interested parties;*

*(c) provide for the coverage of liability relating to the network assets that it owns and are managed by the independent system operator, excluding the liability relating to the tasks of the independent system operator;*

*(d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to paragraph b, it has given its agreement to financing by any interested party including the independent system operator.*

*7. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 6.*

Or. en

#### *Justification*

*The Independent System operator model implies bureaucracy and costly regulatory control and is therefore not a viable alternative to full ownership unbundling.*

#### **Amendment 245 Giles Chichester**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/55/EC  
Article 9 – paragraph 1

#### *Text proposed by the Commission*

1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive, Member States may grant derogations from Article 7(1), provided that an independent system

#### *Amendment*

1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive, Member States may grant derogations from Article 7(1), provided that an independent system

operator is designated by the Member State upon a proposal from the transmission system owner and subject to approval of such designation by the Commission. Vertically integrated undertakings which own a transmission system may not in any event be prevented from taking steps to comply with Article 7 (1).

operator *for that Member State* is designated by the Member State upon a proposal from the transmission system owner and subject to approval of such designation by the Commission. Vertically integrated undertakings which own a transmission system may not in any event be prevented from taking steps to comply with Article(1).

Or. en

*(Article 1 point 8 paragraph 1 of Commission proposal amended as shown)*

#### *Justification*

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

#### **Amendment 246**

**Silvia-Adriana Țicău**

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

##### **Article 1 – point 8**

Directive 2003/55/EC

Article 9 – paragraph 4

#### *Text proposed by the Commission*

4. Where the Commission has taken a decision in accordance with the procedure in Article 7b and finds that the regulatory authority has not complied with its decision within two months, it shall, within a period of six months, designate, on a proposal from the Agency and after having heard the views of the transmission system owner **and** the transmission system operator, an independent system operator for a period of 5 years. At any time, the transmission system owner may propose to the regulatory authority the designation of a new independent system operator pursuant to the procedure in Article 9(1).

#### *Amendment*

4. Where the Commission has taken a decision in accordance with the procedure in Article 7b and finds that the regulatory authority has not complied with its decision within two months, it shall, within a period of six months, designate, on a proposal from the Agency and after having heard the views of the transmission system owner, and the transmission system operator, **the national regulatory authorities**, an independent system operator for a period of 5 years. At any time, the transmission system owner may propose to the regulatory authority the designation of a new independent system operator pursuant to the procedure in

**Amendment 247**

**Claude Turmes, Rebecca Harms**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9a

*Text proposed by the Commission*

*Amendment*

**Article 9a**

**deleted**

***Unbundling of transmission system owner  
and storage system operator***

***1. Transmission system owners, where an independent system operator has been appointed, and storage system operators which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission and storage. This Article shall only apply to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 19.***

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

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

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

*(c) the storage system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 24c(4) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument;*

*(d) the transmission system owner and storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.*

***3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner and of the storage operator 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 30(3)."***

Or. en

*Justification*

*The Independent System operator model implies bureaucracy and costly regulatory control and is therefore not a viable alternative to full ownership unbundling.*

**Amendment 248**  
**Christian Ehler**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/55/EC  
Article 9a

*Text proposed by the Commission*

*Amendment*

***Article 9a***

***deleted***

***Unbundling of transmission system owner and storage system operator***

***1. Transmission system owners, where an independent system operator has been appointed, and storage system operators which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission and storage.***

***This Article shall only apply to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 19.***

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

***a) those persons responsible for the management of the transmission system owner and storage system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas.***

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

***c) the storage system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 24c(4) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument.***

*d) the transmission system owner and storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.*

*3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner and of the storage operator 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 30(3).*

Or. xm

#### **Amendment 249**

**Herbert Reul**

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

#### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a

*Text proposed by the Commission*

*Amendment*

#### **Article 9a**

**deleted**

***Unbundling of transmission system owner and storage system operator***

***1. Transmission system owners, where an independent system operator has been appointed, and storage system operators which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation***

*and decision making from other activities not relating to transmission and storage.*

*This Article shall only apply to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 19.*

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

*a) those persons responsible for the management of the transmission system owner and storage system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas.*

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

*c) the storage system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 24c(4) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its*

*subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument.*

*d) the transmission system owner and storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.*

*3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner and of the storage operator 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 30(3) .*

Or. xm

#### *Justification*

*The provisions of the European GGPSSO (Guidelines for Good TPA Practice for Storage System Operators) on confidentiality and on transparency for all market participants already guarantee non-discriminatory access to storage. Furthermore, the principles of the use of storage facilities are covered by the Regulation amending Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks, in particular Articles 4a, 5a and 6a thereof.*

**Amendment 250**  
**Giles Chichester**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/55/EC  
Article 9a

*Text proposed by the Commission*

*Amendment*

**Article 9a**

**deleted**

***Unbundling of transmission system owner  
and storage system operator***

***1. Transmission system owners, where an independent system operator has been appointed, and storage system operators which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission and storage.***

***This Article shall only apply to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 19.***

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

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

***(b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner and storage system operator are taken into account in a manner that ensures that***

*they are capable of acting independently;*

*(c) the storage system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 24c(4) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument;*

*(d) the transmission system owner and storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.*

*3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner and of the storage operator 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 30(3).*

Or. en

*Justification*

*The Independent System operator model implies bureaucracy and costly regulatory control and is therefore not a viable alternative to full ownership unbundling.*

**Amendment 251**

**Lambert van Nistelrooij, Dorette Corbey**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9a

*Text proposed by the Commission*

*Amendment*

*Article 9a*

*deleted*

***Unbundling of transmission system owner and storage system operator***

***1. Transmission system owners, where an independent system operator has been appointed, and storage system operators which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission and storage.***

***This Article shall only apply to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 19.***

***2. In order to ensure the independence of the transmission system owner and storage system operator referred to in***

*paragraph 1, the following minimum criteria shall apply:*

- (a) those persons responsible for the management of the transmission system owner and storage system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas;*
- (b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner and storage system operator are taken into account in a manner that ensures that they are capable of acting independently;*
- (c) the storage system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 24c(4) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument;*
- (d) the transmission system owner and storage system operator shall establish a compliance programme, which sets out*

*measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.*

*3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner and of the storage operator 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 30(3).*

Or. en

#### *Justification*

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

#### **Amendment 252**

**Erika Mann**

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

##### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a

*Text proposed by the Commission*

*Amendment*

*Article 9a*

*deleted*

*Unbundling of transmission system owner*

*and storage system operator*

*1. Transmission system owners, where an independent system operator has been appointed, and storage system operators which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission and storage.*

*This Article shall only apply to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 19.*

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

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

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

*(c) the storage system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company*

*in respect of return on assets regulated indirectly in accordance with Article 24c(4) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument;*

*(d) the transmission system owner and storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.*

*3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner and of the storage operator 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 30(3).*

Or. en

**Amendment 253**  
**Dorette Corbey**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/55/EC  
Article 9a – paragraph 1 - subparagraph 1

*Text proposed by the Commission*

1. **Transmission system owners, where an independent system operator has been appointed, and** storage system operators which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to **transmission and** storage.

*Amendment*

1. *Storage* system operators which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to storage.

Or. en

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

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/55/EC  
Article 9a – paragraph 1

*Text proposed by the Commission*

1. Transmission system owners, where an independent system operator has been appointed, **and storage system operators** which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission and storage.

*Amendment*

1. Transmission system owners, where an independent system operator has been appointed, which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission and storage.

*This Article shall only apply to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 19.*

Or. de

*Justification*

*Gas storage is not a monopoly market. Regulation would also jeopardise existing competition and planned investments in the construction of additional necessary gas storage. Furthermore, the Commission's proposal that the guidelines be adopted in accordance with the regulatory procedure with scrutiny significantly restricts the rights of the European Parliament and should be rejected .*

**Amendment 255**

**Dorette Corbey**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 - introductory part

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 256**

**Angelika Niebler**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 - introductory part

*Text proposed by the Commission*

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

*Amendment*

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

Or. de

*Justification*

*Gas storage is not a monopoly market. Regulation would also jeopardise existing competition and planned investments in the construction of additional necessary gas storage. Furthermore, the Commission's proposal that the guidelines be adopted in accordance with the regulatory procedure with scrutiny significantly restricts the rights of the European Parliament and should be rejected.*

**Amendment 257**

**Dorette Corbey**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 – point (a)

*Text proposed by the Commission*

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

*Amendment*

(a) those persons responsible for the management of the storage system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas;

Or. en

**Amendment 258**  
**Angelika Niebler**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 – point (a)

*Text proposed by the Commission*

a) those persons responsible for the management of the transmission system owner **and storage system operator** may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas.

*Amendment*

a) those persons responsible for the management of the transmission system owner may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas.

Or. de

*Justification*

*Gas storage is not a monopoly market. Regulation would also jeopardise existing competition and planned investments in the construction of additional necessary gas storage. Furthermore, the Commission's proposal that the guidelines be adopted in accordance with the regulatory procedure with scrutiny significantly restricts the rights of the European Parliament and should be rejected.*

**Amendment 259**  
**Dorette Corbey**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 – point (b)

*Text proposed by the Commission*

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

*Amendment*

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

of acting independently;

Or. en

## **Amendment 260**

**Angelika Niebler**

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

#### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 – point (b)

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. de

#### *Justification*

*Gas storage is not a monopoly market. Regulation would also jeopardise existing competition and planned investments in the construction of additional necessary gas storage. Furthermore, the Commission's proposal that the guidelines be adopted in accordance with the regulatory procedure with scrutiny significantly restricts the rights of the European Parliament and should be rejected.*

## **Amendment 261**

**Angelika Niebler**

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

#### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 – point (c)

#### *Text proposed by the Commission*

**c) the storage system operator shall have effective decision-making rights,**

#### *Amendment*

**deleted**

*independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 24c(4) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument.*

Or. de

#### *Justification*

*Gas storage is not a monopoly market. Regulation would also jeopardise existing competition and planned investments in the construction of additional necessary gas storage. Furthermore, the Commission's proposal that the guidelines be adopted in accordance with the regulatory procedure with scrutiny significantly restricts the rights of the European Parliament and should be rejected.*

#### **Amendment 262**

**Dorette Corbey**

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

##### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 – point (d)

*Text proposed by the Commission*

(d) the **transmission system owner and storage system operator** shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

*Amendment*

(d) the storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

Or. en

**Amendment 263**  
**Angelika Niebler**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/55/EC  
Article 9a – paragraph 2 – point (d)

*Text proposed by the Commission*

d) the transmission system owner **and storage system operator** shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

*Amendment*

d) the transmission system owner shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

Or. de

### *Justification*

*Gas storage is not a monopoly market. Regulation would also jeopardise existing competition and planned investments in the construction of additional necessary gas storage. Furthermore, the Commission's proposal that the guidelines be adopted in accordance with the regulatory procedure with scrutiny significantly restricts the rights of the European Parliament and should be rejected.*

#### **Amendment 264** **Giles Chichester**

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

##### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 – point (d)

#### *Text proposed by the Commission*

(d) the transmission system owner and storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, ***and ensure that observance of it is adequately monitored.*** The programme shall set out the specific obligations of employees to meet this objective. ***An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.***

#### *Amendment*

(d) the transmission system owner and storage system operator shall establish a compliance programme, which sets out measures taken to ***provide fair access and*** ensure that discriminatory conduct is excluded. The programme shall set out the specific obligations of employees to meet this objective.

Or. en

### *Justification*

*Extends the compliance provisions to be applied to distribution system operators, and introduces the concept of a compliance board to oversee at a senior level the work of the compliance office/officer.*

**Amendment 265**  
**Giles Chichester**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/55/EC  
Article 9a – paragraph 2 – point (d a) (new)

*Text proposed by the Commission*

*Amendment*

***"(da) compliance with the programme shall be adequately monitored by a designated person or a body, hereinafter referred to as a 'compliance officer', who shall be fully independent and have access to all the necessary information of the transmission system owner and storage system operator and any affiliated companies in order to fulfil the assigned tasks."***

Or. en

*Justification*

*Extends the compliance provisions to be applied to distribution system operators, and introduces the concept of a compliance board to oversee at a senior level the work of the compliance office/officer.*

**Amendment 266**  
**Giles Chichester**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/55/EC  
Article 9a – paragraph 2 – point (d b) (new)

*Text proposed by the Commission*

*Amendment*

***"(db) compliance shall be overseen by a compliance board comprising a majority of members independent of the vertically integrated undertaking."***

Or. en

### *Justification*

*Extends the compliance provisions to be applied to distribution system operators, and introduces the concept of a compliance board to oversee at a senior level the work of the compliance office/officer.*

#### **Amendment 267**

**Giles Chichester**

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

##### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 2 – point (d c) (new)

*Text proposed by the Commission*

*Amendment*

***"(dc) an annual report, setting out the measures taken and evaluating the degree of compliance, shall be submitted by the compliance officer to the national regulatory authority and shall be published."***

Or. en

### *Justification*

*Extends the compliance provisions to be applied to distribution system operators, and introduces the concept of a compliance board to oversee at a senior level the work of the compliance office/officer.*

#### **Amendment 268**

**Angelika Niebler**

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

##### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a – 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 and of the*** ***deleted***

*storage operator 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 30(3).*

Or. de

*Justification*

*Gas storage is not a monopoly market. Regulation would also jeopardise existing competition and planned investments in the construction of additional necessary gas storage. Furthermore, the Commission's proposal that the guidelines be adopted in accordance with the regulatory procedure with scrutiny significantly restricts the rights of the European Parliament and should be rejected.*

**Amendment 269**

**Paul Rübig**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9a – 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 and of the storage operator 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 30(3).** **deleted**

Or. en

*Justification*

*These measures exceed the scope of comitology. The issue is neither a simple implementation measure, nor does it concern "non-essential elements". The unbundling provisions are at the core of gas market liberalisation and thus can not be considered „non-essential“. In addition they impinge on company law – a central pillar in every economic system – and can*

*consequently not be considered „non-essential“.*

#### **Amendment 270**

**Dorette Corbey**

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

##### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 3

#### *Text proposed by the Commission*

3. The Commission may adopt guidelines to ensure full and effective compliance *of the transmission system owner and* of the storage operator 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 30(3).

#### *Amendment*

3. The Commission may adopt guidelines to ensure full and effective compliance of the storage operator 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 30(3).

Or. en

#### **Amendment 271**

**Christian Ehler**

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

##### **Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 3

#### *Text proposed by the Commission*

3. The Commission may **adopt** guidelines to ensure full and effective compliance of the transmission system owner and of the storage operator 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 30(3).

#### *Amendment*

3. The Commission may **amend** guidelines to ensure full and effective compliance of the transmission system owner and of the storage operator with paragraph 2 of 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 30(3).

*Justification*

*Seeks to ensure that the guidelines are adopted under the ordinary procedure by Parliament and the Council. The transfer of powers to the Commission should remain confined to any necessary amendments.*

**Amendment 272**

**Angelika Niebler**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/55/EC

Article 9a – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

**Amendment 273**

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

**Proposal for a directive – amending act**

**Article 1 – point 8 a (new)**

Directive 2003/55/EC

Article 9 b (new)

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

***"Article 9b***

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

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

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

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

***(ii) transmission system operators shall employ the staff necessary for the regular business of gas transmission ;***

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

***The activities deemed necessary for the regular business of gas transmission mentioned in this paragraph shall include at least:***

***– representation of the transmission system operator and contacts with third parties and the national regulatory authorities,***

***– granting and managing third party access to the network, especially the access for new market operators and producers of biogas,***

***– collection of the access charges, congestion rents and payments under the inter transmission system operator compensation mechanism in compliance with Article 7 of Regulation (EC) No***

*1775/2005,*

- operation, maintenance and development of the transmission system,*
- investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply,*
- legal services,*
- accountancy and IT services.*

*2. The sharing of the staff and rendering of services, from and to any branch of the vertically integrated undertaking performing functions of generation or supply, shall be prohibited.*

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

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

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

*6. Transmission system operator's accounts shall be audited by another auditor than the one auditing the*

*vertically integrated undertaking and all its affiliated companies.*

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

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

***8. Rights of appeal to the national regulatory authority or to a court shall be guaranteed to the members of the management of the transmission system operator regarding early terminations of their employment.***

***9. The national regulatory authority shall decide on such appeal within six months. This time period may be exceeded only in exceptional and duly justified cases.***

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

*less than 3 years.*

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

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

*12. The chief executive officer or the members of the executive board of the transmission system operator may not be responsible, directly or indirectly, for the day-to-day operation of any other branch of the vertically integrated undertaking.*

*13. Without prejudice to the provisions above, the transmission system operator shall have all effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the parent company is able to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument.*

*III. Supervisory board / Board of directors*

*14. The Chairman of the supervisory board/board of directors of the transmission system operator and all of its members shall not participate in any branch of the vertically integrated*

*undertaking. They shall also not be members of the supervisory board/board of directors of any undertaking of the vertically integrated company.*

*15. The supervisory boards / boards of directors of transmission system operators shall also include independent members, appointed for at least 5 years.*

*Appointment of the members of the supervisory board / board of directors shall be notified to the national regulatory authority and become binding under the conditions referred to in paragraph 7.*

*16. For the purpose of paragraph 15, a member of the supervisory board / board of directors of a transmission system operator shall be deemed independent if he/she does not participate in any business with, or has no other relationship with, the vertically integrated undertaking, its controlling shareholders or the management of either, which would create a conflict of interest, in particular:*

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

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

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

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

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

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

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

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

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

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

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

***20. The compliance officer shall have the opportunity to regularly address the supervisory board/board of directors of***

*the transmission system operator and of the vertically integrated undertaking and the regulatory authorities.*

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

*(i) conditions for access and connection to the system, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 7 of Regulation (EC) No 1775/2005;*

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

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

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

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

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

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

*25. Following revocation of the mandate of the compliance officer, the compliance officer should be barred from having*

*business relations with the vertical integrated undertaking for a period of not less than five years.*

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

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

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

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

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

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

***29. The national regulatory authority shall consult the draft plan with all relevant network users in an open and transparent manner and may publish the result of such consultation, in particular possible needs for investments.***

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

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

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

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

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

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

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

***VI. Decision making powers regarding the access of third parties to the transmission grid***

***33. Transmission system operators shall be required to establish and publish transparent and efficient procedures for non-discriminatory access of third parties to the network. Those procedures shall be subject to the approval of national regulatory authorities.***

***34. Transmission system operators shall***

*not be entitled to refuse third parties access to the network on the grounds of possible future limitations to available network capacities, e.g. congestion in distant parts of the transmission network. The transmission system operator shall supply the necessary information.*

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

## *VII. Regional cooperation*

*36. Member States which decide to cooperate on a regional level, shall place precise obligations on transmission system operators within a clearly defined time frame and progressively leading to the creation of a common regional dispatching centre responsible for security issues within six years of entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas].*

*37. If the cooperation between several Member States at a regional level encounters difficulties, following the joint request of these Member States the Commission may designate a regional coordinator.*

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

*(a) promote new efficient investments in interconnections. To this end, the regional coordinator shall assist transmission system operators in preparation of their regional interconnection plan and shall contribute to the coordination of their*

*investments decisions and, where appropriate, of their open season procedure,*

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

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

#### ***VIII. Sanctions***

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

***(i) shall be empowered to request any information from the transmission system operator and to directly contact all staff of the transmission system operator; if doubts remain, the national regulatory authority shall have the same power towards the vertically integrated undertaking and its subsidiaries;***

***(ii) may conduct all necessary inspections of the transmission system operator and, if doubts remain, of the vertically integrated undertaking and its subsidiaries; 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<sup>1</sup> shall apply.***

***40. In order to carry out its tasks assigned to it by this Article, the national regulatory authority shall have the power to impose effective, appropriate and dissuasive sanctions to the transmission system operator and/or to the vertically***

*integrated undertaking not complying with their obligations under this Article or any decisions of the national regulatory authority. This power shall include the right to:*

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

*(ii) issue orders to remedy a discriminatory behaviour;*

*(iii) withdraw, partly or in full, the licence of the transmission system operator in case it repeatedly breaches the unbundling provisions set out in this Article."*

<sup>1</sup> OJ L 1, 4.1.2003, p. 1.

Or. en

#### *Justification*

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

**Amendment 274**  
**Anne Laperrouze**

**Proposal for a directive – amending act**  
**Article 1 – point 8 a (new)**  
Directive 2003/55/EC  
Article 9 b (new)

*Text proposed by the Commission*

*Amendment*

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

***"Article 9b***

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

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

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

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

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

***(iii) the sharing of the staff and the rendering of services between branches of a vertically integrated undertaking performing functions of production or supply, shall be limited to cases where there is no risk of discrimination and shall be subject to approval by national regulatory authorities in order to exclude competition concerns and conflicts of interest;***

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

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

***– representation of the transmission system operator and contacts with third parties and national regulatory authorities,***

***– granting and managing third party access to the network,***

***– collection of the access charges, congestion rents,***

***– operation, maintenance and development of the transmission system,***

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

- legal services,*
- accountancy and IT services.*

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

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

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

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

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

***7. Rights of appeal to the national regulatory authority or to another competent national public authority or to a court shall be guaranteed to the members of the management of the transmission system operator in case of early termination of their employment.***

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

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

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

***11. Without prejudice to the provisions above, the transmission system operator shall have effective decision-making rights, independent from the integrated gas undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 24c, in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual***

*financial plan, or any equivalent instrument, of the transmission system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission gas pipelines, that do not exceed the terms of the approved financial plan, or any equivalent instrument.*

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

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

***13. The supervisory board / board of directors of transmission system operator shall also include independent members, appointed for at least 5 years.***

***Appointment of the members of the supervisory board / board of directors shall be notified to the national regulatory authority/ or any other competent national public authority and become binding under the conditions described in paragraph 6.***

***14. For the purpose of paragraph 13, a member of the supervisory board / board of directors of a transmission system operator shall be deemed independent if he is does not participate in any business with, or has no other relationship with, the vertically integrated undertaking, its controlling shareholders or the management of either, that would create a conflict of interest , in particular:***

***(a) has not been an employee of any branch of the vertically integrated undertaking performing functions of production and supply in five years prior to the appointment as a member of the***

*supervisory board / board of directors;*

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

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

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

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

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

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

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

***(ii) preparing an annual report, setting***

*out the measures to be taken in order to implement the compliance programme and submitting it to the national regulatory authority;*

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

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

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

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

*(i) conditions for access and connection to the network, including the collection of access charges and congestion rents;*

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

*(iii) balancing rules, including transmission system operator's flexibility needs;*

*(iv) energy purchases in order to cover transmission system operator's needs.*

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

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

*information for the fulfilment of the assigned tasks.*

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

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

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

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

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

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

*25. In order to prepare the draft of this plan, each transmission system operator shall make reasonable hypothesis about the evolution of supply, consumption and exchanges with other countries, and shall take into account regional and European-wide existing network investment plans. Transmission system operator shall submit in due time the draft of the plan to the competent national body.*

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

*27. The competent national body shall examine whether the draft 10-year network development plan covers all investment needs identified within the*

*consultation. The competent national body may oblige the transmission system operator to modify its plan.*

*28. The competent national body within the meaning of paragraphs 25, 26 and 27, may be the national regulatory authority, any other competent national public authority or a network development trustee constituted by transmission system operators. In the latter case, transmission system operators shall submit the drafts of their statutes, the list of members and the rules of procedure to the approval of the competent national public authority.*

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

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

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

- to agree to financing by any third party,*
- to agree to building by any third party, or to build, the respective new assets and*
- to operate the respective new asset.*

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

*30. Competent national public authority*

*shall monitor and evaluate the implementation of the investment plan.*

#### ***VI. Regional cooperation***

***31. When the cooperation between several Member States at a regional level encounters significant difficulties, the Commission may designate, in agreement with the Member States concerned, a regional coordinator.***

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

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

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

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

Or. en

*Justification*

*An alternative solution for Member States to ensure the independence of TSOs has to be introduced.*