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AMENDMENTS

8 - 66

Draft opinion
Bernhard Rapkay
(PE400.566v01-00)

on the proposal for a European Parliament and Council directive amending Directive 2003/55/EC concerning 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_LegOpinion

Amendment 8
Heide Rühle, Alain Lipietz

Proposal for a directive – amending act
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) In order to ensure efficient and non-discriminatory network access it is appropriate that the transmission and distribution systems are operated through legally separate entities where vertically integrated undertakings exist. The Commission should assess measures of equivalent effect, developed by Member States to achieve this requirement, and, where appropriate, submit proposals to amend this Directive. Different approaches need to be taken for transmission and distribution and therefore the Commission should resolve the persisting difficulties - notably network connections for new entrants, in particular for biogas and gas from biomass producers - by strengthening the powers of the regulators.

Or. en

Justification

The different unbundling requirement between the transmission and distribution system operators should not discourage new market actors using the distribution network. In order to meet the EU's renewable energy target active encouragement of biogas and gas from biomass needs to be encourage.

Amendment 9
Sophia in 't Veld

Proposal for a directive – amending act
Recital 10

Text proposed by the Commission

Amendment

(10) The setting up of system operators independent from supply and production interests should enable vertically integrated companies to maintain their ownership of network assets whilst ensuring an effective separation of interests, provided that the independent system operator performs all the functions of a network operator and detailed regulation and extensive regulatory control mechanisms are put in place.

deleted

Or. en

Justification

The European Parliament stressed in its Resolution from 10 July 2007, that the ownership unbundling at transmission level is the most effective tool to promote investments in infrastructure in a non-discriminatory way, fair access to the grid for new entrants and transparency. Hence, no derogations should be proposed.

Amendment 10
Bernhard Rapkay

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

Text proposed by the Commission

Amendment

(10a) If the provisions on effective and efficient legal unbundling are complied with, vertically integrated undertakings may retain ownership of the assets of the network while at the same time guaranteeing an effective separation of interests, provided that the network company performs all the tasks of a

network operator, and that detailed regulation and comprehensive regulation control mechanisms are in place.

Or. de

Justification

The Member States must be allowed a third practicable option which does not represent a serious interference in the ownership structures of the Member States and enables vertically integrated undertakings to continue to operate the network in collaboration, subject to compliance with stringent conditions and obligations.

Amendment 11
Heide Rühle, Alain Lipietz

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

Text proposed by the Commission

Amendment

(10a) To facilitate efficient market integration, the process of unbundling should enable several transmission systems to be operated together, for example by a Regional Independent System Operator.

Or. en

Justification

Effective separation between transmission operators and production or supply businesses is essential to ensure non-discriminatory access, but the process of unbundling must lead to market integration, not to market fragmentation. A new recital should be added to make this clear.

Amendment 12
Sophia in 't Veld

Proposal for a directive – amending act
Recital 11

Text proposed by the Commission

Amendment

(11) Where the undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling and, as a derogation, setting up system operators which are independent from supply and production interests. The full effectiveness of the independent system operator solution needs to be assured by way of specific additional rules. To preserve fully the interests of the shareholders of vertically integrated companies, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated company into shares of the network company and shares of the remaining supply and production business, provided that the requirements resulting from ownership unbundling are complied with.

deleted

Or. en

Justification

The European Parliament stressed in its Resolution from 10 July 2007, that the ownership unbundling at transmission level is the most effective tool to promote investments in infrastructure in a non-discriminatory way, fair access to the grid for new entrants and transparency. Hence, no derogations should be proposed.

Amendment 13
Bernhard Rapkay

Proposal for a directive – amending act
Recital 11

Text proposed by the Commission

Where the undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling **and, as a derogation**, setting up system operators which are independent from supply and production interests. The full effectiveness of the independent system operator solution needs to be assured by way of specific additional rules. To preserve fully the interests of the shareholders of vertically integrated companies, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated company into shares of the network company and shares of the remaining supply and production business, provided that the requirements resulting from ownership unbundling are complied with.

Amendment

(11) Where the undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling, setting up system operators which are independent from supply and production interests, **and the effective and efficient legal unbundling of transmission system operators**. The full effectiveness of the independent system operator solution needs to be assured by way of specific additional rules. To preserve fully the interests of the shareholders of vertically integrated companies, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated company into shares of the network company and shares of the remaining supply and production business, provided that the requirements resulting from ownership unbundling are complied with.

Or. de

Justification

The Member States must be allowed a third practicable option which does not represent a serious interference in the ownership structures of the Member States and enables vertically integrated undertakings to continue to operate the network in collaboration, subject to compliance with stringent conditions and obligations.

All three options must also have equal status.

Amendment 14
Christian Ehler

Proposal for a directive – amending act
Recital 12

Text proposed by the Commission

(12) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To this effect, the same person should not be able to exercise any influence, solely or jointly, over the composition, voting or decision of the bodies of both transmission system operators and supply undertakings.

Provided that the Member State in question can demonstrate that this requirement is respected, two distinct public bodies could control on the one hand generation and supply activities and on the other transmission activities.

Amendment

(12) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To this effect, the same person should not be able to exercise any influence, solely or jointly, over the composition, voting or decision of the bodies of both transmission system operators and supply undertakings.

Or. de

Justification

Equal treatment irrespective of ownership status.

Amendment 15
Heide Rühle, Alain Lipietz

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

Text proposed by the Commission

Amendment

(-1) Article 1(2) shall be replaced by the following:

2. The rules established by this Directive for natural gas, including liquefied natural gas (LNG), shall also apply *in a*

non-discriminatory way to biogas and gas from biomass or other types of gas in so far as such gases can technically and safely be injected into, and transported through, the natural gas system.

Or. en

Justification

Assuming the technical and chemical safety threshold for the different gases are met the need for non-discrimination for access between the gases from different sources must be emphasized

Amendment 16
Benoît Hamon

Proposal for a directive – amending act

Article 1 – point 1 a (new)

Directive 2003/55/EC

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

(1a) Article 3(2) shall be replaced by the following:

"2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on undertakings operating in the gas sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for EU gas companies to national consumers. *These obligations may in particular take the form of price regulation, including setting a maximum price for the supply of gas to end-users.* In relation to security of

supply, energy efficiency/demand-side management and for the fulfilment of environmental goals, as referred to in this paragraph, Member States may introduce the implementation of long term planning, taking into account the possibility of third parties seeking access to the system."

Or. fr

Justification

It is important explicitly to safeguard the Member States' right to regulate their prices for gas as an essential service. In line with European legislation on mobile telephony, Member States must in particular be permitted to set a maximum price for the supply of gas to end users.

Amendment 17
Heide Rühle, Alain Lipietz

Proposal for a directive – amending act

Article 1 – point 1 a

Directive 2003/55/EC

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

(1a) Article 3(2) shall be replaced by the following:

2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on undertakings operating in the gas sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency and *Community targets for the use of renewable energy* and climate protection. Such obligations shall be clearly defined, transparent, non discriminatory, verifiable and shall guarantee equality of access for EU gas companies to national

consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals, as referred to in this paragraph, Member States may introduce the implementation of long term planning, taking into account the possibility of third parties seeking access to the system.

Or. en

Amendment 18
Christian Ehler

Proposal for a directive – amending act
Article 1 – point 2
Directive 2003/55/EC
Article 3 – paragraph 7

Text proposed by the Commission

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

Amendment

'7. The Commission may **amend** guidelines for the implementation 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).'

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 19
Heide Rühle, Alain Lipietz

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

Text proposed by the Commission

Amendment

(2a) Article 5 shall be replaced by the following:

Member States shall ensure the monitoring of security of supply issues. Where Member States consider it appropriate, they may delegate this task to the regulatory authorities referred to in Article 25(1). This monitoring shall, in particular, cover the supply/demand balance on the national market, the level of expected future demand and available supplies, envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the networks, *the use of biogas and gas from biomass*, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers. The competent authorities shall publish, by 31 July each year at the latest a report outlining the findings resulting from the monitoring of these issues, as well as any measures taken or envisaged to address them and shall forward this report to the Commission forthwith.

Or. en

Amendment 20
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 21
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 1 – point 3 a (new)
Directive 2003/55/EC
Article 6a (new)

Text proposed by the Commission

Amendment

(3a) The following article shall be inserted:

"Article 6a

Unbundling provisions

In order to ensure the independence of transmission system operators Member States shall ensure that as from ... * vertically integrated undertakings shall comply with the provisions of Article 7(1)(a) to (d) on ownership unbundling (OU), Article 9 on independent system operators (ISO), or Article 9b on effective and effective unbundling (EEU) .

* ***One year after the date for transposition.***"

Or. en

Justification

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

Amendment 22
Benoît Hamon

Proposal for a directive – amending act
Article 1 – point 3 a (new)
Directive 2003/55/EC
Article 6a (new)

Text proposed by the Commission

Amendment

(3a) The following article shall be inserted:

"Article 6a

Alternative unbundling requirements

In order to ensure the independence of transmission system operators, Member States shall ensure that as from ... * vertically integrated undertakings shall comply with Article 7(1)(a) to (d) on ownership unbundling (OU), Article 9 on independent system operators (ISO), or Article 9b on effective and efficient unbundling (EEU).

* ***One year after the date for transposition.***"

Or. en

Justification

An alternative way has to be introduced.

Amendment 23
Bernhard Rapkay

Proposal for a directive – amending act
Article 1 – point 3 a (new)
Directive 2003/55/EC
Article 6a (new)

Text proposed by the Commission

Amendment

(3a) The following article is inserted:

‘Article 6a

***Provisions on the unbundling of
transmission system operators***

***In order to guarantee the independence of
transmission system operators, the
Member States shall ensure that, as
from...* vertically integrated
undertakings comply with Article 7(1)(a)
to (d) on full ownership unbundling,
Article 9 on independent system
operators, or Article 9b on effective and
efficient legal unbundling. .***

*** date of transposition plus one year.**

Or. de

Justification

The Member States must be allowed a third practicable option which does not represent a serious interference in the ownership structures of the Member States and enables vertically integrated undertakings to continue to operate the network jointly, subject to compliance with stringent conditions and obligations.

Amendment 24
Sophia in 't Veld

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

The European Parliament stressed in its Resolution from 10 July 2007, that the ownership unbundling at transmission level is the most effective tool to promote investments in infrastructure in a non-discriminatory way, fair access to the grid for new entrants and transparency. Hence, no derogations should be proposed.

Amendment 25
Sophia in 't Veld

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***

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 9a as an independent system operator.

Article.

Or. en

Amendment 26
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

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).

Amendment

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

Or. de

Justification

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

Amendment 27
Bernhard Rapkay

Proposal for a directive – amending act

Article 1 – point 6 a (new)

Directive 2003/55/EC

Article 8 – paragraphs 4a to 4h (new)

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

"4a. A transmission system operator shall elaborate a 10-year network development plan at least every two years. It shall provide efficient measures in order to guarantee system adequacy and security of supply. That development plan shall, in particular:

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

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

4b. In order to elaborate its 10-year network development plan, each transmission system operator shall make reasonable estimates about the evolution of generation, consumption and exchanges with other countries, taking into account regional and European-wide existing network investment plans. A transmission system operator shall submit its estimates to the national regulatory authority within a reasonable time period.

4c. The national regulatory authority shall consult all relevant network users on the basis of a draft 10-year network development plan in an open and transparent manner and may publish the result of the consultation process, in particular as regards possible investment needs.

4d. The national regulatory authority shall examine whether the 10-year network development plan covers all investment needs identified in the consultation and may require that the transmission system operator amend its

plan.

4e. If a transmission system operator refuses to implement a specific investment that is listed in the 10-year network development plan for execution during the following three years, Members States shall ensure that the regulatory authority has the competence to:

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

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

- third-party financing;*
- a third party building a new asset;*
- a third party operating a new asset;*
- and/or*
- a capital increase to finance the necessary investments and allow independent investors to participate in the capital.*

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

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

4f. The national regulatory authority shall monitor and evaluate the implementation of the investment plan.

4g. Transmission system operators shall be required to establish and publish transparent and efficient procedures for non-discriminatory connection of third parties to the grid. Those procedures shall be subject to the approval of national regulatory authorities.

4h. Transmission system operators shall not be entitled to refuse the access of third parties on the grounds of possible future limitations to available network capacities, such as congestion in distant parts of the transmission grid.

Transmission system operators shall be required to supply necessary information.

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

Or. en

Justification

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

Amendment 28

Heide Rühle, Alain Lipietz

Proposal for a directive – amending act

Article 1 – point 6 a (new)

Directive 2003/55/EC

Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(6a) In Article 8 the following paragraph shall be added:

"4a. Transmission system operators shall build sufficient interconnection capacity between their transmission infrastructure in order to meet all reasonable demands for capacity, facilitate an efficient overall market, and fulfil gas security of supply criteria."

Justification

The tasks of TSOs need to be strengthened to ensure that use of existing capacity is maximized on a non-discriminatory basis and new infrastructure is built where there is a market demand. These changes are essential for the integration of the European energy market.

Amendment 29

Heide Rühle, Alain Lipietz

Proposal for a directive – amending act

Article 1 – point 6 b (new)

Directive 2003/55/EC

Article 8 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

The tasks of TSOs need to be strengthened to ensure that use of existing capacity is maximized on a non-discriminatory basis and new infrastructure is built where there is a market demand. These changes are essential for the integration of the European energy market.

Amendment 30
Heide Rühle, Alain Lipietz

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

Text proposed by the Commission

Amendment

Article deleted

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 31
Sophia in 't Veld

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

Text proposed by the Commission

Amendment

Article deleted

Or. en

Justification

The European Parliament stressed in its Resolution from 10 July 2007, that the ownership unbundling at transmission level is the most effective tool to promote investments in infrastructure in a non-discriminatory way, fair access to the grid for new entrants and transparency. Hence, no derogations should be proposed.

Amendment 32
Heide Rühle, Alain Lipietz

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

Text proposed by the Commission

Amendment

Article deleted

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 33
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 deleted

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 34
Sophia in 't Veld

Proposal for a directive – amending act

Article 1 – point 8

Directive 2003/55/EC

Article 9a

Text proposed by the Commission

Amendment

Article deleted

Or. en

Justification

The European Parliament stressed in its Resolution from 10 July 2007, that the ownership unbundling at transmission level is the most effective tool to promote investments in infrastructure in a non-discriminatory way, fair access to the grid for new entrants and transparency. Hence, no derogations should be proposed.

Amendment 35
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

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).

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).

Or. de

Justification

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

Amendment 36 Bernhard Rapkay

Proposal for a directive – amending act

Article 1 – point 8 a (new)

Directive 2003/55/EC

Article 9b (new)

Text proposed by the Commission

Amendment

(8a) The following Article 9 is inserted:

Article 9b

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

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, the transmission system operator shall:

(a) own assets necessary for the regular business of gas transmission;

(b) directly employ personnel necessary for the regular business of gas transmission;

c) ensure that appropriate financial resources for future investment projects will be available in accordance with annual financial planning.

The activities referred to in subparagraphs a to c shall include, at least:

- representing the transmission system operator and contacts to third parties and the regulatory authorities,***

- *granting and managing third-party access, in particular to new market participants from the biogas sector,*
- *collecting access charges, congestion rents and payments pursuant to the balancing mechanisms between transmission system operators set out in Article 7 of Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks*,*
- *operating, maintaining and developing 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 information technology services;*

(2) The leasing of personnel and rendering of services, from and to any branch of the vertically integrated undertaking performing functions of production or supply, shall be prohibited.

(3) The transmission system operator may not engage in any activities other than transmission which might conflict with its tasks, including the possession of shares or participation in an undertaking or a part of the vertically integrated undertaking or in any other gas or electricity company. Exceptions to this rule shall require prior authorisation by the national regulatory authority and shall be confined to share ownership and participation in other network undertakings.

(4) The transmission system operator shall have its own corporate identity, significantly distinct from the vertically integrated undertaking with separate

branding, communication and premises.

(5) The transmission system operator shall not provide the vertically integrated undertaking any sensitive information or information conferring a competitive advantage, unless it shares such information with all market participants in an equal and non-discriminatory manner. What types of information are covered by this definition shall be determined by the transmission system operator in collaboration with the national regulatory authority.

(6) Transmission system operators' accounts shall be audited by an auditor other than the auditor of the vertically integrated undertaking and its affiliated companies.

Independence of the transmission system operator management, chief executive officer / executive board

(7) Decisions on the appointment and on any premature termination of the employment of the transmission system operator's chief executive officer or members of the executive board and their respective contractual agreements of employment and their termination shall be notified to the national regulatory authority. Those decisions and agreements may become binding only if the regulatory authority has not used its right of veto within 3 weeks of notification. The regulatory authority may use a veto in connection with appointments and their respective contractual agreements in the event that serious doubts arise in regard to the professional independence of a nominee for appointment as chief executive officer or member of the executive board on the one hand, or the justification for the premature termination of employment and corresponding contractual agreements on the other.

(8) Effective rights of appeal to the regulatory authority or to a court shall be guaranteed for any complaints by the chief executive officer or members of the executive board of the transmission system operator against premature terminations of their employment.

(9) The regulatory authority must take a decision on the appeal within six months. This time limit may only be exceeded for objectively justified reasons.

(10) After termination of employment with the transmission system operator, chief executive officers or members of the executive board shall be prohibited from participating in any branch of the vertically integrated undertaking performing functions of production or supply for a period of not less than 3 years.

(11) The chief executive officer or members of the executive board shall hold no interest in or receive any compensation from any undertaking of the vertically integrated company other than the transmission system operator. His, her or their remuneration 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 members of the executive board of the transmission system operator shall bear no responsibility, directly or indirectly, in the day-to-day operation of any other branch of the vertically integrated undertaking.

(13) Without prejudice to this Article, 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 shall not prevent the existence of appropriate coordination mechanisms enabling the parent company

to set global limits on the levels of indebtedness of its subsidiary. The parent company may not issue any instructions either regarding day-to-day operations, or with respect to individual decisions concerning the construction or upgrading of transmission gas pipelines, that exceed the terms of the approved financial plan, or any equivalent instrument.

Supervisory board and board of directors

(14) Chairpersons and members of the transmission system operator's supervisory board or board of directors shall not participate in any branch of the vertically integrated undertaking, neither may they be members of the supervisory board or board of directors of any branch or subsidiary of the vertically integrated undertaking.

(15) The members of the transmission system operator's supervisory board or board of directors shall be independent and shall be appointed for a term of at least 5 years. Their appointment shall be notified to the regulatory authority and shall become binding only subject to the conditions provided for in paragraph (7).

(16) For the purposes of paragraph 13, a member of a transmission system operator's supervisory board or board of directors shall be deemed independent if he or she is free of any business or other relationship with the vertically integrated undertaking, its controlling shareholders or the management of either, that creates a conflict of interest such as to impair his or her judgement, and, in particular, he or she:

- 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 his or her appointment to the supervisory board or 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 or her appointment to the supervisory board or board of directors; and

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

Compliance officer

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

(18) The transmission system operator's chief executive officer or executive board shall appoint a person or a body as a compliance officer in order to:

a) monitor the implementation of the compliance programme;

b) elaborate a detailed annual report, the criteria for which shall be determined by regulatory authority in agreement with the European Agency for the Cooperation of Energy Regulators, set out the measures taken in order to implement the compliance programme and submit the

report to the regulatory authority; and
c) issue recommendations on the compliance programme and its implementation.

(19) The independence of the compliance officer shall be guaranteed in particular by the terms of his or her employment contract.

(20) The compliance officer shall have the opportunity regularly to address the supervisory board or board of directors of the transmission system operator, the vertically integrated undertaking, and the regulatory authorities.

(21) The compliance officer shall attend all sessions of the supervisory board or board of directors of the transmission system operator that address the following areas:

a) conditions for access and connection to the network, including the collection of access charges, congestion rents and payments in accordance with the balancing mechanism between transmission system operators set out in Article 7 of Regulation (EC) No 1775/2005;

b) projects undertaken in order to operate, maintain and develop the transmission network system, including interconnection and connection investments;

c) balancing rules, including provisions on energy reserves; and

d) energy purchases in order to cover energy losses.

(22) 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 or board of

directors.

(23) The compliance officer shall have access to all the transmission system operator's relevant books, records and offices and to all the necessary information for the proper performance of his or her duties.

(24) The compliance officer shall be nominated and removed from office by the chief executive officer or executive board only following the prior approval of the regulatory authority.

(25) The compliance officer may not have any kind of business dealings with the vertically integrated undertaking for at least five years after leaving office.

Network development and powers to make investment decisions

(26) Each transmission system operator shall elaborate a 10-year network development plan at least every two years. It shall provide efficient measures in order to guarantee system adequacy and security of supply.

(27) That ten-year plan shall, in particular:

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

b) include all the investments already decided upon and identify new investments for which an implementation decision has to be taken during the following three years.

(28) In order to elaborate its 10-year network development plan, each transmission system operator shall make reasoned estimates about the evolution of supply, consumption and exchanges with other countries, taking into account regional and Europe-wide existing network investment plans. A transmission system operator shall submit its estimates to the national regulatory authority within

a reasonable time period.

(29) The regulatory authority shall consult all relevant network users on the basis of a draft 10-year network development plan in an open and transparent manner and may publish the result of the consultation process, in particular as regards possible investment needs.

(30) The regulatory authority shall examine whether the 10-year network development plan covers all investment needs identified in the consultation and may require that the transmission system operator amend its plan.

(31) If the transmission system operator refuses to make a specific investment that is listed in the 10-year network development plan for execution during the following three years, the Member State in question shall ensure that the regulatory authority has the competence to:

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

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

- agree to third-party financing,*
- agree to a third party building a new asset, or create the new asset in question,*
- operate the new asset, and/or*
- accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.*

The relevant financial arrangements shall be subject to the approval of the regulatory authority. In either case, tariff regulation shall allow for revenue that

covers the costs of such investment.

(32) The regulatory authority shall monitor and evaluate the implementation of the investment plan.

Power of decision on third-party access to the transmission network

(33) Transmission system operators shall be required to develop and publish transparent and efficient procedures for the 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 access the access of third parties on the grounds of possible future limitations to available network capacities, such as congestion in distant parts of the transmission network. The transmission system operator shall be required to supply necessary information.

(35) Transmission system operators shall not refuse a new connection point on the sole ground that it will lead to additional costs linked to necessary capacity increase of network elements in the immediate vicinity of the connection point.

Regional Cooperation

(36) If Member States opt for regional cooperation, they must impose precisely defined obligations on the transmission system operator, to be fulfilled within a clearly defined time frame. Such obligations must also lead gradually to the creation of a common regional dispatching centre, which shall be responsible for security and safety issues no later than six years from the entry into force of this directive.

(37) Where there is cooperation between several Member States at regional level, the Member States in question shall appoint a regional coordinator in agreement with the Commission.

(38) The regional coordinator shall promote cooperation at regional level between regulatory authorities and any other competent authorities, network operators, power exchanges, network users and market participants. In particular, he shall :

a) promote new, efficient investments in interconnection infrastructure. To that end, he shall help transmission network operators in setting up their regional interconnection infrastructure plan and shall contribute to the coordination of their investment decisions and, where appropriate, their open season procedure;

b) promote the efficient and safe use of the network. To that end, he shall contribute, by drafting common rules and common safety mechanisms, to coordination between transmission system operators, national regulatory authorities and other competent national authorities;

c) report annually to the Commission and the Member States in question on the progress made in the field and on any difficulties or obstacles which might impair progress;

Sanctions

(39) In order to perform the duties imposed on it in this Article, the national regulatory authority shall have the right:

a) to demand any information from the transmission system operator and to contact any member of the transmission system operator's staff directly; in case of doubt, it may also exercise this right over the vertically integrated undertaking and its branches;

b) to carry out any necessary investigations of the transmission system operator and, in case of doubt, of the vertically integrated undertaking and its branches; the provisions of 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** shall apply accordingly.*

(40) In order to perform its tasks under this Article, the national regulatory authority shall have the right to impose effective, appropriate and deterrent penalties on the transmission system operator and/or the vertically integrated undertaking where they do not comply with their duties pursuant to this Article or to the decisions of the national regulatory authority. This right includes the right:

a) to impose effective, appropriate and deterrent fines, calculated on the basis of the turnover of the transmission network operator;

b) to impose orders to refrain from discriminatory behaviour;

c) to withdraw the transmission system operator's licence, at least in part, should the operator repeatedly infringe the unbundling provisions of this Article.

** OJ L 289, 3.11.2005, p. 1.*

*** OJ L 1, 4.1.2003, p. 1. Last amended by Regulation (EC) No 1419/2006 of 25 September 2006 (OJ L 269, 28.9.2006, p.1).*

Or. de

Justification

The Member States must be given a third practicable option which does not represent a serious interference in the ownership structures of the Member States and permits vertically integrated undertakings to continue to operate the network in collaboration in accordance with strict conditions and obligations.

Amendment 37
Jean-Paul Gauzès

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

Text proposed by the Commission

Amendment

Article 9b

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

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 , the transmission system operator shall:

(a) own assets necessary for the regular business of gas transmission;

(b) employ personnel necessary for the regular business of gas transmission;

(c) lease personnel and render services, from and to any branch of the vertically integrated undertaking performing functions of production or supply, on a non-discriminatory basis only and subject to the approval of national regulatory authorities in order to exclude competition concerns and conflicts of interest;

(d) appropriate financial resources for future investment projects shall be available within an appropriate delay.

2. The activities deemed necessary for the regular business of gas transmission referred to in paragraph 1 shall include, at least:

(a) representing the transmission system operator and contacts to third parties and the regulatory authorities;

(b) granting and managing third-party access;

(c) collecting access charges, congestion rents;

(d) operating, maintaining and developing the transmission system;

(e) investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;

(f) legal services; and

(g) accountancy and information technology services.

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

4. The transmission system operator shall have its own corporate identity, significantly distinct 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 auditor of the vertically integrated undertaking and all its affiliated companies.

Independence of the transmission system operator management, chief executive officer / executive board

6. Decisions on the appointment and on any premature termination of the employment of the transmission system operator's chief executive officer or members of the executive board and their respective contractual agreements of employment and their termination shall be notified to the regulatory authority or any other competent national public authority. Those decisions and agreements may become binding only if the regulatory authority or any other competent national public authority has not used its right of veto within 3 weeks

of notification. A veto may be used in the event that serious doubts arise in regard to the professional independence of a nominee for appointment on the one hand or the justification for the premature termination of employment on the other.

7. Effective rights of appeal to the regulatory authority or another competent national public authority or to a court shall be guaranteed for any complaints by the management of the transmission system operator against premature terminations of their employment.

8. After termination of employment in the transmission system operator, chief executive officers or members of the executive board shall be prohibited from participating 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 or members of the executive board shall hold no interest in or receive any compensation from any undertaking of the vertically integrated company other than the transmission system operator. His, her or their 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 members of the executive board of the transmission system operator shall bear no responsibility, directly or indirectly, in the day-to-day operation of any other branch of the vertically integrated undertaking.

11. Without prejudice to this Article, 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 shall 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.

Supervisory board and board of directors

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

13. The transmission system operator's supervisory board or board of directors shall include independent members, appointed for a term of at least 5 years. Their appointment shall be notified to the regulatory authority or any other competent national public authority and shall become binding subject to the conditions provided for in paragraph (6).

14. For the purposes of paragraph 12, a member of the a transmission system operator's supervisory board or board of directors shall be deemed independent if he or she is free of any business, or other relationship with the vertically integrated undertaking, its controlling shareholders or the management of either, that creates a conflict of interest such as to impair his or her judgement, and, in particular, he

or she:

(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 his or her appointment to the supervisory board or 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 appointment to the supervisory board or board of directors; and

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

Compliance officer

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

16. The transmission system operator's chief executive officer or executive board shall appoint a person or a body as a

compliance officer in order to:

(a) monitor the implementation of the compliance programme;

(b) elaborate an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority; and

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

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

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

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

(a) conditions for access and connection to the grid, including the collection of access charges and congestion rents;

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

(c) balancing rules, including transmission system operators' flexibility needs; and

(d) energy purchases in order to cover transmission system operators' needs.

20. During the meetings referred to in paragraph 19, 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 or board of directors.

21. The compliance officer shall have access to all the transmission system operator's relevant books, records and offices and to all the necessary information for the proper performance of his or her duties.

22. The compliance officer shall be nominated and removed from office by the chief executive officer or executive board only following the prior approval of the regulatory authority.

Grid development and powers to make investment decisions

23. Each transmission system operator shall elaborate a 10-year network development plan at least every two years. It shall provide efficient measures in order to guarantee system adequacy and security of supply. That development plan shall, in particular:

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

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

24. In order to elaborate its 10-year network development plan, each transmission system operator shall make reasonable estimates about the evolution of supply, consumption and exchanges with other countries, taking into account regional and European-wide existing network investment plans. A transmission system operator shall submit its estimates to the competent national body within a reasonable time period.

26. The competent national body shall consult all relevant network users on the

basis of a draft 10-year network development plan in an open and transparent manner and may publish the result of the consultation process, in particular as regards possible investment needs.

27. The competent national body shall examine whether the 10-year network development plan covers all investment needs identified in the consultation and may require that the transmission system operator amend its plan.

28. A competent national body in the context of paragraphs 4 to 6, shall include the national regulatory authority, any other competent national public authority or a network development trustee comprised of transmission system operators. In the latter case, the transmission system operator shall submit its draft statutes, list of members and rules of procedure for approval by the competent national public authority.

29. If the transmission system operator refuses to make a specific investment that is listed in the 10-year network development plan for execution during the following three years, Members States shall ensure that the regulatory authority or any other competent national public authority has the competence to:

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

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

(i) third-party financing;

*(ii) a third party building a new assets;
and/or*

(iii) a third party operating a new asset.

The relevant financial arrangements shall be subject to the approval of the regulatory authority or any other competent national public authority.

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

30. The competent national public authority shall monitor and evaluate the implementation of the investment plan.

Or. en

Justification

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

Amendment 38

Benoît Hamon

Proposal for a directive – amending act

Article 1 – point 8

Directive 2003/55/EC

Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Effective and efficient unbundling of transmission systems

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 the transmission system operator shall:

(a) own assets that are necessary for the

regular business of gas transmission;
(b) employ personnel necessary for the regular business of gas transmission;
(c) lease personnel and render services, from and to any branch of the vertically integrated undertaking performing functions of production or supply, on a non-discriminatory basis only and subject to the approval of the competent national public authority in order to exclude competition concerns and conflicts of interest; and
(d) keep available appropriate financial resources for future investment projects.

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

(a) making representations on behalf of the transmission system operator and contacts to third parties and the regulatory authorities;

(b) granting and managing third-party access;

(c) collecting of access charges and congestion rents;

(d) operating, maintain and developing the transmission system;

(e) investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;

(f) legal services; and

(g) accountancy and IT services.

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

4. Transmission system operators shall have their own corporate identity, significantly distinct 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 auditor of the vertically integrated undertaking and all its affiliated companies.

Independence of the transmission system operator's management, chief executive officer and executive board

6. Decisions regarding the appointment or premature termination of employment of the transmission system operator's chief executive officer or a member of its executive board and the agreement or termination of employment contracts relating thereto shall be notified to the regulatory authority or any other competent national public authority. Those decisions and agreements may become binding only if the regulatory authority or any other competent national public authority has not used its right of veto within 3 weeks of notification. A veto may be used in the event that serious doubts arise in regard to the professional independence of a nominee for appointment on the one hand or the justification for the premature termination of employment on the other.

7. Effective rights of appeal to the regulatory authority or another competent national public authority or to a court shall be guaranteed for any complaints by transmission system operator's management against a premature termination of employment.

8. After termination of employment by the transmission system operator, a former chief executive officer or members of the executive board shall be prohibited from participating in any branch of the vertically integrated undertaking performing functions of production or supply for a period of no less than 3 years.

9. A chief executive officer or member of the executive board shall hold no interest in or receive any compensation from any

undertaking of the vertically integrated company other than the transmission system operator. His, her or their remuneration shall in no part depend on activities of the vertically integrated undertaking other than those of the transmission system operator.

10. A transmission system operator's chief executive officer or member of the executive board shall bear no responsibility, directly or indirectly, in the day-to-day operation of any other branch of the vertically integrated undertaking.

11. Without prejudice to the provisions set out in this Article, a 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 shall 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, a parent company may approve the transmission system operator's annual financial plan, or any equivalent instrument, and set global limits on the levels of indebtedness of its subsidiary. The parent company shall give no instructions regarding day-to-day operations or 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.

Supervisory board and Board of directors

12. A chairperson of the transmission system operator's supervisory board or board of directors shall not participate in any branch of the vertically integrated undertaking performing functions of

production or supply.

13. The transmission system operator's supervisory board or board of directors shall include independent members, appointed for a term of at least 5 years. Their appointment shall be notified to the regulatory authority or any other competent national public authority and shall become binding subject to the conditions set out in paragraph 5.

14. For the purpose of paragraph 12, a member of a transmission system operator's supervisory board or board of directors shall be deemed independent if he or she is free of any business or other relationship with the vertically integrated undertaking or its controlling shareholders or the management of either, which creates a conflict of interest such as to impair his or her judgement, and, in particular, he or she:

(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 his or her appointment to the supervisory board or board of directors;

(b) does not hold any interest in or 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 appointment to the supervisory board or 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 or board of directors.

Compliance officer

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

16. The transmission system operator' chief executive officer or executive board shall appoint a person or body as a compliance officer in order to:

(a) monitor the implementation of the compliance programme ;

(b) elaborate an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority; and

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

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

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

19. The compliance officer shall attend all sessions of the supervisory board or board of directors of the transmission system

operator that address the following areas:

(a) conditions for access and connection to the grid, including the collection of access charges and congestion rents;

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

(c) balancing rules, including the transmission system operator's flexibility needs; and

(d) energy purchases in order to cover the transmission system operator's needs.

20. During the meetings referred to in paragraph 19, 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 or board of directors.

21. The compliance officer shall have access to all the transmission system operator's relevant books, records and offices and to all the necessary information for the proper performance of his or her duties.

22. The compliance officer shall be appointed and removed from office by the chief executive officer or executive board subject to the prior approval of the regulatory authority.

Grid development and powers to make investment decisions

23. A transmission system operator shall elaborate a 10-year network development plan at least every two years. It shall provide efficient measures in order to guarantee system adequacy and security of supply. That development plan shall, in particular:

(a) indicate to market participants the

main transmission infrastructures that ought to be built over the next ten years.

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

24. In order to elaborate its 10-year network development plan, each transmission system operator shall make reasonable estimates about the evolution of supply, consumption and exchanges with other countries, taking into account regional and European-wide existing network investment plans. A transmission system operator shall submit its estimates to the competent national body within a reasonable time period.

25. The competent national body shall consult all relevant network users on the basis of the draft 10-year network development plan in an open and transparent manner and may publish the result of the consultation process, in particular as regards possible investment needs.

26. The competent national body shall examine whether the 10-year network development plan covers all investment needs identified in the consultation. That body may require a transmission system operator to amend its plan

27. A competent national body in the context of paragraphs 24, 25 and 26, shall include the national regulatory authority, any other competent national public authority, or a network development trustee comprised of transmission system operators. In the latter case, a transmission system operator shall submit its draft statutes, list of members and rules of procedure for approval to the competent national public authority.

28. If a transmission system operator refuses to make a specific investment that

is listed in the 10-year network development plan for execution during the following three years, Member States shall ensure that the regulatory authority or any other competent national public authority have the competence to:

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

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

(i) third-party financing;

(ii) a third party building a new asset; and/or

(iii) a third party operating a new asset.

The relevant financial arrangements shall be subject to the approval of the regulatory authority or any other competent national public authority.

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

29. The competent national public authority shall monitor and evaluate the implementation of the investment plan.

Or. en

Justification

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

Amendment 39
Christian Ehler

Proposal for a directive – amending act

Article 1 – point 10

Directive 2003/55/EC

Article 13 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. de

Justification

This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary.

Amendment 40
Bernhard Rapkay

Proposal for a directive – amending act

Article 1 – point 10

Directive 2003/55/EC

Article 13 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may adopt guidelines

4. The Commission may adopt guidelines

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

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

Or. de

Justification

In this area, to date, the Commission has had no power to issue guidelines. There is no need for the scope of comitology to be so broad; it should therefore be made more specific.

Amendment 41 Christian Ehler

Proposal for a directive – amending act
Article 1 – point 10
Directive 2003/55/EC
Article 13 – paragraph 4

Text proposed by the Commission

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

Amendment

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

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

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

Or. de

Justification

This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary.

Amendment 42
Sophia in 't Veld

Proposal for a directive – amending act
Article 1 – point 11
Directive 2003/55/EC
Article 15

Text proposed by the Commission

This *directive* shall not prevent the operation of a combined transmission, LNG, storage and distribution system operator provided it complies, for each of its activities, with the applicable provisions of *Articles 7, 9a and 13(1)*.

Amendment

This *Directive* shall not prevent the operation of a combined transmission, LNG, storage and distribution system operator provided it complies, for each of its activities, with the applicable provisions of *Articles 7 and 13(1)*.

Or. en

Justification

The European Parliament stressed in its Resolution from 10 July 2007, that the ownership unbundling at transmission level is the most effective tool to promote investments in infrastructure in a non-discriminatory way, fair access to the grid for new entrants and transparency. Hence, no derogations should be proposed.

Amendment 43
Christian Ehler

Proposal for a directive – amending act

Article 1 – point 13

Directive 2003/55/EC

Article 22 – paragraph 5

Text proposed by the Commission

5. Within two months after receiving a notification, the Commission may take a decision requiring the regulatory authority to amend or withdraw the decision to grant an exemption. ***That period shall begin on the day following the receipt of the notification. The two month period may be extended by two additional months where additional information is sought by the Commission. That period shall begin on the day following the receipt of the complete additional information. The two month period can also be extended with the consent of both the Commission and the regulatory authority. Where the requested information is not provided within the period set out in the request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period has been extended with the consent of both the Commission and the regulatory authority, or the regulatory authority, in a duly reasoned statement, has informed the Commission that it considers the notification to be complete.***

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

The Commission shall preserve the confidentiality of commercially sensitive information.

The Commission's approval of an exemption decision shall lose its effect ***after two years from its adoption*** if

Amendment

5. Within two months after receiving a notification, the Commission may take a decision requiring the regulatory authority to amend or withdraw the decision to grant an exemption. ***If the infrastructure concerned is located in more than one Member State, a review by the Commission of the agency's decision shall not be necessary.***

The Commission's approval of an exemption decision shall lose its effect if construction of the infrastructure has not

construction of the infrastructure has not *yet* started, *and after five years* if the infrastructure has not become operational.

started *within five years after all necessary national and regional authority decisions and approvals have been issued. The Commission's decision shall also lose its effect* if the infrastructure has not become operational *within five years after all necessary national and regional authority decisions and approvals have been issued. Should construction of large infrastructure facilities be delayed because of unforeseeable circumstances, the investor shall report this to the regulatory authority and may apply for an appropriate extension to the periods referred to.*

Or. de

Justification

To make the procedure less bureaucratic and bring arrangements into line with national time limits.

Amendment 44 **Christian Ehler**

Proposal for a directive – amending act
Article 1 – point 13
Directive 2003/55/EC
Article 22 – paragraph 6

Text proposed by the Commission

The Commission may *adopt* guidelines for the application of the conditions mentioned in paragraph 1 and to set out the procedure to be followed for the application of paragraphs 4 and 5. 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

The Commission may *amend* guidelines for the application of the conditions mentioned in paragraph 1 and to set out the procedure to be followed for the application of paragraphs 4 and 5. 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

This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary.

Amendment 45

Heide Rühle, Alain Lipietz

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24c – paragraph 1 – point b

Text proposed by the Commission

(b) cooperating on cross-border issues with the regulatory authority or authorities of those Member States;

Amendment

(b) cooperating on cross-border issues with the regulatory authority or authorities of those Member States ***including to ensure that transmission system operators jointly and severally build sufficient interconnection capacity between their transmission infrastructure in order to satisfy an efficient overall market assessment and gas security of supply criteria without discriminating between suppliers in different Member States;***

Or. en

Justification

Regulatory scrutiny, whether it is of publicly or privately owned TSOs, will need to ensure that decisions on investment and use of infrastructure take equal account of customers solely within the national boundaries and of customers using connected systems. In this respect paragraph 1.b is weak. The main purpose or objective of cooperation between National Regulatory Authorities needs to be made clear.

Amendment 46
Jean-Paul Gauzès

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24c – paragraph 1 – point k

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The difference between “monitoring” and “reviewing” is unclear. The addendum “and reviewing” tends to create a legal basis for specific new ex ante powers on storage, linepack and other ancillary services, though the access regime for storage, linepack and ancillary services can be offered on a negotiated basis if states allow it. It is crucial that Member States have the choice to favour unregulated/market based mechanisms which are proved to be more inducive to investment in storage.

Amendment 47
Bernhard Rapkay

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24c – paragraph 1 – point (n)

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

More precise wording is needed to ensure that the natural-gas market is opened up to all market participants.

Amendment 48
Jean-Paul Gauzès

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24c – paragraph 1 – point p

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

This is for coherence with new provisions of article 19 §1 introducing an obligation for member states to define and publish criteria according to which it may be determined whether access to storage facilities and linepack is technically and/or economically necessary in order to provide efficient access to the system for the supply of customers.

Amendment 49
Sophia in 't Veld

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24c – paragraph 2

Text proposed by the Commission

2. In addition to the tasks conferred upon it under paragraph 1, when an independent system operator has been

Amendment

deleted

designated under Article 9, the regulatory authority shall:

(a) monitor the transmission system owner's and the independent system operator's compliance with their obligations under this Article, and issue penalties for non compliance in accordance with paragraph 3(d);

(b) monitor the relations and communications between the independent system operator and the transmission system owner so as to ensure compliance of the independent system operator with its obligations, and in particular shall approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner in respect of any complaint submitted by either party pursuant to paragraph 7;

(c) without prejudice to the procedure under paragraph 2c of Article 9, for the first ten year network development plan, approve the investments planning and the multi-annual network development plan presented on a yearly basis by the independent system operator;

(d) ensure that network access tariffs collected by independent system operators include a remuneration for the network owner or network owners that provide for an adequate remuneration of the network assets and of any new investments

(e) have the powers to carry out inspections at the transmission system owner and independent system operator's premises.

Or. en

Justification

The European Parliament stressed in its Resolution from 10 July 2007, that the ownership unbundling at transmission level is the most effective tool to promote investments in infrastructure in a non-discriminatory way, fair access to the grid for new entrants and

transparency. Hence, no derogations should be proposed.

Amendment 50
Sophia in 't Veld

Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in **paragraph 1 and 2** in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

Amendment

3. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in **paragraph 1** in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

Or. en

Justification

The European Parliament stressed in its Resolution from 10 July 2007, that the ownership unbundling at transmission level is the most effective tool to promote investments in infrastructure in a non-discriminatory way, fair access to the grid for new entrants and transparency. Hence, no derogations should be proposed.

Amendment 51
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 3 – point b

Text proposed by the Commission

(b) to carry out in cooperation with the national competition authority investigations of the functioning of gas markets, and to **decide, in the absence of violations of competition rules,, of any**

Amendment

(b) to carry out in cooperation with the national competition authority investigations of the functioning of gas markets, and to **propose to the competent authorities** appropriate measures necessary

appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market, **including gas release programs**;

and proportionate to promote effective competition and ensure the proper functioning of the market;

Or. en

Justification

Without a clear competition framework, this proposal would grant authorities an unrestricted and unpredictable power of intervention into the market, overlapping with national competences.

Gas release programs may create artificial sources of gas supply at short term in a given area, but their impact on final prices seems unpredictable in a free market. They are targeted on long-term gas import contracts, which would be threatened by a downward trend.

Amendment 52
Bernhard Rapkay

Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 3 – point (b)

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

The differences in powers between the energy authority and the competition authority must be

taken into account.

Amendment 53
Bernhard Rapkay

Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 4 – point (a)

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

The methods for calculating transmission and distribution tariffs must be disclosed to the regulatory authority.

Amendment 54
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24c – paragraph 6

Text proposed by the Commission

6. Regulatory authorities shall have the authority to require ***transmission, storage, LNG and distribution system operators***, if

Amendment

6. Regulatory authorities shall have the authority to require ***operators of infrastructures submitted to regulated***

necessary, to modify the terms and conditions, including tariffs referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner.

third party access under the provisions of Article 18, Article 19(4) and Article 20, if necessary, to modify the terms and conditions, including tariffs referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner.

Or. en

Justification

This is to take account of the fact that the Directive allows for access to infrastructures not to be regulated in certain circumstances, i.e. when an exemption is granted under article 22 or when negotiated access regime to storage is chosen by a Member State (article 19§3).

Amendment 55 **Bernhard Rapkay**

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24c – paragraph 13

Text proposed by the Commission

13. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a body independent of the parties involved.

Amendment

13. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a **judicial body or other national authority** independent of the parties involved **and the government of the Member State concerned**.

Or. de

Justification

Where there are appeals against regulatory authority decisions, a body independent of private and political influence must help to reach a decision.

Amendment 56
Christian Ehler

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24c – paragraph 14

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary.

Amendment 57
Christian Ehler

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24d – paragraph 4

Text proposed by the Commission

4. The Commission may **adopt** guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency, and on the situations in which the Agency becomes competent to decide upon the regulatory regime for infrastructures connecting at least two Member States. These measures, designed

Amendment

4. The Commission may **amend** guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency, and on the situations in which the Agency becomes competent to decide upon the regulatory regime for infrastructures connecting at least two Member States. These measures, designed

to amend non-essential elements of this Directive by supplementing it, shall be **adopted** in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

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

This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary.

Amendment 58
Christian Ehler

Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24e – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

Shorter time limit

Amendment 59
Christian Ehler

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24e – paragraph 9

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary.

Amendment 60
Christian Ehler

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24f – paragraph 1

Text proposed by the Commission

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

Amendment

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

LNG operators.

LNG operators.

Or. de

Justification

Shorter time limit

Amendment 61
Jean-Paul Gauzès

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24f – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The circumstances for collection of data related to wholesale contracts should be clearly defined and related to specific tasks of the competent authorities. Competent authorities may include other bodies than those mentioned in the Directive proposal.

Amendment 62
Christian Ehler

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24f – paragraph 2

Text proposed by the Commission

2. The data **shall include** details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives.

Amendment

2. The data **may include** details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives.

Or. de

Justification

Article 24f should simply describe the framework conditions pertaining to compulsory record keeping, and not specify the exact content of the data concerned. This should be done through relevant guidelines that should also be set out by the European Parliament through further amendments.

Amendment 63
Jean-Paul Gauzès

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24f – paragraph 3

Text proposed by the Commission

3. The regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information

Amendment

deleted

about financial instruments which fall within the scope of Directive 2004/39/EC.

Or. en

Justification

The EU gas market depends on imports from third countries. EU producers have a strong market power and most of them benefit from an export monopoly in their country.

The publication of strategic data would be against the interest of EU gas importers because it would give to non-EU gas producers information on their competitors' sales conditions. Datas may be given to the relevant authorities but not be entirely issue as it's the case in other economic sectors.

Amendment 64
Christian Ehler

Proposal for a directive – amending act
Article 1 – point 14
Directive 2003/55/EC
Article 24f – paragraph 4

Text proposed by the Commission

4. To ensure the uniform application of this Article, the Commission may ***adopt*** guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be ***adopted*** in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

Amendment

4. To ensure the uniform application of this Article, the Commission may ***amend*** guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be ***amended*** in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

Or. de

Justification

This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary.

Amendment 65
Christian Ehler

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/55/EC

Article 24f – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

This proposal is to ensure that the guidelines are adopted by Parliament and the Council under the ordinary procedure. Transfer of powers to the Commission should remain limited to any adjustments that may prove necessary.

Amendment 66
Bernhard Rapkay

Proposal for a directive – amending act

Article 2 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Or. de

