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*Committee on Economic and Monetary Affairs*

**2007/0195(COD)**

11.3.2008

## **AMENDMENTS**

### **8 - 80**

**Draft opinion**

**Ján Hudacký**

(PE400.564v01-00)

on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity

Proposal for a directive – amending act  
(COM(2007)0528 – C6-0316/2007 – 2007/0195(COD))

AM\_Com\_LegOpinion

**Amendment 8**  
**Sahra Wagenknecht**

**Proposal for a directive – amending act**  
**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) The EU is seeking to ensure that the proportion of total energy consumption accounted for by renewables is increased to 20% by 2020. To meet that target, every effort should be made to give priority, wherever possible, to energy generation from renewable sources.***

Or. de

**Amendment 9**  
**Sahra Wagenknecht**

**Proposal for a directive – amending act**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

“

***(4a) In many Member States the energy markets are dominated by big market players. Regulators should therefore be empowered to establish that an electricity company is occupying a dominant position and they should ensure that the share of the markets concerned accounted for by such companies will be no higher than 20% in the medium term.***

Or. de

**Amendment 10**  
**Sahra Wagenknecht**

**Proposal for a directive – amending act**  
**Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) To guarantee safe network operation, promote investment in network infrastructure, and enable network access to proceed without discrimination, energy networks should be transferred to public ownership.***

Or. de

**Amendment 11**  
**Bernhard Rapkay, Robert Goebbels**

**Proposal for a directive – amending act**  
**Recital 7**

*Text proposed by the Commission*

*Amendment*

(7) Only the removal of the inherent incentive for vertically integrated companies to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the network owner being appointed as the network operator and being independent from any supply and production interests, is ***clearly the most*** effective and stable way to solve the inherent conflict of interest and to ensure security of supply. For this reason, the European Parliament in its Resolution on *Prospects* for the internal gas and electricity market adopted on 10 July 2007 referred to ownership unbundling at transmission level as the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants

(7) Only the removal of the inherent incentive for vertically integrated companies to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the network owner being appointed as the network operator and being independent from any supply and production interests, is ***an*** effective and stable way to solve the inherent conflict of interest and to ensure security of supply. For this reason, the European Parliament in its Resolution on *prospects* for the internal gas and electricity market adopted on 10 July 2007 referred to ownership unbundling at transmission level as the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market. Member

and transparency in the market. Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control, including through minority blocking rights on decisions of strategic importance such as investments, over a production or supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. Conversely, control over a transmission system operator should preclude the possibility of holding any interest in or exercising any right over a supply undertaking.

States should therefore be required to ensure that the same person or persons are not entitled to exercise control, including through minority blocking rights on decisions of strategic importance such as investments, over a production or supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. Conversely, control over a transmission system operator should preclude the possibility of holding any interest in or exercising any right over a supply undertaking.

Or. de

#### *Justification*

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

#### **Amendment 12** **Bernhard Rapkay, Robert Goebbels**

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

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

**Amendment 13**  
**Christian Ehler**

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

*Text proposed by the Commission*

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

*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 *different options.*

*Justification*

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

**Amendment 14**  
**Bernhard Rapkay, Robert Goebbels**

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

*Text proposed by the Commission*

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

*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 generation interests, ***and effective and efficient corporate 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 generation business, provided that the requirements resulting from ownership unbundling are complied with.

Or. de

*Justification*

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

**Amendment 15**  
**Christian Ehler**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. de

*Justification*

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

**Amendment 16**  
**Sahra Wagenknecht**

**Proposal for a directive – amending act**  
**Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21a) To deal with the problem of energy-related poverty, Member States should draw up national action programmes to guarantee energy supplies to customers in need of protection. To that end an***



*integrated approach is required, encompassing both subsidised rates and improvements in the energy efficiency of residential buildings. This Directive should at least establish the preconditions for preferential treatment for the purposes of pricing models where customers are in need of protection.*

Or. de

**Amendment 17**  
**Andrea Losco**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

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

**Amendment 18**  
**Christian Ehler**

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

*Text proposed by the Commission*

*Amendment*

*(27) In particular power should be conferred on the Commission to adopt the guidelines necessary for providing the*

*deleted*

*minimum degree of harmonisation required to achieve the aim of Directive 2003/54/EC. Since those measures are of general scope and are designed to supplement Directive 2003/54/EC by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.*

Or. de

#### *Justification*

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

#### **Amendment 19** **Benoît Hamon**

**Proposal for a directive – amending act**  
**Article 1 – point 1 a (new)**  
Directive 2003/54/EC  
Article 3 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***(1a) In Article 3, paragraph 2 is replaced as follows:***

**"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 electricity 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 electricity companies to national consumers. *These obligations may take the form of supply price regulation, including the fixing of a maximum price for the supply of electricity to final clients.* 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 Member States' capacity to regulate prices for the supply of such an essential service as electricity. Following the example of EU mobile telephony legislation, Member States should be able, in particular, to fix a maximum price for the supply of electricity to final clients.*

**Amendment 20**  
**Heide Rühle, Alain Lipietz**

**Proposal for a directive – amending act**  
**Article 1 – point 1 a (new)**  
Directive 2003/54/EC  
Article 3 – paragraph 2 (new)

*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 electricity 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, *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 electricity companies to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental *and renewable energy* 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

*Justification*

*The proposal to adopt binding targets for the use of renewable energy, 20% by 2020, will require specific action in the electricity sector, which maybe different from those relating to environmental protection.*

**Amendment 21**  
**Sahra Wagenknecht**

**Proposal for a directive – amending act**

**Article 1 – point 1 a (new)**

Directive 2003/54/EC

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

*Text proposed by the Commission*

*Amendment*

***1a. In Article 3(5), the following subparagraph is added:***

***“To prevent energy-related poverty, Member States must guarantee every household the right to be supplied with electricity. Customers in need of protection should be offered subsidised***

*rates; where customers are in need of protection, payment arrears or the inability to pay may not entail disconnection.”*

Or. de

**Amendment 22**  
**Bernhard Rapkay, Robert Goebbels**

**Proposal for a directive – amending act**

**Article 1 – point 2**

Directive 2003/54/EC

Article 3 – paragraph 10

*Text proposed by the Commission*

*Amendment*

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

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

Or. de

*Justification*

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

**Amendment 23**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 2**

Directive 2003/54/EC

Article 3 – paragraph 10

*Text proposed by the Commission*

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

*Amendment*

“10. 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 27b(3).”

Or. de

*Justification*

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

**Amendment 24**

**Heide Rühle, Alain Lipietz**

**Proposal for a directive – amending act**

**Article 1 – point 2**

Directive 2003/54/EC

Article 3 – paragraph 10 a (new)

*Text proposed by the Commission*

*Amendment*

***10a. In order to balance the negative impact of liberalisation against the efficient use of electricity, Member States shall ensure that a minimum of 2 % of all electricity revenues from domestic consumers is spent to fund energy efficiency and demand-side measurement programmes for domestic consumers. Private and public electricity undertakings, energy service companies, regional and local bodies and non-governmental organisations may apply for such funding to (co)finance the promotion of efficient energy programmes for domestic consumers with a special emphasis on vulnerable consumers. The management and details of the***

***attributions of the funding shall be decided in accordance with the principle of subsidiarity.***

Or. en

### *Justification*

*There is a tendency in the liberalised electricity market for an increase in electricity demand. As the transaction costs for introducing efficient energy services to domestic customers are higher than for bigger electricity consumers, the most appropriate way of promoting energy efficiency at this level is the creation of a fund. This type of instrument has produced extremely positive results in Denmark, the UK, the Netherlands and a number of USA states, in terms of environmental protection, overall reduction of costs for customers and society as a whole and job creation.*

### **Amendment 25** **Jean-Paul Gauzès**

**Proposal for a directive – amending act**  
**Article 1 – point 3**  
Directive 2003/54/EC  
Article 5a

#### *Text proposed by the Commission*

Member **States** shall cooperate among themselves for the purpose of integrating their national markets at least at the regional level. In particular, **Member States** shall **promote** the cooperation of network operators at a regional level, and foster the consistency of their legal and regulatory framework. The geographical area covered by regional **cooperations** shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

#### *Amendment*

Member **States' authorities and regulators** shall cooperate among themselves for the purpose of integrating their national markets at least at the regional level. In particular, **they** shall **ensure** the cooperation of network operators at a regional level, and foster the **convergence and** consistency of their legal and regulatory frameworks. The geographical area covered by regional **cooperation** shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity .

*Justification*

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

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

**Amendment 26**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/54/EC

Article 5a

*Text proposed by the Commission*

Member States shall cooperate among themselves for the purpose of integrating their national markets at least at the regional level. In particular, Member States shall promote the cooperation of network operators at a regional level, and foster the consistency of their legal and regulatory framework. ***The geographical area covered by regional cooperations shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h(3) of Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.***

*Amendment*

***1.*** Member States shall cooperate among themselves for the purpose of integrating their national markets at least at the regional level. In particular, Member States shall promote the cooperation of network operators at a regional level, and foster the consistency of their legal and regulatory framework.

*Justification*

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



**Amendment 27**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/54/EC

Article 5a – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

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

**Amendment 28**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2003/54/EC

Article 5a – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***(1b) The regional coordinator shall promote, at a regional level, the cooperation of regulatory authorities and any other competent public authorities, network operators, power exchanges, grid users and market parties. In particular, he or she shall:***

***(a) promote new efficient investment in interconnections. To this end, he or she***

*shall assist transmission system operators in elaborating their regional interconnection plans and contribute to the coordination of their investments decisions and, where appropriate, of their open season procedure.*

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

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

Or. en

#### *Justification*

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

**Amendment 29**  
**Heide Rühle, Alain Lipietz**

**Proposal for a directive – amending act**

**Article 1 – point 3 a (new)**

Directive 2003/54/EC

Article 7a (new)

*Text proposed by the Commission*

*Amendment*

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

***Article 7a***

***Prohibition of new capacity emitting high levels of carbon dioxide***

***In fulfilling the requirements of Articles 6 and 7, Member States shall not authorise any new generating capacity where such capacity would, during its operation, lead to atmospheric carbon dioxide emissions in excess of [XXX] grams per kilowatt hour of electricity produced.***

Or. en

*Justification*

*The 2006 Stern Review concluded that a failure adequately to stabilise greenhouse gas concentrations in the atmosphere could lead to the loss of at least 20% of world GDP. Such a loss would include substantial negative impacts on the functioning of the internal market and so be contrary to the primary task of the Union as set out in Article 2 of the Treaty. Therefore new generating capacity with high levels of CO<sub>2</sub> emissions per unit output must be prohibited.*

**Amendment 30**  
**Christian Ehler**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. 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 8(1a)(a) to (d) on ownership unbundling (OU), Article 10 on independent system operators (ISO), or Article 8c on effective and efficient unbundling (EEU).***

***\* one year after the date for transposition.***

Or. en

### *Justification*

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

#### **Amendment 31**

**Bernhard Rapkay, Robert Goebbels**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph -1 a (new)

*Text proposed by the Commission*

*Amendment*

***-1a. To guarantee the independence of transmission system operators, Member States shall ensure that, with effect from [transposition deadline + 1 year], vertically integrated companies comply either with Article 8(1)(a) to (d) on complete ownership unbundling or with Article 10 on independent system operators, or Article 10b on effective and efficient corporate unbundling..***

Or. de

### *Justification*

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

#### **Amendment 32**

**Benoît Hamon**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that as from [date of transposition plus one year]:

1. ***In order to ensure the independence of transmission system operators***, Member States shall ensure that as from [date of transposition plus one year]:

Or. fr

*Justification*

*This amendment enables Member States to choose between ownership unbundling and effective and efficient unbundling.*

### **Amendment 33**

**Benoît Hamon**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

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

*Text proposed by the Commission*

*Amendment*

***-a) integrated undertakings have to comply either with the provisions of Articles 8, 8a and 8b or with the provisions of Articles 8a, 8b and 8c;***

Or. fr

*Justification*

*This amendment enables Member States to choose between ownership unbundling and effective and efficient unbundling.*

**Amendment 34**  
**Piia-Noora Kauppi**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point b – introductory part

*Text proposed by the Commission*

(b) the same person or the same persons are not entitled:

*Amendment*

(b) the same person or the same persons are not entitled, ***either individually or jointly***:

Or. en

*Justification*

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

**Amendment 35**  
**Piia-Noora Kauppi**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point b – point i

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### *Justification*

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

#### **Amendment 36**

**Manuel António dos Santos**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point b – point i

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

### *Justification*

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

#### **Amendment 37**

**Piia-Noora Kauppi**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point (b) – point (ii)

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

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

**Amendment 38**

**Manuel António dos Santos**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point b – point ii

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*It is understood that is not necessary to prevent minority shares as long as they do not*



*interfere with the activity control. The existence of minority shares does not compromise the operator's independence.*

**Amendment 39**  
**Piia-Noora Kauppi**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 1 – point c

*Text proposed by the Commission*

*Amendment*

*(c) the same person or the same persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and to directly or indirectly exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of generation or supply;*

*deleted*

Or. en

*Justification*

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

**Amendment 40**  
**Piia-Noora Kauppi**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

**2. Provided that the requirements in paragraph 1(b) are complied with, two distinct public bodies shall be entitled to control generation and supply activities on the one hand and transmission activities on the other.**

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

**(b) the power to exercise voting rights, or**

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

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

Or. en

#### *Justification*

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

#### **Amendment 41**

**Manuel António dos Santos**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

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

**(a) the ownership of part of the capital or**

*of the business assets, or*

*(b) the power to exercise voting rights, or  
(c) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, or  
(d) the right to obtain dividends or other shares of the benefits.*

*(a) the power to exercise voting rights, or  
(b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking.*

Or. en

*Justification*

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

**Amendment 42**  
**Piia-Noora Kauppi**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

*Justification*

*While ownership unbundling is a desirable goal in the long run, full OU can cause considerable delays in adopting the new directive as it faces constitutional obstacles in many*

member states. The amendment would allow avoiding these problems while still achieving a working separation of functions and internal market through banning the control over the transmission network system to any undertakings performing functions of generation or supply.

#### **Amendment 43**

**Andrea Losco**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. en

#### *Justification*

*This article is not relevant in a system with full ownership unbundling . Hence, no derogations should be proposed.*

#### **Amendment 44**

**Jean-Paul Gauzès**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission**

**5. With respect to the goal of achieving regional cooperation as laid down in Article 5a, Member States shall favour and support any collaboration or cooperation between transmission system**

*system operator in several Member States for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 10 as an independent system operator.*

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

Or. en

#### *Justification*

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

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

#### **Amendment 45**

**Andrea Losco**

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

##### **Article 1 – point 4**

Directive 2003/54/EC

Article 8 – paragraph 5

#### *Text proposed by the Commission*

5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned. No

#### *Amendment*

5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned. No

other undertaking may be part of the joint venture, unless it *has been approved under Article 10 as an independent system operator*.

other undertaking may be part of the joint venture, unless it *complies fully with this Article*.

Or. en

*Justification*

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

**Amendment 46**  
**Manuel António dos Santos**

**Proposal for a directive – amending act**  
**Article 1 – point 4**  
Directive 2003/54/EC  
Article 8 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

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

**Amendment 47**  
**Benoît Hamon**

**Proposal for a directive – amending act**  
**Article 1 – point 5 – introductory part**

*Text proposed by the Commission*

(5) The following Articles 8a **and** 8b are inserted:

*Amendment*

(5) The following Articles 8a, 8b **and 8c** are inserted:

Or. fr

**Amendment 48**  
**Dragoş Florin David**

**Proposal for a directive – amending act**  
**Article 1 – point 5**  
Directive 2003/54/EC  
Article 8a – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

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

Or. ro

*Justification*

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

**Amendment 49**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8b – paragraph 13

*Text proposed by the Commission*

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

*Amendment*

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

Or. de

*Justification*

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

**Amendment 50**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8c (new)

*Text proposed by the Commission*

*Amendment*

**Article 8c**

***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 electricity transmission. In particular, the transmission system operator shall:*

*(a) own assets that are necessary for the regular business of electricity transmission;*

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

*(c) lease personnel and render services, from and to any branch of the vertically integrated undertaking performing functions of generation or supply, on a non-discriminatory basis only and subject to the approval of the national regulatory 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 electricity transmission referred to in paragraph 1 shall include at least:*

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

*(b) granting and managing third-party access:*

*(c) collecting access charges, congestion rents and payments under the inter-transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003;*

*(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 in 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 any premature termination of employment of the transmission system operator's chief executive officer or member of its executive board and 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 the transmission system operator's management against a premature termination of employment.*

***8. After the termination of employment in the transmission system operator, a former chief executive officer or member of the executive board shall be prohibited from participating in any branch of the vertically integrated undertaking performing functions of generation 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 of the 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 electricity 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 22c, in a subsidiary are protected. In particular, the 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 lines 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 generation 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 6.*

*14. For the purpose of paragraph 13, a member of a transmission system operator's supervisory board or board of directors shall be deemed to be 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 generation 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; 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 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 the 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 meetings 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, congestion rents, and payments under the inter-transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003;*

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

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

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

*20. During the meetings referred to in paragraph 19, the compliance officer shall prevent information about generators or suppliers activities, which may be commercially advantageous, from being disclosed in a discriminatory manner to the supervisory board 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.*

Or. en

*Justification*

*This constitutes an additional way to achieve the goal of a single market.*

**Amendment 51**  
**Benoît Hamon**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2003/54/EC

Article 8c (new)

*Text proposed by the Commission*

*Amendment*

**Article 8c**

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

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

***(i) assets that are necessary for the  
regular business of electricity  
transmission shall be owned by the  
transmission system operator;***

***(ii) personnel required for the regular  
business of electricity transmission shall  
be employed by the transmission system  
operator;***

***(iii) the leasing of personnel and  
provision of services to and from any  
branch of the vertically integrated  
undertaking performing functions of  
generation or supply shall be limited to  
cases with no discriminatory potential and***

*be subject to approval by national regulatory authorities in order to exclude competition concerns and conflicts of interest;*

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

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

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

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

*4. The accounts of transmission system operators shall be audited by a different auditor than the one auditing the vertically integrated undertaking and all its affiliated companies.*

*Independence of the transmission system operator management, chief executive*



*officer/executive board.*

***5. Decisions on the appointment and on any premature termination of the employment of the chief executive officer and other members of the executive board of the transmission system operator and the respective contractual agreements of the employment and its termination shall be notified to the regulatory authority or any other competent national public authority. These decisions and agreements may become binding unless the regulatory authority or any other competent national public authority uses its right of veto within a period of 3 weeks following notification. A veto may be issued in cases of appointment and mutually contractual agreements if serious doubts arise as to the professional independence of the nominated chief executive officer or member of the executive board, or in the case of early termination of employment and mutual contractual agreements, if serious doubts exist as regards the basis for this measure.***

***6. An effective right of appeal to the regulatory authority or any other competent national public authority or court shall be guaranteed for any complaint by the management of the transmission system operator regarding the early termination of their own employment contracts.***

***7. After termination of employment by the transmission system operator, former chief executive officers and members of the executive board of that transmission system operator shall not work in any capacity in any branch of the vertically integrated undertaking performing functions of generation or supply for a period of not less than 3 years.***

***8. The chief executive officer and members of the executive board of the transmission system operator shall not hold any interest in, or receive any***

*compensation from, any undertaking of the vertically integrated company other than the transmission system operator. His/their remuneration shall in no part depend on activities of the vertically integrated undertaking other than those of the transmission system operator.*

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

*10. Without prejudice to the provisions of this Article, the transmission system operator shall have effective decision-making powers independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company are protected in respect of a return on assets in a subsidiary, as indirectly regulated in accordance with Article 22c. 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 overall limits on the level of indebtedness of its subsidiary. If the annual financial plan, or any equivalent financial plan, is not approved or changed by the parent company, the case shall be referred to the regulatory authority for a decision. The parent company shall not be permitted to give instructions in day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission lines that do not exceed the terms of the approved financial plan or any equivalent instrument.*

***11. Chairmen of the supervisory board or the board of directors of the transmission system operator shall not work in any capacity in any part of the vertically integrated undertaking performing functions of generation or supply.***

***12. The supervisory boards or boards of directors of transmission system operators 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 become binding under the conditions described in paragraph 5.***

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

***(a) has not been an employee of any branch of the vertically integrated undertaking performing functions of generation and supply in five years prior to his 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 hold any relevant business relationship with any branch of the vertically integrated company performing functions of electricity supply during his appointment to the supervisory board or board of directors;***

***14. Member States shall ensure that transmission system operators establish and implement a compliance programme***

*which sets out measures taken to ensure that discriminatory conduct does not occur. The programme shall set out the specific obligations of employees to meet this objective. It shall be subject to the approval of the regulatory authority or any other competent national public authority. Compliance with the program 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 program.*

*15. The chief executive officer or executive board of the transmission system operator shall appoint a person or a body as a compliance officer in charge of:*

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

*(ii) producing an annual report which sets out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority;*

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

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

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

*18. The compliance officer shall assist in all sessions of the supervisory board or board of directors of the transmission system operator that address the following issues:*

*(i) conditions for access and connection to*

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

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

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

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

*19. During these sessions, the compliance officer shall prevent information about generator or supplier activities which may be commercially sensitive from being disclosed in a discriminatory manner to the supervisory board or board of directors.*

*20. The compliance officer shall have access to all relevant books, records and offices of the transmission system operator, as well as to all the information required in the proper performance of his duties.*

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

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

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

*(i) indicate to market participants the main transmission infrastructures that should preferably be built over the next*

*ten years;*

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

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

*25. The competent national body shall consult all relevant network users on the basis of a draft for the 10-year network development plan in an open and transparent manner and may publish the result of the consultation process, in particular the 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. The authority may oblige the transmission system operator to amend its plan.*

*27. A competent national body for the purposes of paragraphs 24, 25 and 26 may be the national regulatory authority, any other competent national public authority or a network development trustee established by transmission system operators. In the latter case, transmission system operators shall submit the drafts of the statutes, of the list of members and of the rules of procedure to the approval of the competent national public authority.*

*28. If the transmission system operator rejects the implementation of a specific investment listed in the 10-year network development plan to be undertaken in the next three years, Members States shall*

*ensure that the regulatory authority or any other competent national public authority have the necessary powers to implement one of the two following measures:*

*(i) request the transmission system operator to undertake, by all legal means, its investment obligations using its own financial means,*

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

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

*- to agree to the provision of construction works by any third party and to the construction of the new assets;*

*- to agree to operate the new assets.*

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

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

*30. Transmission system operators shall be obliged to establish and publish transparent and efficient procedures for the non-discriminatory connection of new power plants to the grid. Those procedures shall be subject to the approval of national regulatory authorities or any other competent national public authority.*

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

*obliged to supply the necessary information.*

*32. Transmission system operators shall not be entitled to refuse a new connection point on the sole basis that this new connection would lead to additional costs because of the required capacity increase of grid elements within close range of that new connection point.*

Or. fr

### *Justification*

*Member States that have not implemented ownership unbundling are given the opportunity to further liberalise their markets without having to resort to ownership unbundling.*

### **Amendment 52**

**Bernhard Rapkay, Robert Goebbels**

**Proposal for a directive – amending act**

**Article 1 – point 6 a (new)**

Directive 2003/54/EC

Article 9 – paragraph 1 a to 1 h (new)

*Text proposed by the Commission*

*Amendment*

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

*"1a. 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.*

*1b. 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.*

*1c. 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.*

*1d. 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.*

*1e. 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 a necessary investment in a transmission system, possibly requiring the transmission system operator to agree to:*

*- third-party financing;*

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

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

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

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

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

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

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

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 new power plants and necessary investments in the grid always need to be guaranteed, regardless of who is the owner of the grid.*

**Amendment 53**  
**Jean-Paul Gauzès**

**Proposal for a directive – amending act**  
**Article 1 – point 6**  
Directive 2003/54/EC  
Article 9 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. In carrying out its tasks, each transmission system operator shall ensure that the benefit to the region in which it is operating is duly taken into account. Without prejudging shareholders' rights related to investment profitability and equity needs, operational and investment decisions taken by a transmission system operator shall be consistent with the Community-wide and regional investment plans pursuant to Articles 2c and 2d of Regulation (EC) No 1228/2003 and shall facilitate market development, market integration and optimise socio-economic welfare gains at least at regional level.***

Or. en

*Justification*

*Article 9(2) (new) to ensure that transmission system operators always consider as first priority the needs of the region they operate in. In particular, they should ensure that the socio-economic welfare is improved inside their region and even beyond (across regions).*

**Amendment 54**  
**Heide Rühle, Alain Lipietz**

**Proposal for a directive – amending act**  
**Article 1 – point 6 a (new)**  
Directive 2003/54/EC  
Article 9 – paragraphs 1 a and 1 b (new)

*Text proposed by the Commission*

*Amendment*

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

***"(1a) 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 security of supply criteria.***

***(1b) 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 55**  
**Benoît Hamon**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/54/EC  
Article 10

**Article 10**

**deleted**

***Independent system operators***

***1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive, Member States may grant derogations from Article 8(1), provided that an independent system operator is designated by the Member State upon a proposal from the transmission system owner and subject to approval of such designation by the Commission. Vertically integrated undertakings which own a transmission system may not in any event be prevented from taking steps to comply with Article 8(1).***

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

***(a) the candidate operator has demonstrated that it complies with the requirements of Article 8(1)(b) to (d);***

***(b) the candidate operator has demonstrated that it has at its disposal the required financial, technical and human resources to carry out its tasks under Article 9;***

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

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

***(e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EC) No***

*1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity\* including the cooperation of transmission system operators at European and regional level.*

*3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Articles 8a and 10(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 8b shall be applicable.*

*4. Where the Commission has taken a decision in accordance with the procedure in Article 8b and finds that the regulatory authority has not complied with its decision within two months, it shall, within a period of six months, designate, on a proposal from the Agency for the Cooperation of Energy Regulators and after having heard the views of the transmission system owner and the transmission system operator, an independent system operator for a period of 5 years. At any time, the transmission system owner may propose to the regulatory authority the designation of a new independent system operator pursuant to the procedure in Article 10(1).*

*5. Each independent system operator shall be responsible for granting and managing third party access, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003, as well as for operating, maintaining and developing the transmission system, and for ensuring the long term ability of the system to meet reasonable demand through investment planning. When developing the network the independent system operator is responsible for planning (including*

*authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, it shall act as a transmission system operator in accordance with this Chapter.*

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

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

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

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

*(c) provide for the coverage of liability relating to the network assets, excluding the liability relating to the tasks of the independent system operator;*

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

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

*paragraph 6.*

Or. fr

*Justification*

*The ISO option does not provide a viable alternative to ownership unbundling in the light of its excessive regulatory cost.*

**Amendment 56**

**Andrea Losco**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10

*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. 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.*

**Amendment 57**

**Andrea Losco**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10 a (new)

*Text proposed by the Commission*

*Amendment*

***Article deleted***



*Justification*

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

**Amendment 58**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 8**

Directive 2003/54/EC

Article 10a – paragraph 3

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

**Amendment 59**  
**Bernhard Rapkay, Robert Goebbels**

**Proposal for a directive – amending act**  
**Article 1 – point 8**  
Directive 2003/54/EC  
Article 10 b (new)

*Text proposed by the Commission*

*Amendment*

**Article 10b**

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

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

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

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

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

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

***The fields of activity covered by points (i) to (iii) shall encompass at least***

- representation of transmission system operators and contacts with third parties and regulatory authorities***
- guaranteeing and regulating third party access, in particular for new market entrants from the renewable energy sector***

- *collection of access charges, revenue from congestion management, and payments under the inter-transmission system operator compensation mechanism in accordance with Article 3 of Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity\**,
- *operation, maintenance, and development of the transmission grid*
- *investment planning to guarantee the long-term ability of the grid to meet commensurate demand and ensure security of supply*
- *legal advice and representation*
- *accounting and IT services*

*2. No staff or services may be provided to any branch of the vertically integrated company performing the functions of generation or supply.*

*3. The transmission system operator may not carry on any businesses or activities other than transmission likely to be incompatible with its tasks, including ownership of shares or interests in a company belonging to, or a part of, the vertically integrated company or in any other electricity or gas undertaking. Exceptions to the above shall require the prior consent of the national regulatory authority and shall be confined to ownership of shares and interests in other network companies.*

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

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

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

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

***7. Decisions concerning the appointment or any early termination of the employment of the chief executive or of members of the board of executive directors of the transmission system operator and the contractual agreements to that effect for the purposes of employment or termination thereof shall be notified to the national regulatory authority. Such decisions and agreements shall not be binding unless the regulatory body has refrained from exercising its right to object in the three weeks following the notification. The regulatory authority may object to appointments and contractual agreements to that effect if serious doubts arise as to the professional independence of the chief executive appointed, or of the member of the board of executive directors, or, where employment and the contractual agreements to that effect have been terminated before the scheduled date, there are serious doubts about the justification for that measure.***

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

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

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

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

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

***13. Notwithstanding the above provisions, the transmission system operator, independent from the integrated electricity undertaking, shall have full decision-making powers regarding the assets necessary for the operation, maintenance, and development of the grid. The foregoing shall apply without prejudice to appropriate coordination***

*procedures enabling the parent company to lay down general limits on the amount of debt that its subsidiary may incur. The parent company may not give any instructions exceeding the scope of the approved budget or any equivalent arrangement as regards routine operations or individual decisions to construct or modernise transmission lines.*

*Supervisory board/Administrative board*

*14. The chairman of the supervisory board/administrative board of the transmission system operator and board members shall not be entitled to work in any establishment of the vertically integrated company. Furthermore, they may not serve on the supervisory board/administrative board of any branch or subsidiary of the vertically integrated company.*

*15. Members of the supervisory board/administrative board shall be independent and appointed for a term of at least five years. Their appointment shall be notified to the regulatory authority and shall take effect only under the conditions set out in paragraph 7.*

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

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

*generation and supply;*

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

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

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

*Compliance (unbundling) officer*

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

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

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

*(ii) drawing up a detailed annual report, the criteria for which shall be laid down by the regulatory authority in agreement with the European Agency for the Cooperation of Energy Regulators; laying*

*down the measures to implement the compliance programme and submitting the report to the regulatory authority;*

*(iii) issuing 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 employment contract.*

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

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

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

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

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

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

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



*board/administrative board.*

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

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

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

*26. Transmission system operators shall draw up a 10-year network development plan at least every two years. They shall provide for efficient measures in order to guarantee that the grid will be adequate and ensure security of supply.*

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

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

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

*28. In order to draw up this 10-year network development plan, each transmission system operator shall make reasonable assumptions as to the trend in generation, consumption, and exchanges with other countries, and shall take into account regional and Europe-wide investment plans for the existing network. The transmission system operator shall submit the draft in due time to the national regulatory authority.*

***29. The regulatory authority shall consult all relevant network users on the basis of a draft text of the 10-year network development plan in an open and transparent manner and may publish the outcome of the consultation procedure, in particular the possible investment needs.***

***30. The regulatory authority shall examine whether the 10-year network development plan fully covers the investment needs identified in the consultations. The authority may oblige the transmission system operator to alter its plan.***

***31. If the transmission system operator refuses to implement a specific investment listed in the 10-year network development plan to be undertaken in the next three years, the Member State concerned shall ensure that the regulatory authority has the necessary powers to implement one of the following measures:***

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

***or***

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

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

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

***- to agree to operate the new assets,***

***- to accept a capital increase, in order to finance the necessary investments, and allow independent investors to acquire shares of that capital.***

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

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

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

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

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

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

#### *Regional cooperation*

*36. If Member States opt to pursue regional cooperation, they must impose specific obligations on the transmission system operator, to be reflected in a clearly defined time-frame. Those obligations must, in addition, serve gradually to establish a common regional dispatching centre, which shall assume responsibility for security matters no later than six years after the entry into force of this Directive.*

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

***38. The regional coordinator shall promote cooperation at regional level among regulatory authorities and any other appropriate authorities, network operators, power exchanges, network users, and market participants. In particular he shall be called upon to***

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

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

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

#### ***Sanctions***

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

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

***(ii) the right to conduct all necessary investigations concerning the transmission system operator and, in case of doubt, the vertically integrated company and its establishments; the provisions applicable shall be those set***

*out in Article 20 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty \*\*.*

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

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

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

*(iii) the right to withdraw the licence of the transmission system operator, at least partially, if the operator repeatedly infringes the unbundling rules laid down in this Article.*

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*\* OJ L 176, 15.7.2003, p. 1. Last amended by Commission Decision 2006/770/EC of 9 November 2006 (OJ L 312, 11.11.2006, p. 59).*

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

Or. de

### *Justification*

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

**Amendment 60**  
**Heide Rühle, Alain Lipietz**

**Proposal for a directive – amending act**

**Article 1 – point 8 a (new)**

Directive 2003/54/EC

Article 11 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(8a) In Article 11, the following paragraph shall be added:***

***"7a. Priority shall be given to electricity from renewable energy sources, combined heat and power and other embedded generation and the costs of connecting new producers of electricity from renewable energy sources and combined heat and power should be objective, transparent and non-discriminatory. A European benchmarking system shall ensure that there are no obstacles to the stimulation of dispersed generation."***

Or. en

*Justification*

*The cost of connecting new renewable energy sources, especially offshore wind farms and cogeneration plants may reduce the attractiveness of investments. Clear and fair tariffs need to be set which take into consideration the additional benefits these technologies bring.*

**Amendment 61**  
**Heide Rühle, Alain Lipietz**

**Proposal for a directive – amending act**

**Article 1 – point 9 a (new)**

Directive 2003/54/EC

Article 14 – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

*following:*

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

Or. en

*Justification*

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

**Amendment 62**  
**Christian Ehler**

**Proposal for a directive – amending act**  
**Article 1 – point 10**  
Directive 2003/54/EC  
Article 15 – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

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

Or. de

*Justification*

*Simplification.*

**Amendment 63**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 10**

Directive 2003/54/EC

Article 15 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***4. The Commission may adopt guidelines to ensure full and effective compliance of the distribution system operator with paragraph 2 as regards the full independence of the distribution system operator, the absence of discriminatory behaviour, and that supply activities of the vertically integrated undertaking cannot take unfair advantage of its vertical integration. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).”*** ***deleted***

Or. de

*Justification*

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



**Amendment 64**  
**Bernhard Rapkay, Robert Goebbels**

**Proposal for a directive – amending act**

**Article 1 – point 10**

Directive 2003/54/EC

Article 15 – 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 procedure with scrutiny referred to in Article 27b(3).”.

*Amendment*

4. The Commission may adopt guidelines **or 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 27b(3).”

Or. de

*Justification*

*To date the Commission has had no power to lay down guidelines in this area. There is no need for such sweeping comitology: on the contrary, its scope should be defined more exactly.*

**Amendment 65**  
**Bernhard Rapkay, Robert Goebbels**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 1 – point (m)

*Text proposed by the Commission*

(m) ensuring access to customer consumption data, the application of a harmonised format for consumption data

*Amendment*

(m) ensuring **that all market participants have efficient** access on **equal terms** to customer consumption data, the application

and the access to data under paragraph (h) of Annex A;

of a harmonised format for consumption data and the access to data under paragraph (h) of Annex A;

Or. de

*Justification*

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

**Amendment 66**

**Bernhard Rapkay, Robert Goebbels**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 3 – point (b)

*Text proposed by the Commission*

(b) to carry out in cooperation with the national competition authority investigations of the functioning of electricity markets, and to decide, in the absence of violations of competition rules, *of any appropriate measures necessary and proportionate* to promote effective competition and ensure the proper functioning of the market, including virtual power plants;

*Amendment*

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

Or. de

*Justification*

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

**Amendment 67**  
**Jean-Paul Gauzès**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 3 – point b

*Text proposed by the Commission*

(b) to carry out in cooperation with the national competition authority investigations of the functioning of electricity markets, and to ***decide, in the absence of violations of competition rules, of any appropriate measures necessary and proportionate*** to promote effective competition and ensure the proper functioning of the market, ***including virtual power plants***;

*Amendment*

(b) to carry out in cooperation with the national competition authority investigations of the functioning of electricity markets, and to promote effective competition and ensure the proper functioning of the market;

Or. en

*Justification*

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

**Amendment 68**  
**Jean-Paul Gauzès**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 3 – point c

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### *Justification*

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

#### **Amendment 69** **Jean-Paul Gauzès**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 3 – point d

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

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

##### *Amendment*

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

Or. en

### *Justification*

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

#### **Amendment 70** **Andrea Losco**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 4 – point a

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

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

**Amendment 71**

**Bernhard Rapkay, Robert Goebbels**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 4 – point (a)

*Text proposed by the Commission*

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

*Amendment*

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

Or. de

### *Justification*

*The methods for calculating transmission and distribution tariffs must be made known to the regulatory authority.*

#### **Amendment 72**

**Bernhard Rapkay, Robert Goebbels**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 13

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. de

### *Justification*

*When decisions of regulatory authorities are the subject of an appeal, rulings must be reached with the aid of a body independent from private and political influences.*

#### **Amendment 73**

**Christian Ehler**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 14

#### *Text proposed by the Commission*

14. The Commission may ***adopt*** guidelines on the implementation by the regulatory

#### *Amendment*

14. The Commission may ***amend*** guidelines on the implementation by the

authorities of the powers described in this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be **adopted** in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)”.

regulatory authorities of the powers described in this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be **amended** in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)”.

Or. de

#### *Justification*

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

#### **Amendment 74** **Heide Rühle, Alain Lipietz**

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

#### **Article 1 – point 12**

Directive 2003/54/EC

Article 22c – paragraph 14 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***14a. Member States shall establish a Gas and Electricity Consumer Council to act as a consumer protection body, operating independently of the regulatory body. Providing a single point of contact for consumers, the Gas and Electricity Consumer Council shall:***

***(a) investigate complaints against utility companies;***

***(b) provide advice on consumer needs to the regulator, government and companies; and***

***(c) have clearly stated rights of access to information and the power to publish that information with the aim of promoting high standards of energy supply and physical energy services for consumers.***

*Justification*

*The rights of consumers need to be protected and enhanced. One such method, already being adopted by some Member States, is the establishment of an Energy Consumer Council. Such bodies should be established across the Union.*

**Amendment 75**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22d – 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 to amend non-essential elements of this Directive by supplementing it, shall be **adopted** in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)..

*Amendment*

4. The Commission may **amend** guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency, and on the situations in which the Agency becomes competent to decide upon the regulatory regime for infrastructures connecting at least two Member States. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be **amended** in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)..

Or. de

*Justification*

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



**Amendment 76**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22e – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

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

Or. de

*Justification*

*Shortens the time limit.*

**Amendment 77**  
**Christian Ehler**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/54/EC

Article 22e – paragraph 9

*Text proposed by the Commission*

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

*Amendment*

**deleted**

Or. de

### *Justification*

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

#### **Amendment 78** **Christian Ehler**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22f – paragraph 4

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. de

### *Justification*

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

#### **Amendment 79** **Christian Ehler**

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

##### **Article 1 – point 12**

Directive 2003/54/EC

Article 22f – paragraph 5

*Text proposed by the Commission*

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

*Amendment*

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

Or. de

*Justification*

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

**Amendment 80**

**Bernhard Rapkay, Robert Goebbels**

**Proposal for a directive – amending act  
Article 2 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. de