

Wednesday 9 July 2008

Internal market in natural gas ***I

P6_TA(2008)0347

European Parliament legislative resolution of 9 July 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas (COM(2007)0529 — C6-0317/2007 — 2007/0196(COD))

(2009/C 294 E/48)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0529),
 - having regard to Article 251(2), Article 47(2) and Articles 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0317/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0257/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2007)0196

Position of the European Parliament adopted at first reading on 9 July 2008 with a view to the adoption of Directive 2008/.../EC of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) and Articles 55, and 95 thereof,

Having regard to the proposal from the Commission ||,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

⁽¹⁾ OJ C 211, 19.8.2008, p. 23.

⁽²⁾ OJ C 172, 5.7.2008, p. 55.

⁽³⁾ Position of the European Parliament of 9 July 2008.

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Whereas:

- (1) The internal market for gas, which has been progressively implemented throughout the Community since 1999, aims at delivering real choice for all consumers in the European Union, whether they are citizens or businesses, new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices, and higher standards of service, and to contribute to security of supply and sustainability.
- (2) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas ⁽¹⁾ has made a significant contribution towards the creation of an internal market for gas.
- (3) The right to sell gas in any Member State on equal terms and without discrimination or disadvantages cannot, however, currently be guaranteed to **all companies in all Member States**. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist, since the legal framework is insufficient.
- (4) The Communication of the Commission of 10 January 2007 entitled 'An Energy Policy for Europe' highlighted the importance of completing the internal market in natural gas and of creating a level playing field for all natural gas undertakings established in the Community. The Communications of the Commission, of the same date, on prospects for the internal gas and electricity market and its final report in relation to its inquiry pursuant to Article 17 of the Regulation (EC) No 1/2003 into the European gas and electricity sectors showed that the present rules and measures do not provide the necessary framework for achieving the objective of a well-functioning internal market.
- (5) Without effective separation of networks from the activities of production and supply, there is a risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated companies to invest adequately in their networks.
- (6) **The Member States should promote cooperation and monitor the effectiveness of the network at regional level. Several Member States have already put forward a proposal that would fulfil such an objective.**
- (7) The rules on legal and functional unbundling currently in place have not yet led to effective unbundling of the transmission system operators in every Member State, partly due to the fact that existing Community legislation has not been fully implemented. At its meeting in Brussels on 8 and 9 March 2007, the European Council invited the Commission to develop legislative proposals for the effective separation of supply and production activities from network operations.
- (8) Only the removal of the inherent incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the appointment of the network owner as the network operator and the network operator's independence 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 of 10 July 2007 on prospects for the internal gas and electricity market ⁽²⁾ referred to ownership unbundling at transmission level as the most effective tool by which to promote non-discriminatory investments in infrastructures, fair access to the grid for new entrants and transparency in the market. Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control, including through minority blocking rights on decisions of strategic importance such as investments, over a production or supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. Conversely, control over a transmission system operator should preclude the possibility of holding any interest in or exercising any right over a supply undertaking.

⁽¹⁾ OJ L 176, 15.7.2003, p. 57.

⁽²⁾ OJ C 175 E, 10.7.2008, p. 206.

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- (9) *Any system for unbundling should be effective in removing any conflict of interests between producers and transmission system operators, in order to create incentives for the necessary investments and guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an onerous or cumbersome regulatory regime for national regulatory authorities that would be difficult or expensive to implement.*
- (10) *Gas is mainly, and increasingly, imported into the European Union from third countries. Community law should therefore take account of the specific integration of the gas sector into the world market, including the differences in the upstream and downstream markets.*
- (11) *Since ownership unbundling requires, in some instances, restructuring of undertakings, Member States that decide to implement ownership unbundling should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should, moreover, apply across both sectors.*
- (12) *Member States that so wish may apply the provisions of this Directive that relate to the effective and efficient separation of transmission systems and transmission system operators. Such separation is effective insofar as it helps to ensure the independence of transmission system operators and is efficient insofar it provides a more appropriate regulatory framework to guarantee fair competition, sufficient investment, access to new market entrants and the integration of natural gas markets. Such separation is, moreover, based on a pillar of organisational measures and measures relating to the governance of transmission system operators and on a pillar of measures relating to investment, connecting new production capacities to the network and market integration through regional cooperation and is in line with the requirements laid down by the European Council at its meeting on 8 and 9 March 2007.*
- (13) *Member States should promote regional cooperation, with the possibility of designating a regional coordinator in charge of facilitating dialogue between competent national authorities. New producers and supply undertakings should, furthermore, be connected to the network in an effective manner in due course.*
- (14) *In order to ensure the proper implementation of this Directive, the Commission should assist those Member States that encounter problems therewith.*
- (15) *The aim of an integrated European energy network is essential for security of supply and a well-functioning internal market for gas. The Commission, in consultation with the stakeholders (in particular the transmission system operators and the Agency for the Cooperation of Energy Regulators ('the Agency') established by Regulation (EC) No .../2008 of the European Parliament and of the Council of ... [on establishment of an Agency for the Cooperation of Energy Regulators] ⁽¹⁾), should therefore assess the feasibility of creating a single European transmission system operator and analyse the costs and benefits with respect to market integration as well as the effective and secure operation of the transmission network.*
- (16) *To ensure full independence of network operation from supply and production interests and to prevent exchange of any confidential information, the same person should not be a member of the managing boards of both a transmission system operator and an undertaking performing any of the functions of production or supply. For the same reason, the same person should not be entitled to appoint members of the managing boards of a transmission system operator and to hold any interest in a supply undertaking.*
- (17) *The setting up of transmission system operators independent from supply and production interests should enable vertically integrated companies to maintain their ownership of network assets whilst ensuring an effective separation of interests, provided that the independent transmission system operator performs all the functions of a network operator, and detailed regulation and extensive regulatory control mechanisms are put in place.*

⁽¹⁾ OJ L ...

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- (18) Where the undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should be given a choice between **two options**: ownership unbundling or **the establishment of an independent transmission system operator**.
- (19) **In order to develop competition in the internal market for gas, non-household customers should be able to choose their suppliers as well as enter into contracts to secure their gas requirements with several suppliers. Such customers should be protected against exclusivity clauses, the effect of which is to exclude competing and/or complementary offers.**
- (20) The implementation of effective unbundling should respect the principle of *non-discrimination* between the public and private sectors. To this end, the same person should not be able to exercise any influence, solely or jointly, over the composition, voting or decision of the bodies of both transmission system operators and supply undertakings. ■
- (21) ■ Separation of network and supply activities should apply throughout the Community ■. This should apply equally to *undertakings established in the European Union and those established in third countries*. To ensure that network and supply activities throughout the Community are kept separate, *national regulatory authorities* should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure consistent application across the Community and respect for the international obligations of the Community, the **Agency** should have the right to review the decisions on certification taken by the *national regulatory authorities*.
- (22) The safeguarding of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the *internal market for gas and the integration of the isolated markets of Member States*. Use of the network is essential for gas to reach citizens of the Union. Functioning **open** gas markets **with genuine trading possibilities**, and, in particular, the networks and other assets associated with gas supply are essential for public security, the competitiveness of the economy and the well-being of the citizens of the Union. Without prejudice to its international obligations, the Commission considers that the gas transmission system sector is of high importance to the Community and therefore additional safeguards are necessary regarding the influence of third countries in order to avoid any threats to Community public order and public security and the welfare of the citizens of the Union. Such measures are also necessary for ensuring compliance with the rules on effective unbundling.
- (23) It is necessary to ensure the independence of storage system operators in order to improve *third-party* access to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers. It is therefore appropriate that storage facilities are operated through legally separate entities that have effective decision making rights with respect to assets necessary to maintain, operate and develop storage facilities. It is also necessary to increase transparency in respect of the storage capacity that is offered to third parties, by obliging Member States to define and publish a non-discriminatory, clear framework that determines the appropriate regulatory regime applicable to storage facilities.
- (24) *Non-discriminatory* access to the distribution network determines downstream access to customers at retail level. The scope for discrimination as regards *third-party* access and investment is, however, less significant at distribution level than it is at transmission level because at distribution level congestion and the influence of production interests are generally less important than at transmission level. Moreover, functional unbundling of distribution system operators became, in accordance with Directive 2003/55/EC, compulsory only as of 1 July 2007 and its effects on the internal market still need to be evaluated. The rules on legal and functional unbundling currently in place can lead to effective unbundling provided they are more clearly defined, properly implemented and closely monitored. To create a level playing field at retail level, the activities of distribution system operators should therefore be monitored so that they are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to small *household* and *non-household* customers.

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- (25) **Member States should take concrete measures to assist the wider use of biogas and gas from biomass, the producers of which must be granted non-discriminatory access to the gas system, provided that such access is compatible with the relevant technical rules and safety standards on an ongoing basis.**
- (26) Directive 2003/55/EC introduced a requirement for Member States to establish *national regulatory authorities* with specific competences. However, experience shows that the effectiveness of regulation is frequently hampered by a lack of independence of *national regulatory authorities* from government, and insufficient powers and discretion. For this reason, at its *abovementioned* meeting in Brussels ¶, the European Council invited the Commission to develop legislative proposals providing for further harmonisation of the powers and strengthening of the independence of *national regulatory authorities*.
- (27) *National regulatory authorities* need to be able to take decisions on all relevant regulatory issues if the internal market is to function *properly*, and to be fully independent from any other ¶ interests **of public or private companies**.
- (28) *National regulatory authorities* should have the power to issue binding decisions on **network operators** and to impose effective, appropriate and dissuasive sanctions on **network operators** that fail to comply with their obligations. They *should* also be granted the powers to decide, irrespective of the application of competition rules, on any appropriate measures **regarding the access to networks with the aim of** effective competition necessary for the proper functioning of the market; as well as to ensure high standards of public service in compliance with market opening, the protection of vulnerable customers and *the full effectiveness of* consumer protection measures ¶. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a Community dimension, and the rules on the internal market, such as the free movement of capital.
- (29) **National regulatory authorities and financial market regulators should cooperate in order to allow each other an overview of their respective markets. They should have the power to obtain relevant information from natural gas undertakings through appropriate and sufficient investigations, settle disputes, and impose effective sanctions.**
- (30) Investments in major new infrastructures should be strongly promoted while ensuring the proper functioning of the internal market *for* gas. In order to enhance the positive effect of exempted infrastructure projects on competition and security of supply, market interest during the project planning phase should be tested and congestion management rules should be implemented. Where an infrastructure is located in the territory of more than one Member State, the Agency ¶ should handle the exemption request in order to take better account of its cross-border implications and to facilitate its administrative handling. Moreover, given the exceptional risk profile of constructing these exempt major infrastructure projects it should be possible temporarily to ¶ grant partial derogations to supply and production undertakings in respect of the unbundling rules for the projects concerned. This should, in particular, apply, for security of supply reasons, to new pipelines within the Community transporting gas from third countries into the Community.
- (31) The internal ¶ market *for gas* suffers from a lack of liquidity and transparency hindering the efficient allocation of resources, risk hedging and new entry. Trust in the market, its liquidity and the number of market participants need to increase, and therefore regulatory oversight over undertakings active in the supply of gas need to be increased. Such requirements should be without prejudice to, and compatible with, the existing Community legislation on financial markets. *National regulatory authorities and financial market regulators* need to cooperate in order to enable each other to have an overview of the markets concerned.
- (32) **The structural rigidities of the gas market which arise from the concentration of suppliers, the long-term contracts that underpin deliveries, and the lack of downstream liquidity, generate non-transparent pricing structures. In order to bring clarity to the cost structure, more transparency is needed in the price formation, and a trading obligation should therefore be mandatory.**

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- (33) The public service requirements and the common minimum standards that follow from them need to be further strengthened to make sure that all consumers can benefit from competition. A key aspect in supplying customers is access to consumption data, and consumers must have access to their data so that they can invite competitors to make an offer based on these data. Consumers also should have the right to be properly informed about their energy consumption. Regularly provided information on energy costs will create incentives for energy savings because it will give customers direct feedback on the effects of investment in energy efficiency and change of behaviour.
- (34) *The public service requirements and the common minimum standards that follow therefrom need to be further strengthened to ensure that gas services are accessible to the public and to small and medium-sized enterprises.*
- (35) *Member States should ensure that individual smart meters are installed, as provided for in Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services ⁽¹⁾, in order to give consumers accurate information about energy consumption and to secure end-user efficiency.*
- (36) *Consumers should be the main focus of this Directive. Existing rights for consumers need to be strengthened and guaranteed, and should include greater transparency and representation. Consumer protection means that all customers should benefit from a competitive market. Consumer rights should be enforced by national regulatory authorities by the creation of incentives and the imposition of sanctions on undertakings which do not comply with consumer protection and competition rules.*
- (37) *Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. Following on from its communication of 5 July 2007 entitled 'Towards a European Charter of the Rights of Energy Consumers', the Commission should put forward, after consulting relevant stakeholders, including national regulatory authorities, consumer organisations and the social partners, an accessible, user-friendly charter listing the rights of energy consumers already in existing Community law including this Directive. Energy suppliers should ensure that all consumers receive a copy of that charter and that it is publicly available.*
- (38) In order to contribute to security of supply, **Member States should**, whilst maintaining a spirit of solidarity **■**, notably in the event of an energy supply crisis, **work together closely. Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply ⁽²⁾ should serve as a basis for that purpose.**
- (39) In view of the creation of an internal market for gas, Member States should foster the integration of their national markets and the cooperation of network operators at European and regional level. **Regional integration initiatives are an essential intermediate step in achieving the integration of the internal energy markets, which remains the final objective. The regional level contributes towards accelerating the integration process by making it possible for the actors concerned, particularly the Member States, the national regulatory authorities and the transmission system operators, to cooperate in regard to specific issues.**
- (40) **The development of a truly pan-Community pipeline network should be one of the main goals of this Directive and regulatory issues on cross-border interconnections and regional markets should, therefore, be the responsibility of the Agency.**
- (41) National regulatory authorities should provide information to the market also to permit the Commission to exercise its role of observing and monitoring the *internal market for gas* and its short, medium and *long-term* evolution, including aspects such as supply and demand, transmission and distribution infrastructures, cross-border trade, investments, wholesale and consumers prices, market liquidity, environmental and efficiency improvements.

⁽¹⁾ OJ L 114, 27.4.2006, p. 64.

⁽²⁾ OJ L 127, 29.4.2004, p. 92.

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- (42) Since the *objective of this Directive*, namely the creation of a fully operational internal market for gas, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (43) **Member States should consider, with the social partners concerned, the implications of amending Directive 2003/55/EC, in particular the different models to ensure independence of transmission system operators, in terms of the employment, working conditions and information, consultation and participation rights of workers, with a view to mitigating the negative consequences.**
- (44) Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission network ⁽¹⁾ provides the Commission with the possibility of adopting guidelines to achieve the necessary degree of harmonisation. Such guidelines, which are thus binding implementing measures, are a useful tool which can be adapted quickly where necessary.
- (45) Directive 2003/55/EC provides that certain measures are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (46) Decision 1999/468/EC has been amended by Council Decision 2006/512/EC ⁽³⁾, which introduced a regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia* by supplementing it with new non-essential elements.

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- (47) Directive 2003/55/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2003/55/EC

Directive 2003/55/EC is amended as follows:

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

'2. The rules established by this Directive for natural gas, including liquefied natural gas (LNG), shall also apply in a non-discriminatory way to biogas and gas from biomass or other types of gas in so far as such gases can technically and safely be injected into, and transported through, the natural gas system.'

- (2) Article 2 shall be amended as follows:

- (a) **point 3 shall be replaced by the following:**

'3. "transmission" means the transport of natural gas through a network containing mainly high-pressure pipelines, other than an upstream pipeline network or the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;'

⁽¹⁾ OJ L 289, 3.11.2005, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23. ||.

⁽³⁾ OJ L 200, 22.7.2006, p. 11.

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(b) point 9 shall be replaced by the following:

9. “storage facility” means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used exclusively for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;

(c) point 14 shall be replaced by the following:

14. “ancillary services” means all services necessary for access to and the operation of transmission and/or distribution networks and/or LNG facilities and/or storage facilities including load balancing, blending and injection of inert gases, but excluding facilities reserved exclusively for transmission system operators carrying out their functions;

(d) point 17 shall be replaced by the following:

17. “interconnector” means a long-distance gas pipeline which crosses or spans a border between Member States for the main purpose of connecting the national transmission systems of these Member States;

(e) point 20 shall be replaced by the following:

20. “vertically integrated undertaking” means a natural gas undertaking, or a group of natural gas undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control within the meaning of Article 3(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (*the EC Merger Regulation*) (*), and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas;

(*) OJ L 24, 29.1.2004, p. 1.

(f) the following points shall be added:

34. “gas supply contract” means a contract for the supply of natural gas, but does not include a gas derivative;
35. “gas derivative” means a financial instrument specified in one of Sections C5, C6, or C7 of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (*), where that instrument relates to natural gas;
36. “control” means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
- (a) ownership or the right to use all or part of the assets of an undertaking;
 - (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

For the avoidance of doubt, the long-term transport contract of an undertaking that holds interests in production or supply activities shall not constitute control of a transmission system per se;

37. “isolated market” means a Member State that has no interconnection to other Member States’ national transmission systems and/or whose gas supply is controlled by a person or persons from a third country;

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38. “project of European interest” means a gas infrastructure project which results in new gas resources becoming available to the Community and in greater diversification of gas supplies in more than one Member State;
39. “fair and undistorted competition in an open market” means common opportunities and equal access for all providers within the European Union, for which the Member States, national regulatory authorities and the Agency for the Cooperation of Energy Regulators (“the Agency”) established by Regulation (EC) No .../2008 of the European Parliament and of the Council of ... on establishment of an Agency for the Cooperation of Energy Regulators (**) shall be responsible;
40. “energy poverty” means the situation where the members of a household cannot afford to heat their home to an acceptable standard, based on the levels recommended by the World Health Organisation;
41. “affordable price” means a price defined by Member States at national level in consultation with national regulatory authorities, social partners and relevant stakeholders while taking account of the definition of energy poverty provided for in point 40;
42. “industrial site” means a privately owned geographical area with a natural gas network managed by one company with a connection to the transmission or distribution network:
- (a) which predominantly supplies the industrial activities of the network operator or of connected undertakings, or
 - (b) which supplies a limited number of industrial consumers or customers linked with the industrial activities on the industrial site.

(*) OJ L 145, 30.4.2004, p. 1.

(**) OJ L ...’

(3) Article 3 shall be amended as follows:

(a) paragraph 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 natural gas undertakings, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity and quality, and environmental protection, including energy efficiency and climate protection.’

(b) paragraph 3 shall be replaced by the following:

‘3. Member States shall take appropriate measures to protect final customers and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers, including prohibiting the disconnection of pensioners and disabled people in winter. In this context, Member States shall recognise energy poverty and shall provide definitions of vulnerable customers. Member States shall ensure that rights and obligations linked to vulnerable customers are applied and, in particular, shall take measures to protect final customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is in fact able easily to switch to a new supplier. As regards at least household customers, these measures shall include those set out in Annex A.’

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(c) the following paragraphs shall be inserted after paragraph 3:

'3a. Member States shall take appropriate measures to address energy poverty in national action plans in order to ensure that the number of people suffering energy poverty decreases in real terms and shall communicate such measures to the Commission. Each Member State shall be responsible for providing, in accordance with the principle of subsidiarity, a definition of energy poverty at national level, in consultation with national regulatory authorities and stakeholders with reference to Article 2(40). Such measures may include benefits in social security systems, support to energy efficiency improvements and energy production at the lowest possible prices, and shall not impede the opening of the market set out in Article 23. The Commission shall provide guidance to monitor the impact of such measures on energy poverty, and on the functioning of the market.'

'3b. Member States shall ensure that all customers are entitled to have their gas provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is authorised or otherwise approved. In this regard, Member States shall take all necessary measures to ensure that undertakings which are approved as suppliers in another Member State can supply their citizens without having to comply with any further conditions.'

(d) paragraph 4 shall be replaced by the following:

'4. Member States shall implement appropriate measures in order to achieve the objectives of social and economic cohesion, with a view to lowering the cost of gas provided to low-income household customers and guaranteeing the same conditions for the customers living in remote areas on the one hand, and the objectives of environmental protection on the other. Those measures include energy efficiency/demand-side management measures and means to combat climate change, and security of supply, and may also include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for the maintenance and construction of necessary network infrastructure, including interconnection capacity.'

(e) the following paragraphs shall be inserted after paragraph 4:

'4a. In order to promote energy efficiency, national regulatory authorities shall mandate natural gas undertakings to introduce pricing formulas which increase in the case of greater levels of consumption and shall ensure the active participation of customers and distribution system operators in system operations by supporting the introduction of measures to optimise the use of gas, particularly during peak hours. Such pricing formulas, combined with the introduction of smart meters and grids, shall promote energy efficiency behaviour and the lowest possible costs for household customers, in particular household customers suffering energy poverty.'

'4b. Member States shall provide single points of contact in order to ensure that consumers have access to all necessary information concerning their rights, current legislation and the means of redress available to them in the event of a dispute.'

(f) the following paragraph shall be inserted after paragraph 5:

'5a. The implementation of this Directive shall have no negative consequences for the employment, working conditions and information, consultation and participation rights of the workers concerned. Member States shall consult the social partners concerned as regards the implementation of any amendments to this Directive to mitigate such negative consequences. The Commission shall report to the sectoral social dialogue committees for gas and for electricity on the consultations and measures taken.'

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(4) Article 4(2) shall be replaced by the following:

'2. Where Member States have a system of authorisation, they shall lay down objective and non-discriminatory criteria which shall be met by an undertaking applying for an authorisation to build and/or operate natural gas facilities or applying for an authorisation to supply natural gas. Member States shall, in any event, not be entitled to bind the authorisation to criteria which give the competent authorities discretionary powers. The non-discriminatory criteria and procedures for the granting of authorisations shall be made public. Member States shall ensure that authorisation procedures for facilities, pipelines and associated equipment take into account the importance of the project for the internal market for gas.'

(5) The following articles shall be inserted after Article 5:

Article 5a

Regional solidarity

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

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

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

(b) identification and, where necessary, development or upgrading of electricity and natural gas inter-connections;

(c) conditions and practical modalities for mutual assistance.

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

■

Article 5b

Promotion of Regional Cooperation

1. **National regulatory authorities** shall cooperate || for the purpose of **harmonising the market design and** integrating their national markets at least at **one regional level, as a first and intermediate step towards a fully liberalised internal market for gas**. In particular, they shall promote the cooperation of network operators at a regional level and **facilitate their integration at regional level with the aim of creating a competitive internal market, facilitating the harmonisation of their legal, regulatory and technical framework and, above all, integrating the gas islands that persist in the European Union. Member States shall also promote cross-border and regional cooperation among national regulatory authorities.**

2. **The Agency shall cooperate with national regulatory authorities and transmission system operators in accordance with Chapters III and IV to ensure the convergence of regulatory frameworks between the regions with the aim of creating a competitive internal market. Where the Agency considers that binding rules on such cooperation are required, it shall make appropriate recommendations. In regional markets, the Agency shall be deemed to be the competent authority in the areas specified in Article 24d.'**

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(6) Article 7 shall be replaced by the following:

‘Article 7

Unbundling of transmission systems and transmission system operators

1. Member States shall ensure that as from ... (*):

(a) each undertaking which owns a transmission system acts as a transmission system operator;

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

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

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

(c) the same person or the || 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 ||, and || directly or indirectly to exercise control or hold any interest in or exercise any right over an undertaking performing any of the functions of production or supply;

(d) the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of production or supply and a transmission system operator or a transmission system;

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

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

(a) the ownership of part of the capital or of the business assets; ||

(b) the power to exercise voting rights; ||

(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.

3. For the purpose of paragraph 1(b), the term “undertaking performing any of the functions of production or supply” shall cover “undertaking performing any of the functions of generation or supply” within the meaning of Directive 2003/54/EC ||, and the terms “transmission system operator” and “transmission system” shall cover “transmission system operator” and “transmission system” within the meaning of Directive 2003/54/EC.

||

4. Member States shall monitor the process of unbundling vertically integrated undertakings and shall submit a report to the Commission on the progress achieved.

5. Member States may allow for derogations from paragraph 1(b) and ||(c) until ... (**), provided that transmission system operators are not part of a vertically integrated undertaking.

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6. 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. ■

7. Where a person referred to in paragraph 1(b) to (e) is the Member State or another public body, two separate public bodies exercising control over either a transmission system operator or a transmission system on the one hand and an undertaking performing any of the functions of production or supply on the other shall be deemed not to be the same person or persons.

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

9. Where on ... (*) , the transmission system belongs to a vertically integrated undertaking, Member States may decide not to apply paragraph 1.**

In such a case, Member States shall comply with the provisions of Chapter IVa.

Vertically integrated undertakings that own a transmission system may not in any event be prevented from taking steps to comply with paragraph 1.

(*) One year after the date of transposition of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas].

(**) Two years after the date of transposition of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas].

(***) **Date of entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas] ...'**

(7) The following articles shall be inserted after Article 7:

'Article 7a

Control over transmission system owners and transmission system operators

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

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

Article 7b

Designation and certification of transmission system operators

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

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

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

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

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

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

(c) upon reasoned request from the Commission.

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

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

7. The Commission shall examine the notification as soon as it is received. Within two months after receiving a notification, where the Commission finds that the decision of the *national* regulatory authority raises serious doubts as to its compatibility with Article 7(1), Article 7a or Article 7b(2) it shall decide to initiate proceedings. In such a case, it shall invite the *national* regulatory authority and the transmission system operator concerned to submit comments. Where additional information is sought by the Commission, the two-month-period may be extended by two additional months starting from the receipt of the complete information.

8. Where the Commission has decided to initiate proceedings, it shall, within || four months of the date of such decision, issue a final decision:

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

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

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

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

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

12. National regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

■

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

Article 7c

Designation of storage and LNG system operators

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

(8) Article 8 shall be amended as follows:

(a) paragraph 1 shall be amended as follows:

(i) point (a) shall be replaced as follows.

'(a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities **to secure an open market for new entrants**, with due regard to the environment ■.'

(ii) the following point shall be inserted after point (b):

'(ba) **build sufficient interconnection capacity linking their transmission infrastructure in order to meet all reasonable demands for capacity, facilitate an efficient overall market, and fulfil the criteria for security of supply of gas;**

(b) paragraph 3 shall be replaced by the following:

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

(c) the following paragraph shall be added:

'4a. While carrying out their tasks, transmission system operators shall take into account the codes adopted by the European Network of Transmission System Operators for Gas.'

(9) Article 9 shall be deleted.

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(10) Article 10 shall be replaced by the following:

‘Article 10

Confidentiality for transmission system operators and transmission system owners

1. Without prejudice to Article 16 or any other legal duty to disclose information, each transmission, storage and/or LNG system operator, and transmission system owners, shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner, and in particular shall not disclose any commercially sensitive information to the remaining parts of the company, unless this is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information unbundling it must also be ensured that the transmission owner and the remaining part of the company do not use joint services, apart from purely administrative or IT functions (e.g. no joint legal service).

2. Transmission, storage and/or LNG system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system. ||

3. **Commercially sensitive information shall be determined by using objective and transparent criteria.**’

(11) Article 12 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

‘1. Each distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas, and for operating, maintaining and developing under economic conditions a secure, reliable and efficient distribution system in its area with due regard for the environment, and for promoting energy efficiency.’

(b) paragraph 4 shall be replaced by the following:

‘4. Each distribution system operator shall provide system users with the information they need for efficient access to and use of the system.’

(c) the following paragraphs shall be inserted after paragraph 4:

‘4a. The distribution system operator shall submit to the relevant national regulatory authority, by ... (*), a proposal describing the appropriate information and communication systems to be implemented in order to provide the information referred to in paragraph 4. That proposal shall facilitate, inter alia the use of bi-directional electronic meters, which shall be rolled out to all customers by ... () the active participation of final customers and distributed producers in system operation and the flow of real-time information between distribution and transmission system operators with the aim of optimising the use of all available production, network and demand resources.**

4b. By ... (*) national regulatory authorities shall approve or reject the proposals referred to in paragraph 4a. National regulatory authorities shall ensure full interoperability of the information and communication systems to be implemented. For this purpose, they may issue guidelines and may call for the amendment of the proposals referred to in paragraph 4a.**

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4c. Prior to notification to the distribution system operator of its decision concerning the proposal referred to in paragraph 4a, the national regulatory authority shall inform the Agency or, if the Agency is not yet in operation, the Commission thereof. The Agency or the Commission shall ensure that the information and communication systems to be implemented facilitate the development of the internal market for gas and do not introduce any new technical barriers.

(*) One year after entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas].

(**) Ten years after entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas].

(***) Two years after entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas].'

(12) The following chapters shall be inserted after Chapter IV:

'CHAPTER IVb

Independent transmission system operators

Article 12a

Scope

The provisions of this Chapter shall apply when a Member State decides not to apply Article 7(1) in accordance with Article 7(7).

Article 12b

Assets, equipment, staff and identity

1. Transmission system operators shall be equipped with all human, physical and financial resources necessary for fulfilling their obligations under this Directive and carrying out the business of gas transmission, provided that:

- (a) assets that are necessary for the business of gas transmission, including the transmission network, shall be owned by the transmission system operator;
- (b) personnel necessary for the business of gas transmission, including the performance of all corporate tasks, shall be employed by the transmission system operator;
- (c) leasing of personnel and rendering of services, to and from any other parts of the vertically integrated undertaking shall be prohibited;
- (d) appropriate financial resources for future investment projects and/or for the replacement of existing assets shall be kept available notably by the vertically integrated undertaking following an appropriate request from the transmission system operator in the framework of the annual financial plan referred to in Article 12f;
- (e) transmission system operators shall not use the same external contractors or consultants as the vertically integrated undertaking and they must not share information technology systems or equipment, physical premises and security access systems.

2. The business of gas transmission shall at least include the following activities in addition to those listed in Article 8:

- (a) representation of the transmission system operator and contacts in relation to third parties and the regulatory authorities;
- (b) representation of the transmission system operator within the European network of transmission system operators;

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- (c) *granting and managing third-party access;*
 - (d) *collection of all charges related to the transmission system including the access charges, balancing charges for ancillary services such as gas treatment, purchasing of services (balancing costs, energy for losses);*
 - (e) *operation, maintenance and development of the transmission system;*
 - (f) *investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;*
 - (g) *setting up appropriate joint ventures, including with one or more transmission system operators, gas exchanges, pursuing the objective to develop the creation of regional markets or to facilitate the liberalisation process;*
 - (h) *all corporate services, including legal services, accountancy and IT services.*
3. *Transmission system operators shall be organised in the legal form of a limited liability company as referred to in Article 1 of Directive 68/151/EEC.*
4. *The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion in respect of the separate identity of the vertically integrated undertaking.*
5. *The accounts of transmission system operators shall be audited by an auditor other than the one auditing the vertically integrated undertaking or any part of it.*

Article 12c

Independence of the transmission system operator

1. *Without prejudice to the powers of the members of the supervisory body appointed by the vertically integrated undertaking under Article 12f, the transmission system operator shall have effective decision-making rights, independent from the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the network. The transmission system operator shall have the power to raise money on the capital market in particular through borrowing and capital increase in the framework of the annual financial plan referred to in Article 12f.*
2. *Subsidiaries of the vertically integrated undertaking performing functions of production or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither hold direct or indirect shares in any subsidiary of the vertically integrated undertaking performing functions of production or supply, nor receive dividends or any other financial benefit from such a subsidiary except for the revenues derived from the use of the network.*
3. *The overall management structure and the corporate statutes of the transmission system operator shall ensure effective independence of the transmission system operator as referred to in this Chapter. The vertically integrated undertaking shall not determine, whether directly or indirectly, the competitive behaviour of the transmission system operator in relation to the day-to-day activities of the transmission system operator and management of the network, or in relation to activities necessary for the preparation of the 10-year investment plan developed pursuant to Article 12h.*
4. *Any commercial and financial relations between the vertically integrated undertaking and the transmission system operator, including loans from the transmission system operator to the vertically integrated undertaking, shall be subject to market conditions. The transmission system operator shall keep detailed records of such commercial and financial relations and make them available to the national regulatory authority on request.*

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5. *The transmission system operator shall submit to the national regulatory authority all commercial and financial agreements with the vertically integrated undertaking.*

6. *The transmission system operator shall inform the national regulatory authority of the available financial resources referred to in Article 12b(1)(d).*

7. *An undertaking which has been certified by the national regulatory authority as complying with the requirements of this Chapter shall be approved and designated as a transmission system operator by the Member State concerned. The certification procedure in Article 7b shall be applicable.*

8. *Transparency shall be mandatory to ensure non-discrimination, in particular in relation to references for tariffs, third-party access services, capacity allocation and balancing. Vertically integrated undertaking shall be required to refrain from any activities that impede the transmission system operators in fulfilment of those obligations.*

Article 12d

Independence of staff and management of the transmission system operator

1. *Decisions regarding appointment and renewal, working conditions including remuneration and termination of the term of office of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator shall be taken by the supervisory body of the transmission system operator appointed in accordance with Article 12f.*

2. *The identity and the conditions governing the term, the duration and the termination of office of the persons nominated by the supervisory body for appointment or renewal as persons responsible for the management and/or as members of the administrative bodies of the transmission system operator, and the reasons for any proposed decision terminating such term of office, shall be notified to the national regulatory authority. Those conditions and the decisions referred to in paragraph 1 shall become binding only if, within a period of three weeks after notification, the national regulatory authority has not objected to them. The national regulatory authority may object if serious doubts arise as to the professional independence of a nominated person responsible for the management and/or member of the administrative bodies, or in the case of premature termination of his/her term of office, if serious doubts exist regarding its justification.*

3. *The persons responsible for the management and/or the members of the administrative bodies of the transmission system operator appointed by the supervisory body shall hold no professional position or responsibility, interest or business relationship, directly or indirectly, in or with the vertically integrated undertaking or any part of it or its controlling shareholders other than the transmission system operator for a period of five years before their appointment.*

4. *The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall hold no other professional position or responsibility, interest or business relationship, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.*

5. *The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall hold no interest in or receive financial benefit from any part of the vertically integrated undertaking, whether directly or indirectly, other than the transmission system operator. Their remuneration shall not depend on activities or results of the vertically integrated undertaking other than those of the transmission system operator.*

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6. *Effective rights of appeal to the national regulatory authority shall be guaranteed for any complaints by the persons responsible for the management and/or members of the administrative bodies of the transmission system operator against premature terminations of their term of office.*

7. *After termination of their term of office in the transmission system operator, the persons responsible for its management and/or members of its administrative bodies shall have no professional position or responsibility, interest or business relationship, directly or indirectly, in or with any part of the vertically integrated undertaking other than the transmission system operator, or its controlling shareholders for a period of no less than five years.*

Article 12e

Trustee

1. *An independent Trustee shall be appointed by the national regulatory authority on the proposal and at the expense of the vertically integrated undertaking. The Trustee shall act exclusively in the legitimate interest of the vertically integrated undertaking in the preservation of the asset value of the transmission system operator, while safeguarding the independence of the transmission system operator from the vertically integrated undertaking. In the exercise of its functions, the Trustee shall have no regard to the interest of the production and supply business of the vertically integrated undertaking.*

2. *The Trustee shall have no professional position or responsibility, interest or business relationship, directly or indirectly, in or with the vertically integrated undertaking or any part thereof, its controlling shareholders, or any undertaking performing functions of production or supply, for a period of five years before its appointment.*

The terms of the mandate of the Trustee, including the duration, the conditions for termination and the financial conditions, shall be subject to approval by the national regulatory authority.

During its mandate, the Trustee may have no other professional position or responsibility, interest or business relationship, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.

Following termination of the mandate, the Trustee shall have no professional position or responsibility, interest or business relationship, directly or indirectly, in or with any part of the vertically integrated undertaking or its controlling shareholders for a period of no less than five years.

3. *The Trustee shall be responsible for:*

(a) *the appointment, renewal and dismissal of the members, other than those referred to in Article 12f(2)(a), of the supervisory body of the transmission system operator; and*

(b) *the exercise of its voting rights in the supervisory body.*

Article 12f

Supervisory body

1. *The transmission system operator shall have a supervisory body which shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the transmission system operator, in particular decisions regarding the approval of the annual financial plan, the level of indebtedness of the transmission system operator and the amount of dividends distributed to shareholders.*

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2. *The supervisory body shall be composed of:*
 - (a) *members representing the vertically integrated undertaking,*
 - (b) *members representing third-party shareholders,*
 - (c) *members representing the transmission system operator,*
 - (d) *the Trustee, and*
 - (e) *where the relevant legislation of a Member State so provides, members representing other interested parties such as employees of the transmission system operator.*
3. *Article 12d(2) to (7) shall apply to the members of the supervisory body.*
4. *The Trustee shall have the right of veto with respect to decisions that in his/her view may significantly reduce the asset value of the transmission system operator. When assessing whether a decision may significantly reduce the value of the assets, the annual financial plan and the amount of debts of the transmission system operator shall be of particular importance. In the event that two thirds of the members of the supervisory body overrule such veto, Article 12h(7) shall apply.*

Article 12g

Compliance programme and compliance officer

1. *Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that the compliance with this programme is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. It shall be subject to approval by the national regulatory authority. Without prejudice to the powers of the national regulatory authority, compliance with the programme shall be independently monitored by the compliance officer.*
2. *The supervisory body shall appoint a compliance officer. The compliance officer may be a natural or legal person. Article 12d(2) to (7) shall apply to the compliance officer. The national regulatory authority may object to the appointment of a compliance officer for reasons of lack of independence or professional capacity.*
3. *The compliance officer shall be in charge of:*
 - (a) *monitoring the implementation of the compliance programme;*
 - (b) *elaborating an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the national regulatory authority;*
 - (c) *reporting to the supervisory body and issuing recommendations on the compliance programme and its implementation;*
 - (d) *reporting to the national regulatory authority on any commercial and financial relations between the vertically integrated undertaking and the transmission system operator.*
4. *The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the network to the national regulatory authority. Such decisions shall be submitted no later than when the management and/or the competent administrative body of the transmission system operator submit them to the supervisory body.*

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5. *The compliance officer shall notify the national regulatory authority in the event that the vertically integrated undertaking, in the general assembly or through the vote of the members of its supervisory body, has prevented the adoption of a decision with the effect of preventing or delaying investments in the network.*
6. *The conditions governing the mandate or the employment conditions of the compliance officer shall be subject to the approval of the national regulatory authority and shall ensure the independence of the compliance officer.*
7. *The compliance officer shall regularly report, either orally or in writing, to the national regulatory authority and shall have the right regularly to report, either orally or in writing, to the supervisory body of the transmission system operator.*
8. *The compliance officer may attend all meetings of the management or administrative bodies of the transmission system operator and those of the supervisory body and the general assembly. The compliance officer shall attend all meetings that address the following matters:*
- (a) conditions for access to the network, as defined in Regulation (EC) No 1775/2005, in particular regarding tariffs, third-party access services, capacity allocation and congestion management, transparency, balancing and secondary markets;*
 - (b) projects undertaken in order to operate, maintain and develop the transmission system, including investments in new transport connections, in expansion of capacity and in optimisation of existing capacity;*
 - (c) energy purchases or sales necessary for the operation of the transmission system.*
9. *The compliance officer shall monitor the compliance of the transmission system operator with Article 10.*
10. *The compliance officer shall have access to all relevant data and to the offices of the transmission system operator and to all the information necessary for the fulfilment of its task.*
11. *After prior approval by the national regulatory authority, the supervisory body may dismiss the compliance officer.*
12. *Obligations of the transmission system operator and vertically integrated undertaking in particular for commercial and financial agreements between transmission system operator and vertically integrated undertaking should only be notified to the national regulatory authority without the need for approval. The appointment and working conditions of management and of the compliance officer shall be notified to the national regulatory authority without the need for approval.*

Article 12h

Network development and powers to make investment decisions

1. *Every year, transmission system operators shall submit to the national regulatory authority a 10-year network development plan based on existing and forecast supply and demand after having consulted all the relevant stakeholders. The plan shall contain efficient measures in order to guarantee the adequacy of the system and the security of supply.*

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2. *The 10-year network development plan shall in particular:*
 - (a) *indicate to market participants the main transmission infrastructures that need to be built or upgraded over the next ten years;*
 - (b) *contain all the investments already decided and identify new investments which have to be executed in the next three years;*
 - (c) *provide for a time frame for all investment projects.*
3. *When elaborating the 10-year network development plan, the transmission system operator shall make reasonable assumptions about the evolution of its production, supply, consumption and exchanges with other countries, taking into account investment plans for regional and EU-wide networks, as well as investment plans for storage and LNG regasification facilities.*
4. *The national regulatory authority shall consult all actual or potential network users on the 10-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential users may be required to substantiate such claims. It shall publish the result of the consultation process, in particular possible needs for investments.*
5. *The national regulatory authority shall examine whether the 10-year network development plan covers all investment needs identified during the consultation process, and whether it is consistent with the Community-wide 10-year network development plan referred to in Article 2c(1) of Regulation (EC) No 1775/2005. If any doubt arises as to the consistency with the Community-wide 10-year network development plan, the national regulatory authority shall consult the Agency. The national regulatory authority may require the transmission system operator to amend its plan.*
6. *The national regulatory authority shall monitor and evaluate the implementation of the 10-year network development plan.*
7. *In circumstances where the transmission system operator, other than for overriding reasons beyond its control, does not execute an investment, which, according to the 10-year network development plan, was supposed to be executed in the following three years, Member States shall ensure that the national regulatory authority has the obligation to take at least one of the following measures to ensure that the investment in question is made:*
 - (a) *require the transmission system operator to execute the investments in question in coherence with the annual financial plan referred to in Article 12f, or,*
 - (b) *organise a tender procedure open to any investors for the investment in question.*

When the national regulatory authority has made use of its powers under point (b), it may require the transmission system operator to accept any of the following:

- (a) *third-party financing,*
- (b) *third-party construction,*
- (c) *building the respective new assets, or*
- (d) *operating the respective new asset.*

The transmission system operator shall provide the investors with all information needed to realise the investment, connect new assets to the transmission network and generally make its best efforts to facilitate the implementation of the investment project.

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

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8. In the event that the national regulatory authority makes use of its powers under paragraph 7, the relevant tariff regulations shall cover the costs of the investments in question.

Article 12i

Decision-making powers regarding the connection of storage facilities, LNG regasification facilities and industrial consumers to the transmission network

1. Transmission system operators shall establish and publish transparent and efficient procedures and tariffs for non-discriminatory connection of storage facilities, LNG regasification facilities and industrial consumers to the network. The procedures shall be subject to approval by the national regulatory authority.

2. Transmission system operators shall not be entitled to refuse the connection of a new storage facility, LNG regasification facility or industrial consumer on the grounds of possible future limitations to available network capacities or additional costs linked with necessary capacity increase. The transmission system operator shall ensure sufficient entry and exit capacity for the new connection.

3. Transmission system operators shall grant and manage third-party access to the network, especially the access for new market operators and producers of biogas with respect to the safety rules of the network.

CHAPTER IVb

Article 12j

Revision clause

1. The Agency shall, by ... (*), submit to the European Parliament and Council, a detailed report outlining the extent to which the unbundling requirements under this Directive have been successful in ensuring full and effective independence of transmission system operators.

2. For the purpose of its assessment under paragraph 1, the Agency shall take into account in particular the following criteria: fair and non-discriminatory network access, effective regulation, the development of the network, investments and undistorted incentives to invest, the development of interconnection infrastructure, and the security of supply situation in the Community.

3. The Commission shall, by ... (*), submit to the European Parliament and the Council, a detailed report outlining the feasibility of creating a single European transmission system operator and analyse the costs and benefits with respect, notably, to property rights, market integration as well as the effective and secure operation of the transmission network. The report shall be drafted in consultation with the stakeholders in particular the transmission system operators and the Agency.

4. Where appropriate, and in particular in the event that the detailed report referred to in paragraph 1 determines that the conditions referred to in paragraph 2 have not been guaranteed in practice, the Commission shall submit proposals to the European Parliament and the Council to ensure full and effective independence of transmission system operators by ... (**).

(*) Five years after entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas].

(**) Seven years after entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas].

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(13) Article 13 shall be amended as follows:

(a) in paragraph 2(c), the following sentence shall be *inserted* after the first sentence:

'In order to fulfill these tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical.'

(b) paragraph 2(d) shall be amended as follows:

(i) the last sentence shall be replaced by the following:

'An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, hereinafter referred to as "compliance officer", to the national regulatory authority referred to in Article 24a(1) and shall be published.'

(ii) the following sentence shall be added:

'The compliance officer shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated companies to fulfil his task.'

(c) the following paragraph shall be added:

'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.'

(14) Article 15 shall be replaced by the following:

'Article 15

Combined operator

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

(15) The following article shall be inserted after Article 18:

'Article 18a

Access to LNG facilities

1. For the organisation of access to LNG facilities either the regulated access procedure, or the negotiated access procedure referred to in paragraph 2 shall apply. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria. National regulatory authorities shall observe compliance with these criteria.

Member States shall decide on the applicable access procedure based on defined and published criteria. These criteria will notably address if competition between LNG facilities takes place in the relevant market, and if the access to LNG is arranged through an independent infrastructure operator that provides open access. National regulatory authorities shall monitor compliance with these criteria and make public, or require LNG operators to make public which LNG facilities, or which parts thereof, are offered under the negotiated access procedure referred to in paragraph 2.

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2. *In the event of negotiated access, Member States shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to LNG facilities. The parties shall be required to negotiate access to LNG facilities in good faith.*

(16) *Article 19 shall be replaced by the following:*

'Article 19

Access to storage

1. *For the organisation of access to storage facilities when technically and/or economically necessary for providing efficient access to the system for the supply of customers, Member States shall decide if they choose either the regulated access procedure as described in paragraph 4, or the negotiated access procedure referred to in paragraph 3. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria. National regulatory authorities shall observe compliance with these criteria.*

National regulatory authorities shall define and publish criteria according to which the access regime to storage facilities may be determined, notably addressing if competition between storage facilities takes place in the relevant market, and if such organisation is arranged through an independent infrastructure operator that provides open access. National regulatory authorities shall monitor compliance with these criteria and make public, or oblige storage operators to make public which storage facilities, or which parts of those storage facilities are offered under the different procedures referred to in paragraphs 3 and 4.

2. *The provisions of paragraph 1 shall not apply to ancillary services and temporary storage that are related to LNG facilities and are necessary for the regasification process and subsequent delivery to the transmission system.*

3. *In the case of negotiated access, national regulatory authorities shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to storage, when technically and/or economically necessary for providing efficient access to the system. The parties shall be obliged to negotiate access to storage in good faith.*

Contracts for access to storage shall be negotiated with the relevant storage system operator. National regulatory authorities shall require storage system operators to publish their main commercial conditions for the use of storage within the first six months following implementation of this Directive and on an annual basis every thereafter. The development of these conditions shall take into consideration the views of system users, who have the right to object to them to the national regulatory authority.

4. *In the case of regulated access, national regulatory authorities shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right to access to storage on the basis of published tariffs and/or other terms and obligations for use of that storage, when technically and/or economically necessary for providing efficient access to the system. The development of these tariffs and other terms and obligations shall take into consideration the views of system users, who have the right to object to them to the national regulatory authority. This right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking.'*

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(17) Article 22 is replaced by the following:

'Article 22

New infrastructure

1. Major new gas infrastructures, i.e. interconnectors between Member States, LNG and storage facilities, may, upon request, be exempted, for a **defined** period of time, from the provisions of Articles 7, 18, 19 and 20, and Article 24c(4), (5) and (7) under the following conditions:

- (a) the investment must enhance competition in gas supply and enhance security of supply;
- (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted;
- (c) the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;
- (d) charges are levied on users of that infrastructure;
- (e) the exemption is not detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected;
- (f) the project is of an European interest and crosses at least one national border within the European Union.**

2. Paragraph 1 shall apply also to **all** significant increases of capacity in existing infrastructures and to modifications of such infrastructures which enable the development of **increased and additional quantities**.

3. The *national* regulatory authority referred to in Chapter VIa may, on a case by case basis, decide on the exemptions referred to in paragraphs 1 and 2. Where the infrastructure in question is located in the territory of more than one Member State, the Agency shall exercise the tasks conferred on the national regulatory authority by the present Article. **The Agency's decision shall be subject to prior consultation of the relevant national regulatory authorities and the applicant.**

An exemption may cover all or **only certain specific parts** of, the capacity of the new infrastructure, or of the existing infrastructure with significantly increased capacity.

In deciding to grant an exemption consideration shall be given, on a case by case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the infrastructure. When deciding on those conditions account shall, in particular, be taken of the additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.

Before granting an exemption the *national* regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity, **which may, if necessary, be amended during the period in which the infrastructure is exempted from the abovementioned provisions, in order to make adjustments to economic and market-relevant needs.** The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place. The *national* regulatory authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the facility to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in paragraph 1(a), (b) and (e) ||, the *national* regulatory authority shall take into account the results of that capacity allocation procedure, **where third parties have indicated a firm commitment.**

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The exemption decision, including any conditions referred to in the second subparagraph, shall be duly reasoned and published.

4. The *national* regulatory authority shall transmit to the Commission without delay a copy of every request for exemption as of its receipt. The decision shall be notified, without delay, by the competent authority to the Commission, together with all the relevant information with respect to the decision. This information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision. In particular, the information shall contain:

- (a) the detailed reasons on the basis of which the *national* regulatory authority granted **or refused** the exemption **together with the reference to the specific Article on which such decision is based**, including the financial information justifying the need for the exemption;
- (b) the analysis undertaken of the effect on competition and the effective functioning of the internal gas market resulting from the grant of the exemption;
- (c) the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;
- (d) in case the exemption relates to an interconnector, the result of the consultation with the regulatory authorities concerned;
- (e) the contribution of the infrastructure to the diversification of gas supply.

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

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

The Commission shall preserve the confidentiality of commercially sensitive information.

The Commission's exemption decision shall lose its effect if the infrastructure has not become operational **five years after all national and regional decisions and authorisations have been issued, unless the delay is due to circumstances beyond control of the person to whom the exemption has been granted.**

6. **The exemptions referred to in paragraph 1 shall automatically apply to exemptions granted pursuant to this Article on ... (*) The conditions of an exemption approval granted under this Article shall not be changed retrospectively without the agreement of all parties concerned.**

(*) *Date of entry into force of Directive .../.../EC [amending Directive 2003/55/EC concerning common rules for the internal market in natural gas].*

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(18) The following chapter *shall be* inserted after Article 24:

‘CHAPTER VIa

NATIONAL REGULATORY AUTHORITIES

Article 24a

Designation and independence of regulatory authorities

1. Each Member State shall designate a single national regulatory authority.
2. *Each Member State* shall guarantee the independence of the *national* regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive **and other relevant legislation**, the *national* regulatory authority is legally distinct and functionally independent from any other public or private entity, and that its staff and the persons responsible for its management act independently from any market interest and shall not seek or take **direct** instructions from any government or other public or private entity **when carrying out the regulatory tasks...**
3. In order to protect the independence of the *national* regulatory authority, Member States shall in particular ensure that:
 - (a) the *national* regulatory authority has legal personality, **financial** autonomy, and adequate human and financial resources to carry out its duties;
 - (b) **the members of the management board of the national regulatory authority are** appointed for a *non-renewable* fixed term of at least five years **but for no more than seven years and that for the first mandate, that term shall be two-and-a-half years for half of the members. The members shall be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or if they have been guilty of serious misconduct under national law; and**
 - (c) **the budgetary needs of the national regulatory authority are covered by the direct revenues from energy market operations.**

Article 24b

Policy objectives of the *national* regulatory authority

In carrying out the regulatory tasks specified in this Directive, the *national* regulatory authority shall take all reasonable measures to achieve the following objectives:

- (a) the promotion, in close cooperation with the *Commission, the Agency, and the national* regulatory authorities of other Member States ¶, of a competitive, secure and environmentally sustainable internal gas market within the Community, and effective market opening for all consumers and suppliers in the Community, **and ensuring that energy supply networks operate in an effective, reliable way, taking in to account long term objectives;**
- (b) the development of competitive and properly functioning ¶ markets within the Community in view of the achievement of the objective mentioned in point (a);
- (c) the suppression of **any** restrictions to natural gas trade between Member States, including the development of appropriate cross border transmission capacities to meet demand **and** enhance **the** integration of national markets **so as to facilitate** unrestrained natural gas flow across the Community;

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- (d) *the development , in the most cost effective way, of customer-orientated, secure, reliable and efficient network systems, promoting || system adequacy whilst ensuring energy efficiency and integration of large and small-scale renewable energy (e.g. biogas) and distributed production in both transmission and distribution networks;*
- (e) *facilitating the access to the network, in particular removing barriers that could prevent access for new market entrants and renewable energies;*
- (f) *ensuring that network operators are granted adequate incentives, in both the short and the long term, to increase efficiencies in network performance and foster market integration;*
- (g) *ensuring that customer benefits through the efficient functioning of their national market, ensuring consumer protection and promoting effective competition in cooperation with competition authorities;*
- (h) *contributing towards high standards of public service for natural gas and the protection of vulnerable customers, and helping to ensure that consumer protection measures set out in Annex A are effective;*
- (i) *harmonising necessary data exchange processes.*

Article 24c

Duties and powers of the national regulatory authority

1. The national regulatory authority shall have the following duties **to be carried out where appropriate in close consultation with other relevant Community or national bodies, transmission system operators and other market stakeholders and without prejudice to their specific competencies:**
 - (a) *ensuring compliance of transmission and distribution system operators, and where relevant system owners, as well as || any natural gas undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross border issues;*
 - (b) *cooperating on cross-border issues with the national regulatory authority or authorities of other Member States and the Agency, including ensuring that there is sufficient interconnection capacity between transmission infrastructure to satisfy an efficient overall market assessment and security of supply criteria, without discrimination between supply undertakings in different Member States;*
 - (c) *complying with, and implementing, any relevant binding decisions of the Commission and of the Agency ||;*
 - (d) *reporting annually on its activities and the fulfilment of its duties to the Commission, the relevant authorities of the Member States and the Agency ||. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;*
 - (e) **monitoring compliance with unbundling requirements under this Directive and other relevant Community legislation and** *ensuring that there are no cross subsidies between transmission, distribution, storage, LNG and supply activities as well as ensuring that distribution and transmission tariffs are set well in advance of the relevant periods during which they apply;*
 - (f) *reviewing the investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plan of the transmission system operators as regards its consistency with the European-wide 10-year network development plan mentioned in Article 2c of Regulation (EC) No 1775/2005; the investment plans of transmission system operators shall ensure that the skills and number of the staff are sufficient to meet the service obligations; failure to honour the investment plan shall result in proportionate sanctions imposed on the transmission system operator in accordance with the guidelines issued by the Agency;*

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- (g) **approving the annual investment plans of the transmission system operators;**
- (h) monitoring **compliance with** network security and reliability, **setting or approving standards and requirements for quality of service and supply** and reviewing **performances for quality of service and supply**, network security and reliability rules;
- (i) monitoring the level of transparency, ensuring compliance of **network operators** with transparency obligations;
- (j) monitoring the level of market opening and competition at wholesale and retail levels, including on natural gas exchanges, household prices, switching rates, disconnection rates and household complaints in an agreed format, as well as any distortion or restriction of competition in cooperation with *national* competition authorities, including providing any relevant information, bringing any relevant cases to the attention of the relevant competition authorities;
- (k) **monitoring the occurrence of restrictive contractual practices, including exclusivity provisions, which may prevent or restrain the choice of non-household customers from contracting simultaneously with more than one supplier and, where appropriate, informing the national competition authorities of such practices;**
- (l) **with full regard to the provisions of the Treaty, promoting agreements on a long-term basis between energy consumers and suppliers that contribute to the improvement of the energy production and distribution and, at the same time, allow consumers to share the resulting benefits, provided that such agreements can contribute to an optimal level of investment in the energy sector;**
- (m) monitoring the time taken by transmission and distribution undertakings to make connections and repairs **and imposing sanctions in accordance with the guidelines issued by the Agency if these time periods are exceeded without due cause;**
- (n) monitoring ¶ the access conditions to storage facilities and other ancillary services as provided for in Article 19;
- (o) without prejudice to the competence of other national regulatory authorities, ensuring high standards of public service for natural gas, the protection of vulnerable customers, and that consumer protection measures set out in Annex A are effective **and enforced;**
- (p) publishing, *at least annually*, recommendations ¶ on compliance of supply tariffs with Article 3; **due attention shall be paid in those recommendations to the impact on the functioning of the market of regulated prices (wholesale and end-users' prices);**
- (q) ensuring **effective and equal** access to customer consumption data **including data on prices and any related expenditure for all market participants**, the application of **an easily understandable** harmonised format for *such* consumption data, **adequate prepayment that reflects the actual consumption** and **prompt** access **for all customers** to *such* data under **point** (h) of Annex A;
- (r) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Article 8b of Regulation (EC) No 1775/2005;
- (s) **fixing or approving network access tariffs and publishing the methodology used to set the tariffs;**
- (t) **ensuring the transparency of wholesale fluctuations in prices;**
- (u) monitoring the correct application of the criteria that determine whether a storage facility falls under Article 19(3) or ¶ (4).

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||

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

- (a) || issue binding decisions on gas undertakings;
- (b) || carry out in cooperation with the national competition authority investigations of the functioning of gas markets, and to decide **on** any appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market, including gas release *programmes*;
- (c) || request any information from natural gas undertakings relevant for the fulfilment of its tasks;
- (d) || impose effective, appropriate and dissuasive sanctions to natural gas undertakings not complying with their obligations under this Directive or any decisions of the *national* regulatory authority or of the Agency, **or propose to a competent body to impose such sanctions; furthermore, to impose, or to propose to impose fines of up to 10 % of the yearly turnover of the transmission system operator on the transmission system operator or on the vertically integrated undertaking, as the case may be, for non-compliance with their respective obligations pursuant to this Directive;**
- (e) || have appropriate rights of investigations, and relevant powers of instructions for dispute settlement under paragraphs 8 and 9;
- (f) *undertake* approve safeguards measures as referred to in Article 26.

3. ***In addition to the tasks and powers conferred on it under paragraphs 1 and 2, when a transmission system operator has been designated in accordance with Chapter IVa, the national regulatory authority shall, inter alia, be granted the following tasks and powers:***

- (a) ***to impose sanctions including fines accordance with paragraph 2(d) for discriminatory behaviour in favour of the vertically integrated undertaking;***
- (b) ***to monitor communications between the transmission system operator and the vertically integrated undertaking so as to ensure compliance of the transmission system operator with its obligations;***
- (c) ***to act as a dispute settlement authority between the vertically integrated undertaking and the transmission system operator in respect of any complaint submitted pursuant to paragraph 8;***
- (d) ***to monitor commercial and financial relations including loans between the vertically integrated undertaking and the transmission system operator,***
- (e) ***to monitor all commercial and financial agreements on the condition that they comply with market conditions;***
- (f) ***to request justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article 12g(4). Such justification shall in particular include evidence to the end that no discriminatory behaviour to the advantage of the vertically integrated undertaking has occurred;***
- (g) ***to carry out inspections on the premises of the vertically integrated undertaking and the transmission system operator;***

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- (h) *to request any information from the transmission system operator and to directly contact all staff of the transmission system operator; if doubts remain, the same rights shall apply for the vertically integrated undertaking and its subsidiaries;*
- (i) *to conduct all necessary inspections of the transmission system operator and, if doubts remain, of the vertically integrated undertaking and its subsidiaries; the rules of Article 20 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (*) shall apply;*
- (j) *to impose effective, appropriate and dissuasive sanctions to the transmission system operator and/or the vertically integrated undertaking not complying with their obligations under this Article or any decisions of the national regulatory authority; that power shall include the right to:*
 - (i) *impose effective, appropriate and dissuasive fines related to the turnover of the transmission system operator or the vertically integrated undertaking;*
 - (ii) *issue orders to remedy discriminatory behaviour;*
 - (iii) *withdraw, at least partly, the licence of the transmission system operator in case of repeated breach of the unbundling provisions set out in this Article.*

4. The national regulatory authorities shall be responsible for fixing or approving prior to their entry into force the terms and conditions for:

- (a) *connection and access to national networks, including transmission and distribution tariffs and methodologies for their calculation, or alternatively, the methodologies and their monitoring for setting or approving the transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities including methodologies for their calculation, or alternatively, the methodologies and their monitoring for setting or approving the tariffs for access to LNG facilities. These tariffs shall reflect the actual costs incurred, insofar as such costs correspond to those of an efficient operator and shall be transparent. They shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing these investments to ensure the viability of the networks and LNG facilities. These tariffs shall not discriminate against new entrants;*
- (b) *the provision of balancing services which shall reflect the cost and shall be revenue neutral to the extent possible, whilst providing appropriate incentives for network users to balance their input and offtakes; they shall be fair and non-discriminatory and based on objective criteria;*
- (c) *the access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management. They shall have the authority to require the transmission system operators, to modify those terms and conditions.*

5. In fixing or approving *the terms and conditions or methodologies for calculation of the tariffs, and the balancing services*, the national regulatory authorities shall ensure that network operators are granted adequate incentive, over both the short and long term, to increase efficiencies, foster market integration, *ensure security of supply*, and support the related research activities.

6. *The national regulatory authorities shall monitor congestion management within national gas transmission networks.*

Transmission system operators shall submit their congestion management procedures, including capacity allocation, to the national regulatory authorities for approval. National regulatory authorities may request amendments to those procedures before approving them.

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7. National regulatory authorities shall have the authority to require transmission, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner.

8. Any party having a complaint against a transmission, LNG, **storage** or distribution system operator may refer the complaint to the national regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the national regulatory authorities. This period may be extended with the agreement of the complainant. The national regulatory authority's decision shall have binding effect unless and until overruled on appeal.

9. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the national regulatory authority has a duty to consult, concerning the proposed **tariffs and** methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

10. Member States shall create appropriate and efficient mechanisms for control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

11. The national regulatory authorities shall put in place independent complaints services and alternative redress schemes such as an independent energy ombudsman or a consumer body. Those services or schemes shall be responsible for the efficient treatment of complaints and shall comply with best practice criteria. The national regulatory authorities shall set standards and guidelines on how complaints will be handled by producers and network operators.

12. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

13. Complaints referred to in paragraphs 8 and 9 shall be without prejudice to the exercise of rights of appeal under Community and national law.

14. Decisions taken by national regulatory authorities shall be fully reasoned and available to the public to allow for legal scrutiny.

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

|

Article 24d

Regulatory regime for cross-border issues

1. National regulatory authorities shall closely cooperate and consult with each other, and shall provide each other and the Agency with any information necessary for the fulfilment of their tasks under this Directive. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.

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2. *In order to ensure that where regional gas markets occur integration is mirrored by adequate regulatory structures, the national regulatory authorities concerned shall ensure, in close cooperation with and under the guidance of the Agency, that at least the following regulatory tasks are performed in relation to their regional markets:*

- (a) *cooperation* at least at a regional level to foster the creation of operational arrangements in order to ensure an optimal management of the network, develop joint gas exchanges and the allocation of cross-border capacity, and to ensure **an adequate** level of interconnection capacity **including through new interconnection**, within the region **and between regions** to allow for **the development of** effective competition **and the improvement of security of supply**;
- (b) *harmonisation at least at the relevant regional level of all technical and market codes for the relevant transmission system operators and other market actors*;
- (c) *harmonisation of the rules governing the management of congestion*;
- (d) *adoption of rules to ensure that the owners and/or managers of gas exchange(s) which operate the relevant regional pool markets are fully independent of the owners and/or managers of production assets*.

National regulatory authorities shall have the right to enter into agreements with each other to foster regulatory cooperation and the actions referred to in first subparagraph shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competencies.

3. The Agency shall decide upon the regulatory regime for infrastructure connecting at least two Member States:

- (a) upon a joint request from the competent national regulatory authorities; or ¶
- (b) where the competent national regulatory authorities have not been able to reach an agreement on the appropriate regulatory regime within six months from the date *that* the file was brought before the last of *those* regulatory authorities.

¶

Article 24e

Compliance with Guidelines

1. *The Commission or any national regulatory authority ¶ may request the opinion of the Agency on the compliance of a decision taken by a national regulatory authority with guidelines referred to in this Directive or in Regulation (EC) No 1775/2005.*

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

3. *Where the national regulatory authority which has taken the *disputed decision fails to* comply with the Agency's opinion within four months from the date of *its receipt*, the Agency shall inform the Commission *accordingly*.*

4. *Any national regulatory authority may inform the Commission where it considers that a decision taken by a national regulatory authority does not comply with guidelines referred to in this Directive or in Regulation (EC) No 1775/2005 within two months from the date of that decision.*

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5. Where the Commission ¶ finds that the decision of a *national* regulatory authority raises serious doubts as to its compatibility with guidelines referred to in this Directive or in Regulation (EC) No 1775/2005, *either within two months of being informed of the failure to comply with the Agency's opinion in accordance with paragraph 3 or of the failure to comply with guidelines in accordance with paragraph 4, or, on its own initiative, within three months from the date of the disputed decision*, the Commission may decide to initiate proceedings. In such a case, *the Commission shall invite the national regulatory authority and the parties to the proceedings before the national regulatory authority to submit comments.*

6. Where the Commission has decided to initiate proceedings, it shall, within ¶four months of the date of such decision, issue a final decision:

- (a) not to raise objections against the decision of the *national* regulatory authority; or
- (b) requiring the *national* regulatory authority concerned to amend or *revoke* its decision if it considers that guidelines have not been complied with.

7. Where the Commission has not taken a decision to initiate proceedings or a final decision within the time-limits set in paragraphs 5 and 6 respectively, it shall be deemed not to have raised objections against the decision of the *national* regulatory authority.

8. The *national* regulatory authority shall comply with the Commission decision to amend or *revoke* its decision within a period of two months and shall inform the Commission accordingly.

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

Article 24f

Record keeping

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

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

3. The *national* regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC.

¶

4. The provisions of this Article shall not create additional obligations vis-à-vis the authorities mentioned in paragraph 1 for entities falling within the scope of Directive 2004/39/EC.

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5. In the event that the authorities mentioned in paragraph 1 need access to data kept by entities falling within the scope of Directive 2004/39/EC, the authorities responsible under that Directive shall provide the authorities mentioned in paragraph 1 with the required data.

(*) OJ L 1, 4.1.2003, p. 1.

(19) Article 25 shall be deleted.

(20) The following article shall be inserted after Article 26:

‘Article 26a

Exemption of industrial sites

1. Member States may exempt industrial sites from Articles 4 and Article 7, Article 8(1) and (2), Article 11, Article 12(5), Articles 13, 17 and 18, Article 23(1), and/or Article 24 of this Directive.

2. Third-party access shall not be affected by the exemptions referred to in paragraph 1. Customers on industrial sites shall be able freely to choose their gas supplier, having resort to the national regulatory authorities in the event of a disagreement with the network operator.’

(21) Article 30 shall be replaced by the following:

‘Article 30

Committee

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.’

(22) ■ Annex A, shall be **replaced by** the following:■

‘Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council and Council Directive 93/13/EEC, the measures referred to in Article 3 are to ensure that customers:

(a) have a right to a contract with their gas service provider that specifies:

- **the identity and address of the supplier;**
- **the services provided, the service quality levels offered, as well as the time for the initial connection;**
- **the types of maintenance service offered;**
- **the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;**
- **the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal without charge;**
- **any compensation and the refund arrangements which apply if contracted service quality levels are not met including inaccurate and delayed billing;**

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- *the method of initiating procedures for settlement of disputes in accordance with point (f);*
- *information on consumer rights, including all of the above, clearly communicated through billing and natural gas undertaking web sites; and*
- *details concerning the competent appeals authority and of the procedure to be followed by customer in case of dispute.*

Conditions shall be fair and well-known in advance. In any event, the information referred to in this point should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, that information shall also be provided prior to the conclusion of the contract;

- (b) *are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect in a transparent and comprehensible manner. Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their gas service provider;*
- (c) *receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services;*
- (d) *are offered a wide choice of payment methods, which shall not discriminate between customers. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. Customers shall be protected against unfair or misleading selling methods including non-contractual barriers imposed by the trader, for example excessive contractual documentation;*
- (e) *are not charged for changing supplier;*
- (f) *benefit from transparent, simple and inexpensive procedures for dealing with their complaints. In particular, all consumers shall have the right to service delivery and complaint handling by their gas service provider. Such procedures shall enable disputes to be settled fairly and promptly, and within three months, with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (*);*
- (g) *where they are already connected to the gas system, are informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices;*
- (h) *are easily able to switch to a new supplier and have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any **authorised supply** undertaking access to its metering data. The party responsible for data management is obliged to give that data to the undertaking. Member States shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs can be charged to the consumer for this service;*
- (i) *are properly informed at least quarterly of actual gas consumption and costs. No additional costs can be charged to the consumer for this service. **The Member States shall ensure that roll-out of smart meters is completed with minimum disruption to consumers by ... (**)** which shall be the responsibility of the distribution system operator or supply undertakings. National regulatory authorities shall be responsible for monitoring the process of such development and for laying down common standards for that purpose. Member States shall ensure that standards establishing the minimum technical design and operational requirements for meters address interoperability issues to provide maximum benefit at minimum cost to consumers;*

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(j) *receive a final closure account bill following switching of supply undertaking no later than one month after informing the relevant supply undertaking.*

(*) *OJ L 115, 17.4.1998, p. 31.*

(**) *Ten years after entry into force of Directive .../...EC [amending the Directive 2003/55/EC].**

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (*) ||. They shall || communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive *forthwith*.

They shall apply these provisions from ... (*) ||.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. ***Member States shall repeal any laws, regulations and administrative provisions which prevent any natural gas undertaking, regulatory or other authority from complying with their duties or fulfilling their powers or obligations under this Directive.***

4. ***The Commission shall report annually to the European Parliament and the Council on the formal and practical implementation of this Directive in each Member State.***

5. ***Where a publicly controlled entity is directly or indirectly involved in the acquisition of parts of a vertically integrated undertaking, the price in relation to the arrangement of such a transaction shall be notified to the Commission. Such notification shall include certification of the underlying asset value by an international auditing company. The Commission shall use such information solely to exercise control over State aid.***

Article 3

Entry into force

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at ||

For the European Parliament

The President

For the Council

The President

(*) 18 months after entry into force of this Directive.