



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.11.2004
COM(2004) 760 final

2003/0302 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a regulation of the European
Parliament and of the Council on conditions for access to the gas transmission networks**

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a regulation of the European
Parliament and of the Council on conditions for access to the gas transmission networks**

1- BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2003) 741 final – C5–0644/2004 - 2003/0302(COD)):	12 December 2003
Date of the opinion of the European Economic and Social Committee:	2 June 2004
Date of the opinion of the European Parliament, first reading:	20 April 2004
Date of the amended proposal:	No amended proposal has been submitted due to political urgency. All amendments accepted by the Commission have been accepted by the Council.
Date of political agreement in the Council:	10 June 2004
Date of adoption of Common Position by the Council	12 November 2004
Annex	Declaration of the Commission

2- OBJECTIVE OF THE COMMISSION PROPOSAL

This proposal for a Regulation of the European Parliament and of the Council represents a complementary measure to Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC. It aims at setting minimum requirements for conditions for access to the gas transmission networks.

Experience, among others gathered by the EU Gas Regulatory Forum in Madrid, has shown that qualitative market opening is as important as quantitative market opening. While Directive 2003/55/EC will fully open the market not later than July 2007, access conditions for Third Parties to the network in Member States are far from providing a level playing field. Both directive 2003/55/EC and the proposed Regulation acknowledge the crucial importance of Third Party Access as the principal tool to open the market and introduce competition.

However, while the Directive only defines the objectives, the Regulation aims at certain minimum requirements to be met with respect to this key element of the Directive, i.e. access conditions to the transmission network.

3- COMMENTS ON THE COMMON POSITION

With the exception of the issues set in 4.4., the Common Position fully corresponds to the proposal from the Commission with respect to its substance. A number of other changes introduced by the Council and the European Parliament clarify the provisions of the Regulation with respect to its consistency with Directive 2003/55/EC or supplement them.

Member States have not only acknowledged the need for the regulation as such, but also the fact that its scope has to go beyond pure cross-border issues, in order to avoid distortion of competition and discrimination.

4- COMMISSION DETAILED COMMENTS

4.1 Amendments accepted by the Commission and incorporated in full or in part in the common position

Amendment 1: The amendment is acceptable in so far it highlights the need to tackle remaining barriers to trade.

Amendment 3: The amendment highlights the need for consultation and collaboration between the Commission and the relevant industry, to which the Commission agrees.

Amendment 4: The acceptable part of the amendment provides clarification.

Amendment 7: The proposed definition of “network users” provides clarification and simplification without limiting the scope of the definition as proposed by the Commission.

Amendment 12: The amendment brings the text in line with the respective provisions of Directive 2003/55/EC. It also takes the fact into account that in some Member States a certain degree of pipeline-to-pipeline competition exists. Finally, the amendment acknowledges the need to design tariffs also with a view to enabling infrastructure investments as well as investments aiming at a flow of gas unimpeded by quality or other interoperability issues.

Amendment 13: Convergence of tariff structures and balancing mechanisms would facilitate and improve conditions to trade natural gas.

Amendment 15: The matter could be left to the market, since it would be in the interest of the transmission system operator to market as much capacity as possible.

Amendment 18: The amendment covers an important aspect discussed in the Madrid process. It would protect TSOs from risks linked to uneconomic behaviour of network users or unreliable network users.

Amendments 19, 26, and 32: The amendments provide clarification.

Amendments 20 and 39: The amendments are based on the voluntary Guidelines for Good TPA Practice agreed in Madrid and strikes the right balance between the requirements of a competitive market and security of supply.

Amendment 21: It is important to define the time-scale under which unused capacity should be offered on an interruptible basis. Otherwise, network users could not benefit from this service, if time-ahead would not allow to react.

Amendment 23: Publication of tariff derivation and of the underlying methodology as well as information on the structure of tariffs is a clear transparency requirement and needed, in order to enable competition and avoid unfair and inappropriate tariffs.

Amendment 25 middle part: The approval of relevant points of a transmission system on which the information must be made public after consultation with network user would ensure that information on those points are published which represent the most important ones for the market.

Amendment 28: The amendment complies with the wording of Madrid Guidelines. It is incorporated in substance, although the wording has been changed by the Council for the sake of legal clarity and textual consistency.

Amendment 29: Harmonised balancing regimes are important to allow an unimpeded flow of gas and the development of spot markets.

Amendment 34: The amendment represents a useful supplement and mirrors corresponding provisions of Regulation (EC) 1228/2003.

Amendment 36: The amendment contributes to increased efficiency of the Commission's work and streamlines the Commission's reporting duties.

Amendment 38: Involvement of network users in the development of standard contracts and network codes would increase their practical worth and applicability.

Amendment 40 and 41: The amendment is based on the voluntary Guidelines agreed in Madrid. Network users need to learn how availability of contracted capacity is affected, in order to take necessary measures to meet their customers' needs under the prevailing circumstances. In this respect, the level of transparency should be as high as possible.

4.2 Amendments accepted by the Commission and not incorporated in the common position

None

4.3 Amendments rejected by the Commission and not incorporated in the common position

Amendments 1 and 4: Those parts of the amendments implying a possible restriction of the scope of the Regulation to cross-border trade cannot be accepted by the Commission. Any restriction of the scope of the Regulation to cross-border trade would render it impossible to achieve the underlying objectives of the Regulation. Restricting the scope of the Regulation to cross-border trade would not enable the Regulation to ensure the necessary level playing field in terms of access conditions, in particular with Member States with more than one transmission system operator. Issues addressed by the Regulation are relevant throughout gas

networks and are not confined to inter-connections. Restricting the scope of the regulation to cross-border trade would therefore render the proposed regulation almost useless.

Amendments 2, 5 and 6 1st part: The amendment gives the wrong impression that only transport across borders would lead to an intensification of competition throughout the EU, whilst this would be achieved through an increased number of market participants that are able to supply gas throughout the EU (i.e. within Member States and across Member States). (see also comments on amendments 1 and 4).

Amendment 6 2nd part: the amendment restricts the scope of the Regulation to transmission system operators as defined under Directive 2003/55/EC. This is likely to exclude regional transmission systems and would thus not provide a level playing in terms of access conditions to transmission networks.

Amendment 8: The amendment does not clearly distinguish between the concept of primary and secondary markets underlying the regulation. It would leave room for misunderstandings with respect to Article 8 “Capacity rights trading”, which means secondary markets.

Amendment 9 and 10: The terms defined by these amendments do not occur in the text and no definition is therefore needed.

Amendment 11: The definition of “relevant points” should occur in the Guidelines annexed to the regulation, in order to allow its flexible and quick adaptation to market developments. Storage facilities have been deliberately excluded from the scope of the regulation, since their specific features and regulatory requirements would deserve an approach of its own.

Amendment 14: The amendment would be difficult or impossible to apply in practice due to the general wording.

Amendment 16: The subjects addressed by the amendment are beyond the scope of the regulation.

Amendment 17: The amendment aims at an obligation for capacity holders to offer unused capacity on the secondary market. While the Commission shares the objectives and intentions of the amendment, it takes the view that with respect to existing contracts economic incentives might be most promising. As for new contracts, the matter is addressed in Article 5(2).

Amendment 22: The amendment would introduce a considerable degree of discretionary with respect to what should be considered “prolonged and significant contractual congestion”. In addition, the amendment would weaken the respective provisions of the Commission’s text. It is worth highlighting that while existing contracts have – for legal reasons – to be dealt with in a different way, it is of fundamental importance that new contracts should take account of the fact that capacity hoarding is not acceptable in a competitive market and that use-it-or-lose-it principles have to be applied.

Amendment 24: The amendment does not add any new element. The definition of relevant points is contained in Art 6(3) and the Annex.

Amendment 25 first and last part: The points relevant for publication should only be addressed in Article 6(3) as a matter of clarity. Due to the large number of exit points in some

transmission systems, it is important to indicate at least a percentage of capacity of exit points, which have to be published. This requirement is met in the Annex.

Amendment 27: Due to the large differences between European transmission systems, the amendment seems to be premature. The size of a system, availability of storage facilities and other flexibility tools to the TSO may predetermine its possibilities with respect to balancing services. In addition, the reference to market based balancing systems is too ambiguous, since there are different market based system on the EU gas market.

Amendment 30: The amendment may convey wrong signals, restrict the steps to be taken to consultations and would delete the involvement of regulatory authorities, which is considered necessary to ensure non-discriminatory and transparent contracting procedures.

Amendment 31: The amendment would not allow to carry out a proper consultation process with the industry, which the Commission considers of utmost importance.

Amendment 35: Whilst the Commission has repeatedly stated its intention to maintain a close consultation process with the industry and gas consumers, it would institutionally not be correct to bind a committee set up under comitology rules to any consultation.

Amendment 37: Some Member States are still enjoying derogations from Directive 98/30/EC. In order to ensure consistent application of Community law, in particular Article 22, 27 and 28 of Directive 2003/55/EC, and the provisions of the regulation in question, derogations and exemptions from the application of the Regulation are indispensable, since the Regulation supplements some of those provisions of the Directive, from which these Member States can derogate.

Amendment 42: Due to technical reasons related to the pressure conditions in the network, which are subject to changes on a relatively short notice, published capacities often require further confirmation before being contracted. This applies in particular to short-term services and services at short notice.

4.4. Amendments rejected by the Commission and incorporated in the Common Position

Amendment 33: The Commission considers it useful to highlight the right of European citizens and companies to go to the Court of Justice, where appropriate. However, the Council in adapting Article 11 to the requirements of the proposed Regulation, has deleted paragraphs 2, 3, 4 and 5 of Article 11 in total, thereby incorporating Amendment 33 of the Parliament. The Commission accepts this approach of the Council, which streamlines the provisions of the Regulation.

4.5. Changes introduced by the Council

The definitions of “new market entrants” and “small players” contained in Article 2(23) and (24) of the Commission’ initial proposal have been deleted. This is acceptable to the Commission, because the concept of “new market entrants” and “small players” is sufficiently clear. However, the provisions addressing new market entrants in the text of the Regulation have been maintained.

In Article 9(1) and (2), the Council has reduced the scope of the Comitology procedure as proposed by the Commission. It has deleted all subjects not yet covered by Guidelines annexed to the Regulation. Only those subjects addressed already by the annexed Guidelines

have been maintained. The subjects taken out by the Council could be addressed at a later stage, e.g. when submitting the report pursuant to Article 30 of Directive 2003/55/EC (2nd Internal Gas Market Directive).

In order to avoid the impression that any of the Guidelines annexed to the Regulation require EU wide standardisation or harmonisation, the Council has introduced a new paragraph (Article 9(3)) with a view to clarifying this issue. The Commission never intended to stipulate that conditions and terms on access to the network should be standardised at Community level, but rather minimum standards regarding network access be set. For this reason, the text of Article 9(3) is acceptable to the Commission.

For the sake of consistency with Directive 2003/55/EC, the Council has introduced Article 16 on “Derogations and exemptions”. The provisions of this Article would bring about consistent application of Community law. Article 16 of the Regulation does not go beyond the scope of the derogations already laid down in Directive 2003/55/EC, but grants Member State with a derogation under Article 28 of Directive 2003/55/EC the right to apply for a temporary derogation from the application of this Regulation, subject to approval from the Commission.

Finally, the Commission accepted an entry into force of the Regulation delayed by one year compared to its original proposal. In addition, it accepted that the Guidelines annexed to the Regulation should not be amended before 1 January 2007. As the Commission considers the Guidelines contained in the Annex to the Regulation sufficiently complete, comprehensive and developed in order to respond properly to market requirements, it could accept this proposal, too.

5- CONCLUSION

The Commission would have preferred the entry into force of the Regulation in 2005, but considers that the political agreement adopted on 10 June (by qualified majority) and the consequent common position adopted on 12 November 2004 would fully accomplish the objectives envisaged by the Regulation. For this reason, the Commission supports the common position.

Annex

Proposal for a Regulation on Conditions for Access to the Gas Transmission Networks

Declaration of the Commission

Storage and access to storage facilities do not fall under the scope of this Regulation.

Storage and access to storage facilities will therefore not be addressed in Guidelines laid down in Article 9(1) of the Regulation or as amended under Article 9(2) of this Regulation.