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| From:          | General Secretariat of the Council  |
| To:            | Delegations   |
| No. Cion doc.: | 14204/17  |
| Subject:       | Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/73/EC concerning common rules for the internal market in natural gas |

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Delegations will find attached the Presidency's first revision of the proposal on the draft directive, amended in the light of the discussion in the Energy Working Party and the written comments received.

New text compared to the Commission proposal is indicated in **bold underlined**.

Deletions are marked by ~~strikethrough~~.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2009/73/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 on the Functioning of the European Union, and in particular Article 194 (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The internal market in natural gas, which has been progressively implemented throughout the Union since 1999, aims to deliver real choice for all consumers in the Union, be they citizens or businesses, new business opportunities, competitive prices, efficient investment signals and a higher standard of service, and to contribute to security of supply and sustainability.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (2) Directive 2003/55/EC of the European Parliament and of the Council<sup>3</sup> and Directive 2009/73/EC of the European Parliament and of the Council<sup>4</sup> have made a significant contribution towards the creation of the internal market in natural gas.
- (3) This Directive seeks to address the remaining obstacles to the completion of the internal market in natural gas resulting from the non-application of Union market rules to ~~gas pipelines~~ **gas transmission lines** to and from third countries. The amendments introduced by this Directive will ensure that the rules applicable to gas transmission ~~pipelines~~ **lines** connecting two or more Member States, are also applicable to ~~pipelines~~ **gas transmission lines** to and from third countries within the Union. This will establish consistency of the legal framework within the Union while avoiding distortion of competition in the internal energy market in the Union. It will also enhance transparency and provide legal certainty as regards the applicable legal regime to market participants, in particular investors in gas infrastructure and network users.
- (4) To take account of the previous lack of specific Union rules applicable to gas **transmission lines** ~~pipelines~~ to and from third countries, Member States should be able to grant derogations from certain provisions of Directive 2009/73/EC to such **gas transmission lines** ~~pipelines~~ which are completed at the date of entry into force of this Directive. The relevant date for the application of unbundling models other than ownership unbundling should be adapted for gas **transmission lines** ~~pipelines~~ to and from third countries.
- (5) The applicability of Directive 2009/73/EC ~~for~~ **to** gas **transmission lines** ~~pipelines~~ to and from third countries remains confined to the territorial limit of Union's jurisdiction. As regards offshore **gas transmission lines** ~~pipelines~~ it should be applicable in the territorial ~~waters~~ **sea and exclusive economic zones** of the Member States.
- (6) Directive 2009/73/EC should therefore be amended accordingly,

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<sup>3</sup> 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 (OJ L 176, 15.7.2003, p. 57).

<sup>4</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2009/73/EC is amended as follows:

(1) in Article 2, point (17) is replaced by the following:

"(17) 'interconnector' means a transmission ~~line~~ **system** which crosses or spans a border between Member States or between **a** Member States and **a** third country**ies** **for the sole purpose of connecting the national transmission system of those countries,** up to the border of Union **territory** ~~jurisdiction~~;"

(2) Article 9 is amended as follows:

(a) in paragraph 8, the first subparagraph is replaced by the following:

"8. A Member State may decide not to apply paragraph 1:

(a) where the transmission system belonged to a vertically integrated undertaking on 3 September 2009;

(b) as regards ~~infrastructure to and from~~ **transmission system connecting a Member State with** third country**ies** between the border of Union **territory** ~~jurisdiction~~ and the first ~~inter~~connection point with the Union network, where the transmission system belonged to a vertically integrated undertaking on [PO: *date of adoption of this proposal*];"

(b) paragraph 9 is replaced by the following:

"9. Where there are arrangements in place which guarantee more effective independence of the transmission system operator than the provisions of Chapter IV, a Member State may decide not to apply paragraph 1:

(a) where the transmission system belonged to a vertically integrated undertaking on 3 September 2009;

(b) as regards **transmission line connecting a Member State with a third country** infrastructure to and from third countries between the border of Union **territory** jurisdiction and the first ~~inter~~connection point with the Union network, where the transmission system belonged to a vertically integrated undertaking on [*PO: date of adoption of this proposal*].";

(3) in Article 14, paragraph 1 is replaced by the following:

"1. Member States may decide not to apply Article 9(1) and designate an independent system operator upon a proposal from the transmission system owner:

(a) where the transmission system belonged to a vertically integrated undertaking on 3 September 2009;

(b) as regards **transmission systems connecting a Member State with a third country** infrastructure to and from third countries between the border of Union **territory** jurisdiction and the first ~~inter~~connection point with the Union network, where the transmission system belonged to a vertically integrated undertaking on [*PO: date of adoption of this proposal*].

Such designation shall be subject to approval by the Commission";

**(4)** ~~(3)~~ In Article 34, paragraph 4, the following third sentence is added:

"Where the network concerned is covered by at least one Member State and at least one third country, the Member States concerned shall consult each other and shall consult the third countries concerned, with a view to ensuring, as regards the network concerned, that the provisions of this Directive are applied consistently up to the border of Union **territory** jurisdiction."

**Where the upstream pipeline network originates from one third country and connects to at least one Member State, the Member States concerned shall consult each other and shall consult the said third countries, with a view to ensuring, as regards the network concerned, that the provisions of this Directive are applied consistently up to the border of Union jurisdiction.**

**(5)** ~~(4)~~ Article 36 is amended as follows:

(a) in paragraph 3, the following second sentence is added:

"Where the infrastructure in question is **connected with the Union network** under the jurisdiction of a Member State and **originates from or ends in** one (or more) third countries, the national regulatory authority, **or where appropriate other competent authorities**, shall consult the relevant authorities of the third countries prior to adopting a decision.";

(b) in the second subparagraph of paragraph 4, the following second sentence is added:

"Where the infrastructure in question **originates from or ends in** ~~is also under the jurisdiction of one or more third countries, the national regulatory authorities of the Member States,~~ **or where appropriate other competent authorities, may** ~~shall~~ consult the relevant authorities of the third countries prior to adopting a decision with a view to ensuring, as regards the concerned infrastructure, that the provisions of this Directive are applied consistently up to the border of Union **territory** ~~jurisdiction~~.";

**(6)** ~~(5)~~ in Article 41 (1), point c) is replaced by the following:

"(c) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency, as well as, for infrastructure to and from third countries, with the relevant authorities of the third country aiming at, as regards this infrastructure, consistent application of the provisions of this Directive up to the border of Union **territory** ~~jurisdiction~~;"

**(7)** ~~(6)~~ in Article 42, the following paragraph 6 is added:

"6. Regulatory authorities, **or where appropriate other competent authorities, may** ~~shall~~ consult and cooperate with the relevant authorities of third countries in relation to the operation of gas **infrastructure** ~~pipelines~~ to and from third countries with a view to ensuring, as regards the concerned infrastructure, that the provisions of this Directive are applied consistently up to the border of Union **territory** ~~jurisdiction~~."

**(8)** ~~(7)~~ in Article 49, the following paragraph 9 is added:

"In respect of gas **transmission system** pipelines to and from third countries completed before [PO: date of entry into force of this Directive], Member States may decide, **up to their discretion**, to derogate from Articles 9, 10, 11 and 32 and Article 41(6), (8) and (10) for the sections of such pipelines **gas transmission system** between the border of Union **territory** jurisdiction and the first interconnection point, **for reasons such as enabling the recovery of the investment made or due to reasons of security of supply**, provided that the derogation would not be detrimental to **negatively affect in significant way** competition **in the Union** or the effective functioning of the internal market in natural gas in the Union, or the security of supply in the Union.

The derogation shall be limited in time **up to 20 years, renewable** and may be subject to conditions which contribute to the achievement of the above conditions.

**This derogation is not applicable to interconnectors completed before [PO: date of entry into force of this Directive] to and from third countries which apply Article 36 of this Directive in their legal order.**

Where the gas **transmission system** pipeline in question is located in the **territory** jurisdiction of more than one Member State, the Member State in the **territory** jurisdiction of which the first interconnection point is located shall decide on a derogation for the pipeline **gas transmission system after consultation with all concerned Member States**.

Member States shall publish any decision on a derogation in accordance with this paragraph within one year after the entry into force of this Directive."

*Article 2*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [PO: one year after the date of entry into force] at the latest, **without prejudice to possible derogations according to article 49(9)**. They shall forthwith communicate to the Commission the text of those provisions.

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.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*