

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) <a href="#">2007/0196(COD)</a> Directive	Procedure completed
Internal market in natural gas. Third energy package  Repealing Directive 2003/55/EC <a href="#">2001/0077A(COD)</a> See also <a href="#">2007/0195(COD)</a> See also <a href="#">2007/0197(COD)</a> See also <a href="#">2007/0198(COD)</a> See also <a href="#">2007/0199(COD)</a> Amended by <a href="#">2016/0375(COD)</a> Amended by <a href="#">2017/0294(COD)</a>	
Subject 3.60.03 Gas, electricity, natural gas, biogas 3.60.06 Trans-European energy networks	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ITRE</b> Industry, Research and Energy		02/12/2008
		UEN <a href="#">MUSSA Antonio</a>	
	Former committee responsible		
	<b>ITRE</b> Industry, Research and Energy		09/10/2007
		UEN <a href="#">LA RUSSA Romano Maria</a>	
	Former committee for opinion		
<b>ECON</b> Economic and Monetary Affairs			23/10/2007
		PSE <a href="#">RAPKAY Bernhard</a>	
<b>ENVI</b> Environment, Public Health and Food Safety	The committee decided not to give an opinion.		
<b>IMCO</b> Internal Market and Consumer Protection			03/10/2007
		ALDE <a href="#">MANDERS Antonius</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Environment</a>	<a href="#">2953</a>	25/06/2009
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2895</a>	09/10/2008
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2875</a>	06/06/2008
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2854</a>	28/02/2008
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2835</a>	29/11/2007
European Commission	Commission DG	Commissioner	
	Energy and Transport	PIEBALGS Andris	

Key events			
19/09/2007	Legislative proposal published	<a href="#">COM(2007)0529</a>	Summary
11/10/2007	Committee referral announced in Parliament, 1st reading		
29/11/2007	Debate in Council	<a href="#">2835</a>	
28/02/2008	Debate in Council	<a href="#">2854</a>	Summary
05/06/2008	Vote in committee, 1st reading		Summary
06/06/2008	Debate in Council	<a href="#">2875</a>	Summary
13/06/2008	Committee report tabled for plenary, 1st reading	<a href="#">A6-0257/2008</a>	
08/07/2008	Debate in Parliament		
09/07/2008	Decision by Parliament, 1st reading	<a href="#">T6-0347/2008</a>	Summary
09/01/2009	Council position published	<a href="#">14540/2/2008</a>	Summary
15/01/2009	Committee referral announced in Parliament, 2nd reading		
31/03/2009	Vote in committee, 2nd reading		Summary
03/04/2009	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A6-0238/2009</a>	
21/04/2009	Debate in Parliament		
22/04/2009	Results of vote in Parliament		
22/04/2009	Decision by Parliament, 2nd reading	<a href="#">T6-0244/2009</a>	Summary
25/06/2009	Act approved by Council, 2nd reading		
09/07/2009	End of procedure in Parliament		
13/07/2009	Final act signed		
14/08/2009	Final act published in Official Journal		

Technical information	
Procedure reference	2007/0196(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Repealing Directive 2003/55/EC <a href="#">2001/0077A(COD)</a> See also <a href="#">2007/0195(COD)</a> See also <a href="#">2007/0197(COD)</a> See also <a href="#">2007/0198(COD)</a> See also <a href="#">2007/0199(COD)</a> Amended by <a href="#">2016/0375(COD)</a> Amended by <a href="#">2017/0294(COD)</a>

Legal basis	EC Treaty (after Amsterdam) EC 055; EC Treaty (after Amsterdam) EC 047-p2; EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/6/71700

## Documentation gateway

Legislative proposal		<a href="#">COM(2007)0529</a>	19/09/2007	EC	Summary
Document attached to the procedure		<a href="#">SEC(2007)1179</a>	19/09/2007	EC	
Document attached to the procedure		<a href="#">SEC(2007)1180</a>	19/09/2007	EC	
Committee draft report		<a href="#">PE400.700</a>	12/02/2008	EP	
Amendments tabled in committee		<a href="#">PE404.544</a>	31/03/2008	EP	
Amendments tabled in committee		<a href="#">PE404.589</a>	31/03/2008	EP	
Amendments tabled in committee		<a href="#">PE404.542</a>	07/04/2008	EP	
Committee opinion	IMCO	<a href="#">PE402.499</a>	09/04/2008	EP	
Amendments tabled in committee		<a href="#">PE404.543</a>	10/04/2008	EP	
Committee of the Regions: opinion		<a href="#">CDR0021/2008</a>	10/04/2008	CofR	
Committee opinion	ECON	<a href="#">PE400.566</a>	23/04/2008	EP	
Amendments tabled in committee		<a href="#">PE407.613</a>	21/05/2008	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0257/2008</a>	13/06/2008	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0347/2008</a>	09/07/2008	EP	Summary
Council position		<a href="#">14540/2/2008</a>	09/01/2009	CSL	Summary
Commission communication on Council's position		<a href="#">COM(2008)0907</a>	12/01/2009	EC	Summary
Committee draft report		<a href="#">PE421.368</a>	11/03/2009	EP	
Amendments tabled in committee		<a href="#">PE421.278</a>	11/03/2009	EP	
Amendments tabled in committee		<a href="#">PE421.427</a>	26/03/2009	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A6-0238/2009</a>	03/04/2009	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T6-0244/2009</a>	22/04/2009	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2009)0316</a>	23/06/2009	EC	Summary
Commission response to text adopted in plenary		<a href="#">SP(2009)3507</a>	25/06/2009	EC	
Draft final act		<a href="#">03649/2009/LEX</a>	13/07/2009	CSL	
Follow-up document		<a href="#">C(2011)3013</a>	06/05/2011	EC	
Document attached to the procedure		SWD(2014)0315	13/10/2014	EC	
Follow-up document		SWD(2014)0312	13/10/2014	EC	Summary

<b>Additional information</b>	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>
<b>Final act</b>	
<a href="#">Directive 2009/73</a> <a href="#">OJ L 211 14.08.2009, p. 0094</a> Summary Final legislative act with provisions for delegated acts	

## Internal market in natural gas. Third energy package

**PURPOSE:** to amend Directive 2003/55/EC concerning the common rules for the internal market in natural gas.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** this proposal constitutes one element of a third package of legislative measures which aims to complement the existing rules to make the internal market work for all consumers whether large or small, and to help the EU achieve more secure, competitive and sustainable energy. The Commission is proposing a number of measures to complement the existing rules (see also [COD/2007/0195](#); [COD/2007/0197](#); [COD/2007/0198](#); [COD/2007/0199](#)).

The Commission Communication of 10 January 2007 entitled "An Energy Policy for Europe" (COM(2007)0001) highlighted the importance of completing the internal market in electricity and natural gas. It was backed by a comprehensive internal market report, the final results of the competition sector inquiry and in-depth reviews of the situation of the national electricity and gas market.

The 2007 Spring European Council invited the Commission to propose further measures, such as: i) the effective separation of supply and production activities from network operation; ii) the further harmonisation of the powers and enhanced independence of the national energy regulators; iii) the establishment of an independent mechanism for cooperation among national regulators; iv) the creation of a mechanism for transmission system operators to improve the coordination of networks operation and grid security, cross-border trade and grid operation; v) greater transparency in energy market operations. The European Council also underlined the need to strengthen security of supply in a spirit of solidarity between Member States.

In its Resolution on Prospects for the internal gas and electricity market adopted on 10 July 2007, the European Parliament expressed strong political support for a common energy policy, considering that "transmission ownership unbundling is the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market". It also underlined, however, that other measures were also necessary and that the differences between the electricity and gas markets might call for differing implementation arrangements. Parliament also called for enhanced "cooperation between national regulators at EU level, through an EU entity, as a way to promote a more European approach to regulation on cross-border issues" (see [INI/2007/2089](#)).

**CONTENT:** these following elements were taken fully into consideration in drawing up the current proposals:

**Effective separation of supply and production activities from network operations:** the concrete proposal in this respect makes it clear that the preferred option of the Commission remains ownership unbundling. Unbundling refers to the effective separation between the operation of electricity and gas transmission networks from supply and generation activities. In practice this means that Member States must ensure that the same person or persons cannot exercise control over a supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. This provision also applies vice versa, that is, control over a transmission system operator precludes the possibility of holding any interest in or exercising any right over a supply undertaking. Whilst the Commission considers that ownership unbundling remains the preferred option it does however provide an alternative option for Member States that choose not to go down this path. This option must, however, provide the same guarantees regarding independence of action of the network in question and the same level of incentives on the network to invest in new infrastructure that may benefit competitors. This option, a derogation from the basic ownership unbundling approach, is known as the "Independent System Operator". This option enables vertically integrated companies to retain the ownership of their network assets, but requires that the transmission network itself is managed by an independent system operator - an undertaking or entity entirely separate from the vertically integrated company ? that performs all the functions of a network operator. In addition, to ensure that the operator remains and acts truly independently of the vertically integrated company, regulation and permanent regulatory monitoring must be put in place. With a view to encouraging investment in new energy infrastructures by supply and production companies, the present proposal includes the possibility of a temporary derogation to ownership unbundling rules for the construction of new infrastructure. This exemption will be applied on a case by case basis, taking into account in the economics of the new investment, the internal market objectives and the security of supply objective. It should be noted that this proposal applies in the same way to publicly and privately owned companies.

**Third country aspects:** the present proposal requires the effective unbundling of transmission system operators and supply and production activities not only at national level but throughout the EU. It means in particular that no supply or production company active anywhere in the EU can own or operate a transmission system in any Member State of the EU. This requirement applies equally to EU and non-EU companies. The package contains safeguards to ensure that in the event that companies from third countries wish to acquire a significant interest or even control over an EU network, they will have to demonstrably and unequivocally comply with the same unbundling requirements as EU companies. The Commission can intervene where a purchaser cannot demonstrate both its direct and indirect independence from supply and generation activities.

**National regulators:** the present proposal aims to strengthen the powers of the regulatory authorities. First, they would be given a clear mandate to cooperate at European level, in close cooperation with the Agency for the Cooperation of Energy Regulators and the Commission,

to ensure competitive, secure and environmentally sustainable internal electricity and gas markets within the European Union, and effective market opening for all consumers and suppliers. Second, it is proposed to strengthen their market regulation powers, in particular in the following areas: i) monitoring compliance of transmission and distribution system operators with third party access rules, unbundling obligations, balancing mechanisms, congestion and interconnection management; ii) reviewing the investment plans of the transmission system operators, and providing in its annual report an assessment of how far the transmission system operators' investment plans are consistent with the European-wide 10-year network development plan; monitoring network security and reliability, and reviewing network security and reliability rules; iii) monitoring transparency obligations; iv) monitoring the level of market opening and competition, and promoting effective competition, in cooperation with competition authorities; and v) ensuring that consumer protection measures are effective. It is proposed that the regulatory authority be legally distinct and functionally independent of any other public or private entity, and that its staff and any member of its decision-making body act independently of any market interest and neither seek nor take instruction from any government or other public or private entity.

The Agency for the cooperation of energy regulators: The Commission believes that if an independent body should be established which can make proposals to the Commission regarding decisions that involve substantive decisions and take individual regulatory decisions which are binding on third parties concerning detailed technical issues that are delegated to them, the only solution would be to establish an Agency. The Agency would complement at European level the regulatory tasks performed at national level by the regulatory authorities by: i) providing a framework for national regulators to cooperate; ii) regulatory oversight of the cooperation between transmission system operators; iii) individual decision powers; iv) general advisory role: the Agency would in general have an advisory role vis-à-vis the Commission as regards market regulation issues and could issue non-binding guidelines to publicise good practices among the national regulators. The total annual costs of the Agency are estimated at approximately EUR 6-7 million per year.

Cooperation between transmission system operators: for market integration to take place, there also needs to be effective cooperation among transmission system operators (TSOs) and a clear and stable regulatory framework, including regulatory coordination. It is therefore proposed to task the transmission operators with strengthening their cooperation in a number of key areas, focusing on the following main issues: development of market and technical codes; research and innovation activities of common interest; coordination of grid operation and investment planning. It is important for the transmission system operators' cooperation structures to be fully recognised at European level as having the authority to carry out the above tasks. For that purpose, the Commission will formally designate the European Networks of (gas and electricity) transmission system operators in charge of these tasks. It should be noted that the network of operators can only cooperate successfully when all operators are on a level playing field. This means that all operators must be effectively unbundled.

Improving the functioning of the market: the proposed energy package also aims at improving the legislative framework to facilitate third party access to key infrastructures, to increase transparency on the market, to enhance market integration and to improve access to retail customers. With this in mind, the Commission proposes to make the good practice guidelines legally binding. The Commission also states that transparent rules on access to LNG terminals are needed. To reduce uncertainty on the market, the Commission will, in the coming months, provide guidance in an appropriate form on the compliance of downstream bilateral long-term supply agreements with EC competition law. Lastly, with a view to stimulating this process, the Commission is considering setting up a retail forum. This forum would allow to focus on specific retail issues, and it should serve as a platform for all stakeholders to promote the establishment of an EU wide retail market.

Reinforce the security of supply monitoring by transmission system operators: as a first step, the present proposals do not modify Directive 2004/67/EC and only address two issues: increased transparency obligations on the level of commercial stocks. Each storage operator would have the obligation to publish on a daily basis the amount of working gas it has in its facilities. This obligation would considerably increase mutual confidence for regional and bilateral assistance in case of severe supply disruptions. It is proposed that Member States cooperate in order to promote regional and bilateral solidarity. This cooperation is intended to cover situations which would be likely to result in severe disruptions of gas supply affecting a Member State. The Commission will adopt guidelines for regional solidarity cooperation, if needed.

## Internal market in natural gas. Third energy package

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The Council held a public policy debate on the internal energy market package on the basis of a presidency note.

There were different opinions voiced by delegations concerning the Commission's proposal, the proposal presented by eight Member States, the non-paper of the Commission as well as the United Kingdom contribution. During the debate, Member States showed support for further work towards a compromise solution at working group and the permanent representatives' committee level. Further work should lead to political agreement on the third package by the TTE Council in June 2008.

## Internal market in natural gas. Third energy package

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The Committee on Industry, Research and Energy adopted, by 31 votes to 16 and 2 abstentions, a report drafted by Romano Maria LA RUSSA (UEN/IT) and amended, in the framework of the codecision procedure, 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. The main amendments are as follows:

Ownership unbundling: the key part of the report concerns the separation of ownership, which expressly prevents vertically integrated companies from holding an interest in both the supply and transmission of gas. An amendment seeking to introduce the "third option", which was supported by certain countries opposed to "full ownership unbundling" (the complete separation of gas suppliers from gas transmission networks), was rejected.

It is recalled that the Commission's proposal would have given Member States two options: ownership unbundling, or the preservation of integrated supply and transmission companies, provided that the operation of the transmission network was handed over to a separate body. Eight Member States had proposed a third option which kept the transmission network with the suppliers but with a structure to ensure it operates independently in practice.

Rejecting this "third option", the committee confirmed its endorsement of a proposal based on the recent Commission compromise text, involving the creation of independent transmission operators (ITOs). This proposal, like the "third option", would allow a company to retain the ownership of pipelines, if management of them is in the hands of a transmission system operator with "effective decision-making rights", but

with some further safeguards of these rights.

Accordingly, the committee deleted Article 9 on Independent system operators, stating that the ISO model implies bureaucracy and costly regulatory control and is therefore not a viable alternative to full ownership unbundling.

ITO model: Members inserted a new Chapter IVa on Independent Transmission Operators, which allows for vertical integration and preserves effective unbundling. The ITO model leaves ownership of pipelines with the gas supply companies, but hands the management over to an ITO whose operational independence would be guaranteed by an independent Trustee meant to protect the asset value of the transmission system operator; a supervisory body composed of gas company representatives, third party shareholders, transmission system operator representatives, as well as the Trustee responsible for decisions which may have a significant impact on the value of the assets of the shareholders; a

a compliance programme setting out measures that prevent discriminatory conduct; a compliance officer responsible for monitoring the implementation of the compliance programme.

No later than five years after the directive's entry into force, the energy regulators' Agency would report on whether requirements have managed to ensure the independence of transmission system operators.

The committee also confirmed that it is in favour of the Commission's proposal to prevent control of transmission systems by third countries unless there is an EU-third country international agreement.

Storage: a new clause states that, 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, or the negotiated access procedure. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria. National regulatory authorities shall observe compliance with these criteria. The committee deleted the articles on unbundling of transmission system owner and storage system operator.

Comitology: the use of comitology to adopt guidelines was generally deleted. The Commission's text is strengthened on elements such as powers of national regulators and fight against market concentration.

Consumer rights: consumers should be at the centre of the 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 companies which do not comply with consumer protection and competition rules.

A definition of energy poverty was inserted into the text.

The committee added that Member States shall ensure that there are adequate safeguards to protect vulnerable customers, including appropriate measures including those related to payment terms to help them avoid disconnection.

Member States must implement measures to achieve the objectives of social and economic cohesion which lower the cost of gas provided to low-income household customers and guarantee the same conditions for the customers living in remote areas, and the objectives of environmental protection.

Independence of national regulators: the committee welcomes the Commission's proposals seeking to harmonise and strengthen the role of the national regulators. The national regulatory authorities should be able to monitor the occurrence of restrictive contractual practices. They should be able to fix or approve network access tariffs and publishing the methodology used to set the tariffs, and ensure that wholesale fluctuations in prices are transparent. The power of NRAs to impose sanctions is strengthened.

Infrastructure: the Commission's exemption decision will 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. The committee also added a clause to ensure that new investments are not discriminated against. Conditions of exemption approvals should not be changed retrospectively unless all parties involved in granting the exemption (holder of the exemption, NRA and Commission) agree.

Regional cooperation: Member States must ensure that transmission system operators have one or more integrated systems at regional level covering several Member States for capacity allocation and for checking the security of the network.

Lastly, the committee added clauses on policy obligations for the promotion of biogas and energy efficiency and rules on price regulation.

## Internal market in natural gas. Third energy package

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The Council discussed the third package of legislative measures for the internal energy market. This package aims to complement the existing rules in order to make the internal market work for all consumers and to help the EU achieve the objective of more secure, competitive and sustainable energy supply.

Although not all Member States could agree with all elements of the package, the President concluded that the Council reached a broad agreement on the essential elements of this internal energy market package.

The agreement was reached on the basis of the Presidency compromise proposal amended during the Council and covering in particular certain elements.

Effective separation of supply and production activities from network operation: all delegations agreed that effective separation of supply and production activities from network

operations should be achieved in accordance with the orientations defined by the 2007 spring

European Council. However, while the majority of delegations and the Commission see full ownership unbundling as the first best option, an option allowing for an independent transmission operator has been developed in order to take account of cases where arrangements are in place for a transmission system that belongs to a vertically integrated undertaking, which guarantees more effective independence of the TSO.

These provisions aim at balancing concerns on the scope, timeframe and enforceability of this option with keeping it workable and preserving the financial interest of the vertically integrated undertaking.

The ITO option will be available to both gas and electricity sectors for Member States where the transmission system belongs to a vertically integrated undertaking on entry into force of the directive. This option would allow companies to retain ownership of transmission systems on condition that they are managed by an independent transmission operator. A number of provisions will ensure:

- the effective independence of the operator, its management and the supervisory body;
- that conflicts of interest are avoided;
- fair and non-discriminatory network access;
- undistorted incentives to invest and the development of investments and interconnection infrastructure;
- independent access to means and resources for TSO's work.

The Commission will carry out a specific review of the ITO-related provisions, to be conducted two years after implementation on the basis of objective criteria, leading, where appropriate, to proposals to ensure full and effective independence of the TSO.

Third country clause: irrespective of the option retained to achieve effective separation, the text needs to ensure that the issue of third country control of networks is addressed in a non-protectionist way which guarantees that these companies respect the same rules that apply to EU undertakings and addresses Member State concerns about third country control. It also needs to address concerns about potential implications on Community competence and the handling of existing investment as well as provide the criteria against which investment from third country would be assessed, in particular the EU security of supply.

Derogations: the Council agreed on derogations for small or isolated systems, with nominative derogations for Cyprus, Luxembourg and Malta for both gas and electricity sectors as well as derogation for Estonia, Finland and Latvia regarding gas until any of these Member States is directly connected to the system of other Member State than these countries.

Market functioning including retail markets: the texts will include provisions on extended record keeping (supply undertakings need to keep at the disposal of regulators the relevant data relating to transactions in supply contracts and gas/electricity derivatives) and on consumers' rights (guaranteeing that customers are properly informed on their energy consumption and costs frequently enough to regulate their electricity/gas consumption, give them the right to change supplier at any time and require energy companies that bills are sent within three months after a consumer switches supplier).

Agency for the Cooperation of Energy Regulators: the regulatory Agency to be established will be independent from the Member States and the Commission and will have well circumscribed tasks. It will focus on issues involving more than one Member State as far as binding decision-making is concerned. Its involvement in technical matters has been strengthened, but is still of an advisory nature; it generally allows for the national levels to play their parts. In all these tasks, market participants and authorities at national level are duly consulted and due account is taken of the outcomes of regional cooperation between TSOs and between regulators.

Other elements, which form part of the package, are the following: minority shareholding, public ownership, certification or designation of transmission systems operators, adoption of network codes, regulatory authorities, handling of cross-border cases, guidelines to be adopted through comitology, regional cooperation and gas specific issues.

This will be the basis for further work at working party and Coreper level.

## Internal market in natural gas. Third energy package

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The European Parliament adopted, by 579 votes to 80 with 52 abstentions, a legislative resolution amending 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. The report had been tabled for consideration in plenary by Romano Maria LA RUSSA (UEN/IT), on behalf of the Committee on Industry, Research and Energy.

The main amendments ? adopted under 1st reading of the codecision procedure ? were as follows:

Ownership unbundling: the key part of the resolution concerns the separation of ownership, which expressly prevents vertically integrated companies from holding an interest in both the supply and transmission of gas. It is recalled that the Commission's proposal would have given Member States two options: ownership unbundling, or the preservation of integrated supply and transmission companies, provided that the operation of the transmission network was handed over to an independent system operator (ISO). Eight Member States had proposed a third option which kept the transmission network with the suppliers but with a structure to ensure it operates independently in practice.

Parliament confirmed its endorsement of a proposal based on the recent Commission compromise text, involving the creation of independent transmission system operators (ITOs). This proposal, like the "third option", would allow a company to retain the ownership of pipelines, if management of them is in the hands of a transmission system operator with "effective decision-making rights", but with some further safeguards of these rights. Parliament rejected the ISO option, but endorsed the ITO model.

Accordingly, it deleted Article 9 on independent system operators.

ITO model: Members inserted a new Chapter IVa on Independent Transmission System Operators, which allows for vertical integration and preserves effective unbundling. The ITO model leaves ownership of pipelines with the with the gas supply companies, but hands the management over to an ITO whose operational independence would be guaranteed by a an independent Trustee ; a supervisory body composed of gas company representatives, third party shareholders, transmission system operator representatives, as well as the Trustee ? responsible for decisions which may have a significant impact on the value of the assets of the shareholders; a compliance programme and a compliance officer responsible for monitoring the implementation of the compliance programme.

Trustee: an independent Trustee shall be appointed by the 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.

Revision clause: the Agency shall after 5 years, submit a detailed report outlining the extent to which the unbundling requirements under the Directive have been successful in ensuring full and effective independence of transmission system operators. It must take into account 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. In the event that the detailed report determines that the conditions referred to above have not been guaranteed in practice, the Commission shall submit proposals to ensure full and effective independence of transmission system operators.

No later than five years after the directive's entry into force, the Commission must submit a detailed report outlining the feasibility of creating a single European transmission system operator and analyse the costs and benefits with respect to, notably, property rights, market integration as well as the effective and secure operation of the transmission network.

Access to LNG facilities and storage: a new clause states that, for the organisation of access to LNG facilities either the regulated access procedure, or the negotiated access procedure shall apply. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria. National regulatory authorities shall observe compliance with these criteria. The same applies for access to storage.

Comitology: the use of comitology to adopt guidelines was generally deleted. The Commission's text is strengthened on elements such as powers of national regulators and fight against market concentration.

Consumer rights: consumers should be at the centre of the Directive. Parliament stipulated that Member States must protect final customers and 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. Rights and obligations linked to vulnerable customers must be applied and, final customers in remote areas protected. Member States must ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Eligible customers must be able easily to switch to a new supplier.

In addition, Member States shall implement measures 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, and the objectives of environmental protection. Those measures include energy efficiency/demand-side management measures and means to combat climate change, and security of supply. Additional measures for consumers include:

- the right to withdraw from contracts with their gas providers without charge;
- the right to compensation if service quality levels are not met (as with, for example, inaccurate and delayed billing);
- access to information on their rights through bills and gas company web sites;
- access to information on procedures to be followed in case of disputes;
- the right to be informed, at least quarterly, of actual gas consumption and costs;
- access to smart meters within 10 years of the directive's entry into force.
- independent complaints services and alternative redress schemes such as an independent energy ombudsman or a consumer body.

Energy efficiency: national regulatory authorities shall mandate natural gas undertakings to introduce pricing formulas which increase in the case of greater levels of consumption 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.

Independence of national regulators: Parliament approved and extended the Commission's proposals seeking to harmonise and strengthen the role of the national regulators. The national regulatory authorities should be able to monitor the occurrence of restrictive contractual practices. They should be able to fix or approve network access tariffs and publishing the methodology used to set the tariffs, and ensure that wholesale fluctuations in prices are transparent. The power of NRAs to impose sanctions is strengthened.

Infrastructure: the Commission's exemption decision will 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. Parliament also added a clause to ensure that new investments are not discriminated against. Conditions of exemption approvals should not be changed retrospectively without the agreement of all parties concerned.

Regional cooperation: Parliament deleted comitology provisions on regional solidarity cooperation. The Agency shall cooperate with national regulatory authorities and transmission system operators 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.

Lastly, Parliament added clauses on policy obligations for the promotion of biogas and rules on price regulation.

## Internal market in natural gas. Third energy package

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The Council unanimously adopted its common position in the form of a recast of Directive 2003/55/EC (the current legislative act will therefore be repealed). To the extent possible the Council has followed the Commission's approach regarding an identical treatment of the electricity and gas sectors.

Concerning the 122 amendments adopted by the European Parliament at first reading, the Council has followed the Commission in accepting, in part or in full, 20 amendments, and in rejecting 44 other amendments.

Regarding the European Parliament amendments where the Council has deviated from the Commission position, the Council accepted one amendment and rejected 59.

The Council also introduced the following modifications to the Commission proposal:

Effective separation of network operation from generation and supply activities: in addition to the two options proposed by the Commission (ownership unbundling (OU) and the Independent System Operator (ISO)), the Council, in agreement with the Commission, considered it appropriate to introduce a third option, the Independent Transmission Operator (ITO), in the case where a transmission system operator is part of a vertically integrated undertaking (VIU) at the entry into force of the Directive. The three options are on equal footing and will be available for both the electricity and the gas sector.

The ITO-provisions will ensure the effective independence of the operator, its management and the supervisory body and that conflicts of interest are avoided. Moreover, undistorted investment incentives and the development of interconnection infrastructure, as well as fair and non-discriminatory network access, will be ensured.

Additional powers and competences for the regulatory authorities have been added. In addition, a paragraph has been added regarding regional cooperation where ITOs are involved. Finally, the Commission will assess, as part of a general review, the implementation of the ITO option against certain criteria two years after the date of transposition of the Directive.

Level playing field: given the future presence of three different unbundling models on the Community market, provisions establish a number of criteria for measures which Member States have the possibility to take in order to ensure a level playing field.

Certification of Transmission System Operators (TSOs) of the Community and of third countries: the common position has a general Article on certification and one on certification in relation to third countries. This Article ensures on the one hand that TSOs of third countries have to respect the same unbundling rules as Community TSOs. On the other hand, it introduces the criterion of security of energy supply of the Member States and the Community which has to be taken into account when certification is granted.

The main decision on certification will remain with the national regulatory authorities while the Commission is requested to give its opinion on the certification. National regulators must take utmost account of that opinion.

Regulatory authorities: the common position ensures that the principle of a single regulator at national level combined with unique representation (e.g. at the Agency) is compatible with the current existence in some Member States of regulators at regional level or for small and isolated parts of the territory.

While ensuring the independence of the regulatory authorities, the text of the common position also clarifies that this does not mean that regulators are free from judicial control or parliamentary supervision or can ignore broader objectives e.g. on environmental sustainability or on public service obligations.

The common position also ensures that, when carrying out their duties, regulators have the possibility to act, where relevant, in close cooperation with other authorities, such as competition ones, while preserving their independence and without duplicating the tasks (e.g. monitoring) usually carried out by other authorities.

Regulatory regime for cross-border issues: the provisions setting out the role of the Agency have, for legal reasons, been transferred to the Agency Regulation. The Agency will be involved in cross-border issues as a last resort, at the request of national regulators or if national regulators don't reach an agreement within a certain time frame.

Derogations: the Council considered it appropriate to update the text, in particular regarding a derogation from the unbundling provisions for Member States with emergent or isolated markets.

Minority shareholding: the Council considered it appropriate not to exclude minority shareholding of producer/supplier in ownership unbundled TSOs as long as this does not entail any control or any influence of one on the other and cannot lead to a conflict of interest.

Public ownership: the common position contains the possibility to achieve ownership unbundling with two separate public bodies through a provision recognising that two distinct public bodies can be considered as two persons for the purpose of implementing ownership unbundling.

Combined operators: a provision provides that a combined operator can be operated, alternatively, either as an ownership unbundled operator, as an independent System Operator or as an Independent Transmission Operator.

## Internal market in natural gas. Third energy package

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The common positions adopted by the Council on the five texts that make up the Third Package contain all the essential components of the Commission's proposal that are needed to ensure the proper functioning of the internal gas and electricity market. They can therefore be generally supported by the Commission.

Concerning the Gas Directive, the Ownership Unbundling option and the Independent System Operator (ISO) option were adopted. The Commission continues to regard ownership unbundling as the best solution. In its common position, the Council has included a third option, the Independent Transmission Operator (ITO). The Commission can accept the ITO option as part of a general compromise provided that this option is not weaker than in the common position and contains the strongest possible features a political compromise will allow.

The Commission recalls that the first reading focused on obtaining agreement within the Council. The amendments adopted by the European Parliament were therefore not formally incorporated into the common position. Negotiations to this end will take place during the second reading.

Some amendments adopted by the European Parliament are however taken into account in the common position. These are amendments on: the definition of electricity undertakings; the definition of virtual power plants; the application of unbundling to public entities; monitoring of the implementation of safeguards measures; guidelines for public service obligations and power of regulatory authorities. The amendments partially covered by the common position are on: greater regional cooperation; the independence of national regulators and the duties of these national regulators; the methodology for approving tariffs.

The Commission considers that a number of the amendments that are not covered should be taken into account in the second reading. These amendments are on the following points:

Role of regulators: the Commission generally supports amendments that strengthen the role and independence of the national regulators.

Long-term contracts are acceptable provided they comply with competition rules, but they will not be encouraged as they have a potential foreclosing effect on the market. The principles behind amendments relating to the promotion of energy efficiency can generally be supported. However, the specific amendment calling for a pure obligation to introduce pricing formulas which increase in the case of greater levels of consumption cannot be accepted.

Consumer rights: the Commission generally supports amendments that increase consumer rights, in particular: the obligation on suppliers to set adequate prepayment bills; the cross-recognition of supply licences between Member States; the appointment of a single point of contact at national level to provide consumers with all the necessary information concerning their rights; and the appointment of an Ombudsman at national level. The proposal to roll out smart meters within a 10-year period can also in principle be supported although its precise scope and drafting would need to be carefully reviewed.

However, the Commission cannot support amendments that aim to incorporate an Energy Consumers Charter into the Directive. The Commission supports the aim of amendments regarding the role of distribution system operators. However, the proposals need to be considered in further detail to ensure that they are practical and achievable.

Fight against energy poverty: the Commission could support an obligation on Member States to define energy poverty within the confines of a definition of vulnerable consumers at national level, but does not support a definition of energy poverty at EC level.

Furthermore, the Commission believes that an obligation at EC level to ensure that the number of people suffering from energy poverty decreases would be inappropriate. Nevertheless, it could: (i) support a general objective to reduce the number of people suffering from energy poverty; (ii) support an obligation on Member States to ensure specific protection of pensioners and disabled people in winter and to report to the Commission on the measures adopted in this regard.

Access to Storage and LNG: amendments that underpin the access regime to storage can be supported, but not the deletion of legal and functional unbundling. Parliament's proposal to allow negotiated Third Party Access (TPA) for LNG cannot be accepted in its current form.

Other issues: the Commission can accept amendments which underline the obligations of TSOs on congestion management, investment in new capacity and transparency. It can also support the requirement of greater cooperation between Transmission System Operators (TSOs) in the operation of their systems.

Parliament wants to allow Member States to grant derogations to third-party access rules for industrial sites. The Commission supports in principle the derogation for industrial sites, which would also cover airports and railways. However, it considers that the amendment goes too far and outlines a solution consisting of a derogation limited to the most burdensome administrative obligations, i.e. ex ante tariff approval by regulators.

## Internal market in natural gas. Third energy package

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The Committee on Industry, Research and Energy adopted the recommendation for second reading by Antonio MUSSA (UEN, IT) modifying, under the second reading of the codecision procedure, the Council's common position for adopting a directive of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

The amendments are the result of an informal compromise negotiated by the committee responsible with the Council Presidency on the package of energy market legislation.

The compromise gives Member States the possibility to choose between three options for separating supply and production activities from network operations - both for gas and electricity markets: (a) full ownership unbundling; (b) the independent system operator (ISO); (c) the independent transmission operator (ITO). MEPs obtained in the compromise a strengthening of energy consumers' rights.

The main amendments are as follows:

Customer protection: Member States shall ensure that all customers connected to the gas network 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 registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements

Member States shall also ensure that: (i) where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; (ii) customers are entitled to receive all relevant consumption data. Member States shall ensure that these rights are granted to all customers in a non-discriminatory way as regards cost, effort or time.

The contracts concluded with their gas provider shall provide information on consumer rights, including on the complaint handling and all of the above, clearly communicated through billing or natural gas undertakings' web sites.

Checklist: the Commission should establish, after consulting relevant stakeholders including Member States, national regulatory authorities, consumer organisations and electricity undertakings, an accessible, user-friendly Energy Consumer Checklist providing consumers with practical information about their rights. That Energy Consumer Checklist should be provided to all consumers and be made publicly available.

Single points of contact: Member States shall ensure: (i) the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute; (ii) that an independent mechanism such as an energy ombudsman or a consumer body is in place for an efficient treatment of complaints and out-of-court dispute settlements.

Vulnerable customers: each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of such customers in critical times. Member States shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take appropriate measures to protect final customers in remote areas who are connected to the gas system. They may appoint a supplier of last resort for customers connected to the gas network.

Addressing energy poverty: Member States shall take appropriate measures, such as National Energy Action Plans or benefits in social security systems for ensuring the necessary energy supply to vulnerable customers or support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty. Such measures shall not impede the effective opening of the market and market functioning.

Promoting energy efficiency: Member States or the regulatory authority shall strongly recommend that electricity undertakings optimise the use of electricity, for example by providing energy management services, developing innovative pricing formulas, or introducing intelligent metering systems or smart grids where appropriate.

Intelligent metering systems: Member States shall ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the gas supply market. The implementation of those metering systems may be subject to an economic assessment of all the long-term costs and benefits to the market and the individual consumer. Subject to this assessment, Member States shall prepare a timetable for the implementation of intelligent metering systems.

Promotion of regional cooperation: Member States as well as the regulatory authorities shall cooperate among themselves for the purpose of integrating their national markets at one and more regional levels, as a first step towards a fully liberalised internal market. Member States shall also facilitate integration of the isolated systems forming gas islands that persist in the European Union.

Tasks of distribution system operators: 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 system in its area, with due regard for the environment and energy efficiency.

Closed distribution systems: the text provides that where a closed distribution system is used or a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the users of the system. Industrial, commercial or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities or chemical industry sites can include closed distribution systems because of the specialised nature of their operations.

Duties and powers of the regulatory authority: the regulatory authority shall have the following duties: (i) fixing or approving, in accordance with transparent criteria, regulated transmission or distribution tariffs or their methodologies; (ii) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses; (iii) respecting contractual freedom with regard to interruptible supply contracts as well as with regard to long term contracts provided that they are compatible with Community law and consistent with EU policies; (iv) helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced; (v) contributing to the compatibility of data exchange processes for the most important market processes at regional level.

Congestion management: the regulatory authorities shall monitor congestion management of national electricity systems including interconnectors, and the implementation of congestion management rules. To that effect, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to these rules.

Report: the Commission shall, no later than 1 January 2006, forward to the European Parliament and Council, a detailed report outlining progress in creating the internal market in natural gas. In that report, the Commission, in consultation with the ENTSO for Gas, may also consider the feasibility of the creation, by transmission system operators, of a single European transmission system operator.

In the recitals, the following points are highlighted:

- any system for unbundling should be effective in removing any conflict of interests between producers, suppliers 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 overly onerous regulatory regime for national regulatory authorities;
- in order to develop competition in the internal market for gas, large non-household customers should be able to choose their suppliers as well as enter into contracts to secure their gas requirements with several suppliers;
- 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;
- to secure common rules for a truly European internal market and a broad supply of gas should also be one of the main goals of this Directive. To this end, undistorted market prices would provide an incentive for cross-border interconnections while leading, in the long term, to price convergence.

## Internal market in natural gas. Third energy package

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The European Parliament adopted with amendments, under the second reading of the codecision procedure, the Council's common position for adopting a directive of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

The amendments are the result of a compromise negotiated with the Council on the package of energy market legislation.

The compromise gives Member States the possibility to choose between three options for separating supply and production activities from network operations - both for gas and electricity markets:

- full ownership unbundling;
- the independent system operator (ISO);
- the independent transmission operator (ITO).

MEPs obtained in the compromise a strengthening of energy consumers' rights. The main amendments are as follows:

Public service obligations and customer protection: Member States shall ensure that all customers connected to the gas network 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 registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements. In this regard, Member States shall take all measures to ensure that administrative procedures do not constitute a barrier for supply undertakings already registered in another Member State.

Member States shall also ensure that: (i) where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; (ii) customers are entitled to receive all relevant consumption data. Member States shall ensure that these rights are granted to all customers in a non-discriminatory way as regards cost, effort or time.

The contracts concluded with their gas provider shall provide information on consumer rights, including on the complaint handling and all of the above, clearly communicated through billing or natural gas undertakings' web sites.

Checklist: the Commission should establish, after consulting relevant stakeholders including Member States, national regulatory authorities, consumer organisations and electricity undertakings, an accessible, user-friendly Energy Consumer Checklist providing consumers with practical information about their rights. That Energy Consumer Checklist should be provided to all consumers and be made publicly available.

Single points of contact: Member States shall ensure: (i) the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute; (ii) that an independent mechanism such as an energy ombudsman or a consumer body is in place for an efficient treatment of complaints and out-of-court dispute settlements.

Vulnerable customers: each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of such customers in critical times. Member States shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take appropriate measures to protect final customers in remote areas who are connected to the gas system. They may appoint a supplier of last resort for customers connected to the gas network.

Addressing energy poverty: Member States shall take appropriate measures, such as National Energy Action Plans or benefits in social security systems for ensuring the necessary energy supply to vulnerable customers or support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty. Such measures shall not impede the effective opening of the market and market functioning.

Promoting energy efficiency: Member States or the regulatory authority shall strongly recommend that electricity undertakings optimise the use of electricity, for example by providing energy management services, developing innovative pricing formulas, or introducing intelligent metering systems or smart grids where appropriate.

Intelligent metering systems: Member States shall ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the gas supply market. The implementation of those metering systems may be subject to an economic assessment of all the long-term costs and benefits to the market and the individual consumer or which form of intelligent metering is economically reasonable and cost-effective and which timeframe is feasible for their distribution. Such assessment shall take place within three years of the entry into force of this Directive.

Subject to this assessment, Member States or any competent authority they designate, shall prepare a timetable for the implementation of intelligent metering systems.

Promotion of regional cooperation: Member States as well as the regulatory authorities shall cooperate among themselves for the purpose of integrating their national markets at one and more regional levels, as a first step towards a fully liberalised internal market. Member States shall also facilitate integration of the isolated systems forming gas islands that persist in the European Union.

Tasks of transmission, storage and/or LNG system operators: each transmission, storage and/or LNG system operator shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations.

Each transmission system operator shall build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply.

Tasks of distribution system operators: 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 system in its area, with due regard for the environment and energy efficiency.

Closed distribution systems: the text provides that where a closed distribution system is used or a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the users of the system. Industrial, commercial or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities or chemical industry sites can include closed distribution systems because of the specialised nature of their operations.

General objectives of the regulatory authority: the regulatory authority shall take all reasonable measures in pursuit of the objectives and ensure appropriate conditions for the effective and reliable operation of gas networks, taking into account long-term objectives.

Duties and powers of the regulatory authority: the regulatory authority shall have the following duties: (i) fixing or approving, in accordance with transparent criteria, regulated transmission or distribution tariffs or their methodologies; (ii) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses; (iii) respecting contractual freedom with regard to interruptible supply contracts as well as with regard to long term contracts provided that they are compatible with Community law and consistent with EU policies; (iv) helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced; (v) contributing to the compatibility of data exchange processes for the most important market processes at regional level.

Congestion management: the regulatory authorities shall monitor congestion management of national electricity systems including interconnectors, and the implementation of congestion management rules. To that effect, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to these rules.

Regulatory authorities shall cooperate at least at a regional level to coordinate the development of all network codes for the relevant transmission system operators and other market actors and coordinate the development of the rules governing the management of congestion. National regulatory authorities shall also have the right to enter into co-operative arrangements with each other to foster regulatory cooperation.

Report: the Commission shall, no later than 1 January 2006, forward to the European Parliament and Council, a detailed report outlining progress in creating the internal market in natural gas. In that report, the Commission, in consultation with the ENTSO for Gas, may also consider the feasibility of the creation, by transmission system operators, of a single European transmission system operator.

In the recitals, the following points are highlighted:

- any system for unbundling should be effective in removing any conflict of interests between producers, suppliers 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 overly onerous regulatory regime for national regulatory authorities;
- in order to develop competition in the internal market for gas, large non-household customers should be able to choose their suppliers as well as enter into contracts to secure their gas requirements with several suppliers;
- 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;
- any harmonisation of the powers of national regulatory authorities should include the powers to provide for incentives that may be offered and the powers to issue effective, proportionate and dissuasive penalties that may be imposed on natural gas undertakings or to propose to a court to impose such penalties. Moreover, regulatory authorities should have the power to request relevant information from natural gas undertakings, make appropriate and sufficient investigations and settle disputes;
- the public service requirements should be defined at national level, taking into account national circumstances. Community law should, however, be respected by the Member States. The citizens of the European Union and, where Member States deem it appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply and reasonable tariffs.
- to secure common rules for a truly European internal market and a broad supply of gas should also be one of the main goals of this Directive. To this end, undistorted market prices would provide an incentive for cross-border interconnections while leading, in the long term, to price convergence.

## Internal market in natural gas. Third energy package

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At its Plenary Session of 22 April 2009, the European Parliament adopted a compromise package which had been agreed with the Council in view of reaching a second reading agreement.

These amendments concern essentially:

- the limited strengthening of some rules ensuring effective unbundling of transmission system operator;
- reinforced independence and powers of national regulators;
- provisions creating stronger obligations for Member States as regards consumer protection, energy poverty and the implementation of smart metering.

The Commission accepts the compromise package as it is in line with the overall purpose and the general characteristics of the proposal.

## Internal market in natural gas. Third energy package

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**PURPOSE:** to establish a fully operational internal market in natural gas (third package of legislative measures concerning the internal energy market).

**LEGISLATIVE ACT:** Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

**CONTENT:** the Council unanimously adopted the package of legislative measures concerning the internal energy market, approving all of the European Parliament's second-reading amendments. The legislative package also includes: (i) a [Directive](#) concerning common rules for the internal market in electricity; (ii) a [Regulation](#) on conditions for access to the network for cross-border exchanges in electricity; (iii) a [Regulation](#) establishing an Agency for the Cooperation of Energy Regulators; and (iv) a [Regulation](#) on conditions for access to the natural gas transmission networks.

The third package of legislative measures on the internal energy market aims to:

- supplement the existing rules so as to ensure that the internal market operates smoothly for all consumers and to enable the EU to achieve a more secure, competitive and sustainable energy supply;
- give energy consumers more protection and the benefit of the lowest possible energy prices;
- promote sustainability by stimulating energy efficiency and guaranteeing that small companies, too, in particular those investing in renewable energy, will have access to the energy market;
- ensure fair competition between EU companies and third country companies.

This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the rules governing the organisation and functioning of the natural gas sector, access to the market, the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas and the operation of systems.

The gas directive specifies the same three models as the electricity directive for ensuring the separation of transmission activities from production and supply activities. It also provides for public service obligations and the rights of gas consumers and clarifies competition requirements. The directive reinforces regional cooperation among regulatory authorities and among transmission system operators and lays down in great detail the objectives, duties and powers of regulatory authorities so as to ensure a more consistent internal gas market.

The rules established by this Directive for natural gas, including 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.

The main provisions of the Directive are as follows:

Separation of transmission from supply and generation activities: the Directive specifies several models for achieving the separation of transmission from supply and generation activities. It gives Member States the possibility to choose between three options for separating supply and production activities from network operations for the gas market:

- full ownership unbundling;
- independent system operator (ISO);
- independent transmission operator (ITO).

Any system for unbundling should be effective in removing any conflict of interests between producers, suppliers 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 overly onerous regulatory regime for national regulatory authorities.

Strengthening consumer rights: the Directive lays down universal service obligations and the rights of gas consumers and clarifies competition requirements. Member States shall, in particular:

- ensure that all customers connected to the gas network 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 registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements. In this regard, Member States shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Member State;
- ensure that: (i) where a customer, while respecting the contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; (ii) customers are entitled to receive all relevant consumption data. Customers have a right to a contract with their gas service provider that specifies information relating to consumer rights, including on the complaint handling and all of the information referred to in this point, clearly communicated through billing or the natural gas undertaking's web site;
- ensure: (i) the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute; (ii) that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out-of-court dispute settlements;
- ensure that there are adequate safeguards to protect vulnerable customers: each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of electricity to such customers in critical times;
- take appropriate measures, such as formulating national energy action plans, providing benefits in social security systems to ensure the necessary gas supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified;
- recommend that natural gas undertakings optimise the use of gas, for example by providing energy management services, developing innovative pricing formulas or introducing intelligent metering systems or smart grids where appropriate;
- ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the gas supply market.

The Commission should establish, after consulting relevant stakeholders, an accessible, user-friendly energy consumer checklist providing consumers with practical information about their rights.

Promotion of regional cooperation: the Directive strengthens regional cooperation among regulatory authorities and among transmission system operators. Member States as well as the regulatory authorities shall cooperate among themselves for the purpose of integrating their national markets at one or more regional levels, as a first step towards a fully liberalised internal market. They shall also facilitate integration of the isolated systems forming gas islands that persist in the Community.

Tasks of transmission, storage and/or LNG system operators: the Directive provides that each transmission, storage and/or LNG system operator shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations.

Each transmission system operator shall build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply.

Tasks of distribution system operators: 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 system in its area, with due regard for the environment and energy efficiency.

Closed distribution systems: the Directive provides that where a closed distribution system is used or a closed distribution system is maintained primarily for the use of the owner of the system, it shall be possible to exempt the distribution system operator, under certain conditions, from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the users of the system.

Industrial, commercial or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities or chemical industry sites can include closed distribution systems because of the specialised nature of their operations.

Congestion management: the regulatory authorities shall monitor congestion management of national gas systems including interconnectors, and the implementation of congestion management rules. To that effect, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to these rules.

Third-party access: Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems, applicable to all eligible customers. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal and based on objective, technically and economically justified criteria. The regulatory authorities where Member States have so provided, or Member States, shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure.

Regulatory authorities: the Directive strengthens the independence and powers of the national regulators. It sets out in great detail the objectives, duties and powers of regulatory authorities so as to improve consistency.

Each Member State shall designate a single national regulatory authority at national level. The regulatory authority shall have the following duties: (i) fixing or approving, in accordance with transparent criteria, regulated transmission or distribution tariffs or their methodologies; (ii) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency; (iii) monitoring investment plans of the transmission system operators; (iv) monitoring compliance with network security and reliability rules; (v) monitoring the level of transparency and ensuring compliance of gas undertakings with transparency obligations; (vi) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels; (vii) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses; (viii) monitoring the time taken by transmission and distribution system operators to make connections and repairs; (ix) helping to ensure that the consumer protection measures are effective and enforced.

The regulatory authority may: (i) issue binding decisions on gas undertakings; (ii) carry out investigations into the functioning of the gas markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market; (iii) require any information from gas undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access; (iv) impose effective, proportionate and dissuasive penalties on gas undertakings not complying with their obligations under this Directive. This shall include the power to impose or propose the imposition of penalties of up to 10% of the annual turnover of the transmission system operator or vertically integrated undertaking.

Reporting: the Commission shall monitor and review the application of this Directive and submit an annual overall progress report. The Commission shall, by 3 March 2013, submit, as part of the general review, to the European Parliament and the Council, a detailed specific report outlining the extent to which the unbundling requirements under the Directive have been successful in ensuring full and effective independence of transmission system operators.

ENTRY INTO FORCE: 03/09/2009.

TRANSPOSITION: 03/03/2011.

APPLICATION: from 03/03/2011, with the exception of Article 11 (certification in relation to third countries), which shall apply from 03/03/2013.

## Internal market in natural gas. Third energy package

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This Commission Staff Working Document on the report on the independent transmission operator (ITO) Model in the context of the Third Energy Package.

To recall, Directives [2009/72/EC](#) (the Electricity Directive) and [2009/73/EC](#) (the Gas Directive) introduced new and stricter rules on the unbundling of transmission system operators (TSOs). Under these Directives, part of the Third Energy Package, three possible unbundling models were provided: ownership unbundling, independent system operator (ISO) and independent transmission operator (ITO).

The present Staff Working Paper aims to provide an assessment of the ITO model and the extent to which it is capable of sufficiently and adequately ensuring the effective separation of transmission networks from generation and supply interests.

State of play: where on the date of entry into force of the Electricity and Gas Directives, i.e. 3 September 2009, the transmission system belonged to a vertically integrated undertaking (VIU), a Member State could decide not to apply the rules of full ownership unbundling, but to provide for an independent transmission operator. The ITO model under the Third Energy Package permits TSOs to remain part of a vertically integrated undertaking as long as a set of detailed behavioural and structural criteria are respected.

At the time of writing of this document, there were 26 certified ITOs in 10 EU Member States (Austria, Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Slovakia and Slovenia). The majority of the certified ITOs are operating in the gas sector (21), while only five ITOs are active in the electricity sector. Moreover, there is a limited number of remaining TSOs which are likely to be certified as ITOs but for which a certification process at European level has not started yet.

As a first remark it needs to be underlined that ITOs have been certified only since 2012 and have been operating under the new rules for a very short period of time. It is therefore too early to draw definite conclusions on the functioning of the model and the actual independence of the ITOs in practice. Also, compliance checks are still ongoing to ensure the correct implementation of the existing unbundling requirements under the Gas and Electricity Directives in the national legislation of the Member States in which the ITO model is implemented.

That being said, the ITO study underlines the initial assessment of the Commission that at present, in the view of the Compliance Officers, but also of NRAs and the majority of network users who responded to the questionnaire, most requirements related to the ITO model seem to work in practice and are usually sufficient and adequate to ensure effective separation of the transmission business from generation and supply activities in the day-to-day business. This suggests that the notion that the positive effects that unbundling has on facilitating cross-border trade as well as security of supply can also materialize in market areas where the network is operated by an ITO.

Although ensuring compliance under the ITO model appears to be burdensome for both the NRAs and the TSOs involved, this does not mean that the ITO model is not effective in separating transmission and generation/supply and ensuring investments in the networks.

Provisions designed to ensure autonomy, independence of the ITO and independence of the staff and management seem to be working well. Equally, ITOs are actively consulting with the NRA with regards to commercial and financial agreements between ITOs and other parts of the VIU.

Nevertheless, careful monitoring is essential with regards to the requirements for the Supervisory Board and its independence from the VIU, provisions concerning Cooling On/Off period, effectiveness of the Compliance Programme and ITOs ability to ensure that the necessary investments are made in the network.

Whilst the ITO model so far appears to function well in practice, it may be further improved, for instance, by strengthening the independence of the Supervisory Board, specifying the scope of the Compliance Programmes and developing common guidance and a network of cooperation for Compliance Officers, as well as harmonising the timeframe for network development plans at national and European level.

Therefore, the Commission will continue to monitor the implementation and effectiveness of the unbundling requirements under the Third

Energy Package. The Commission will also continue to be vigilant to ensure that ITOs and VIUs comply with the EU competition rules.