Basic information

2003/0302(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks Repealed by 2007/0199(COD) **Subject** 3.60 Energy policy 3.60.03 Gas, electricity, natural gas, biogas	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ITRE Industry, Research and Energy	SEPPÄNEN Esko (GUE/NGL)	28/06/2004

Former committee responsible	Former rapporteur	Appointed
ITRE Industry, External Trade, Research, Energy	SEPPÄNEN Esko (GUE/NGL)	21/01/2004

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	The committee decided not to give an opinion.	
JURI Legal Affairs and Internal Market	The committee decided not to give an opinion.	
ENVI Environment, Public Health, Consumer Policy	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2672	2005-07-12
Transport, Telecommunications and Energy	2554	2003-12-15
Transport, Telecommunications and Energy	2589	2004-06-10
Education, Youth, Culture and Sport	2616	2004-11-15

European Commission	Commission DG	Commissioner
	Energy and Transport	

Key events

Date	Event	Reference	Summary
10/12/2003	Legislative proposal published	COM(2003)0741	Summary
15/12/2003	Debate in Council		
15/01/2004	Committee referral announced in Parliament, 1st reading		
06/04/2004	Vote in committee, 1st reading		Summary
06/04/2004	Committee report tabled for plenary, 1st reading	A5-0254/2004	
19/04/2004	Debate in Parliament		
20/04/2004	Decision by Parliament, 1st reading	T5-0301/2004	Summary
12/11/2004	Council position published	11652/2/2004	Summary
18/11/2004	Committee referral announced in Parliament, 2nd reading		
25/01/2005	Vote in committee, 2nd reading		Summary
27/01/2005	Committee recommendation tabled for plenary, 2nd reading	A6-0012/2005	
07/03/2005	Debate in Parliament		
08/03/2005	Decision by Parliament, 2nd reading	T6-0061/2005	Summary
08/03/2005	Results of vote in Parliament		
12/07/2005	Act approved by Council, 2nd reading		
28/09/2005	Final act signed		
28/09/2005	End of procedure in Parliament		
03/11/2005	Final act published in Official Journal		

Technical information

Procedure reference	2003/0302(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by 2007/0199(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/6/24994

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0254/2004	06/04/2004	
Text adopted by Parliament, 1st reading/single reading		T5-0301/2004 OJ C 104 30.04.2004, p. 0036-0305 E	20/04/2004	Summary
Committee recommendation tabled for plenary, 2nd reading		A6-0012/2005	27/01/2005	
Text adopted by Parliament, 2nd reading		T6-0061/2005 OJ C 320 15.12.2005, p. 0014-0036 E	08/03/2005	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	13401/2004	22/10/2004	
Council statement on its position	14120/2004	03/11/2004	
Council position	11652/2/2004 OJ C 025 01.02.2005, p. 0044-0056 E	12/11/2004	Summary
Draft final act	03614/2005	28/09/2005	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2003)0741	10/12/2003	Summary
Document attached to the procedure	COM(2003)0743	10/12/2003	Summary
Commission communication on Council's position	COM(2004)0760	16/11/2004	Summary
Commission response to text adopted in plenary	SP(2005)1475	06/04/2005	
Commission opinion on Parliament's position at 2nd reading	COM(2005)0157	13/04/2005	Summary
Follow-up document	COM(2008)0192	15/04/2008	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0851/2004 OJ C 241 28.09.2004, p. 0031-0033	02/06/2004	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Regulation 2005/1775 OJ L 289 03.11.2005, p. 0001-0013	Summary

Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks

2003/0302(COD) - 13/04/2005 - Commission opinion on Parliament's position at 2nd reading

The Commission can accept all nine amendments adopted by the European Parliament in full. They are the result of a compromise agreement reached between the European Parliament, Council and Commission during the second reading. The amendments are in line with the Commission's objectives for the proposal and maintain the balance of interests achieved in the common position.

The substance of the amendments can be described as follows:

- Four Parliamentary amendments concern the costs to be taken into account when establishing transmission tariffs or imbalance charges. They reinforce the text of the Common Position by referring to actual costs incurred, "insofar as such costs correspond to those of an efficient and structurally comparable network operator". Such a concept is already part of the acquis communautaire.

- One amendment defines imbalance charges to be cost reflective to the extent possible.

Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks

2003/0302(COD) - 28/09/2005 - Final act

PURPOSE : to set fair rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets.

LEGISLATIVE ACT : Regulation 1775/2005/EC of the European Parliament and of the Council on conditions for access to the natural gas transmission networks.

CONTENT : the Council adopted a regulation setting rules for access conditions to natural gas networks in the EU with a view to ensuring the proper functioning of the internal gas market. The regulation aims at establishing harmonised principles on:

- the definition on tariffs for access to networks and on third party access services;
- capacity allocation mechanisms and congestion management procedures;
- transparency requirements;
- balancing rules and imbalance charges;
- trading of capacity rights.

The regulation sets up guidelines on access taking account of the differences between national gas systems. The guidelines establish minimal requirements in order to ensure non-discriminatory access to the network. It aims at setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market.

This objective shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, the establishment of third party access services and harmonised principles for capacity allocation and congestion management, the determination of transparency requirements, balancing rules and imbalance charges and facilitating capacity trading.

Member States may establish an entity or body set up in compliance with Directive 2003/55/EC for the purpose of carrying out one or more functions typically attributed to the transmission system operator, which shall be subject to the requirements of this Regulation.

The Member States must lay down rules on penalties applicable to infringements of the provisions of the new regulation, which will apply from 1 July 2006.

The Commission shall monitor the implementation of this Regulation. In its report under Article 31(3) of Directive 2003/55/EC, the Commission shall also report on the experience gained in the application of this Regulation. In particular the report shall examine to what extent the Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for gas transmission networks in order to contribute to customer choice in a well functioning internal market and to long-term security of supply. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

The regulation is aimed at complementing internal gas market directive 2003/55/EC, in parallel to regulation 1228/2003 on conditions for access to the network for cross-border exchanges in electricity, adopted in 2003 as a package.

The regulation also takes into account guidelines approved by the European gas regulatory forum (Madrid Forum).

ENTRY INTO FORCE : 23/11/2005.

DATE OF APPLICATION: It shall apply from 1 July 2006 with the exception of the second sentence of Article 9(2), which shall apply from 1 January 2007.

Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks

2003/0302(COD) - 16/11/2004 - Commission communication on Council's position

The Commission feels that the Common Position fully corresponds to the proposal from the Commission with respect to its substance. A number of other changes introduced by the Council and the European Parliament clarify the provisions of the Regulation with respect to its consistency with Directive 2003/55/EC or supplement them. Member States have not only acknowledged the need for the regulation as such, but also the fact that its scope has to go beyond pure cross-border issues, in order to avoid distortion of competition and discrimination. With regard to Parliament's amendments, the Commission concurred with the Council's view. In particular, it rejected Parliament's amendment restricting the scope to cross-border issues. Such a restriction of the scope would render it impossible to achieve the underlying objectives of the Regulation, and would not enable the Regulation to ensure the necessary level playing field in terms of access conditions, in particular with Member States with more than one transmission system operator. Issues addressed by the Regulation are relevant throughout gas networks and are not confined to inter-connections. Restricting the scope of the regulation to cross-border trade would therefore render the proposed regulation almost useless.

The Commission accepted the Parliament's definition of "network users" as it provides clarification and simplification without limiting the scope of the definition as proposed by the Commission.

On the matter of comitology, the Commission notes that the Council has reduced the scope of the comitology procedure as proposed by the Commission. It has deleted all subjects not yet covered by Guidelines annexed to the Regulation. Only those subjects addressed already by the annexed Guidelines have been maintained. The subjects taken out by the Council could be addressed at a later stage, e.g. when submitting the report pursuant to Article 30 of Directive 2003/55/EC (2nd Internal Gas Market Directive).

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

Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks

2003/0302(COD) - 10/12/2003

This document comprises of the communication from the Commission on energy infrastructure and security of supply. Europe needs an energy industry that is reliable, in terms of security and continuity of supply; sustainable, in terms of its environmental performance; and competitive, i.e. delivering an efficient service to households and business -and thus contributing to the competitiveness of the European Economy and the quality of life of its citizens. The internal market, moreover, needs to contribute to the underlying objective of sustainable competition. This, above all, relates to the EU's environmental commitments to control the emission of greenhouse and other gases. In addition, it must be ensured that the internal energy market develops in a manner that provides the highest possible standards of security of supply for European citizens and industry. This has two elements; system security, and ensuring adequate supplies of gas and electricity in both the medium and the long term. - A successful electricity industry must deliver a continuous equilibrium between supply and demand of electricity while also allowing for competition between different generators and suppliers. In addition to the market opening measures already in force appropriate incentives to invest in both transmission and distribution networks as well as for demand management and\or electricity generation are central to these objectives. Without such investments the

reforms of the electricity sector will not succeed and there will be an ever increasing risk of interruptions if demand for electricity continues to grow at its current rate and the strain on the network increases. - As for electricity there is a need to ensure that the gas network is adequately developed to provide both a competitive market structure and ensure security of supply. This point has been emphasised in successive Commission Communications on the energy market. The current situation for gas is however subtly different. Firstly, because actual physical congestion of pipelines is not so frequent and there should already be scope for considerable cross border trade if the regulatory framework was improved; and secondly, because an important difference between gas and electricity is the possibility of storing gas and the greater degree of interruptible consumption. For this reason, an event analogous to a general "black-out" is not likely. This means that the concerns relating to the timing of investment do not have the same degree of importance. However it is still necessary that required infrastructure is developed. It is also of note that the security of supply question is equally related to investments outside the EU. In this context, the Commission proposed a new legislative package to promote investment in the European energy sector to both strengthen competition and help prevent the reoccurrence of the blackouts that took place in the summer of 2003. In particular, it highlights the major importance of a clear demand management, through the development of a more oriented energy efficiency policy. It also emphasises the need of a clear EU legislative framework for the proper functioning of a competitive internal market for electricity, by safeguarding security of electricity supply and ensuring an adequate level of interconnection between Member States, through general, transparent and non-discriminatory policies. Moreover, the Commission makes further proposals for the Energy Transeuropean networks in electricity and gas, in order to make it more efficient, to link decisively the future new Member States to the Energy Single Market, and to develop a similar approach with neighbouring countries. It also proposes a regulation on cross-border exchanges in gas which will incorporate in the EU legislation the guidelines agreed by the sector and empower the national regulators to ensure their implementation.

Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks

2003/0302(COD) - 15/04/2008

The Commission presented a report on progress in creating the internal gas and electricity market.

The last step on the road to competitive energy markets was achieved on1 July 2007 with the full opening of national retail markets. From a legal perspective, all European consumers are now able to choose their supplier and benefit from competition. However, this report shows that, in practice, **market integration is still far from a success**. With very few exceptions, electricity and gas markets in the EU remain national in economic scope with limited competition.

Implementation of legislation:all Member States have met the deadline of 1 July 2007 for full opening of their gas and electricity markets. Restrictions to free and fair competition have, however, developed through the coexistence of open market segments and end-user supply price regulation. Some Member States have still not properly implemented the legal requirements of the Electricity and Gas Directives. This concerns, in particular, core areas of market liberalisation, such as regulatory oversight, unbundling and regulated supply tariffs as well as the communication of Public Service Obligations. ERGEG's (European Regulators Group for Electricity and Gas) monitoring, in 2007, of the implementation of the Electricity and Gas Regulation shows inadequate compliance in areas of core relevance for the development of liquid markets such as transparency and primary capacity allocation.

Market integration: market integration has still not developed to a sufficient extent. This is demonstrated by price differences, regional monopolies and persistent cross-border congestion between Member States, for example. Energy prices for industrial electricity customers in the EU are starting to converge in the Central and North Western EU areas but still differ by almost 100% in some cases. Cross-border trade is a key source of competitive pressure on prices. The lack of independence of network operators continues to be a barrier to adequate investment. Lastly, legal differences between Member States remain a barrier to market integration.

Concentration and consolidation: market structures on a national scale are still very concentrated. In addition, incumbents control essential infrastructure facilities, further increasing their market power. Between 2005 and mid-2007, the number of independent suppliers on the electricity market increased in 40% of the Member States where data was available. In 7 out of 21 Member States, no independent supplier is active on the national gas market. Retail markets are not yet well developed, mainly because of limited access to gas supplies for new entrants. Alongside highly concentrated national markets, the tendency towards consolidation and concentration continues.

Price trends: customers in the EU-15 Member States benefited from cumulative price savings from electricity liberalisation to the order of €60 billion over the period 1998 to 2004. These savings were partly countered by price increases in later periods. As competition is still limited, competitive pressures on prices are correspondingly weak. Moreover, prices mirror general trends, notably in oil prices, which increased by more than 50% between 2005 and 2007. Since market opening in 1998, Member States with ownership unbundled TSOs have experienced more positive price developments than Member States where the TSOs were and are still related to supply companies.

Independence of network operators: functional unbundling is still not effectively implemented in all Member States. This applies both to electricity and gas and to transmission and distribution system operators. Insufficient independence of network operators is reflected in underinvestment in network capacities and, in particular, in inadequate cross-border capacities. Legal unbundling has not been sufficient to cope with this effect.

Effective regulation by regulators: despite the Electricity and Gas Directives requiring regulators to hold a minimum set of powers, the unequal levels of regulatory powers across borders have not improved. Non-compliance with European legislation is often met by insufficient or ineffective penalties in national legislation. However, the "regulatory gap" remains a barrier to coordinated decision making across borders, which cannot be solved by the existing model of voluntary cooperation by ERGEG.

Customer dimension: while the rates of **switching** for larger customers continue to rise, most small business customers and households still have limited scope to exercise their right to choose. Electricity switching is at a high level in Iberian countries, the Czech Republic and Nordic countries and above average especially for large industrial customers in Germany, Austria and Luxembourg. In most other countries, the annual switching rate for

households is about 1% or below. The picture is similar for gas, with the exception of Italy, where the rate is above 1%. Moreover, retail competition is distorted by regulated supply tariffs. In terms of **service quality**, market surveys have concluded that the level of satisfaction with the quality of electricity and gas services provided is generally good. Concerns that the introduction of competition would lead to a decline in service standards or problems in the provision of universal service have proved unfounded. The report notes that the coexistence of open energy markets and **regulated energy prices** is quite common among EU Member States: it exists in one third of the gas markets for at least one market segment and more than half of the electricity markets. The negative effects of regulated energy prices remain a major concern.

Security of supply:European electricity outlook reports drawn up in 2007 by the Group of European Electricity Transmission System Operators (ETSO) and European Gas Transmission System Operators suggest that no particular risk of power shortage is expected in the medium term. However, in terms of gas supply in particular, the European Union relies increasingly on imports. Therefore, the diversification of routes or sources plays a key role in reducing dependence on today's three major pipeline sources, Russia, Norway and Algeria. Electricity and gas networks are at the heart of a well-functioning European market. Obstacles still remain to the completion of the priority projects that have already been identified. For electricity, dependence on imports is lower. However, the dependence of power generation on gas, much of which is imported, is increasing.

To conclude, the report notes that despite some encouraging improvements, notably in cross-border coordination at regional level, major barriers to the efficient functioning of the market still exist:

- The insufficient implementation of European legislation remains a crucial factor. Improvement has to be driven by the Commission, Member States, regulators and industry together;
- At the same time, national regulators must be empowered with a view to ensuring proper implementation of legislation by stakeholders;
- Regulators themselves have to act on their own responsibility to encourage implementation of legal requirements. Harmonisation of regulatory best practice models across borders is certainly needed if practical barriers to cross-border trade are to be reduced;
- The industry must observe the legal requirements without compromise. Implementation of European legislation does not allow for negotiations;
- Lastly, regulated energy prices remain a major concern.

The Commission has therefore addressed these shortcomings in a legislative package, which it presented on 19 September 2007 (see also COD/2007/0253 and COD/2007/0197).

Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks

2003/0302(COD) - 20/04/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Esko SEPPANEN (EUL/NGL, FIN) and made some amendments to the Commission's proposals. (Please see the document dated 06/04/04.) European Parliament amendments seek to improve access conditions for new entrants on the gas markets, whilst also encouraging investment in infrastructure.

Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks

2003/0302(COD) - 08/03/2005 - Text adopted by Parliament, 2nd reading

Parliament adopted the report by Esko SEPPÄNEN (GUE/NGL, FIN) broadly approving the Council's common position under the 2nd reading of the codecision procedure, subject to a few minor amendments. (Please refer to the summary dated 25/01/2005).

Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks

2003/0302(COD) - 12/11/2004 - Council position

Regarding the 41 amendments of the European Parliament, the Council has followed the Commission in accepting:

- 22 amendments fully (sometimes with redrafting);

- 3 partially;

- 5 in principle.

The Council has rejected 18 amendments on grounds of substance and/or of form.

Concerning the Commission proposal, the Council has introduced certain modifications.

The main changes introduced by the Council concern the Guidelines referred to in Article 9 the scope of which the Council has reduced. The Commission's ability to adopt new Guidelines through the committee procedure has been deleted from the Commission proposal. The Commission now has the competence to amend the Guidelines laid down in the Annex of the draft Regulation. These Guidelines concern third party access

services, the principles of capacity allocation mechanisms and congestion management procedures, and transparency requirements. The Council has also introduced an additional paragraph to Article 9 where it is made clear that differences between national gas systems should be reflected in the Guidelines and their application and future amendments.

The Council has also delayed the date of application of the Regulation from 1 July

2005 to 1 July 2006 except for Article 9(2) for which the date of application is 1 January 2007.

Other changes include the following:

-the introduction of two new definitions of "unused capacity" and of "firm services";

-the deletion of the definitions of new market entrants and of small player. The Council considers that the Regulation should apply to all market actors in the same way.

-finally, there is a new clause to ensure that the use of auctions is a possible means to determine tariffs.

Energy: internal market in natural gas, cross-border exchanges, access to the transmission networks

2003/0302(COD) - 10/12/2003 - Legislative proposal

PURPOSE : to set fair rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets. PROPOSED ACT : Regulation of the European Parliament and of the Council. CONTENT : to recall, on 26th June 2003, the European Parliament and the Council adopted Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30 /EC. While Directive 98/30/EC, the 1st Internal Market Directive, took the first relatively tentative steps towards the creation of the internal market for gas, the second Directive is expected to provide the necessary structural changes in the regulatory framework to tackle remaining barriers to the completion of the internal market. The Gas Directive progressively opens national gas markets to competition. However, in order to create a real integrated internal market, effective trading rules are necessary, and notably a harmonised approach on cross-border tarification for transmission tariffs and commonly implemented mechanisms for dealing with capacity allocation and congestion at borders. In order to deal with this, the Commission launched the "Madrid process", a Forum composed of the Commission, national Regulators, Member States and industry. Much progress has been made, in particular the agreement of Guidelines for Good Practice at the most recent Forum in September 2003. This agreement covers the following issues : - the criteria according to which charges for access to the network are determined, to ensure that they take fully into account the need for system integrity and reflect effectively incurred costs; - a common minimum set of third party access services - regarding notably for example the duration of transportation contracts offered and on an interruptible basis; - common rules regarding contractual congestion of networks that balance the need to free up unused capacity with the rights of the holders of the capacity to use it when necessary; - information in particular on technical requirements and available capacity; - rules ensuring that transmission system operators operate balancing systems in a manner compatible with the internal market; - common basic requirements regarding the trading of primary rights to capacity. It is now crucial to ensure that these guidelines are fully implemented by Member States and that they can be modified as experience is collected. To deal with this the Commission proposes a Regulation which sets out the basic principles of access conditions to the gas transmission network and permits the Commission, subject to a comitology procedure to adopt binding guidelines on the precise mechanism according to which the harmonised rules should be applied. Thus, the Commission takes on new executive responsibilities. The objectives pursued by the Regulation are, therefore, the rapid entry into force of cost-reflective mechanisms on charges for access to networks, a common minimum set of Third Party Access services, common rules regarding contractual congestion, information and balancing requirements as well as rules for freetrading of primary capacity rights to network capacity. It is expected that the Regulation may enter into force in late 2004/early 2005.