Basic information

2007/0199(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Conditions for access to the natural gas transmission networks. Third energy package Repealing Regulation (EC) No 1775/2005 2003/0302(COD) See also 2007/0195(COD) See also 2007/0196(COD) See also 2007/0197(COD) See also 2007/0198(COD) Repealed by 2021/0424(COD) Amended by 2011/0300(COD) Amended by 2016/0375(COD) Amended by 2022/0090(COD) **Subject** 3.60.03 Gas, electricity, natural gas, biogas 3.60.06 Trans-European energy networks 3.60.08 Energy efficiency	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ITRE Industry, Research and Energy	PAPARIZOV Atanas (PSE)	09/10/2007

Former committee responsible	Former rapporteur	Appointed
ITRE Industry, Research and Energy	PAPARIZOV Atanas (PSE)	09/10/2007

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	EHLER Christian (PPE-DE)	23/10/2007
ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	ANGELAKAS Emmanouil (PPE-DE)	21/11/2007

Council of the European Union

Council configuration	Meetings	Date
Transport, Telecommunications and Energy	2895	2008-10-09

	Transport, Telecommunications and Energy	2854	2008-02-28
	Transport, Telecommunications and Energy	2875	2008-06-06
	Transport, Telecommunications and Energy	2835	2007-11-29
	Environment	2953	2009-06-25

European Commission	Commission DG	Commissioner
	Energy and Transport	PIEBALGS Andris

Key events

Date	Event	Reference	Summary
19/09/2007	Legislative proposal published	COM(2007)0532	Summary
11/10/2007	Committee referral announced in Parliament, 1st reading		
29/11/2007	Debate in Council		
28/02/2008	Debate in Council		Summary
28/05/2008	Vote in committee, 1st reading		Summary
06/06/2008	Debate in Council		Summary
13/06/2008	Committee report tabled for plenary, 1st reading	A6-0253/2008	
08/07/2008	Debate in Parliament		
09/07/2008	Decision by Parliament, 1st reading	T6-0346/2008	Summary
09/01/2009	Council position published	14548/2/2008	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	A6-0237/2009	
21/04/2009	Debate in Parliament		
22/04/2009	Decision by Parliament, 2nd reading	T6-0245/2009	Summary
22/04/2009	Results of vote in Parliament		
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	2007/0199(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)

Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealing Regulation (EC) No 1775/2005 2003/0302(COD) See also 2007/0195(COD) See also 2007/0196(COD) See also 2007/0197(COD) See also 2007/0198(COD) Repealed by 2021/0424(COD) Amended by 2011/0300(COD) Amended by 2016/0375(COD) Amended by 2022/0090(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/6/71702

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE402.501	12/02/2008	
Committee opinion	IMCO	PE400.706	09/04/2008	
Amendments tabled in committee		PE404.707	14/04/2008	
Amendments tabled in committee		PE404.708	14/04/2008	
Committee opinion	ECON	PE400.563	08/05/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0253/2008	13/06/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0346/2008	09/07/2008	Summary
Committee draft report		PE421.369	11/03/2009	
Amendments tabled in committee		PE421.424	26/03/2009	
Committee recommendation tabled for plenary, 2nd reading		A6-0237/2009	03/04/2009	
Text adopted by Parliament, 2nd reading		T6-0245/2009	22/04/2009	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	14548/2/2008	09/01/2009	Summary
Draft final act	03652/2009/LEX	13/07/2009	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2007)0532	19/09/2007	Summary

Document attached to the procedure	SEC(2007)1179	19/09/2007	
Document attached to the procedure	SEC(2007)1180	19/09/2007	
Commission communication on Council's position	COM(2008)0911	12/01/2009	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2009)0315	23/06/2009	Summary
Commission response to text adopted in plenary	SP(2009)3507	25/06/2009	
Follow-up document	C(2011)3013	06/05/2011	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0021/2008	10/04/2008	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Corrigendum to final act 32009R0715R(01)
OJ L 229 01.09.2009, p. 0029 Summary

Regulation 2009/0715
OJ L 211 14.08.2009, p. 0036 Summary

Corrigendum to final act 32009R0715R(02)
OJ L 309 24.11.2009, p. 0087 Summary

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 13/07/2009 - Final act

PURPOSE: to set non-discriminatory rules for access conditions to natural gas transmission systems as well as to LNG facilities and storage facilities (third package of legislative measures concerning the internal energy market).

LEGISLATIVE ACT: Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.

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; (iv) a Directive concerning common rules for the internal market in natural gas.

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 Regulation aims at:

- setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the special characteristics of national and regional markets with a view to ensuring the proper functioning of the internal market in gas;
- setting non-discriminatory rules for access conditions to LNG facilities and storage facilities taking into account the special characteristics of national and regional markets;
- facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas and providing mechanisms to harmonise the network access rules for cross-border exchanges in gas.

The objectives referred to shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, but not to storage facilities, 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 the facilitation of capacity trading.

The main provisions of the Regulation are as follows:

Establishment of the European network of transmission system operators for gas (ENTSO): all transmission system operators shall cooperate at Community level through the ENTSO for Gas, in order to promote the completion and functioning of the internal market in natural gas and cross-border trade and to ensure the optimal management, coordinated operation and sound technical evolution of the natural gas transmission network.

By 3 March 2011, the transmission system operators for gas shall submit to the Commission and to the Agency the draft statutes, a list of members and draft rules of procedure. The Agency, after formally consulting the organisations representing all stakeholders, in particular the system users including customers, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

Cooperation and coordination among transmission system operators: increased cooperation and coordination among transmission system operators is provided for to create network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward-looking planning and sound technical evolution of the transmission system in the Community, including the creation of interconnection capacities, with due regard to the environment.

Those network codes should be in line with framework guidelines, which are non-binding in nature (framework guidelines) and which are developed by the Agency for the Cooperation of Energy Regulators. The Agency should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with the framework guidelines, and it should be enabled to recommend them for adoption by the Commission. The Agency should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Transmission system operators should operate their networks in accordance with those network codes.

Tasks of the ENTSO for Gas: the ENTSO for Gas shall elaborate network codes in the areas referred to in the Regulation upon a request addressed to it by the Commission. The network codes shall be developed for cross-border network issues and market integration issues and shall be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade.

The ENTSO for Gas shall adopt:

- common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incidents classification scale, and research plans;
- a **non-binding Community-wide ten-year network development plan**, (Community-wide network development plan), including a European generation adequacy outlook, every two years. Viable electricity transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan;
- recommendations relating to the coordination of technical cooperation between Community and third-country transmission system operators;
- an annual work programme and an annual report;
- annual summer and winter generation adequacy outlooks.

The ENTSO for Gas shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission in accordance with the Regulation, and their effect on the harmonisation of applicable rules aimed at facilitating market integration. The ENTSO for Gas shall report its findings to the Agency and include the results of the analysis in the annual report.

The Agency shall also provide an opinion on the national 10-year network development plans to assess their consistency with the non binding Community wide 10-year network development plan. If the Agency identifies inconsistencies between a national 10-year network development plan and the non binding Community wide 10-year network development plan, it shall recommend amending the national network development plan or the non binding Community wide 10-year network development plan as appropriate.

Monitoring by the Agency: the Agency shall monitor the execution of the tasks of the ENTSO for Gas and report to the Commission. Where the ENTSO for Gas has failed to implement any such network codes, the Agency shall request the ENTSO for Gas to provide a duly reasoned explanation as to why it has failed to do so. The Agency shall inform the Commission of this explanation and provide its opinion thereon.

Regional cooperation of transmission system operators: transmission system operators shall establish regional cooperation within the ENTSO for Gas. They shall publish a regional investment plan every two years, and may take investment decisions based on that regional investment plan. Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions.

Tariffs for access to networks: the Regulation specifies the criteria according to which tariffs for access to the network are determined, in order to ensure that they fully comply with the principle of non-discrimination and the needs of a well-functioning internal market and take fully into account the need for system integrity and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities.

Third-party access services: a common minimum set of third-party access services is necessary to provide a common minimum standard of access in practice throughout the Community, to ensure that third party access services are sufficiently compatible and to allow the benefits accruing from a well-functioning internal market in natural gas to be exploited. Transmission system operators shall:

- ensure that they offer services on a non-discriminatory basis to all network users;
- provide both firm and interruptible third-party access services;
- offer to network users both long and short-term services.

Principles of capacity-allocation mechanisms and congestion-management procedures: the transmission system operator shall implement and publish non-discriminatory and transparent congestion management procedures which facilitate cross-border exchanges in gas on a non-discriminatory basis.

Transparency requirements: the transmission system operator shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas network, transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.

The transmission system operator shall make public ex-ante and ex-post supply and demand information, based on nominations, forecasts and realised flows in and out of the system. The national regulatory authority shall ensure that all such information is made public.

In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the infrastructures, the **LNG** and storage facility operators or relevant regulatory authorities shall make public sufficiently detailed information on tariff derivation, methodologies and structure of tariffs for infrastructure under regulated third-party access.

Penalties: the Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation. The penalties provided for must be effective, proportionate and dissuasive.

Commission report: the Commission shall monitor the implementation of this Regulation. In its report referred to in Directive 2009/73/EC, the Commission shall also report on the experience gained in the application of this Regulation.

ENTRY INTO FORCE: 03/09/2009.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 23/06/2009 - Commission opinion on Parliament's position at 2nd reading

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 the role of the agency in the process of making codes and guidelines and overseeing the work of the European Network of Transmission Operators for Gas (ENTSO-G);
- provisions strengthening of the role of the agency in the process of establishing a 10-year network development plan;
- role of the ENTSO-G regarding third countries.

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

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 28/02/2008

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.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 13/07/2009 - Corrigendum to final act

PURPOSE: **Corrigendum** to Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (*Regulation initially published in the Official Journal of the European Union L 211 of 14 August 2009*).

CONTENT: the corrigendum concerns Article 27(1), last sentence (**penalties**):

- for: 'They shall notify the Commission of those rules not corresponding to the provisions laid down in Regulation (EC) No 1775/2005 by 3 September 2009 and shall notify the Commission without delay of any subsequent amendment affecting them.',
- read: 'They shall notify the Commission of those rules not corresponding to the provisions laid down in Regulation (EC) No 1775/2005 by 3 March 2011 and shall notify the Commission without delay of any subsequent amendment affecting them.'.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 22/04/2009 - Text adopted by Parliament, 2nd reading

The European Parliament approved as amended, under the second reading of the codecision procedure, the Council's common position for adopting a regulation of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and repealing regulation (EC) No 1775/2005.

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: (a) full ownership unbundling; (b) the independent system operator (ISO); (c) the independent transmission operator (ITO).

The main amendments are as follows:

Cross-border gas interconnection capacity: a sufficient level of cross-border gas interconnection capacity should be achieved and market integration fostered in order to complete the internal market in natural gas.

Regional cooperation: Member States should promote cooperation and monitor the effectiveness of the network operations at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market in gas.

Compliance with the rules: to enhance trust in the market, its participants need to be sure that those engaging in abusive behaviour can be subjected to effective, proportionate and dissuasive penalties. Furthermore, the competent authorities should regularly monitor the compliance of the transmission system operators with the rules.

Community-wide 10-year plan: in order to ensure greater transparency regarding the development of the gas transmission network in the Community, the European Network of Transmission System Operators (ENTSO) for Gas should draw up, publish and regularly update a non-binding Community-wide 10-year network development plan. Viable gas transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan.

European network of transmission system operators for gas: all transmission system operators shall cooperate at Community level through the ENTSO for Gas, in order to promote the completion and functioning of the internal market in natural gas and cross-border trade and to ensure the optimal management, coordinated operation and sound technical evolution of the natural gas transmission network.

Establishment of the ENTSO for Gas: the Agency, after formally consulting the organisations representing all stakeholders, in particular the system users including customers, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

Establishment of network codes: the Commission shall request the Agency to submit to it within a reasonable period of time not exceeding six months a non-binding framework guideline setting out clear and objective principles for the development of network codes relating to the areas identified in the priority list. Each framework guideline shall contribute to non-discrimination, effective competition and the efficient functioning of the market.

Once the Agency is satisfied that the network code is in line with the relevant non-binding framework guidelines, the Agency shall submit the network code to the Commission and may recommend that it be adopted within a reasonable time period. If the Commission does not adopt the code, it shall state the reasons why.

Modification of Network Codes: the Agency shall consult all stakeholders in accordance with the Regulation establishing an Agency for the Cooperation of Energy Regulators.

Tasks of the ENTSO for Gas: the ENTSO for Gas shall adopt, inter alia: (i) common network operation tools to ensure co-ordination of network operation in normal and emergency conditions, including a common incidents classification scale; (ii) recommendations on the coordination of technical cooperation between Community and third-country transmission system operators.

The Agency shall review national 10-year network development plans to assess their consistency with the non binding Community-wide 10-year network development plan. If the Agency identifies inconsistencies between a national 10-year network development plan and the non-binding Community-wide 10-year network development plan, it shall recommend amending the national network development plan or the non-binding Community-wide 10-year network development plan as appropriate.

Monitoring by the Agency: where the ENTSO for Gas has failed to implement any such network codes, the Agency shall request the ENTSO for Gas to provide a duly reasoned explanation as to why it has failed to do so. The Agency shall inform the Commission of this explanation and provide its opinion thereon.

Capacity allocation mechanisms and congestion management procedures: the transmission system operator shall implement and publish non-discriminatory and transparent congestion management procedures which facilitate cross-border exchanges in gas on a non-discriminatory basis.

Transparency requirements: the transmission system operator shall make public ex-ante and ex-post supply and demand information, based on nominations, forecasts and realised flows in and out of the system. The national regulatory authority shall ensure that all such information is made public.

In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the infrastructures, the LNG and storage facility operators or relevant regulatory authorities shall make public sufficiently detailed information on tariff derivation, methodologies and structure of tariffs for infrastructure under regulated third-party access.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 09/01/2009 - Council position

The Council unanimously adopted its common position in the form of a recast of Regulation (EC) No 1775/2005 (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 47 amendments adopted by the European Parliament at first reading, the Council has followed the Commission in accepting, in part or in full, 7 amendments and in rejecting 6 other amendments.

Regarding the European Parliament amendments where the Council has deviated from the Commission position, the Council accepted 3 amendments and rejected 30.

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

Certification of Transmission System Operators (TSOs): the Council considered it appropriate to transfer the part of the certification procedure which sets out the role of the Commission in this procedure from the Gas Directive to the new Regulation.

Establishment and modification of network codes: the common position sets out more in detail the procedure for the establishment of network codes and another - shorter - procedure for the modification of network codes. It has given a clear role to the Agency which should develop non-binding framework guidelines as a basis for the network codes to be established by the European Network of Transmission System Operators (ENTSO), review the draft network codes and assess proposed modifications to the network codes. If necessary, the Commission may adopt those codes through the committee procedure in order to make them binding.

Monitoring by the Agency: the Council introduced two paragraphs setting out the monitoring role of the Agency in relation to the implementation of the network codes by ENTSO.

Transparency / confidentiality requirements: the Council considered it important that confidentiality for commercially sensitive data regarding storage can be ensured, subject to approval by the regulatory authority.

Retail markets: the Council considered it appropriate to take out the cross-border reference, and transfer it from the Regulation to the gas Directive.

Other issues: the Council considered it appropriate to use the term "network development plan" instead of "investment plan" and to clarify that these plans are of a non-binding nature.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 06/06/2008

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.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 09/07/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 642 votes to 32 with 31 abstentions, a legislative resolution amending the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks. The report had been tabled for consideration in plenary by Atanas **PAPARIZOV** (PES, BG), on behalf of the Committee on Industry, Research and Energy.

The main amendments – adopted under 1st reading of the codecsion procedure – were as follows:

Objective: MEPs specify that the Regulation should aim at facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of gas supply and providing mechanisms to harmonise the network access rules for cross-border exchange in gas.

Extension of powers of the Agency for the Cooperation of Energy Regulator: the Commission proposal had created the ENTSOG with power to adopt, inter alia, a 10-year investment plan. Parliament, however, felt that the Agency should have increased powers. Accordingly, it stipulated that the Agency would have powers to approve ENTSOG's submission of, inter alia: (a) draft network codes in the areas mentioned in the text , elaborated in cooperation with market participants and network users; (b) a 10-year investment plan including a supply and demand adequacy report, every two years; (c) measures to ensure the real-time coordination of grid operation in normal and emergency conditions; (d) guidelines on the coordination of technical cooperation between Community and third-country transmission system operators; (d) an annual work programme based on the priorities set by the Agency.

The Agency will monitor the implementation of the network codes by ENTSOG.

Guidelines and network codes: Parliament deleted the clause on the establishment and evaluation of technical and market codes and inserted Articles on the development of guidelines and the development of network codes respectively. The Agency must **develop guidelines**, based on a priority list drawn up by the Commission, establishing principles for the harmonisation of rules on the prescribed issues. In drafting those guidelines, the Agency shall formally consult the ENTSOG and other stakeholders, in an open and transparent manner.

Within six months of the adoption of the guidelines by the Agency, the Commission shall mandate the ENTSOG to **develop draft network codes** in full compliance with the principles established in the guidelines. ENTSOG must submit the draft codes to the Agency, which will conduct a formal consultation and adopt the draft codes on the basis of that consultation.

Monitoring: the Agency will monitor the implementation of the network codes by ENTSOG. It will also monitor the implementation of the technical codes, the 10-year investment plan and the annual work programme and include the results of that monitoring in its annual report. In the event of non-compliance with the network codes by the transmission system operators, the 10-year investment plan or the annual work programme of ENTSOG, the Agency will provide information to the Commission.

Investment plan: this must identify investment gaps, notably with respect to cross-border capacities and will include investments in interconnection, in particular, and as a priority, connections between 'energy islands' and gas networks in the European Union and investments in other infrastructure necessary for effective trading, competition and security of supply. A review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices shall be annexed to the investment plan. The transmission system operators shall implement the published investment plan.

Regional cooperation: regulatory authorities shall cooperate among themselves at all levels for the purpose of harmonising the market design and integrating their national markets at least at one or more regional levels, as a first and intermediate step towards a fully liberalised internal market. In particular, they shall promote the cooperation of transmission network operators at a regional level and facilitate their regional integration with a view to creating a competitive European market, facilitating harmonisation of their regulatory and technical frameworks and, in particular, integrating persisting gas islands.

Comitology: Parliament deleted the comitology provisions with regard to the adoption of codes. It also deleted them with regard to guidelines on third party access to LNG and storage.

Regulatory authorities: national regulatory authorities must have the competence to effectively ensure compliance with the Regulation by providing them with the power, in relation to any single breach, either to impose effective, dissuasive and proportionate penalties of up to 10 % of the system operator's annual turnover in its domestic market or to revoke the operator's licence.

Physical congestion: in the event of long-term physical congestion, the transmission system operators shall relieve congestion by adding new capacities according to market demand. In order to assess market demand, the transmission system operators shall undertake open-season procedures.

Guidelines on third-party access services: the application of guidelines on third-party access will reflect differences between national gas systems, and therefore not require uniform detailed conditions of third party access at Community level. They may, however, set minimum requirements to be met to achieve non-discriminatory and transparent network access conditions necessary for an internal gas market, which may be applied in the light of differences between national gas systems.

Transparency requirements: transmission system operators shall inform the national regulatory authority, on request, (rather than make public, as the Commission had proposed) of measures taken as well as of costs incurred and revenues generated to balance the system. Members felt that this information is commercially sensitive and could place the Transmission System Operators at a disadvantage on the market. In addition, all LNG and storage system operators shall make public the amount of gas in each storage facility or group of storage facilities in the same balancing zone or LNG facility, inflows and outflows, and the available storage and LNG facility capacities, including for those facilities exempted from third party access.

In order to ensure transparent and non-discriminatory tariffs and facilitate efficient utilisation of the infrastructures, the LNG and storage facility operators or relevant regulatory authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodologies and structure of tariffs for infrastructure under regulated third-party access.

Where a LNG or storage facility operator considers that it is not entitled, for reasons of confidentiality, to make public all the data required, it shall seek an authorisation of the competent authorities to limit publication with respect to the points in question. The regulatory authority shall grant or refuse the authorisation on a case-by-case basis, taking into account in particular the need to respect legitimate commercial confidentiality and the objective of creating a competitive internal market for gas. If the authorisation is granted, available storage and/or LNG facility capacity shall be published without indicating the numerical data that would contravene confidentiality.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 12/01/2009 - Commission communication on Council's position

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.

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 taken into account in the common position concerning the Gas Regulation:

Power of the Agency to develop framework guidelines and codes: both the common position of the Council and the amendments by the European Parliament change the Commission proposal regarding the process of establishing network codes. They introduce a new concept of framework guidelines, prepared by the Agency, which have to be applied by the TSOs when drafting European network codes.

Consultation and monitoring by the European Network of Transmission System Operators (ENTSO): the Common position clarifies the role of ENTSO compared to consultation and monitoring by the Agency. Parliament’s amendments are in the same direction but are too restrictive to maintain sufficient scope for ENTSO consultation and monitoring.

Transparency and confidentiality: the Commission proposed full transparency in the use of storage and LNG facilities. The Council provided that storage system operators may be exempted from publishing information on storage use if there is only one storage user, if publication would damage his commercial position and if the regulator approves non-publication. Parliament has proposed the inclusion of an article that allows storage and LNG system operators not to publish data if this would be in breach of confidentiality.

In the Commission's view, the amendment by Parliament is not restrictive enough and gives preference to confidentiality over transparency, whereas a competitive market requires transparency to be the rule and confidentiality the exception. The Council's amendment is acceptable for this particular case of single users of storage facilities, as these are usually small storage facilities that system operators manage primarily for their own use.

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

Power of the Agency regarding investment plans: the European Parliament proposes that the Agency should adopt a binding network investment plan, to be prepared by ENTSO. The Commission cannot agree to the Agency’s being granted discretionary power to adopt a binding investment plan. The Commission could however support the Agency’s adopting a non-binding investment plan, or playing a role in monitoring consistency between the national investment plans as approved by the national regulators and the 10-year network development plan of ENTSO.

Powers of the national regulatory authorities: Parliament has proposed extending the powers of regulatory authorities, by increasing their role in control over capacity allocation and congestion management for storage and LNG, as well as their role in enforcement of the Regulation.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 19/09/2007 - Legislative proposal

PURPOSE: amending Regulation (EC) No 1775/2005 on conditions for **access to the natural gas transmission networks**.

PROPOSED ACT: Regulation 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/2007/0196; COD/2007/0197; COD/2007/0198).

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.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 09/10/2008

The Council unanimously reached a **political agreement** on the package of legislative measures concerning the internal energy market.

The Council's common positions will be prepared on the basis of the political agreement and forwarded to the European Parliament for second reading under the co-decision procedure by the end of 2008.

The third package of legislative measures concerning the internal energy market was submitted by the Commission on 19 September 2007 at the behest of the 2007 spring European Council. On the basis of the agreement reached at the Energy Council on 6 June, the Council has continued working under the French Presidency to finalise the legal texts and agree on the two outstanding issues: 1) the third country clause and 2) the conditions for fair competition.

1) **The third country clause** addresses the question of control of networks by companies of third countries in a non-protectionist manner which ensures that the companies concerned abide by the same rules as those that apply to EU undertakings. The clause lays down criteria for the assessment of investments by companies of third countries, in particular the security of EU supply. The text approved by ministers establishes a procedure for certification of third-country investors wishing to take control of an energy distribution system or operator. It specifies in detail where responsibilities lie and the role of national regulators and the Commission.

2) **The provisions relating to conditions of fair competition**, as approved by the ministers, provide for the coexistence on the internal energy market of three different unbundling models for production and supply activities, on the one hand, and energy transmission activities on the other. In particular, the text prohibits companies engaged in the production or supply of gas or electricity from exercising control over a transmission network operator of a Member State that has opted for full unbundling.

The initial Commission proposal contains two options for effective separation of supply and production activities, on the one hand, and network management activities, on the other: 1) ownership unbundling (meaning that the same company could not simultaneously own a distribution network and produce or supply energy; and 2) the appointment of an Independent Transmission Operator (ITO).

The Council approved **a third solution (ITO)** whereby independent transmission network operators would be set up with a view to effective unbundling. This option would enable companies to retain ownership of transmission networks provided that the networks were operated by an independent transmission network operator and that additional assurances were given. This option should be applicable to the two sectors (electricity and gas) in Member States where the transmission network belongs to a vertically integrated company on the date of entry into force of the Directive.

Conditions for access to the natural gas transmission networks. Third energy package

2007/0199(COD) - 13/07/2009 - Corrigendum to final act

LEGISLATIVE ACT: **Corrigendum** to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005. (*Regulation initially published in the Official Journal of the European Union L 211 of 14 August 2009*).

CONTENT: an amended has been made to the date of application of this Regulation. It shall apply from 3 March 2011.