

European Union Internal Energy Market Proposed Gas Directive and Gas Regulation Amending Directive 2003/55/EC and EC Regulation 1775/2005

Part 1

Priority amendments from the Parliament and from EFET

1.1 GAS DIRECTIVE

Parliament Amendment 28
Proposal for a directive – amending act Recital 25 a (new)

(25a) The development of a truly pan-Community pipeline network should be one of the main goals of this Directive and regulatory issues on cross-border interconnections and regional markets should, therefore, be the responsibility of the Agency.

Parliament Amendment 55
Proposal for a directive – amending act Article 1 – point 3 Directive 2003/55/EC
Article 5b

Both the Council and the Parliament have recognised the importance of harmonising gas market design. EFET strongly supports the duties on regulators and TSOs to co-operate at a regional level as set out by the Parliament. The Council have clearly noted the imperative that Member States foster the consistency of their legal and regulatory frameworks. This is a key point that should be combined with the Parliaments text in the process of agreeing the final wording.

(Council Text for renumbered article 7)

Member States shall cooperate among themselves for the purpose of integrating their national markets at least at **the regional level**. In particular, **Member States** shall promote the cooperation of network operators at a regional level, and **foster the consistency** of their legal **and** regulatory framework. **The geographical area covered by regional cooperations shall be in line with the definition of geographical areas by the Commission in accordance with Article 2h (3) of Regulation (EC) No1775/2005.** "

1. National regulatory authorities shall cooperate among themselves 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 for gas**. In particular, **they** shall promote the cooperation of network operators at a regional level and **facilitate their integration at regional level with the aim of creating a competitive internal market, facilitating the harmonisation** of their legal, regulatory **and technical** framework **and, above all, integrating the gas islands that persist in the European Union . Member States shall also promote cross-border and regional cooperation among national regulatory authorities.**

2. The Agency shall cooperate with national regulatory authorities and transmission system operators in accordance with Chapters III and IV 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. In regional markets, the Agency shall be deemed to be the competent authority in the areas specified in Article 24d.

EFET Priority Amendment GD 4	
Article 1, paragraph (6) – “Article 8 Tasks of System Operators”	
Draft Directive	EFET amendment
	6. Entities responsible for a transmission system shall maximise the transmission capacity offered to the market. In the allocation and interruption of capacity on both sides of a border Transmission System Operators shall not discriminate between system users inside and outside their home country.
<i>Justification</i>	
<i>The tasks of TSOs need to be strengthened to ensure that use of existing capacity is maximized on a non-discriminatory basis and new infrastructure is built where there is a market demand. These changes are essential for the integration of the European energy market.</i>	

Parliament Amendment 118
Proposal for a directive – amending act Article 1 – point 6 a (new) Directive 2003/55/EC Article 8 - paragraph 1 – point b a (new)
(6a) In Article 8(1) the following point shall be inserted:
“(ba) build sufficient interconnection capacity linking their transmission infrastructure in order to meet all reasonable demands for capacity, facilitate an efficient overall market, and fulfil the criteria for security of supply of gas;”

Priority Amendment GD 9	
Article 1, para (13), Article 22 New Infrastructure, 1 (f) (new)	
Draft Directive	EFET amendment
	<i>f) the investment is not necessary to enable third party access to a regulated system</i>
<i>Justification</i>	
<p><i>If this condition were not met (for example the proposed transmission capacity was required to maintain deliveries to an increasing number of consumers) then one or more regulated entities should be responsible for the investment and it should be carried out under the normal regulatory regime (i.e. without a TPA exemption). This test should apply to all new interconnection investment i.e. whether for new pipelines or enhancements to existing pipelines.</i></p>	

Parliament Amendment 104	
Proposal for a directive – amending act Article 1 – point 14 Directive 2003/55/EC Article 24d – paragraph 2	
<p>2. Regulatory authorities shall cooperate at least on a regional level to foster the creation of operational arrangements in order to ensure an optimal management of the network, develop joint gas exchanges and the allocation of cross-border capacity, and to ensure a minimum level of interconnection capacity within the region to allow for effective competition to develop.</p>	<p>2. In order to ensure that where regional gas markets occur integration is mirrored by adequate regulatory structures, the national regulatory authorities concerned shall ensure, in close cooperation with and under the guidance of the Agency, that at least the following regulatory tasks are performed in relation to their regional markets:</p> <p>(a) cooperation at least at a regional level to foster the creation of operational arrangements in order to ensure an optimal management of the network, develop joint gas exchanges and the allocation of cross-border capacity, and to ensure an adequate level of interconnection capacity including through new interconnection, within the region and between regions to allow for the development of effective competition and the improvement of security of supply;</p>

1.2 GAS REGULATION

Parliamentary Amendment 3
Proposal for a regulation – amending act Recital 3 a (new)

(3a) A sufficient level of cross-border gas interconnection capacity should be achieved as a first step towards integrating markets and in order to complete the internal energy market.

Parliament Amendment 16
Proposal for a regulation – amending act Article 1 – point 3 Regulation (EC) No°1775/2005 Article 2b – paragraph 2

Within **six weeks** from receipt, the Agency shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

Within **two months** from receipt, the Agency, **after formally consulting the organisations representing all stakeholders, in particular the system users and customers**, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

Parliament Amendment 23
Proposal for a regulation – amending act Article 1 – point 3 Regulation (EC) No 1775/2005 Article 2h

2. Transmission system operators shall promote operational arrangements in order to ensure optimum management of the network, and promote the development of energy exchanges, the allocation of cross-border capacity **through implicit auctions** and the **integration** of balancing mechanisms.

[...]

2. Transmission system operators shall promote operational arrangements in order to ensure optimum management of the network, and promote the development of energy exchanges, the **coordinated** allocation of cross-border capacity and the **compatibility** of **cross-border** balancing mechanisms.

[...]

3a. Member States' regulatory authorities and other relevant national 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.

Priority Amendment GR 4	
“Article 2c, Tasks of the European Network of Transmission System Operators for Gas	
Draft Regulation	EFET amendment
	<i>3ab. Market participants and TSOs shall have equal rights to propose and to decide jointly on changes to network rules, including at interfaces between TSO systems. If they cannot reach agreement, the Regulatory Authority shall have the power to take a binding decision subject to an appropriate appeals mechanism</i>
<u>Justification</u>	
<i>Market participants need to be actively involved in the development of (and any changes to) network rules. The Regulatory Authority needs to have sufficient powers to ensure that rules are developed and/or changed as necessary within a reasonable timescale. The change is needed to reinforce the provisions in Article 2f Consultations.</i>	

Priority Amendment GR 7	
Article 1, paragraph 3, “Article 2h Regional cooperation of transmission system operators 2a (new)”	
Draft Regulation	EFET amendment
	<i>2a. Transmission System Operators must maximise the cross-border capacity that they offer to the market and ensure harmonisation of the rules for allocation and interruption of capacity on both sides of a border, whilst ensuring that they do not discriminate between network users inside and outside their country of</i>

residence.
<u>Justification</u>
<i>There need to be more explicit obligations on Transmission System Operators to maximize available cross-border capacity. Transmission System Operators must not discriminate between suppliers in this process.</i>

Priority Amendment GR 8	
Article 1, paragraph 3, “Article 2h Regional cooperation of transmission system operators 2b and 2c (new)	
Draft Regulation	EFET amendment
	<p>2b. Transmission system operators must build sufficient interconnection capacity between their transmission infrastructure to meet all reasonable demands for capacity to facilitate an efficient overall market and to fulfil security of supply criteria.</p> <p>2c. National regulatory authorities shall ensure that the regulatory regime provides reasonable incentives for transmission system operators to build all agreed capacity that satisfies appropriate economic, market-based tests and shall ensure that transmission system operators’ investment decisions do not discriminate between suppliers inside and outside their country of residence.</p>
<u>Justification</u>	
<i>Transmission system operators must build the interconnection capacity demanded by the market under economic conditions.</i>	
<i>National regulatory authorities need to be given explicit responsibility to ensure that the regulatory regime supports investment in cross-border capacity and that this does not lead to discrimination against suppliers from other Member States.</i>	

Priority Amendment GR 9
“Article 2c, paragraph 1b. Tasks of the European Network of Transmission System Operators for Gas

Comment on Current Text	EFET amendment
<p>EFET has serious reservation regarding the 15 October 2008 text in the Council's new clause 8. Our concerns include that</p> <ul style="list-style-type: none"> • Too wide a range of issues can be given to ENTSO to develop without including stakeholders • Adding up individual TSO plans is suboptimal and not in the European interest; the starting point must be a consistent set of assumptions and a common network model • Infrequently updating an investment plan which is non-binding on TSO has very little use. EFET suggests a rolling plan with official annual updates and projects commitment dates. • Other aspects of the new section 8 will need to be changed depending on whether or not stakeholders are given an adequate role in the whole process. 	<p>The European Network of Transmission System Operators for Gas shall adopt, taking into account any high level guidelines by the Agency, and using multi-TSO network models:</p> <p>(a) technical codes for cooperation between transmission system operators in the areas mentioned in paragraph 3;</p> <p>(b) a 10-year investment plan, which shall be updated annually;</p> <p>(c) an annual work programme;</p> <p>(d) an annual report;</p> <p>(e) annual summer and winter supply outlooks.</p>
<p><u>Justification</u></p> <p><i>ENTSO should not have responsibility for developing market codes without stakeholders full involvement in the decision making process – the focus should be on fostering greater coordination between networks so as to facilitate the development of more integrated markets. The investment plan should be updated annually as it will have a material impact on the commercial decisions of market participants and lead to higher levels of transparency – including identifying potential delays and changes in investment plans and the reasons. ENTSO should be required to set up, use and publish the results of multi TSO network models covering the whole of Europe.</i></p>	

Priority Amendment GR 10	
Article 7 – Balancing rules and imbalance charges – para 1, subparagraph 2	
Draft Regulation	EFET amendment
Balancing rules shall be market based.	Balancing rules shall be market based, revenue neutral to the extent possible for the transmission system operator and shall provide for daily balancing save where there are sound technical, operational and economic reasons to the contrary.

Justification

The wording is based on the ERGEG guidelines for good practice in gas balancing and confirms the principle that transmission system operator's balancing activities should be broadly revenue neutral (subject only to the possibility of performance incentives). Balancing services are monopoly services and as such the system operators should not be allowed to achieve monopoly profits for the provision of these services.

The balancing period should reflect the system settlement period, whereby the system users' input and output is measured. ERGEG's preference is for a daily balancing period, unless there are technical or operational reasons that mean that a different balancing period is necessary to ensure that the system can be balanced and/or for safety and security reasons. Unnecessary short balancing periods, for example hourly balancing, can be significant barriers to new entry and inappropriately benefit large established companies.

Part 2

EFET suggestions to provide clarity or achieve a compromise

2.1 GAS DIRECTIVE

Amendment GD 1	
Recital 10a (new)	
Draft Directive	EFET amendment
	<i>To facilitate efficient market integration, the process of unbundling should enable several transmission systems to be operated together, for example by a Regional Independent System Operator</i>
<u>Justification</u>	
<i>Effective separation between transmission operators and production or supply businesses is essential to ensure non-discriminatory access, but the process of unbundling must lead to market integration, not to market fragmentation. A new recital should be added to make this clear.</i>	

Amendment GD 2	
Recital 15a (new)	
Draft Directive	EFET amendment
	<i>In a well-functioning market, the</i>

	<i>provision of storage services should be a competitive activity across most of Europe. Member States and National Regulators need to ensure that conditions placed on Storage Operators aim to achieve the goal of a competitive storage market.</i>
<u>Justification</u>	
<i>Whilst transmission pipelines and networks are natural monopolies and must be regulated, gas storage can and should become a competitive activity through encouragement for new investments by new entrants. Recital 15 therefore needs amendment or a new recital added.</i>	

Amendment GD 3	
Article 1, paragraph (3), “Article 5a Regional Solidarity”	
Draft Directive	EFET amendment
3. The Commission shall be kept informed of this cooperation.	3. The Commission and market participants shall be kept informed of this cooperation.
<u>Justification</u>	
<i>Measures that Member States put in place to deal with gas supply disruptions can change the balance of risk to market participants and have unintended distorting effects on market conditions if market participants are not kept fully informed.</i>	
This amendment is required only if an ISO is included Amendment GD 5	
Article1, paragraph (9) – “Article 9 Independent system operators , 2(c)”	
Draft Directive	EFET amendment
c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority;	c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority including the development of interconnector capacity and the integration of the regional market.
<u>Justification</u>	
<i>There should be a commitment of the candidate ISO for the development of interconnection capacity and regional integration.</i>	

Amendment GD 6

Article 9a – Unbundling of transmission system owner and storage system operator - para (2)(d)	
Draft Directive	EFET amendment
d. the transmission system owner and storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.	d. the transmission system owner and storage system operator shall each establish an individual compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programmes shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken shall be submitted by the person or body responsible for monitoring each compliance programme to the regulatory authority and shall be published.
<u>Justification</u>	
<p><i>The European Parliament deleted 9 and 9a. EFET regrets the deletion of compliance programmes from the text. Compliance programmes should be retained regardless of the outcome of discussions on the manner of separation.</i></p> <p><i>In order to ensure that discriminatory and anticompetitive conduct is excluded by all employees where a storage system operator is owned by a transmission system owner, then a compliance programme and compliance officer must be put in place on both sides of the divide, that is both within the transmission system owner of the vertically integrated undertaking and within the storage system operator. The compliance programme and officer are put in place to monitor the effective separation of commercially sensitive information and the appropriate conduct of the employees on both sides of the fence of separation.</i></p>	

Amendment GD 7	
Article 18 – Third party access – para 1	
Draft Directive	EFET amendment
Member States shall ensure the implementation of a system of third party access to the transmission and distribution system and LNG facilities based on published tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users. Member States shall ensure that these tariffs, or the methodologies underlying their calculation shall be	Member States shall ensure the implementation of a system of third party access to the transmission and distribution system, and LNG facilities including linepack and ancillary services based on published tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users. Member States shall ensure that these

<p>approved prior to their entry into force by a regulatory authority referred to in Article 24a (1) and that these tariffs – and the methodologies where only methodologies are approved – are published prior to their entry into force.</p>	<p>tariffs, or the methodologies underlying their calculation shall be approved prior to their entry into force by a regulatory authority referred to in Article 24a (1) and that these tariffs – and the methodologies where only methodologies are approved – are published prior to their entry into force.</p>
<p style="text-align: center;"><u>Justification</u></p> <p><i>This amendment places the task of providing access to linepack and ancillary services within the responsibilities of the network and/or LNG system operators. This activity currently resides in article 19 of the Directive which focuses on storage access. However the access requirements to linepack and ancillary services are incompatible with storage access methodologies.</i></p>	

Amendment GD 8	
Article 21 – Refusal of access - para 1 & 2	
Council Text	EFET amendment
<p>1. Natural gas undertakings may refuse access to the system on the basis of lack of capacity or where the access to the system would prevent them from carrying out the public service obligations referred to in Article 3(2) which are assigned to them or on the basis of serious economic and financial difficulties with take-or-pay contracts having regard to the criteria and procedures set out in article 27 and the alternative chosen by the Member State in accordance with paragraph 1 of that Article. Duly substantiated reasons shall be given for such a refusal.</p> <p>2. Member States may take the measures necessary to ensure that the natural gas undertaking refusing access to the system on the basis of lack of capacity or a lack of connection makes the necessary enhancements as far as it is economic to do so or when a potential customer is willing to pay for them. In circumstances where Member States apply Article 4(4),</p>	<p>1. System operators may refuse access to the system on the basis of lack of physical available capacity. Duly substantiated reasons shall be given for such a refusal on the basis of objective, technically and economically justified criteria. The national regulatory authority shall ensure that these criteria are consistently applied and ensure that the system user who has been refused access has a right of appeal.</p> <p>2. National regulatory authorities may take the measures necessary to ensure that the system operators refusing access to the system on the basis of lack of capacity or a lack of connection makes the necessary enhancements as far as it is economic to do so or when a potential customer is willing to pay for them. In circumstances where Member States apply Article 4(4), Member States shall take such measures.</p>

Member States shall take such measures.	
<u>Justification</u>	
<p><i>The use of the term system operators is consistent with the terminology used in articles 18 and 19 on third party access.</i></p> <p><i>The reference to article 27 on derogations due to take or pay commitments is no longer justified given the requirements to separate the network and supply activities, which have removed the need for such a derogation.</i></p> <p><i>Any refusal of access should be made by the operator of the system and be based on duly reasoned technically and economically justified criteria. Refusal should only be allowed where there is insufficient physical available capacity. That is, it should not be based on lack of contractual capacity alone. Where contractual capacity is not used by the primary capacity holder this must be released to the market according to the rules already established in Regulation 1775/2005.</i></p> <p><i>The regulatory authority should have a duty to ensure that access refusal criteria are consistently applied, and also ensure that system users have a right of appeal where they are not satisfied with a refusal notice. The regulatory authority should also be able to recommend capacity or connection related investment to improve connection provision, where economically justified.</i></p>	

Amendment GD 10	
Article 1, para (13), Article 22 New Infrastructure	
Draft Directive	EFET amendment
When deciding on those conditions, account shall in particular be taken of any additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.	When deciding on those conditions, account shall in particular be taken of any additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances. <i>The regulatory authority shall conduct a public consultation involving among others, potential system users on the exemption request.</i>
<u>Justification</u>	
<p><i>As presently worded, there appears to be no involvement of users in the exemption process. The additional words ensure adequate involvement of system users and other stakeholders, and will enhance the transparency of the process.</i></p>	

Amendment GD 11	
Article 24c – Duties and powers of the regulatory authority - para 1 (a)	
Draft Directive	EFET amendment
(a) ensuring compliance of transmission and distribution system operators, and where relevant system owners, as well as of any natural gas undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross border issues;	(a) ensuring compliance of transmission, distribution, LNG and storage system operators, and where relevant system owners, as well as of any natural gas undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross border issues;
<i>Justification</i>	
<i>Wording needs to be strengthened in order to emphasise the duty of the regulatory authorities in relation to all system operators</i>	

Amendment GD 13	
Article 24c – Duties & powers of regulatory authority - para 1 (p)	
Draft Directive	EFET amendment
(a) monitoring the correct application of the criteria that determine whether a storage facility falls under Article 19(3) or 19(4);	(a) monitoring the correct application of the criteria for storage access referred to in article 19(1)
<i>Justification</i>	
<i>The national regulatory authority should monitor the correct application of the criteria determining whether third party access to storage is necessary and not only whether storage access should be negotiated as per article 19(3) or regulated as per article 19(4). Both these issues are established in article 19(1). Monitoring by regulatory authorities is important to ensure access rules are correctly applied and thus allow market competition to develop.</i>	

Amendment GD 14 support Parliament amendment 95	
Article 24c – Duties & powers of regulatory authority - para 4a-c	
Draft Directive	EFET amendment
(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. These tariffs or methodologies shall allow	(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. These tariffs or methodologies shall

<p>the necessary investments in the networks and LNG facilities to be carried out in a manner allowing these investments to ensure the viability of the networks and LNG facilities.</p> <p>(b) the provision of balancing services</p>	<p>reflect actual costs incurred, insofar as such costs correspond to those of an <u>efficient</u> and structurally comparable operator and shall be transparent. They shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing these investments to ensure the viability of the networks and LNG facilities.</p> <p>(b) the provision of balancing services, which shall be cost reflective and revenue neutral to the extent possible, whilst providing appropriate incentives on network users to balance their input and offtake of gas. They shall be fair and non-discriminatory and based on objective criteria.</p> <p>(c) the provision of gas quality services to the market</p>
<p><u>Justification</u></p> <p>We support EP Amendment 95, but with the word “efficient” added to the requirements for approving costs that may be recovered by the infrastructure operator via regulated tariffs.</p>	

2.2 GAS REGULATION

<p>Compromise Amendment GR 1 (EP Amendment 2 uses the alternative wording “and isolated markets persist”)</p>	
<p>Article 1 – Recital 3</p>	
<p>Draft Regulation</p>	<p>EFET amendment</p>
<p>At present, there are obstacles to sell gas on equal terms, without discrimination or disadvantage in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision do not yet exist in each Member State.</p>	<p>At present, there are obstacles to sell gas on equal terms, without discrimination or disadvantage in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision do not yet exist in each Member State. In addition, some regions lack cross-border interconnection capacity which limits market integration</p>
<p><u>Justification</u></p>	

As noted by the European Parliament, the Gas Regulation should recognise that some Member States lack sufficient cross-border interconnection even though welfare overall would increase if capacity were to be built. This situation hinders the integration of markets and therefore the European energy market as a whole.

Amendment GR 2

“Article 2b, paragraph 1. Establishment of the European Network of Transmission System Operators for gas

Draft Regulation	EFET amendment
<p>By [...] at the latest the Transmission System Operators for Gas shall submit to the Commission and to the Agency the draft of statutes, a list of future members and draft rules of procedure, including the rules of procedure on the consultation of other stakeholders, of the European Network for Transmission System Operators for Gas to be established.</p>	<p>By [...] at the latest the Transmission System Operators for Gas shall submit to the Commission and to the Agency the draft of statutes, a list of future members and draft rules of procedure, including the rules of procedure on the consultation of other stakeholders, of the European Network for Transmission System Operators for Gas to be established.. <i>The list of members of the European Network for Transmission System Operators for Gas shall include all TSOs certified pursuant to Articles 7b of Directive..., amending Directive 2003/55/EC</i></p>
<p style="text-align: center;"><u>Justification</u></p> <p><i>The Agency must be given responsibility for approving the members of ENTSO – which should be all those entities that are certified TSOs (and no other entities) in accordance with the relevant requirements.</i></p>	

Amendment GR 3

Article 2ba.paragraph 8 (new).Establishment of Network Codes

Draft Regulation	EFET amendment
	<p><i>Regarding a need for market codes and market or trading rules, the Agency shall have an obligation to consider, and, if in consultation with the Commission, it considers this necessary develop into practical solutions any proposals that are suggested to it by formal request of system users or customers, to enhance competition, efficiency and/or operation of the European</i></p>

	<p><i>wholesale market. The Agency shall, after a period of a maximum of two months from receiving such proposals, consult all market participants and ENTSO on such proposals and, within a further two months, develop a recommendation based on the balance of views, to the Commission.</i></p> <p><i>The Commission may then adopt, on its own initiative or upon recommendation of the Agency, guidelines on the concerned areas</i></p>
<p style="text-align: center;"><u>Justification</u></p> <p><i>It is crucial that system users and customers (as defined in the directive) have an equal role in proposing changes to existing or new market codes or market/trading rules. Network users will have direct experience and knowledge of how existing codes/rules are functioning and whether any changes are necessary to improve the effective and efficient operation of the market. There also needs to be an effective consultation process for any proposed changes and a route to adopt binding guidelines for the rules to ensure that the market functions effectively and efficiently. The Agency, following consultation with stakeholders, should provide its opinion to the Commission in this respect.</i></p>	

Amendment GR 5	
“Article 2c.paragraph 5.Tasks of the European Network of Transmission System Operators for Gas	
Draft Regulation	EFET amendment
<p>The European Network of Transmission System Operators for Gas shall monitor and analyse the implementation of the codes and the guidelines adopted by the Commission in accordance with Article 2ba(12), and their effect on the harmonisation of applicable rules aimed at facilitating market integration. ENTSO shall report its findings to the Agency and include the results of the analysis in the annual report referred to in paragraph 1(e).</p>	<p>The European Network of Transmission System Operators for Gas shall monitor and analyse the implementation of the codes and the guidelines adopted by the Commission in accordance with Article 2ba(12), and their effect on the harmonisation of applicable rules aimed at facilitating market integration. ENTSO shall report its findings to the Agency and include the results of the analysis in the annual report referred to in paragraph 1(e). <i>The monitoring should identify in a transparent way, for each individual TSO, any areas where there is not full compliance with the relevant rules. Any reported views of system users and customers on the adequacy of implementation should</i></p>

	<i>also be taken into account and reported by ENTSO in preparing its annual report, which should be submitted to the Agency and the Commission.</i>
<u>Justification</u>	
<i>It is crucial that the monitoring report prepared by ENTSO is transparent and identifies for each individual TSO where there is not full compliance against the relevant rules and codes. The views of stakeholders, particularly wholesale gas participants, should be taken into account and reported by ENTSO in preparing its implementation report, as they will be ideally placed to provide a view on whether full implementation has been achieved. The report should also be formally submitted to ACER and the Commission to allow them to take any steps that are necessary to ensure compliance.</i>	

Amendment GR 6	
“Article 2d.paragraph 2 (new) Monitoring by the Agency	
Draft Regulation	EFET amendment
<p>The European Network of Transmission System Operators for Gas shall submit the draft non binding 10-year investment plan and the draft annual work programme, including the information regarding the consultation process, to the Agency for its opinion.</p> <p>Within two months from receipt the Agency shall provide a duly justified opinion as well as recommendations to ENTSO and to the Commission where it considers the draft annual work programme or the draft non-binding 10-year network development plan submitted by ENTSO do not contribute to non-discrimination, effective competition the efficient functioning of the market or a sufficient level of cross-border interconnection open to third party access.</p>	<p>The European Network of Transmission System Operators for Gas shall submit the draft non binding 10-year investment plan and the draft annual work programme, including the information regarding the consultation process, to the Agency for its opinion.</p> <p>Within two months from receipt the Agency shall provide a duly justified opinion as well as recommendations to ENTSO and to the Commission where it considers the draft annual work programme or the draft non-binding 10-year network development plan submitted by ENTSO do not contribute to non-discrimination, effective competition the efficient functioning of the market or a sufficient level of cross-border interconnection open to third party access and <i>shall request the TSO to modify the proposed 10-year network development plan to include the necessary investments, in particular when affecting more than one Member State.</i></p> <p><i>The Agency shall coordinate with</i></p>

	<i>national regulators to ensure that TSOs build all agreed cross-border interconnection capacity and shall ensure that investment decisions do not discriminate between suppliers.</i>
<p style="text-align: center;"><u>Justification</u></p> <p><i>A voluntary approach for investment is not sufficient as this way some key infrastructure might not be built. Therefore, the Agency would need to make a final decision under agreed procedures if the proposal is considered not to be in line with the Internal Energy Market.</i></p>	

Amendment GR 9	
Article 6a– Transparency requirements concerning storage facilities and LNG facilities - para (4) (footnote)	
Draft Regulation	EFET amendment
<p><i>A recital could clarify that “Confidentiality requirements for commercially sensitive information are particularly important where data of a strategic nature are concerned or where there is only one single user for a storage facility.”</i></p>	
<p style="text-align: center;"><u>Justification</u></p> <p><i>It is not clear from this proposed recital what ‘data of a strategic nature’ would refer to, nor who would be the judge that the information in question is of a strategic nature.</i></p> <p><i>Furthermore the potential for reducing the publication of information on storage simply because there is only one storage user could be damaging to market transparency without there being fully justified confidentiality concerns. For example, if there is only one current storage user, should this be a reason not to publish capacity availability levels, which would provide other market participants with information they need for capacity requests and business planning?</i></p> <p><i>Such a recital, particularly the use of the phrase ‘strategic nature’ could fatally undermine the objective for improved and adequate transparency.</i></p>	

Part 3

European Parliament first reading amendments that EFET supports

3.1 Summary of Supported Parliamentary Amendments

EFET supports the following amendments proposed by the European Parliament to the Gas Directive and Gas Regulation.

GAS DIRECTIVE	
Amendment	Article
3	Recital 5a (new)
9	Recital 8b (new)
27	Recital 25
28	Recital 25a (new)
33	Article 1 – paragraph 1 (aa) (new) (Directive 2003/55/EC Article 2.9)
34	Article 1 – paragraph 1 (aa) (new) (Directive 2003/55/EC Article 2.14)
55	Article 1 – point 3 (Directive 2003/55/EC 5b)
118	Article 1 – point 6a (new) (Directive 2003/55/EC Article 8.1 ba (new))
69	Article 1 – point 6a (new) (Directive 2003/55/EC Article 8.3 ba)
93 & 129	Article 1 – point 14 (Directive 2003/55/EC Article 24c.1)
104	Article 1 – point 14 (Directive 2003/55/EC Article 24d.2)
GAS REGULATION	
Amendment	Article
2	Recital 3
3	Recital 3a (new)
5	Recital 6
12	Article 1 – point 1 (Regulation 1775/2005 Article 1 c)
14	Article 1 – point 1 (Regulation 1775/2005 Article 2a)
16	Article 1 – point 1 (Regulation 1775/2005 Article 2b.2)
18	Article 1 – point 1 (Regulation 1775/2005 Article 2c)
19	Article 1 – point 1 (Regulation 1775/2005 Article 2d.2)
23	Article 1 – point 1 (Regulation 1775/2005 Article 2h)
31	Article 1 – point 1 (Regulation 1775/2005 Article 5.2 a)
34	Article 1 – point 1 (Regulation 1775/2005 Article 5.6 a (new)) However our support is subject to the text being changed to allow for TSOs to use methods other than Open Seasons in order to assess demand in a transparent and non-discriminatory manor. Most attempts at Open Seasons in 2007 & 2008 have been unsuccessful.

The following two sections provide the full texts of Parliamentary amendments supported by EFET, other than those already included as Priority Amendments in Part 1 of this document.

3.2 GAS DIRECTIVE

<p>Amendment 3 Proposal for a directive – amending act Recital 5 a (new)</p>
<p>(5a) The Member States should promote cooperation and monitor the effectiveness</p>

of the network at regional level. Several Member States have already put forward a proposal that would fulfil such an objective.

Amendment 9

Proposal for a directive – amending act Recital 8 b (new)

EFET supports this amendment but the reference to power plants needs to be deleted or replaced with a reference to gas storage or other new gas infrastructure.

(8b) Member States should promote regional cooperation, with the possibility of designating a regional coordinator in charge of facilitating dialogue between competent national authorities. [New power plants should, furthermore, be connected to the grid in an effective manner in due course.]

Amendment 27

Proposal for a directive – amending act Recital 25

(25) In view of the creation of an internal market for gas, Member States should foster the integration of their national markets and the cooperation of network operators at European and regional level.

(25) In view of the creation of an internal market for gas, Member States should foster the integration of their national markets and the cooperation of network operators at European and regional level. ***Regional integration initiatives are an essential intermediate step in achieving the integration of Community energy markets, which remains the final objective. The regional level contributes towards accelerating the integration process by making it possible for the actors concerned, particularly the Member States, the national regulatory authorities and the transmission system operators, to cooperate in regard to specific issues.***

Amendment 33

Proposal for a directive – amending act Article 1 – point 1 – point - a a (new)

"9. 'storage facility' means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used exclusively for production operations, and excluding facilities reserved exclusively for

transmission system operators in carrying out their functions;"

Amendment 34

Proposal for a directive – amending act Article 1 – point 1 – point - a b (new)

"14. 'ancillary services' means all services necessary for access to and the operation of transmission and/or distribution networks and/or LNG facilities and/or storage facilities including load balancing, blending and injection of inert gases, but excluding facilities reserved exclusively for transmission system operators carrying out their functions;"

Amendment 69

Proposal for a directive – amending act Article 1 – point 6 b (new) Directive 2003/55/EC Article 8 – paragraph 3

(6b) Article 8(3) shall be replaced by the following:

"3. Member States may, through their national regulatory authorities, require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity. National regulatory authorities should be given broader powers for the purpose of ensuring consumer protection within the European Union."

Amendments 93 and 129

Proposal for a directive – amending act Article 1 – point 14 Directive 2003/55/EC Article 24c – paragraph 1

EFET believes that the additional text on interconnection and the need for an efficient overall market assessment in 1 (b) is particularly important

1. The regulatory authority shall have the following duties:

1. The regulatory authority shall have the following duties **to be carried out where appropriate in close consultation with other relevant Community or national bodies, transmission system operators and other market stakeholders and**

<p>(b) cooperating on cross-border issues with the regulatory authority or authorities of <i>those</i> Member States;</p>	<p><i>without prejudice to their specific competencies :</i></p>
<p>f) reviewing investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plan of the transmission system operators as regards its consistency with the European wide 10-year network development plan mentioned in Article 2c of Regulation (EC) No 1775/2005;</p>	<p>(b) cooperating on cross-border issues with the regulatory authority or authorities of <i>other</i> Member States <i>and the Agency , including ensuring that there is sufficient interconnection capacity between transmission infrastructure to satisfy an efficient overall market assessment and security of supply criteria, without discrimination between supply undertakings in different Member States ;</i></p>
<p>f) reviewing investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plan of the transmission system operators as regards its consistency with the European wide 10-year network development plan mentioned in Article 2c of Regulation (EC) No 1775/2005;</p>	<p>(f) reviewing the investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plan of the transmission system operators as regards its consistency with the European wide 10-year network development plan mentioned in Article 2c of Regulation (EC) No 1775/2005; the investment plans of transmission system operators shall ensure that the skills and number of the staff are sufficient to meet the service obligations; failure to honour the investment plan shall result in proportionate sanctions imposed on the transmission system operator in accordance with the guidelines issued by the Agency;</p>
<p>(fa) approving the annual investment plans of the transmission system operators;</p>	<p>(fa) approving the annual investment plans of the transmission system operators;</p>

3.3 GAS REGULATION

<p style="text-align: center;">Amendment 2 Proposal for a regulation – amending act Recital 3</p>	
<p>(3) However, at present, the right to sell gas in any Member State on equal terms, without discrimination or disadvantage cannot be guaranteed to any company in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist.</p>	<p>(3) However, at present, the right to sell gas in any Member State on equal terms, without discrimination or disadvantage cannot be guaranteed to any company in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist <i>and isolated markets persist.</i></p>

Amendment 5
Proposal for a regulation – amending act Recital 6

(6) In particular, increased cooperation and coordination among transmission system operators *is* required to ensure progressive compatibility of the technical and commercial codes for providing and managing effective 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, with due regard to the environment, and promote energy efficiency and research and innovation notably with respect to ensuring penetration of renewables and dissemination of low carbon technology. Transmission system operators should operate their networks according to these compatible technical and market codes.

(6) In particular, ***the creation of physical connections between gas networks and*** increased cooperation and coordination among transmission system operators ***are*** required to ensure progressive compatibility of the technical and commercial 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, with due regard to the environment, and promote energy efficiency and research and innovation notably with respect to ensuring penetration of renewables and dissemination of low carbon technology. Transmission system operators should operate their networks according to these compatible technical and market codes.

Amendment 12
Proposal for a regulation – amending act Article 1 – point 1 Regulation (EC) No 1775/2005 Article 1 – point c

(c) facilitating the emergence of *well functioning* and transparent ***cross-border retail markets and a well functioning and transparent*** wholesale market; *it provides* mechanisms to harmonise ***these*** rules ***in order to allow trading and supplying*** gas ***to retail customers across borders.***

(c) 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.

Amendment 14
Proposal for a regulation – amending act Article 1 – point 3 Regulation (EC) No 1775/2005 Article 2a

All transmission system operators shall cooperate at Community level through establishing the European Network of Transmission System Operators for Gas in order to ensure the optimal management and sound technical evolution of the European gas transmission network

All transmission system operators shall cooperate at Community level through establishing the European Network of Transmission System Operators for Gas in order to ensure the optimal management, ***coordinated operation*** and sound technical evolution of the European gas transmission network ***and to promote the completion of the internal market for gas, cross-border***

trade and the functioning of the energy markets.

Amendment 18
Proposal for a regulation – amending actArticle 1 – point 3Regulation (EC) No 1775/2005Article 2c

5. The European Network of Transmission System Operators for Gas shall publish a Community-wide 10-year network investment plan every two years. The investment plan shall include the modelling of the integrated network, scenario development, a supply and demand adequacy report and an assessment of the resilience of the system. The investment plan shall, in particular, build on national investment plans **and on** the Guidelines for Trans-European energy networks in accordance with Decision No 1364/2006/EC of the European Parliament and of the Council. The investment plan shall identify investment gaps, notably with respect to *cross border capacities*.

5. The European Network of Transmission System Operators for Gas shall publish a Community-wide 10-year network investment plan every two years **following its approval by the Agency**. The investment plan shall include the modelling of the integrated network, **taking into account storage and LNG facilities**, scenario development, a supply and demand adequacy report and an assessment of the resilience of the system. The investment plan shall, in particular, build on national investment plans **taking into account Community and regional aspects of network planning, including** the Guidelines for Trans-European energy networks in accordance with Decision No 1364/2006/EC of the European Parliament and of the Council. The investment plan shall identify investment gaps, notably with respect to *cross-border capacities*, **and shall 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.

Amendment 19
Proposal for a regulation – amending actArticle 1 – point 3Regulation (EC) No 1775/2005Article 2d – paragraph 2

2. The European Network of Transmission System Operators for Gas shall submit the draft **technical**

2. The European Network of Transmission System Operators for Gas shall submit the draft **network codes and the documents**

and market codes, the draft 10-year investment plan and the draft annual work programme, including the information regarding the consultation process, to the Agency.

The Agency may provide an opinion to the European Network of Transmission System Operators for Gas within 3 months.

The Agency shall **provide a duly justified opinion to the Commission where it considers that the draft annual work programme or the draft 10-year investment plan do not ensure non-discrimination, effective competition and the efficient functioning of the market.**

referred to in Article 2c (1), to the Agency for approval.

The Agency shall **monitor the implementation of the technical codes, the 10-year investment plan and the annual work programme and shall 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 the European Network of Transmission System Operators for Gas the Agency shall provide information thereof to the Commission.**

Amendment 31

Proposal for a regulation – amending actArticle 1 – point 7 – point a (new)Regulation (EC) No 1775/2005Article 5 – paragraph 2 – point a

(aa) paragraph 2(a) shall be replaced by the following:

"(a) provide appropriate economic signals for efficient and maximum use of technical capacity, facilitate investment in new infrastructure and facilitate cross-border trade in gas."

Amendment 34 – including minor change proposed by EFET

Proposal for a regulation – amending actArticle 1 – point 7 – point d a (new)Regulation (EC) No 1775/2005Article 5 – paragraph 6 a (new)

Investment to relieve physical congestion is essential, but an undue reliance on badly designed Open Seasons has not provided the solution. EFET proposes that the last sentence is changed to read **"To assess market demand Transmission System Operators shall include the use of open season procedures that follow agreed industry guidelines."** or alternatively delete this final sentence.

**(da) the following paragraph shall be added:
"6a. 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 include the use of open-season procedures that follow agreed industry guidelines.]