

January 2008

## **European Federation of Energy Traders Gas Committee Main changes required in 3<sup>rd</sup> EU Energy Package Gas documents**

### **Overall Support for the 3<sup>rd</sup> Internal Energy Market package**

EFET<sup>§</sup> strongly supports those proposals that will help establish robust and liquid wholesale energy markets with trading unimpeded by national boundaries across Europe. In this respect we welcome those parts of the proposals that aim to establish

1. effective unbundling of Transmission System Operators (TSOs)
2. consistent and effective powers for national regulatory authorities and greater independence of those regulators from governments
3. a European coordinating Agency to deal with cross border and regional transmission access issues
4. obligations on operators to provide information on the aggregate use and availability of gas infrastructure, including storage and LNG terminals

Effective separation of TSOs from affiliate supply, generation or production businesses means the removal of inherent conflicts of interest in the allocation and use of existing capacity, and in the development of new infrastructure. Separation must also be done in such a way that it facilitates supra-national grid operation and market integration.

### **Approach to x-border issues can be improved**

We applaud a pan-European vision to resolve the x-border issues that are currently preventing the rapid development of the gas market, but to be successful the way forward will need to include clear obligations on regulated TSOs:

1. to offer all existing transmission capacity to the market, including the consistent offering of unused capacity between connected TSO systems.
2. to build sufficient transmission capacity to satisfy forecast demand subject to market-based principles and economic tests overseen by the regulator.

In this note we suggest wording that include these obligations in a practical way in the Gas Directive and the Gas Regulation.

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<sup>§</sup> Established in 1999, the European Federation of Energy Traders (EFET) is an industry association representing over 90 trading companies operating in more than 20 countries. The EFET mission involves improving conditions for energy trading in Europe and fostering the development of an open, liquid and transparent European wholesale energy market. More information about EFET views and activities is available on [www.efet.org](http://www.efet.org).

### **The formation of ENTSO is unbalanced**

Our main concern about the structure of the 3rd package relates to the proposed European Network of Transmission System Operators, (ENTSO). Unless the current text is changed there is a serious danger that the creation of ENTSO(gas) will delay or even undermine the development of a liberalised, competitive and integrated EU energy market. TSOs have a key role to play but amendments must be incorporated to help ensure

- a better balance between the responsibilities of ENTSO and oversight by the Agency;
- that ENTSO is given responsibilities only for network issues; and
- that the views of system users and consumers are properly taken in to account

### **Ensuring that agreed and approved codes & rules are made binding**

Once agreed and approved, following a transparent consultation process, codes and rules envisaged under the 3<sup>rd</sup> package should be binding. Experience has shown that voluntary arrangements by infrastructure operators tend to result in inconsistent and incomplete implementation across the EU, increasing risk for wholesale market participants and undermining the development of competition and market integration.

Binding codes and rules covering essential areas agreed by market participants is the best way of avoiding this situation.

### **Market participants need equal rights to TSOs**

The goal of an EU gas market involves gas producers, suppliers, retailers, large consumers and other companies all being able to trade in the wholesale gas markets that operate within the Transmission Systems. It is these System Users that are commercially exposed (besides the TSOs) to the rules affecting the development, access to and operation of Europe's high pressure gas networks. The regulatory process must give equal weight to the views of System Users (including customers) and the views of TSOs, for example in drafting or changing rules or codes that affect both the pipeline companies and the Wholesale market participants.

### **ACER needs powers to act on x-border issues**

Cooperation between National Regulators is an important issue. For the Agency to be an effective body its decision-making powers need to be enhanced in the context of resolving x-border issues and facilitating market integration. Significant improvements are needed to the text to provide the Agency with a clear remit in relation to the commercial and physical operation of transmission systems across the boundaries of Member States and to give it real powers to take decisions in this specific area of capacity on both sides of a border.

**PROPOSED AMENDMENTS TO LEGISLATIVE TEXT**

**Directive amending Gas Directive 2003/55/EC  
Internal market in natural gas - COD(07)0196 - COM(07)0529**

Commission text

Amendments

Amendment 1  
Recital 10a (new)

	<p><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></p>
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*Justification*

*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.*

Amendment 2  
Recital 15a (new)

	<p><i>In a well-functioning market, the provision of storage services could 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></p>
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*Justification*

*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.*

Amendment 3  
Recital 19

<p>Energy regulators should have the power to issue binding decisions on gas undertakings and to impose effective, appropriate and dissuasive sanctions on natural gas undertakings which fail to comply with their obligations. They must also <b><i>be granted the powers to decide, irrespective of the application of competition rules, on any appropriate measures promoting</i></b> effective competition necessary for the proper functioning of the market; as well as to ensure high standards of public service in compliance with market opening, the protection of vulnerable customers and that consumer protection measures are fully effective. These provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a Community dimension, and the rules on the internal market, such as the free movement of capital.</p>	<p>Energy regulators should have the power to issue binding decisions on gas undertakings and to impose effective, appropriate and dissuasive sanctions on natural gas undertakings which fail to comply with their obligations. They must also <b><i>monitor the level of market opening and competition, and in cooperation with competition authorities promote</i></b> effective competition necessary for the proper functioning of the market; as well as to ensure high standards of public service in compliance with market opening, the protection of vulnerable customers and that consumer protection measures are fully effective. These provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a Community dimension, and the rules on the internal market, such as the free movement of capital.</p>
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*Justification*

*Attempts to “develop legislative proposals providing for further harmonisation of the powers and strengthening of the independence of national energy regulators” (recital 17) should be supported. The primary focus of Energy Regulators should be monopolistic gas infrastructure, in particular the primary sales of capacity, its aggregate physical use and new investments. Duplication of the roles of various authorities would be inefficient and cause undue burdens on business.*

Amendment 4  
Recital 21

<p>The internal gas market is suffering from a lack of liquidity and transparency hindering the efficient allocation of resources, risk hedging and new entry. Trust in the market, its liquidity and the number of market participants need to increase <b><i>and therefore regulatory oversight over undertakings active in the supply of gas need to be increased.</i></b></p>	<p>The internal gas market is suffering from a lack of liquidity and transparency hindering the efficient allocation of resources, risk hedging and new entry. Trust in the market, its liquidity and the number of market participants need to increase.</p>
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*Justification*

*Further regulatory burdens on individual supply companies will not solve the identified problems of lack of liquidity and lack of transparency which, for the gas market, are rightly addressed in the amendments to articles 6 and 6a) regarding infrastructure transparency requirements in the regulation amending EC 1775/2005. The phrase “and therefore regulatory oversight over undertakings active in the supply of gas need to be increased” is unjustified, is the wrong focus and should be deleted from this section:*

Amendment 6  
Article 1, paragraph (1) (aa) (new)

<u>Existing Directive</u>	<i>(aa) point 4 is amended as follows:</i>
<p>4. ‘transmission system operator’ means a natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transportation of gas;</p>	<p>“4. ‘transmission system operator’ means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area of the European Union and, where applicable, its interconnections with other systems, and for ensuring the long term ability of the system to meet reasonable demands for the transportation of gas. <b>The term ‘transmission system operator’ includes an independent system operator properly formed and designated under Article 9.</b>”</p>

*Justification*

*It is important to ensure that any ISO has the same obligations as a transmission system operator.*

Amendment 6  
Article 1, paragraph (1) (aaa) (new)

<u>Existing Directive</u>	<i>(aaa) point 9 is amended as follows:</i>
<p>“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 for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;</p>	<p>“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 <b>exclusively</b> for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;”</p>

*Justification*

*For clarity and consistency, the word “exclusively” needs to be added to definition 9 storage facility, in the phrase “the portion used exclusively for production operations” in the same way as “reserved exclusively for transmission system operators”.*

Amendment 7  
Article 1, paragraph (1) (aaaa) (new)

<u>Existing Directive</u>	<i>(aaaa) point 14 is amended as follows:</i>
<p>“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</p>	<p>“9. ‘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</p>

load balancing <b>and</b> blending, but excluding facilities reserved exclusively for transmission system operators carrying out their functions.;	load balancing, blending, <b>gas quality conversion, including injection of inert gases</b> , but excluding facilities reserved exclusively for transmission system operators carrying out their functions.
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*Justification*

*Wording needs to be tightened to ensure that 'blending' is not restricted to the mixing of natural gas streams but also includes nitrogen injection, which is the main way of converting H gas to L gas. Given the de facto monopoly in the L gas market, access to quality conversion is essential to creating competition.*

Amendment 8  
Article 1, paragraph (3), "Article 5a Regional solidarity"

3. The Commission shall be kept informed of this cooperation.	3. The Commission <b>and market participants</b> shall be kept informed of this cooperation.
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*Justification*

*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*

Amendment 9  
Article 1, paragraph (6), "Article 8 Tasks of System Operators"

	<p><b><i>The following paragraphs 5 and 6 are added:</i></b></p> <p><b><i>5. Transmission system operators shall build sufficient interconnection capacity between their transmission infrastructure to meet all reasonable demands for capacity to facilitate an efficient overall market and to fulfill gas security of supply criteria.</i></b></p> <p><b><i>6. Transmission system operators shall maximise the transmission capacity offered to the market and in the allocation and interruption of capacity on both sides of a border do not discriminate between suppliers inside and outside their home country.</i></b></p>
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*Justification*

*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.*

Amendment 10

Article 1, paragraph (9), “Article 9 Independent system operators, 2 (c )”

<p>c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority;</p>	<p>c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority <b><i>including the development of interconnector capacity and the integration of the regional market;</i></b></p>
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*Justification*

*Linked to the new recital 10a - the commitment of the candidate ISO should be extended in clause 2 (c)*

Amendment 11

Article 1, paragraph (13), “Article 22 New Infrastructure, 1 (f) (new)”

	<p><b><i>(f) the investment is not necessary to enable compliance with an obligation on a regulated entity for the transport of gas through a Transmission System.</i></b></p>
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*Justification*

*If this condition was not met (for example the proposed transmission capacity was required to maintain future secure deliveries to consumers) then one or more regulated TSOs 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 be added for all new interconnection investment i.e. whether for new pipelines or enhancements to existing pipelines.*

Amendment 12  
Article 1, paragraph (13), “Article 22 New Infrastructure, 3”

<p>... 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.</p>	<p>... 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. <b><i>The regulatory authority shall conduct a public consultation involving, among others, potential system users on the exemption request.</i></b></p>
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*Justification*

*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*

Amendment 13  
Article 1, paragraph (14), “Article 24c, Duties and powers of the regulatory authority, 1 (b)”

<p>(b) cooperating on cross-border issues with the regulatory authority or authorities of those Member States;</p>	<p>(b) cooperating on cross-border issues with the regulatory authority or authorities of those Member States <b><i>including to ensure that TSOs jointly and severally build sufficient interconnection capacity between their transmission infrastructure to satisfy an efficient overall market assessment and gas security of supply criteria without discriminating between suppliers in different Member States;</i></b></p>
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*Justification*

*Regulatory scrutiny, whether it is of publicly or privately owned TSOs, will need to ensure that decisions on investment and use of infrastructure take equal account of customers solely within the national boundaries and of customers using connected systems. In this respect paragraph 1.b is weak. The main purpose or objective of cooperation between National Regulatory Authorities needs to be made clear.*



Amendment 14

Article 1, paragraph (14), “Article 24c, Duties and powers of the regulatory authority, 1 (b)”

<p>(b) to carry out in cooperation with the national competition authority investigations of the functioning of gas markets, and to decide, <b>in the absence of violations of competition rules, of</b> any appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market, including gas release programs;</p>	<p>(b) to carry out in cooperation with the national competition authority investigations of the functioning of gas markets, and to decide any appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market, including <b>for example</b> gas release programs;</p>
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*Justification*

*This clause 3 (b) provides for strong and balanced regulatory oversight of the market, with ex ante powers to promote competition. The controversial reference to violation of competition rules is unnecessary and removing this phrase would avoid potential future complications whilst still establishing strong regulatory powers. Gas release is just one example of the possible appropriate measures.*

Amendment 15

Article 1, paragraph (14), “Article 24c, Duties and powers of the regulatory authority, 4(b)”

<p>The regulatory authorities shall be responsible for fixing or approving prior to entry into force the terms and conditions for: (a) connection and access to national networks, including transmission and distribution tariffs, and terms and conditions and tariffs for access to LNG facilities. These tariffs 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>The regulatory authorities shall be responsible for fixing or approving prior to entry into force the terms and conditions for: (a) connection and access to national networks, including transmission and distribution tariffs, and terms and conditions and tariffs for access to LNG facilities <b>including approving their methodologies</b>. These tariffs 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>
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*Justification*

*It is important that regulatory authorities are also responsible for approving tariff methodologies for transmission, distribution and LNG so as to ensure that there is no discrimination.*

Amendment 16

Article 1, paragraph (14), “Article 24c, Duties and powers of the regulatory authority, 1 (b)”

(b) cooperating on cross-border issues with the regulatory authority or authorities of those Member States;	(b) cooperating on cross-border issues with the regulatory authority or authorities of those Member States, <b><i>including ensuring there is sufficient interconnection capacity between transmission infrastructures to satisfy an efficient overall market assessment and gas security of supply criteria, without discrimination between supply undertakings in different Member States;</i></b>
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*Justification*

*Wording needs to be strengthened in order to spell out a key objective of such cooperation, that decisions on investment and use of infrastructure must take equal account of customers within the national boundary and those using interconnected systems*

Amendment 17

Article 1, paragraph (14), “Article 24c, Duties and powers of the regulatory authority, 12”

12. Decisions taken by regulatory authorities shall be <b><i>motivated</i></b> .	12. Decisions taken by regulatory authorities shall be <b><i>publicly justified, proportionate and necessary, with due account taken of the views of market participants, existing contractual obligations, as well as the expected costs and benefits of the decision.</i></b>
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*Justification*

*The powers of Regulatory Authorities are listed in 24.c (3), without adequate control in the text as to how these far-reaching powers can be exercised, other than clause 12 which states “Decisions taken by regulatory authorities shall be motivated”.*

Amendment 18

Article 1, paragraph (14), “Article 24f, Record keeping, 1 (a) (new)”

	<b><i>1a. An authority in article 24f.1 may request this information from a supply undertaking if the authority requesting the data has the responsibility and a duly substantiated need to undertake an investigation</i></b>
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*Justification*

*Regulators should have the ability to access wholesale market information, but if they were to do this unduly then it would be an unnecessary cost on business and an unwarranted barrier to new entrants. While not affecting the obligation to keep the data, the Directive should define how national regulatory and*

*competition authorities and the Commission access this information. The current text just states it should be at their disposal, which could easily lead to duplication of effort and might impose destructive burdens on market participants.*

*A new clause therefore needs to be added to Article 24f.*

Amendment 19

Article 1, paragraph (14), “Article 24f, Record keeping, 3”

<p>The regulatory <b>authority may decide to make available</b> to market participants elements of this information <b>provided</b> that commercially sensitive information on individual market players or individual transactions is not released. <b>This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC.</b></p>	<p>The regulatory authority <b>shall report on the outcome of its investigations or its request</b> to market participants elements of this information <b>whilst ensuring</b> that commercially sensitive information on individual market players or individual transactions is not released.</p>
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*Justification*

*To ensure that there is always transparency in decision making while at the same time commercial confidentiality is respected, paragraph 3 needs to be amended.*

**Regulation setting up European ACER**  
Agency for the Cooperation of Energy Regulators - COD(07)0197 -  
COM(07)0530

The creation of a regulatory agency at EU level should foster deeper collaboration among national regulators. But it is important that there is a clear focus on cross-border issues and decision making powers as well as a duty to take action, without which the proposed structure will add bureaucracy without solving the many remaining problems to cross-border trade.

Furthermore, if the European Commission confirms that the powers of ACER can be made stronger under current EU treaty agreements, then in the event that the European Network of Transmission System Operators were to be established it would be essential that the powers and duties of ACER would need to further extended to match the activities of ENTSO. Whether or not ENTSO is created, we believe that ACER should have direct powers to force individual TSOs to comply with its decisions.

The best practical approach is to make every effort to improve the focus of the Agency and enable it to resolve issues involving gas transportation from one country to another as we have outlined in these amendments. In any event the gas and electricity regulations will also need some further amendments to place clear cross-border obligations on TSOs and to enhance the cooperation of national regulators as demonstrated in the Regional Initiatives.

EFET may have additional specific proposals with respect to the Agency.

Commission text

Amendments

Amendment 1  
Article 6

	<p><b><i>7. The Agency shall monitor the cross-border capacity calculations by TSOs and the actual (aggregate) use of the interconnection capacity between the grids, as well as resolving problems of unfair, discriminatory or inefficient access across national borders.</i></b></p> <p><b><i>8. The Agency shall be able to impose meaningful sanctions if barriers to cross-border trade are not resolved.</i></b></p> <p><b><i>9. The Agency shall have the power and duty to take binding decisions on all issues affecting access and use of connected transmission systems involving more than one Member State if joint agreement has not been reached by the relevant national regulatory authorities 6 months after an issue has been notified by a Supplier or a Transmission System Operator.”</i></b></p>
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*Justification*



*Article 6 needs to be strengthened to ensure that The Agency has real powers to oversee cross-border trade and take action to remove any barriers to trade.*

*Whether or not ENTSO is created, we believe that ACER should have direct powers to force individual TSOs to comply with its decisions. If ENTSO is created it would be essential that the powers and duties of ACER would need to further extended to match the activities of ENTSO*

**Regulation amending EC/1775/2005**  
Conditions for access to the natural gas transmission networks -  
COD(07)0199 - COM(07)0532

Commission text

Amendments

Amendment 1  
Recital 3

<p>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>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. <b><i>In addition, some regions lack cross-border interconnection capacity which limits market integration</i></b></p>
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*Justification*

*It should be noted that some Member States lack cross-border interconnection. This situation hinders the integration of markets and therefore the European energy market.*

Amendment 2  
Recital 3a (new)

	<p><b><i>A sufficient level of cross-border gas interconnection capacity should be achieved as a first step to integrate markets and to develop a single European Energy market.</i></b></p>
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*Justification*

*This new recital would be in line with the Presidency conclusions of the Brussels European Council of 8/9 March 2007, whilst recognizing that in practice the level of necessary interconnection capacity will vary between the different regions of the EU.*

Amendment 3

“Article 2a, European Network of Transmission System Operators for gas”

<p>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.</p>	<p>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, <b><i>coordinated operation</i></b> and sound technical evolution of the European electricity transmission network. <b><i>Each transmission system operator shall remain responsible for fulfilling its obligations under Article 8 of Directive 2003/55/EC, as amended. The powers, tasks and discretion of the European Network of Transmission System Operators for Gas shall therefore be limited to those activities of transmission system operators which require coordination and harmonization throughout the internal gas market or a significant part of it.</i></b></p>
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*Justification*

*The crucial objective of creating ENTSO is to ensure the development of an EU gas grid that ensures that there are no barriers to coordinated operation of gas networks. It is also crucial to set a boundary on the responsibilities of ENTSOs that is linked primarily to their legislative duties.*

Amendment 4

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

<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 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.</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 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. <b><i>The list of members of the European Network for Transmission System Operators for Gas shall include all TSOs certified pursuant to Articles 7b and 9 of Directive..., amending Directive 2003/55/EC.</i></b></p>
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*Justification*

*The Agency must be given responsibility for approving the members of ENTSO – which can only include those entities that are certified TSOs in accordance with the relevant requirements.*

Amendment 5

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

<p>Within <i>six weeks</i> from receipt, the Agency, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.</p>	<p>Within <i>three months</i> from receipt, the Agency, <b><i>after consulting system users and customers</i></b>, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.</p>
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*Justification*

*The Agency should allow system users and customers (as defined in the Directive) the opportunity to submit their views on the statutes, members and rules of procedure for the ENTSO as they will be well placed to identify whether the arrangements will underpin the development of an effective and efficient market. To allow sufficient time for such consultation, the time period within which the Agency should provide an opinion to the Commission, will need to be extended to 3 months.*

Amendment 6

“Article 2b, paragraph 3. Establishment of the European Network of Transmission System Operators for Gas”

<p>The Commission shall deliver an opinion on the draft statutes, list of members and draft rules of procedure within three months from the receipt of the opinion of the Agency.</p>	<p>The Commission shall deliver an opinion, <b><i>taking account of views expressed to the Agency by system users and customers</i></b>, on the draft statutes, list of members and draft rules of procedure within three months from the receipt of the opinion of the Agency.</p>
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*Justification*

*The Commission should take account of the views expressed by system users and customers to the Agency (through its consultation process) in deciding on the statutes, members and rules of procedure for the ENTSO.*

Amendment 7

“Article 2c, paragraph 1. “Tasks of the European Network of Transmission System Operators for Gas”

<p>The European Network of Transmission System Operators for Gas shall adopt:</p> <ul style="list-style-type: none"> <li>(a) technical and market codes in the areas mentioned in paragraph 3;</li> <li>(b) <b><i>common network operation tools and research plans</i></b></li> <li>(c) a 10-year investment plan <b><i>every two years</i></b>;</li> <li>(d) an annual work programme;</li> <li>(e) an annual report;</li> <li>(f) annual summer and winter supply outlooks</li> </ul>	<p>The European Network of Transmission System Operators for Gas shall adopt, <b><i>taking into account any high level guidelines by the Agency, and using multi-TSO network models</i></b>:</p> <ul style="list-style-type: none"> <li>(a) <b><i>technical codes for cooperation between transmission system operators in the areas mentioned in paragraph 3</i></b>;</li> <li>(b) a 10-year investment plan, <b><i>which shall be updated annually</i></b>;</li> <li>(c) an annual work programme;</li> <li>(d) an annual report;</li> <li>(e) annual summer and winter supply outlooks.</li> </ul>
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*Justification*

*ENTSO should not have responsibility for developing market codes – 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.*

Amendment 8

Article 1, paragraph 3, “Article 2e Establishment and evaluation of technical and market codes 1a (new)”

	<b><i>1a. 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></b>
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*Justification*

*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.*

Amendment 9

Article 1, paragraph 3, “Article 2h Regional cooperation of transmission system operators 2a (new)”

	<b><i>2a. Transmission System Operators must maximise the cross-border capacity that they offer to the market and ensure harmonisation in the rules for allocation and interruption of capacity on both sides of a border, whilst ensuring they do not discriminate between network users inside and outside their home country.</i></b>
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*Justification*

*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.*

Amendment 10

Article 1, paragraph 3, “Article 2h Regional cooperation of transmission system operators 2b and 2c (new)”

	<p><b>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 fulfill gas security of supply criteria.</b></p> <p><b>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 the suppliers inside and outside their home country.</b></p>
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*Justification*

*Transmission system operators must build the interconnection capacity demanded by the market under economic condition.*

*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.*

Amendment 11

Article 2c, paragraph 3, “Tasks of the European Network of Transmission System Operators for Gas”

<p>The detailed technical and <b>market</b> codes shall cover the following areas, according to the priorities defined in the annual work programme:</p> <ul style="list-style-type: none"> <li>(a) security and reliability rules</li> <li>(b) grid connection and access rules</li> <li>(c) data exchange <b>and settlement rules</b></li> <li>(d) interoperability rules</li> <li>(e) operational procedures in an emergency</li> <li>(f) <b>capacity allocation and congestion management rules</b></li> <li>(g) <b>rules for trading</b></li> <li>(h) <b>transparency rules</b></li> <li>(i) <b>balancing rules including rules on nomination procedures, rules for imbalance charges and rules for operational balancing between transmission system operator systems</b></li> <li>(j) <b>rules regarding harmonised transportation tariffs</b></li> <li>(k) <b>energy efficiency regarding gas networks</b></li> </ul>	<p>The detailed technical and <b>operational</b> codes shall cover the following areas, according to the priorities defined in the annual work programme:</p> <ul style="list-style-type: none"> <li>(a) security and reliability rules</li> <li>(b) grid connection and access rules</li> <li>(c) data exchange <b>between TSOs including common network operation tools</b></li> <li>(d) interoperability rules</li> <li>(e) operational procedures in an emergency</li> <li>(f) <b>facilitating a secondary market</b></li> <li>(g) <b>consistent methodologies for transportation tariffs</b></li> <li>(h) <b>methodologies leading to harmonisation of:</b> <ul style="list-style-type: none"> <li>i. <b>the calculation of cross border transmission capacity;</b></li> <li>ii. <b>rules for allocation of cross border transmission capacity rights</b></li> <li>iii. <b>rules for congestion management</b></li> <li>iv. <b>capacity products at cross-border points</b></li> <li>v. <b>rules operational balancing between transmission system operator</b></li> </ul> </li> </ul>
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	<i>systems</i>
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*Justification*

*The cooperation of TSOs should be limited to network/operational issues. It is not appropriate for TSOs to have responsibility for drafting rules for trading. In addition, the requirements for transparency should not be set by the TSOs. TSOs should also put in place rules that allow market based balancing to help ensure that balancing arrangements are transparent, non-discriminatory and efficient. It is also crucial that ENTSO is given responsibility in relation to ensuring that arrangements for the calculation and allocation of capacity; the provision of capacity products; and the rules for congestion management are harmonised to facilitate cross-border trading and market integration. ENTSO should also develop rules that allow for the development of a secondary market for the trading of capacity to help ensure that capacity is used more efficiently. There also needs to be consistent methodologies for transportation tariffs to ensure that there is no discrimination.*

Amendment 12

Article 2c, paragraph 4 “tasks of the European Network of Transmission System Operators for Gas” (new)

	<i>The detailed rules and codes referred to in paragraph 3 (a) to (h) should be drafted in accordance with any guidelines brought forward under Article 9 paragraph 1.</i>
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*Justification*

*There needs to be an explicit link between the detailed rules and codes and related envisaged guidelines to ensure consistency of intention and outcome.*

Amendment 13

Article 2c, paragraph 5.”tasks of the European Network of Transmission System Operators for Gas”

<p>The European Network of Transmission System Operators for Gas shall monitor the implementation of the technical and <b>market</b> codes and include the results of its monitoring activities in the annual report referred to in paragraph 1(e).</p>	<p>The European Network of Transmission System Operators for Gas shall monitor the implementation of the technical and <b>operational codes, the rules and the registry referred to in paragraph 1 a) and paragraph 4 (a) – (j)</b> and include the results of its monitoring activities in the annual report referred to in paragraph 1(d). <b>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 also be taken into account and reported by ENTSO in preparing its annual report, which should be submitted to the Agency and the Commission.</b></p>
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*Justification*

*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.*

Amendment 14

Article 2c, paragraph 6. “tasks of the European Network of Transmission System Operators for Gas 5.”

<p>5. The European Network of Transmission System Operators for Gas shall publish a Community-wide 10-year network investment plan <b>every two years</b>. The investment plan shall include the modeling 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<sup>20</sup>. The investment plan shall identify investment gaps, notably with respect to cross border capacities.</p>	<p>5. The European Network of Transmission System Operators for Gas shall publish a Community-wide 10-year network investment plan <b>on a annual basis</b>. 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<sup>20</sup>. The investment plan shall identify investment gaps, notably with respect to cross border capacities <b>and ensure that the necessary investments in interconnection to allow effective trade and competition and to guarantee security of supply are included.</b></p> <p><b><i>If required by the Agency, ENTSO shall modify the proposed 10-year investment plan as requested by the Agency in consultation with system users and customers.</i></b></p> <p><b><i>TSOs must comply with the 10 year investment plan.</i></b></p>
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*Justification*

*The third package relies on voluntary approaches by TSOS or ENTSG for cross-border investments. ENTSG would prepare a 10 year investment plan which would be overseen by ACER. A voluntary approach for investments cannot be relied upon, as it would imply no change with regard to the current situation where nothing prevents TSOs from collaborating.*

*Therefore, clear obligations on TSOs to build sufficient capacity to satisfy demand should be included in the third package and that an independent European body (European Commission, ACER) would need to make a final decision if the proposal is considered not to be in line with the Internal Energy Market as interconnections do not only affect two neighbours MS but the whole European market.*

Amendment 15

Article 2d, paragraph 2. “Monitoring by the Agency”

<p>1. The Agency shall monitor the execution of the tasks referred to in Article 2c(1) of the European Network of Transmission System Operators for Gas.</p> <p>2. The European Network of Transmission System Operators for Gas shall submit the draft technical 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 Networks of Transmission System Operators for Gas within 3 months. The Agency <b><i>shall provide a duly justified opinion to the Commission</i></b> 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.</p>	<p>1. The Agency shall monitor the execution of the tasks referred to in Article 2c(1) of the European Network of Transmission System Operators for Gas.</p> <p>2. The European Network of Transmission System Operators for Gas shall submit the draft technical 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 Networks of Transmission System Operators for Gas within 3 months. The Agency, 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, <b><i>shall request the TSO to modify the proposed 10-year investment plan to include the necessary investments, in particular when affecting more than one member State.</i></b></p> <p><b><i>The Agency shall coordinate with national regulators to ensure that TSOs build all agreed cross-border interconnection capacity in the 10-year investment plan and shall ensure that TSOs’ investment decisions do not discriminate between the suppliers inside and outside their home country.</i></b></p>
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*Justification*

*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.*

Amendment 16

Article 2e, Establishment and evaluation of technical and *operational* codes *and initiation of market codes or market and trading rules*,  
Paragraph 1

<p>1. <i>After consulting the Agency, the Commission may invite the European Network of Transmission Operators for Gas, within a reasonable period of time, to prepare codes in the areas listed in Article 2c(3) where it considers that such codes are necessary for the efficient functioning of the market.</i></p>	<p>1. <i>As set forth in Article 2c (1), the European Network of Transmission System Operators for Gas shall, within a reasonable period of time, prepare codes in the areas listed in Article 2c(3) .</i></p>
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*Justification*

*ENTSO should be required to prepare the relevant codes and rules – it should not be at the invitation of the Commission – as it is already clear that they are necessary for the efficient functioning of the market..*

Amendment 17

Article 2e, Establishment and evaluation of technical and *operational* codes *and initiation of market codes or market and trading rules”*  
Paragraph 2

<p>2. The Agency shall provide a duly justified opinion to the Commission where it considers that:</p> <ul style="list-style-type: none"> <li>(a) a technical code adopted by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;</li> <li>(b) the European Network of Transmission System Operators for Gas fails to agree within a reasonable period of time on a technical or <i>market</i> code in the areas listed in Article 2c(3); or</li> <li>(c) the transmission system operators fail to implement a technical or <i>market</i> code adopted by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(3).</li> </ul>	<p>2. The Agency shall provide a duly justified opinion to the Commission where it considers that:</p> <ul style="list-style-type: none"> <li>(a) a technical code adopted by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient <i>and transparent access to the interconnected transmission system</i>;</li> <li>(b) the European Network of Transmission System Operators for Gas fails to agree within a reasonable period of time on a technical <i>or operational code</i> in the areas listed in Article 2c(3); or</li> <li>(c) the transmission system operators fail to implement a technical <i>or operational</i> code adopted by the European Network of Transmission System Operators for Electricity in the areas listed in Article 2c(3).</li> </ul>
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*Justification*

*Changes reflect those proposed to earlier Articles.*

Amendment 18

Article 2e, Establishment and evaluation of technical and *operational* codes *and initiation of market codes or market and trading rules*”

Paragraph 3

<p>3. The Commission may adopt, on its own initiative or upon recommendation of the Agency, guidelines in Article 2c(3) when it considers that:</p> <ul style="list-style-type: none"> <li>(a) a technical code adopted by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;</li> <li>(b) the European Network of Transmission System Operators for Gas fails to agree within a reasonable period of time on a technical or <i>market</i> code in the areas listed in Article 2c(3); or</li> <li>(c) the transmission system operators fail to implement a technical or <i>market</i> code adopted by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(3).</li> </ul> <p>Those measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 13(2).</p>	<p>3. The Commission may adopt, on its own initiative or upon recommendation of the Agency, guidelines <i>on the areas listed</i> in Article 2c (4) when it considers that:</p> <ul style="list-style-type: none"> <li>(a) a technical <i>or operational code</i> adopted by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(4) does not ensure non-discrimination, effective competition and the efficient <i>and transparent access to the interconnected transmission system</i>;</li> <li>(b) the European Network of Transmission System Operators for Gas fails to agree within a reasonable period of time on a technical or <i>operational</i> code in the areas listed in Article 2c(4); or</li> <li>(c) the transmission system operators fail to implement a technical or <i>operational</i> code adopted by the European Network of Transmission System Operators for Gas in the areas listed in Article 2c(4).</li> </ul> <p>Those measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 13(2).</p>
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*Justification*

*Changes reflect those proposed to earlier Articles.*

Amendment 19

Article 2e, Establishment and evaluation of technical and *operational codes and initiation of market codes or market and trading rules*” (new paragraph 4)

	<p><b>4. 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 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.</b></p> <p><b>The Commission may then adopt, on its own initiative or upon recommendation of the Agency, guidelines on the concerned areas.</b></p>
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*Justification*

*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.*

Amendment 20

Article 2f “Consultations”

<p>In carrying out its tasks, the European Network of Transmission System Operators for Gas shall consult extensively, at an early stage and in an open and transparent manner, in particular while preparing the technical and market codes and its annual work programme referred to in Article 2c(1) and (3), with all appropriate market participants; the consultation shall include supply undertakings, customers, system users, <i>traders</i>, distribution system operators, LNG system operators and storage system operators, including relevant (industry) associations, technical bodies and stakeholder platforms.</p>	<p>In carrying out its tasks, the European Network of Transmission System Operators for Gas shall consult extensively, at an early stage and in an open and transparent manner, in particular while preparing the technical and market codes and its annual work programme referred to in Article 2c(1) and (3), with all appropriate market participants; the consultation shall include supply undertakings, customers, system users, distribution system operators, LNG system operators and storage system operators, including relevant (industry) associations, technical bodies and stakeholder platforms.</p> <p><b><i>In addition, where such consultation addresses matters affecting the inter-TSO sale, trading or transmission of gas, the European Network of</i></b></p>
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	<p><i>Transmission System Operators for Gas shall have particular regard for the input of those market participants, and their relevant industry associations, who commonly bid for and use cross border transmission capacity.</i></p>
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*Justification*

*It is important, in order to help facilitate the development of more integrated markets, that where issues are relevant for cross-border transmission capacity, that the views of those market participants that commonly bid/use such capacity are directly consulted as changes are likely to impact on their business.*

Amendment 21

Article 6, paragraph 3 “Transparency requirements concerning transmission system operators”

<p>Transmission system operators shall make public ex-ante <i>and ex-post supply and demand information, based on nominations, forecasts and realised flows in and out of the system. The level of detail of the information that is made public shall reflect the information available to the transmission system operator.</i></p>	<p>Transmission system operators shall make public <i>on an ex-ante daily basis, and in real time, if changes occur, information on a numerical basis for each relevant entry and exit points, for:</i></p> <ul style="list-style-type: none"> <li><i>(a) maximum technically available capacity</i></li> <li><i>(b) commercially available and booked (or contracted) capacity</i></li> <li><i>(c) maintenance schedules and planned outages</i></li> </ul> <p><i>Each transmission system operator shall make public information on a numerical basis for each relevant entry and exit point:</i></p> <ul style="list-style-type: none"> <li><i>(a) the daily gas flows, including interruptions to those flows, on an ex post basis, no later than one day after the end of the relevant gas day</i></li> <li><i>(b) the historic daily gas flows, including interruptions to those flows, for the past [ten years] on a rolling basis</i></li> <li><i>(c) notify each relevant shipper, daily allocation information, on an ex post basis, not later than one day after the end of the relevant gas day.</i></li> </ul> <p><i>Each transmission system operator shall make public information on a numerical basis, for each interconnection point:</i></p> <ul style="list-style-type: none"> <li><i>(a) daily aggregate upstream gas flows, on an ex post basis, no later than one day after the end of the relevant gas</i></li> <li><i>(b) daily historic daily aggregate upstream gas flows, for the past [ten years] on a rolling basis.</i></li> </ul> <p><i>Each transmission system operator shall make</i></p>
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*public on a numerical basis daily aggregate demand forecasts for each relevant balancing zone, on an ex ante basis, no later than the beginning of the preceding relevant gas day.*

*Each transmission operator shall make public, in real time, the imbalance charge for each relevant balancing period.*

*Each transmission system operator shall provide each relevant shipper, in each balancing period, preliminary imbalance and cost data, at least one month after the end of the balancing period, with final data provided within three months, but no later than one year after the end of the balancing period.*

*Each transmission system operator shall make public, on an ex post basis no later than one day after the end of the relevant gas day, daily aggregate linepack information (including historic information for the last [10 years])*

*Each transmission system operator shall make public, on an ex ante basis, daily aggregate linepack forecasts for the end of each relevant gas day.*

*Each transmission system operator shall make public the calculation method for imbalance quantity and charges. Updates shall be provided promptly by each transmission system operator where there are any changes to the relevant information.*

*Each transmission system operator shall make public information relating to the basis upon which a supply emergency is declared including the procedures for doing so. Updates shall be provided promptly by each transmission system operator where there are any changes to the relevant information.*

*Each transmission system operator shall make public a full specification of the gas quality parameters applicable to the system and the procedures and rules (including any associated costs) for the treatment of any gas that is not within the specified parameters. Updates shall be provided promptly by each transmission system operator where there are any changes to the relevant information.*

*Each transmission system operator shall make public information on the daily actual measured*

	<p><i>values of key gas quality parameters, on an ex post basis, no later than three days after the end of the relevant gas day.</i></p> <p><i>Each transmission system operator shall make public any Operational Balancing Agreements and Interconnection Agreements (or other equivalent agreements) that set out provisions in relation to gas flow allocations (including methods used) and related information. Updates shall be provided promptly by each transmission system operator where there are any changes to the relevant information.</i></p> <p><i>Each transmission system operator shall provide a secure web based capacity booking and nomination system for network users.</i></p> <p><i>The requirements outlined in this paragraph shall be provided at no additional charge, in an internet based, user friendly and transparent basis, accessible to all network users (including potential network users).</i></p>
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*Justification*

*The transparency requirements identified in the proposed amendments represent the minimum requirements necessary to support the development of an efficient and effective EU gas market and as such legal obligations should be placed on TSOs to ensure that the information is made available to the market. The existing transparency requirements are not sufficiently prescriptive and they do not cover all of the information that the market requires and as such these additional areas should be included in the Gas Regulation.*