

# EUROPEAN PARLIAMENT

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*Committee on Industry, Research and Energy*

**2007/0195(COD)**

12.2.2008

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## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity  
(COM(2007)0528 – C6-0316/2007 – 2007/0195(COD))

Committee on Industry, Research and Energy

Rapporteur: Eluned Morgan

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity (COM(2007)0528 – C6-0316/2007 – 2007/0195(COD))

(Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0528),
  - having regard to Article 251(2) and Articles 47(2), 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0316/2007),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0000/2008),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

### Amendment 1

**Proposal for a directive – amending act**  
**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) The European Union has set a target of 20% renewable energy use by 2020. Every measure should be put in place to ensure that this is reached through giving priority to this form of electricity whenever possible.***

Or. en

### *Justification*

*Renewable energy must be given priority access to the grid, allowing Member States to reach their targets for renewable energy.*

### **Amendment 2**

#### **Proposal for a directive – amending act Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) Markets in many Member States are dominated by large players. Regulatory authorities should be given the power to identify market dominance by an electricity undertaking and put forward a medium term plan to limit the share at any relevant market to 20%. The relevant market should be defined by the Commission and should take into account any changes to the geographic scope of the market.***

Or. en

### *Justification*

*This will open up the markets in member states, in particular those with dominant market players and ensure fair access to other market players. As markets become more integrated, the geographic size of the market will expand, so this provision will allow companies to grow as the markets become more integrated.*

### **Amendment 3**

#### **Proposal for a directive – amending act Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***(7a) Any system to be implemented should be effective in removing any conflict of interests between generators and transmission system operators, and should not create an onerous and cumbersome regulatory regime for national regulatory***

*authorities that would be difficult and expensive to implement.*

Or. en

*Justification*

*Any system that is introduced must be effective and simple.*

**Amendment 4**

**Proposal for a directive – amending act  
Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11a) In order to develop competition on the internal market of electricity, non-household customers should be able to choose their suppliers as well as to contract for their electricity requirements with several suppliers. Consumers should be protected against exclusivity clauses in contract whose effect is to exclude competing and/or complementary offers.***

Or. en

*Justification*

*The Directive must aim at allowing consumers to benefit from lower energy prices and therefore should prevent incumbent dominant suppliers from providing exclusivity provisions in contracts with clients. Exclusivity provisions prevent non household customers to call on a mix of suppliers that allow significant savings on their electricity bills.*

**Amendment 5**

**Proposal for a directive – amending act  
Recital 13**

*Text proposed by the Commission*

*Amendment*

(13) Full separation of network and supply activities should apply throughout the Community, so that any network operator

(13) Full separation of network and supply activities should apply throughout the Community, so that any network operator

in the Community or its affiliated companies should be prevented from having any supply or generation activities in any Member State. This should apply equally to EU and non-EU companies. To ensure that network and supply activities throughout the Community are kept separate, regulatory authorities should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure a consistent application across the Community and the respect of the international obligations of the Community, *the Commission* should have the right to review the decisions on certification taken by the regulatory authorities.

in the Community or its affiliated companies should be prevented from having any supply or generation activities in any Member State. This should apply equally to EU and non-EU companies. To ensure that network and supply activities throughout the Community are kept separate, regulatory authorities should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure a consistent application across the Community and the respect of the international obligations of the Community, *the Agency* should have the right to review the decisions on certification taken by the regulatory authorities.

Or. en

#### *Justification*

*The Agency can be used as an honest broker to ensure that all member states are working on the same basis. The Agency would be equipped with more technical skills than the Commission.*

#### **Amendment 6**

##### **Proposal for a directive – amending act Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

***(16a) Any harmonisation of the powers of national regulatory authorities should include incentives that can be offered and sanctions that can be levelled against energy companies. The Agency should be given the appropriate powers to take the lead in ensuring there is parity in the incentives and sanctions across all Member States, and provide guidelines on such measures.***

Or. en



*Justification*

*The Agency must ensure a common approach on these measures.*

**Amendment 7**

**Proposal for a directive – amending act  
Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

***(19a) Energy regulators and financial market regulators need to cooperate in order to enable each other to have an overview over the markets concerned, and should have the power to obtain relevant information from energy companies through appropriate and sufficient powers for investigation, for dispute settlement, and to impose effective sanctions.***

Or. en

*Justification*

*Lack of implementation of current directives remains of concern. To ensure the effective opening up of the internal market in electricity National Regulatory authorities must be able to cooperate with other relevant regulatory authorities allowing them to effectively monitor the electricity market, and where appropriate they must be able to impose effective, appropriate and dissuasive sanctions against electricity undertakings in cases of non-compliance with any of the obligations set out in this Directive.*

**Amendment 8**

**Proposal for a directive – amending act  
Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21a) Consumers should be at the centre of this Directive. Existing rights for consumers need to be strengthened and guaranteed, and should include greater transparency and representation. Consumer protection must ensure that all customers benefit from a competitive***

*market. Consumer rights should be enforced by national regulatory authorities through creating incentives and imposing sanctions on companies who do not comply with consumer protection and competition rules.*

Or. en

## **Amendment 9**

### **Proposal for a directive – amending act Recital 21 b (new)**

*Text proposed by the Commission*

*Amendment*

*(21b) Energy poverty is a growing problem in the Community. Member States should develop national action plans to tackle energy poverty and ensure affordable prices for vulnerable customers. An integrated approach is needed and measures should include social tariffs and energy efficiency improvements for housing. At the very least, this Directive should allow positive discrimination, in terms of pricing models, for vulnerable customers.*

Or. en

## **Amendment 10**

### **Proposal for a directive – amending act Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

*(22a) The development of a truly European grid should be the goal of this Directive and as such regulatory issues on cross border interconnections and regional markets should be the responsibility of the Agency.*

*Justification*

In order to ensure that cross border interconnections and regional markets are developed and managed in a clear, transparent and non-discriminatory way they should be regulated by the Agency.

**Amendment 11**

**Proposal for a directive – amending act  
Recital 22 b (new)**

*Text proposed by the Commission*

*Amendment*

***(22b) Increased regional cooperation should be the first step in the development of a fully integrated European electricity grid, ultimately incorporating the electricity islands currently present in the Union.***

*Justification*

A truly European electricity network should be the goal of this Directive and as such the linking up of these regions is a vital step.

**Amendment 12**

**Proposal for a directive – amending act  
Article 1 - paragraph -1 (new)  
Directive 2003/54/EC  
Article 1**

*Text proposed by the Commission*

*Amendment*

***(-1) Article 1 shall be replaced by the following:***

***"Article 1***

***This Directive establishes common rules for the generation, transmission, distribution and supply of electricity with a view to creating integrated and competitive energy markets in the European Union. It lays down the rules relating to the organisation and***

***functioning of the electricity sector, access to the market, the criteria and procedures applicable to calls for tenders and the granting of authorisations and the operation of networks. It also sets out universal service obligations and rights for electricity consumers and clarifies competition obligations."***

Or. en

(Same wording as that of Article 1 of Directive 2003/54 EC, adding new elements to existing text)

*Justification*

*The scope should be extended to ensure that consumers are at the centre of directive. The link with competition obligations should also be underlined.*

**Amendment 13**

**Proposal for a directive – amending act**

**Article 1 - point 1 – point (b a) (new)**

Directive 2003/54/EC

Article 2 – point 35 (new)

*Text proposed by the Commission*

*Amendment*

***(ba) The following point shall be added:***

***"35. "fair competition in an open market" means working towards a position where no company may hold more than 20% of the relevant market;"***

Or. en

*(Adding new point 35 to Article 2 of Directive 2003/54 EC)*

*Justification*

*This will open up the markets in member states, in particular those with dominant market players, who have been in several cases guilty of abuse of power, and ensure fair access to other market players. As markets become more integrated, the geographic size of the market will expand, so this provision will allow companies to grow as the markets become more integrated.*

## Amendment 14

### Proposal for a directive – amending act

#### Article 1 - point 1 – point (b b) (new)

Directive 2003/54/EC

Article 2 – point 36

*Text proposed by the Commission*

*Amendment*

***(bb) The following point shall be added:***

***"36. "energy poverty" means a household which is not able to afford to heat the home to an acceptable standard. This is based on the levels recommended by the World Health Organisation of at least 18°C for all living areas when occupied (18-22°C depending on room function). It also includes the ability to purchase other energy services in the home at a reasonable cost. A household is energy poor if its share of energy expenditure within total household expenditure exceeds twice the national median energy expenditure;"***

Or. en

*(Adding new point 36 to Article 2 of Directive 2003/54 EC)*

#### *Justification*

*Due to a lack of definition, many Member States do not officially collect data on the large number of citizens who are in energy poverty. In supporting a common definition, Member States will be aware of the scale of the problem and should be encouraged to take measures to tackle it. This definition is based on research undertaken by a group of European academics ensures a relative calculation which can be applied across the European Community. It is aimed at low income households who pay proportionally more on their energy than high income households.*

## Amendment 15

### Proposal for a directive – amending act

#### Article 1 - point 1 – point (b c) (new)

Directive 2003/54/EC

Article 2 – point 37

*Text proposed by the Commission*

*Amendment*

***(bc) The following point shall be added:  
"37. "affordable price" means a price defined by Member States at national level in consultation with national regulators, social partners and relevant stake holders while taking account of the definition of energy poverty provided for in Article 2(36);"***

Or. en

*(Adding new point 37 to Article 2 of Directive 2003/54 EC)*

*Justification*

*Affordable price should be determined at the member state level as this is clearly a matter for subsidiarity.*

## **Amendment 16**

**Proposal for a directive – amending act**

**Article 1 - point 1 a (new)**

Directive 2003/54/EC

Article 3 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(1a) Article 3(3) shall be replaced by the following:***

***"3. Member States shall ensure that all household customers and [...] small enterprises, (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at affordable, easily and clearly comparable, transparent and non-discriminatory prices. These customers shall have access to choice, fairness, representation and redress. Quality of***

*service shall be a central feature of electricity companies' responsibilities. To ensure the provision of universal service, Member States may appoint a supplier of last resort. Member States shall impose on distribution companies an obligation to connect customers to their grid under terms, conditions and tariffs set in accordance with the procedure laid down in Article 23(2). Nothing in this Directive shall prevent Member States from strengthening the market position of the domestic, small and medium-sized consumers by promoting the possibilities of voluntary aggregation of representation for this class of consumers.*

Or. en

*(Adding new elements to Article 3, paragraph 3, Directive 2003/54 EC)*

*Justification*

*Energy is crucial for the daily life of consumers and guaranteeing access to electricity at an affordable price is essential. Due to the particular circumstances affecting the opening up of the electricity market consumer's rights must be ensured. Universal service is a vital means of ensuring consumer protection. Clear guidelines should be provided to ensure a truly universal service which highlights the concerns for low income and vulnerable customers.*

**Amendment 17**

**Proposal for a directive – amending act**

**Article 1 - point 1 b (new)**

Directive 2003/54/EC

Article 3 – paragraph 5

*Text proposed by the Commission*

*Amendment*

***(1b) Article 3(5) shall be replaced by the following:***

**"5. Member States shall take appropriate measures to protect final customers, and shall in particular ensure that there are adequate safeguards to protect vulnerable customers, including**

*the prohibition of disconnection where there is a clear inability to pay. In this context, Member States shall recognise energy poverty provided for in Article 2 and shall provide definitions of vulnerable customers. Member States shall ensure that rights and obligations linked to vulnerable customers are applied and in particular shall take measures to protect final customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is in fact able to easily switch to a new supplier. As regards at least household customers, these measures shall include those set out in Annex A."*

Or. en

*(Adding new elements to Article 3 paragraph 5, Directive 2003/54 EC)*

*Justification*

*Within the context of public and universal service obligations, vulnerable customers' rights should be targeted. Such measures already exist in the current Directive but should be strengthened by the recognition of energy poverty and fully implemented through harmonised rules.*

**Amendment 18**

**Proposal for a directive – amending act**

**Article 1 - point 1 c (new)**

Directive 2003/54/EC

Article 3 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***(1c) In Article 3, the following paragraph shall be added:***

***"5a. Member States shall take appropriate measures to address energy poverty in***



***National Energy Action Plans in order to ensure that the number of people in energy poverty decreases in real terms and shall communicate such measures to the Commission. Member States may take an integrated approach to ensure that universal service obligations and public service obligations are met. Such measures may include special tariffs for vulnerable consumers and individual households and shall include energy efficiency improvements. The Commission shall provide indicators to monitor the impact of such measures on energy poverty. Such measures shall not impede the opening of the market set out in Article 21."***

Or. en

*(Adding a new paragraph 5a to Article 3, Directive 2005/54 EC)*

*Justification*

*Energy Poverty is a growing problem in all Member States. An integrated approach is needed and the role of NRAs is essential. The Commission should also take responsibility for monitoring the progress of Member States in this area and communicating successful measures by Member States to deal with energy poverty.*

**Amendment 19**

**Proposal for a directive – amending act**

**Article 1 - point 1 d (new)**

Directive 2003/54/EC

Article 3 – paragraph 6 – subparagraph 1 – point (a)

*Text proposed by the Commission*

*Amendment*

***(1d) In the first subparagraph of Article 3(6), point (a) shall be replaced by the following:***

***"(a) the contribution of each energy source to the overall fuel mix of the supplier over the preceding year in a harmonised and comprehensible manner within Member States so as to allow for***

*easy comparison;"*

Or. en

*(Same wording as that of Directive 2003/54 (EC), adding "in a harmonised and comprehensible manner within member states so as to allow for easy comparison")*

*Justification*

*Providing clear and easy to understand information is essential for customers to be able to make like for like comparisons of suppliers.*

**Amendment 20**

**Proposal for a directive – amending act**

**Article 1 - point 1 e (new)**

Directive 2003/54/EC

Article 3 – paragraph 6 – subparagraph 1 - point (b)

*Text proposed by the Commission*

*Amendment*

*(1e) In the first subparagraph of Article 3(6), point (b) shall be replaced by the following:*

**"(b) [...] Information on the environmental impact, in terms of at least emissions of CO<sub>2</sub> and the radioactive waste resulting from the electricity produced by the overall fuel mix of the supplier over the preceding year is publicly available."**

Or. en

*(Amends Article 3 paragraph 6 subparagraph 1 piont (b) (Directive 2005/54 EC)*

*Justification*

Not all customers have access to the internet and as such this information shall be included in bills.

## Amendment 21

### Proposal for a directive – amending act

#### Article 1 - point 1 f (new)

Directive 2003/54/EC

Article 3 – paragraph 6 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

***(1f) In Article 3(6), subparagraph 3 shall be replaced by the following:***

***"National regulatory authorities shall take the necessary steps to ensure that the information provided by suppliers to their customers pursuant to this Article is reliable. Rules relating to presentation of information shall be harmonised within Member States and relevant markets. Implementation will be monitored by the Agency."***

Or. en

*(Adding new elements to Article 3, paragraph 6, Directive 2003/54 EC)*

#### *Justification*

*In order for consumers to exercise their right to have real choice they should have access to data which will contribute to both social and environmental goals. Consumer choice should mean being able to make like for like comparisons. The presentation of data should be harmonised across electricity suppliers. Consistency will ensure transparency and improve the customer's ability to switch suppliers and make an informed choice about their supplier.*

## Amendment 22

### Proposal for a directive – amending act

#### Article 1 - point 1 g (new)

Directive 2003/54 (EC)

Article 3 – paragraph 7

*Text proposed by the Commission*

*Amendment*

***(1g) In Article 3, paragraph 7 shall be replaced by the following:***

***"7. Member States shall implement appropriate measures to achieve the***

**objectives of social and economic cohesion and environmental protection, which must ensure the prevention of discrimination in particular against those on low income, energy efficiency/demand-side management measures and means to combat climate change, and security of supply. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for the maintenance and construction of the necessary network infrastructure, including interconnection capacity."**

Or. en

*(Amends Article 3, paragraph 7 (Directive 2005/54 EC) adding "must ensure the prevention of discrimination in particular against those on low income")*

#### *Justification*

*Currently many consumers are suffer discrimination in particular those on low incomes or those who live in certain geographic areas.*

#### **Amendment 23**

##### **Proposal for a directive – amending act**

##### **Article 1 - point 1 h (new)**

Directive 2003/54/EC

Article 3 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(1h) In Article 3, after paragraph 7, the following paragraph shall be inserted:***

***"7a. In order to promote energy efficiency and help reduce energy poverty, national regulatory authorities shall mandate electricity suppliers to introduce pricing formulas which involve increasing block tariffs whereby the price increases for greater levels of consumption national regulatory authorities shall ensure that the part of consumption which is subject***

***to the lower price is equal to the typical consumption of low income households."***

Or. en

*(Adding a new paragraph 7a to Article 3, Directive 2005/54 EC)*

*Justification*

*This tariff model would turn the current model of pricing on its head. At a time when we are trying to cut down on energy consumption the current pricing model rewards people through lower prices the more energy they use. This model should be cost neutral for electricity companies but would provide incentives for energy efficiency. This model will come into its own when smart meters are introduced.*

**Amendment 24**

**Proposal for a directive – amending act**

**Article 1 - point 1 i (new)**

Directive 2003/54/EC

Article 3 – paragraph 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(1h) In Article 3, after paragraph 9, the following paragraph shall be inserted:***

***"9a. Where electricity companies can be proved to have passed the costs of the emission trading scheme certificates to customers when these certificates have been allocated free of charge Member States may demand re-imburement from these companies through additional taxation. The proceeds should be used to promote energy efficiency in the collecting member state."***

Or. en

*(Adding a new paragraph 9a to Article 3 Directive 2005/54 EC)*

### *Justification*

*Many companies have made windfall profits from the Emissions Trading Scheme where they have been allocated ETS certificates free of charge, but have nevertheless passed on the nominal costs of these certificates to consumers.*

#### **Amendment 25**

##### **Proposal for a directive – amending act**

##### **Article 1 - point 2**

Directive 2003/54/EC

Article 3 – paragraph 10

##### *Text proposed by the Commission*

10. The Commission **may** adopt guidelines for the implementation of this Article. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)".

##### *Amendment*

10. The Commission **shall** adopt guidelines for the implementation of this Article ***within one year after the entry into force of this Directive***. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)".

Or. en

### *Justification*

*This should be a binding measure, and this action needs to be taken in a timely manner*

#### **Amendment 26**

##### **Proposal for a directive – amending act**

##### **Article 1 - point 3**

Directive 2003/54/EC

Article 5a

##### *Text proposed by the Commission*

5a. 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***

##### *Amendment*

5a. Member States ***and national regulatory authorities*** 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

***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) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

network operators at a regional level ***with the aim of realising a competitive European market, and facilitate the harmonisation of their legal and regulatory framework.*** The geographical area covered by regional cooperation shall be in line with the definition of ***regions*** by the Commission in accordance with Article 2h(3) of Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

Or. en

### *Justification*

*Regional cooperation could foster market integration and establish a competitive European market. To ensure that regional cooperation leads to reconcilable and to a true pan-European market, inter-regional cooperation should also be required from regulators, TSO's and ACER.. ACER should also be empowered to make appropriate recommendation to facilitate market integration. Any move towards regional markets must not become exclusive and there must be a clear regulatory framework for these markets, otherwise there is a danger of a regulatory gap developing.*

### **Amendment 27**

#### **Proposal for a directive – amending act**

#### **Article 1 - point 3 a (new)**

Directive 2003/54/EC

Article 5a – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(3a) In Article 5a, the following paragraph shall be added:***

***"The Agency shall cooperate with national regulatory authorities and unbundled transmission system operators (in accordance with Chapter IV of this Directive) to ensure the convergence of regulatory frameworks between the regions with the aim of realising a competitive European market. Where the Agency considers that binding rules on***

***such cooperation are required, it shall make appropriate recommendations. In regional markets the Agency shall become the accountable regulatory authority."***

Or. en

*(Adding new paragraph 2 to Article 5a, Directive 2003/54 EC)*

*Justification*

*See justification to previous Amendment*

## **Amendment 28**

**Proposal for a directive – amending act**

**Article 1 - point 3 b (new)**

Directive 2003/54/EC

Article 6 – paragraph 2- point (i a) (new)

*Text proposed by the Commission*

*Amendment*

***(3b) In Article 6(2) the following point shall be added:***

***"(ia) the Member States' contribution towards meeting a target of 20% for renewables by 2020;"***

Or. en

*(Adding new paragraph to Article 6, paragraph 2, Directive 2003/54 EC)*

*Justification*

Member states must take in to account their obligations vis-à-vis the 20% renewable energy target set out in the Council conclusions of 8th and 9th March 2007 when assessing new generating capacity These targets could be subject to change through the legislative process.

## **Amendment 29**

**Proposal for a directive – amending act**

**Article 1 - point 3 c (new)**

Directive 2003/54/EC

Article 6 – paragraph 2- point (i b) (new)



*Text proposed by the Commission*

*Amendment*

***(3b) In Article 6(2), the following point shall be added:***

***"(ib) the need for generators to take account of the emission trading scheme."***

Or. en

*(Adding new paragraph (2k) to Article 6, Directive 2003/54 EC)*

*Justification*

*Member states must take in to account the impact of the EU Emissions Trading Scheme when assessing new generating capacity.*

### **Amendment 30**

**Proposal for a directive – amending act**

**Article 1 - point 3 c (new)**

Directive 2003/54/EC

Article 7 – paragraph 5

*Text proposed by the Commission*

*Amendment*

***(3c) Article 7(5) shall be replaced by the following:***

***"5. Member States shall designate an authority or a public body or a private body independent from electricity generation, transmission, distribution and supply activities, which may be a national regulatory authority referred to in Article 22a(1), to be responsible for the organisation, monitoring and control of the tendering procedure referred to in paragraphs 1 to 4. [...] This authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders."***

Or. en

*(Amends Article 7, Paragraph 5 (Directive 2005/54 EC) deleting "where a transmission*

*system operator is fully independent from other activities not relating to the transmission system in ownership terms, the transmission system operator may be designated as the body responsible for organising and controlling the tendering procedure")*

*Justification*

*This should be the responsibility of the NRA and not the TSO.*

**Amendment 31**

**Proposal for a directive – amending act**

**Article 1 - point 4**

Directive 2003/54/EC

Article 8 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***4. Member States may allow for derogations from paragraphs 1(b) and 1(c) until [date of transposition plus two years], provided that transmission system operators are not part of a vertically integrated undertaking.***

***deleted***

Or. en

*Justification*

*This is not relevant in a system with full ownership unbundling.*

**Amendment 32**

**Proposal for a directive – amending act**

**Article 1 - point 4**

Directive 2003/54/EC

Article 8 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned. No**

**5. The obligation set out in paragraph 1(a) is deemed to be fulfilled in a situation where several undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in several Member States for the transmission systems concerned. No**

other undertaking may be part of the joint venture, unless it *has been approved under Article 10 as an independent system operator*.

other undertaking may be part of the joint venture, unless it *complies fully with this Article*.

Or. en

#### *Justification*

*All undertakings that are not fully unbundled shall not be permitted to act as a transmission system operator.*

### **Amendment 33**

#### **Proposal for a directive – amending act**

##### **Article 1 - point 5**

Directive 2003/54/EC

Article 8b – paragraph 13

#### *Text proposed by the Commission*

13. The Commission shall adopt guidelines setting out the details of the procedure to be followed for the application of paragraphs 6 to 9. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)."

#### *Amendment*

13. The Commission shall adopt *within one year after the entry into force of this Directive* guidelines setting out the details of the procedure to be followed for the application of paragraphs 6 to 9. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)."

Or. en

#### *Justification*

*This should be a binding measure and this action needs to be taken in a timely manner*

### **Amendment 34**

#### **Proposal for a directive – amending act**

##### **Article 1 - point 6**

Directive 2003/54/EC

Article 9 - point (a)

*Text proposed by the Commission*

(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems 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.

*Amendment*

(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems with due regard to the environment, and **promotion of** energy efficiency and research and innovation notably with respect to ensuring penetration of renewables and dissemination of low carbon technology. ***Working towards the development of smart grids within 10 years to be set against an incremental time table in consultation with the national regulatory authorities and the Agency. When developing the network the transmission system operator is responsible for planning, (including authorisation procedure) construction and commissioning of the new infrastructure.***

Or. en

*Justification*

*The development of Smart Grids will encourage environmentally conscious behaviour and improve consumers' role in positively influencing the market. Clear lines of demarcation need to be drawn to ensure that everyone knows where the responsibility lies.*

**Amendment 35**

**Proposal for a directive – amending act**

**Article 1 - point 6 a (new)**

Directive 2003/54/EC

Article 9 - point (d)

*Text proposed by the Commission*

*Amendment*

***(6a) In Article 9, point (d) shall be replaced by the following:***

***"(d) providing to the operator of any other system with which its system is***

**interconnected sufficient information to ensure the secure and efficient operation [...]”**

Or. en

*Same wording as that of Article 9(c) of Directive 2003/54 EC, deleting "coordinated development and interoperability of the interconnected system"*

*Justification*

*We need to set common standards so that we can work towards a common European system.*

### **Amendment 36**

#### **Proposal for a directive – amending act**

**Article 1 - point 6 b (new)**

Directive 2003/54/EC

Article 9 - point (f a) (new)

*Text proposed by the Commission*

*Amendment*

***(6b) In Article 9, the following point shall be added:***

***"(fa) collecting congestion rents and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003 granting and managing third party access and giving reasoned explanations when this is denied which shall be monitored by the national regulatory authorities; in carrying out their tasks under this Article, transmission system operators shall primarily consider the benefits of the region in which they operate."***

Or. en

*(Adding new point (fa) to Article 9, Directive 2003/54 EC)*

*Justification*

*This details some of the activities which need to be carried out by TSOs, but also we need to*

*ensure that reasons for failing to grant access are dealt with in a transparent way.*

### **Amendment 37**

#### **Proposal for a directive – amending act**

#### **Article 1 - point 8**

Directive 2003/54/EC

Article 10

*Text proposed by the Commission*

*Amendment*

*Article 10*

*deleted*

#### ***Independent system operators***

***1. Where the transmission system belongs to a vertically integrated undertaking on entry into force of this Directive, Member States may grant derogations from Article 8(1), provided that an independent system operator is designated by the Member State upon a proposal from the transmission system owner and subject to approval of such designation by the Commission. Vertically integrated undertakings which own a transmission system may not in any event be prevented from taking steps to comply with Article 8(1).***

***2. The Member State may approve and designate an independent system operator only where:***

***(a) the candidate operator has demonstrated that it complies with the requirements of Article 8(1)(b) to (d);***

***(b) the candidate operator has demonstrated that it has at its disposal the required financial, technical and human resources to carry out its tasks under Article 9;***

***(c) the candidate operator has committed to complying with a ten year network development plan proposed by the regulatory authority;***

*(d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 6. To this effect, it shall provide all the draft contractual arrangements with the candidate undertaking and any other relevant entity;*

*(e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity\* including the cooperation of transmission system operators at European and regional level.*

*3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Articles 8a and 10(2) shall be approved and designated as independent system operators by Member States. The certification procedure in Article 8b shall be applicable.*

*4. Where the Commission has taken a decision in accordance with the procedure in Article 8b and finds that the regulatory authority has not complied with its decision within two months, it shall, within a period of six months, designate, on a proposal from the Agency for the Cooperation of Energy Regulators and after having heard the views of the transmission system owner and the transmission system operator, an independent system operator for a period of 5 years. At any time, the transmission system owner may propose to the regulatory authority the designation of a new independent system operator pursuant to the procedure in Article 10(1).*

*5. Each independent system operator*

*shall be responsible for granting and managing third party access, including the collection of access charges, congestion rents, and payments under the inter transmission system operator compensation mechanism in compliance with Article 3 of Regulation (EC) No 1228/2003, as well as for operating, maintaining and developing the transmission system, and for ensuring the long term ability of the system to meet reasonable demand through investment planning. When developing the network the independent system operator is responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, it shall act as a transmission system operator in accordance with this Chapter. Transmission system owners may not be responsible for granting and managing third party access, nor for investment planning.*

*6. Where an independent system operator has been designated, the transmission system owner shall:*

*(a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;*

*(b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority. Prior to this approval, the Regulatory Authority shall consult the asset owner together with other interested parties;*



*(c) provide for the coverage of liability relating to the network assets, excluding the liability relating to the tasks of the independent system operator;*

*(d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to paragraph b, it has given its agreement to financing by any interested party including the independent system operator.*

*7. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 6.*

Or. en

*Justification*

*The Independent System operator model implies bureaucracy and costly regulatory control and is therefore not a viable alternative to full ownership unbundling. The Rapporteur will consider in addition to full ownership unbundling any other model that can give assurance to competitors who enter the market, ensures that no conflict of interest arises and is as effective as ownership unbundling model.*

**Amendment 38**

**Proposal for a directive – amending act**

**Article 1 - point 8**

Directive 2003/54/EC

Article 10a

*Text proposed by the Commission*

*Amendment*

*Article 10a*

*deleted*

*Unbundling of transmission system owners*

*1. Transmission system owners, where an*

*independent system operator has been appointed, which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission.*

*2. In order to ensure the independence of the transmission system owner referred to in paragraph 1, the following minimum criteria shall apply:*

*(a) those persons responsible for the management of the transmission system owner may not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;*

*(b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner are taken into account in a manner that ensures that they are capable of acting independently;*

*(c) transmission system owner 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.*

*3. The Commission may adopt guidelines to ensure full and effective compliance of the transmission system owner with paragraph 2 of this Article. This measure*

*designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)."*

Or. en

*Justification*

*See justification to previous Amendment*

**Amendment 39**

**Proposal for a directive – amending act**

**Article 1 - point 8 a (new)**

Directive 2003/54/EC

Article 11 – paragraph 2

*Text proposed by the Commission*

*Amendment*

*(8a) Article 11(2) shall be replaced by the following:*

**"2. The dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which *shall* be approved by *national regulatory authorities* and which must be objective, published and applied in a non-discriminatory manner which ensures the proper functioning of the internal market in electricity. They shall take into account the economic precedence of electricity from available generating installations or interconnector transfers and the technical constraints on the system."**

Or. en

*(Same wording as that of Article 11, paragraph 2 of Directive 2003/54 EC, changing elements to existing text)*

*Justification*

*Independent National Regulatory Authorities are in a better position to be objective than Member State governments.*

**Amendment 40**

**Proposal for a directive – amending act**

**Article 1 - point 8 b (new)**

Directive 2003/54/EC

Article 11 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(8b) Article 11(3) shall be replaced by the following:***

***"3. A national regulatory authority shall require the system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power except when technical balancing requirements or the safety and reliability of the grid is compromised."***

Or. en

*(Same wording as that of Article 11, paragraph 3 of Directive 2003/54 EC, changing elements to existing text)*

*Justification*

*Renewable energy must be given priority access to the grid, providing there are no technical balancing issues associated with this. This will allow Member States an opportunity to reach their targets for renewable energy.*

**Amendment 41**

**Proposal for a directive – amending act**

**Article 1 - point 8 c (new)**

Directive 2003/54/EC

Article 11 – paragraph 5

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*Text proposed by the Commission*

*Amendment*

***(8c) Article 11(5) shall be replaced by the following:***

***"5. Member States, through the national regulatory authorities, may 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 a wider remit which ensures that the European consumer is taken into account in its work."***

Or. en

*(Same wording as that of Article 11, paragraph 5 of Directive 2003/54 EC, changing element to existing text)*

*Justification*

*Consumer protection must be a priority when maintenance decisions are being taken to ensure that there are no detrimental effects for end users. Currently many National Regulatory Authorities have no remit to care for the European consumer so all decisions are taken only with the national consumer in mind, this will need to change if a truly European energy market is to succeed.*

## **Amendment 42**

**Proposal for a directive – amending act**

**Article 1 - point 9 a (new)**

Directive 2003/54/EC

Article 14 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***(9a) Article 14(1) shall be replaced by the following:***

***"1. The distribution system operator shall be responsible for ensuring the long term ability of the system to meet reasonable demands for the distribution of electricity, operating, maintaining and***

***developing under economic conditions a secure, reliable and efficient electricity distribution system in its area with due regard for the environment, and promotion of energy efficiency."***

Or. en

*(Same wording as that of Article 14, paragraph 1 of Directive 2003/54 EC, changing elements to existing text)*

*Justification*

*The DSO should have the same responsibilities as the TSO to fulfil the criteria set out above.*

**Amendment 43**

**Proposal for a directive – amending act**

**Article 1 - point 9 b (new)**

Directive 2003/54/EC

Article 14 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***(9b) Article 14(4) shall be replaced by the following:***

***"4. A Member State shall require the distribution system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power except when technical balancing requirements or the safety and reliability of the grid is compromised."***

Or. en

*(Same wording as that of Article 14, paragraph 4 of Directive 2003/54 EC, changing elements to existing text)*

*Justification*

*Renewable energy must be given priority access to the grid, providing there are no technical balancing issues associated with this. This will allow Member States an opportunity to reach*

*their targets for renewable energy.*

#### **Amendment 44**

##### **Proposal for a directive – amending act**

##### **Article 1 - point 9 c (new)**

Directive 2003/54/EC

Article 14 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(9c) In Article 14, after paragraph 4, the following paragraph shall be added:***

***"4a. Member States shall also commit to the installation of smart meters and grids within ten years after the entry into force of this Directive which shall be the responsibility of the electricity distribution companies. National regulatory authorities shall set out a rolling programme to ensure compliance by the set date."***

Or. en

*(Adding new paragraph 4 subparagraph (a) to Article 14, Directive 2003/54 EC)*

##### *Justification*

*The European Union should encourage member states to install smart meters and grids within a set time framework, evidence suggests that consumers are likely to become far more energy aware with better knowledge of their personal energy consumption on a real time basis, this will lead to energy efficiency.*

#### **Amendment 45**

##### **Proposal for a directive – amending act**

##### **Article 1 - point 9 d (new)**

Directive 2003/54/EC

Article 14 – paragraph 4b (new)

*Text proposed by the Commission*

*Amendment*

***(9d) In Article 14, after paragraph 4, the following paragraph shall be added:***

***"4b. Member States shall encourage the modernisation of distribution networks which shall be built in a way that will encourage decentralised generation and shall ensure energy efficiency."***

Or. en

*(Adding new paragraph 4 subparagraph (b) to Article 14, Directive 2003/54 EC)*

*Justification*

*Member States should do more to encourage combined heat and power in particular.*

**Amendment 46**

**Proposal for a directive – amending act**

**Article 1 - point 10 - point (c)**

Directive 2003/54/EC

Article 15 – paragraph 3

*Text proposed by the Commission*

3. Where the distribution system operator is part of a vertically integrated undertaking, ***Member States*** shall ensure that the activities of the distribution system operator is monitored so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.

*Amendment*

3. Where the distribution system operator is part of a vertically integrated undertaking, ***national regulatory authorities*** shall ensure that the activities of the distribution system operator is monitored so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.

Or. en

*Justification*

*NRAs should take the responsibility for overseeing the unbundling provisions for Distribution System Operators to ensure the independence of the DSO.*



## **Amendment 47**

### **Proposal for a directive – amending act**

#### **Article 1 - point 10 - point (c)**

Directive 2003/54/EC

Article 15 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***4. The Commission may adopt guidelines to ensure full and effective compliance of the distribution system operator with paragraph 2 as regards the full independence of the distribution system operator, the absence of discriminatory behaviour, and that supply activities of the vertically integrated undertaking cannot take unfair advantage of its vertical integration. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).***

***deleted***

Or. en

*Justification*

*This should not be decided by the Commission through the comitology process, but by co-decision.*

## **Amendment 48**

### **Proposal for a directive – amending act**

#### **Article 1 - point 12**

Directive 2003/54/EC

Article 22a – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***”3a. The Commission shall adopt minimum standards on transparency and accountability of national regulatory authorities through the adoption of guidelines to ensure full and effective compliance of national regulatory***

*authorities with paragraphs 1 and 2. These measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).”*

Or. en

*Justification*

*To ensure the effective opening up of the internal market in electricity National Regulatory authorities must be subject to minimum standards on transparency and accountability that allow them to effectively monitor the electricity market.*

**Amendment 49**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22b – point (d)

*Text proposed by the Commission*

(d) ensuring the development of secure, reliable and efficient systems, promoting **energy efficiency**, system adequacy, **and research and innovation to meet demand and the development of innovative renewable and low carbon technologies**, in both **short and long term**;

*Amendment*

(d) ensuring, **at the lowest cost to consumers**, the development of secure, reliable and efficient **grid** systems, promoting system adequacy **whilst ensuring energy efficiency and integration of large and small scale renewables and distributed generation** in both **transmission and distribution grids**;

Or. en

*Justification*

*National Regulators should have no influence over the mix of energy in Member States, this should be left to subsidiarity.*

## Amendment 50

### Proposal for a directive – amending act

#### Article 1 - point 12

Directive 2003/54/EC

Article 22c – paragraph 1 - point (b)

*Text proposed by the Commission*

*Amendment*

(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 **and the Agency**;

Or. en

#### *Justification*

The agency should be involved in all cross border activities to ensure transparent and fair practices and sufficient levels of investment we should not allow a regulatory gap to develop in relation to cross border and regional markets.

## Amendment 51

### Proposal for a directive – amending act

#### Article 1 - point 12

Directive 2003/54/EC

Article 22c – paragraph 1 - point (e)

*Text proposed by the Commission*

*Amendment*

(e) ensuring that there are no cross subsidies between transmission, distribution, and supply activities;

(e) ensuring that there are no cross subsidies between transmission, distribution, and supply activities **as well as ensuring that distribution and transmission tariffs are set well in advance of the relevant periods during which they apply**;

Or. en

#### *Justification*

*Effective planning of investments is crucial to the development of the internal market in electricity, and NRAs must be able to ensure that tariffs are set far enough in advance to assist in the planning of investments.*

## Amendment 52

### Proposal for a directive – amending act

#### Article 1 - point 12

Directive 2003/54/EC

Article 22c – paragraph 1 - point (f)

#### *Text proposed by the Commission*

(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(1) of Regulation (EC) No 1228/2003;

#### *Amendment*

(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 at Article 2c(1) of Regulation (EC) No 1228/2003; ***the 10 year investment plan shall ensure that the quality and numbers of the workforce are sufficient to deliver service obligations; failure to honour the 10 year investment plan shall result in proportionate sanctions imposed in accordance with the guidelines issued by the Agency;***

Or. en

#### *Justification*

*Regulatory authorities must be responsible for ensuring ten year investment plans include provisions to ensure the workforce is capable of meeting any public service obligations as set out in this directive. There must be effective, appropriate and dissuasive sanctions in place to use against electricity undertakings in cases of non-compliance with any of the obligations set out in this Directive.*

## Amendment 53

### Proposal for a directive – amending act

#### Article 1 - point 12

Directive 2003/54/EC

Article 22c – paragraph 1 - point (g)

#### *Text proposed by the Commission*

(g) monitoring network security and reliability, and reviewing network security

#### *Amendment*

(g) monitoring network security and reliability, ***setting or approving standards***

and reliability rules;

***and requirements for quality of service and supply and reviewing performances for quality of service and supply network security and reliability rules;***

Or. en

*Justification*

*Regulatory authorities must be able to monitor quality of service, in conjunction with network security and reliability to ensure that public service obligations are met.*

**Amendment 54**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph - point (i a) (new)

*Text proposed by the Commission*

*Amendment*

***“(ia) monitoring the occurrence of restrictive contractual practices, including exclusivity provisions, which may prevent or restrain the choice of non-household customers from contracting simultaneously with more than one supplier; where appropriate the national regulatory authorities shall inform the national competition authorities of such practices;“***

Or. en

*Justification*

*Allowing non-household customers to chose their suppliers and not be restricted through exclusivity clauses will help develop competition on the internal market.*

**Amendment 55**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 1 - point (i b) (new)

*Text proposed by the Commission*

*Amendment*

***“(ib) recognising contractual freedom with regards to long term contracts and the possibility to conclude asset based contracts providing these are compatible with existing EU legislation.”***

Or. en

*Justification*

*There is a need to develop new capacity, especially by new entrants, and long term contracts with base load customers could be necessary to ensure part of the financing of such investments. Further some high energy users need to have access to long term, predictable energy contracts to remain competitive with other regions where these are available.*

## **Amendment 56**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 1 - point (j)

*Text proposed by the Commission*

*Amendment*

(j) monitoring the time taken by transmission and distribution undertakings to make connections and repairs;

(j) monitoring the time taken by transmission and distribution undertakings to make connections and repairs ***and imposing sanctions in accordance with the guidelines by the Agency if these are prolonged without due cause;***

Or. en

*Justification*

*There must be effective, appropriate and dissuasive sanctions in place to use against electricity undertakings in cases of non-compliance with any of the obligations set out in this Directive.*

## Amendment 57

### Proposal for a directive – amending act

#### Article 1 - point 12

Directive 2003/54/EC

Article 22c – paragraph 1 - point (k)

#### *Text proposed by the Commission*

(k) without prejudice to the competence of other national regulatory authorities, ensuring high standards of universal and public service for electricity, the protection of vulnerable customers, and that consumer protection measures set out in Annex A are effective;

#### *Amendment*

(k) without prejudice to the competence of other national regulatory authorities, ensuring high standards of universal and public service for electricity, the protection of vulnerable customers, and that consumer protection measures set out in Annex A are effective ***and enforced***;

Or. en

#### *Justification*

*To effectively protect consumers the provisions set out in Annex A need to be enforceable and Regulatory Authorities must have effective, appropriate and dissuasive sanctions in place to use against electricity undertakings in cases of non-compliance with any of the obligations set out in this Directive.*

## Amendment 58

### Proposal for a directive – amending act

#### Article 1 - point 12

Directive 2003/54/EC

Article 22c – paragraph 1 - point (l)

#### *Text proposed by the Commission*

(l) publishing recommendations, at least on a yearly basis, on compliance of supply tariffs with Article 3;

#### *Amendment*

(l) publishing recommendations ***and decisions***, at least on a yearly basis, on compliance of supply tariffs with Article 3 ***with a view to abolishing by the time of implementation of this Directive generalised regulated end user prices below the market value of the electricity sold; proportionate sanctions should be imposed if this is not honoured***;

Or. en

### *Justification*

*To assist with the development of the internal market regulated tariffs that are set below market price should be abolished to open up the market. There must be effective, appropriate and dissuasive sanctions in place to use against electricity undertakings in cases of non-compliance with this.*

### **Amendment 59**

#### **Proposal for a directive – amending act**

#### **Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 1 - point (1 a) (new)

*Text proposed by the Commission*

*Amendment*

***“(la) reporting to the national competition authorities and the Commission those Member States in which regulated tariffs are lower than the market price;”***

Or. en

### *Justification*

*To assist with the development of the internal market regulated tariffs that are set below market price should be abolished to open up the market. There must be effective, appropriate and dissuasive sanctions in place to use against electricity undertakings in cases of non-compliance with this*

### **Amendment 60**

#### **Proposal for a directive – amending act**

#### **Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 1 - point (o a) (new)

*Text proposed by the Commission*

*Amendment*

***“(oa) fixing or approving network access tariffs and publishing the methodology used to set the tariffs.”***

Or. en



### *Justification*

NRAs must be able to fix or approve tariffs to ensure fair access for all actors in the electricity market, and the methodology behind setting these tariffs must be transparent and published in accordance with paragraph 4 of this article.

### **Amendment 61**

#### **Proposal for a directive – amending act**

#### **Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 1 - point (o b) (new)

*Text proposed by the Commission*

*Amendment*

***“(ob) imposing price caps in uncompetitive markets for a defined and limited period in order to protect customers against market abuse; the price caps shall be fixed at a sufficiently high level so as not to discourage new entry and expansion of existing competitors;”***

Or. en

### *Justification*

*NRAs must be able to impose price caps where there is excessive market power, but these must be sufficiently high so as not to discourage new entry and expansion of existing competitors and the development of the internal market in electricity.*

### **Amendment 62**

#### **Proposal for a directive – amending act**

#### **Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 1 - point (o c) (new)

*Text proposed by the Commission*

*Amendment*

***“(oc) developing in conjunction with relevant planning authorities guidelines regarding a time limited licensing procedure in order to encourage new entrants into generation and trading; these guidelines shall be approved by the***

*Agency in order to ensure a minimum level of harmonisation in planning across Member States;”*

Or. en

*Justification*

*Many new entrants currently find difficulty in accessing the generation and trading market.*

**Amendment 63**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 1 - point (o d) (new)

*Text proposed by the Commission*

*Amendment*

***“(od) ensuring that wholesale fluctuations in prices are transparent.”***

Or. en

*Justification*

*To ensure a level playing field for all market actors any changes in wholesale prices must be available.*

**Amendment 64**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 3 - point (b)

*Text proposed by the Commission*

*Amendment*

(b) to carry out in cooperation with the national competition authority investigations of the functioning of electricity markets, and to decide, in the absence of violations of competition rules,, of any appropriate measures necessary and proportionate to promote effective

(b) to carry out in cooperation with the national competition authority investigations of the functioning of the electricity markets, and to decide, in the absence of violations of competition rules, of any appropriate measures necessary and proportionate to promote effective

competition and ensure the proper functioning of the market, including virtual power plants

competition and ensure the proper functioning of the market, including virtual power plants; ***ensuring that a truly competitive EU market shall be established by mandating incremental release of generation capacity at real cost so that by 2020 no individual company may account for more than 20% of any relevant market; the relevant market shall be defined by the Commission;***

Or. en

### *Justification*

*To ensure there is no dominance in a specified market, by one or more player, Regulatory Authorities shall have the powers to limit the share of market to 20% for an electricity undertaking. This will open up the markets in member states, in particular those with dominant market players, who have been in several cases been guilty of abuse of power, and ensure fair access to other market players. As markets become more integrated, the geographic size of the market will expand, so this provision will allow companies to grow as the markets become more integrated.*

### **Amendment 65**

#### **Proposal for a directive – amending act**

#### **Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 3 - point (c)

#### *Text proposed by the Commission*

(c) to ***request*** any information from electricity undertakings relevant for the fulfilment of its tasks;

#### *Amendment*

(c) to ***obtain*** any information from electricity undertakings relevant for the fulfilment of its tasks, ***including justifications for refusal to grant third party access, and any information on measures necessary to reinforce the network, and should cooperate with financial market regulators where necessary;***

Or. en

### *Justification*

*To ensure that NRAs are able to monitor the functioning of the electricity market they should be able to obtain any relevant information from electricity undertakings.*

### **Amendment 66**

#### **Proposal for a directive – amending act**

##### **Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 3 - point (d)

#### *Text proposed by the Commission*

(d) to impose effective, appropriate and dissuasive sanctions to electricity undertakings not complying with their obligations under this Directive or any decisions of the regulatory authority or of the Agency;

#### *Amendment*

(d) to impose effective, appropriate and dissuasive sanctions, ***including withdrawal of permissions***, to electricity undertakings not complying with their obligations under this Directive, ***including Annex A*** or any decisions of the regulatory authority or of the Agency;

Or. en

### *Justification*

*There must be effective, appropriate and dissuasive sanctions in place to use against electricity undertakings in cases of non-compliance with any of the obligations set out in this Directive.*

### **Amendment 67**

#### **Proposal for a directive – amending act**

##### **Article 1 - point 12**

Directive 2003/54 (EC)

Article 22c – paragraph 4 - point (a)

#### *Text proposed by the Commission*

(a) connection and access to national networks, including transmission and distribution tariffs. These tariffs shall allow the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of

#### *Amendment*

(a) connection and access to national networks, including transmission and distribution tariffs ***and their methodologies, or alternatively, the methodologies and their monitoring for setting or approving the transmission and distribution tariffs***. These tariffs shall

the networks;

allow the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks;

Or. en

*Justification*

*Transparency of the system must be guaranteed to ensure access for all market actors, and the ability to plan effectively must be ensured by the NRA.*

**Amendment 68**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 5

*Text proposed by the Commission*

5. In fixing or approving the tariffs, the regulatory authorities shall ensure that network operators are granted adequate incentive, over both the short and long term, to increase efficiencies, foster market integration and support the related research activities.

*Amendment*

5. In fixing or approving ***the terms and conditions of*** the tariffs ***and the balancing services,*** the regulatory authorities shall ensure that network operators are granted adequate incentive, over both the short and long term, to increase efficiencies, foster market integration and support the related research activities.

Or. en

*Justification*

*NRAs must ensure that TSO's balancing activities are conducted in a open and transparent manner to ensure parity for all market actors.*

**Amendment 69**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 6

*Text proposed by the Commission*

6. Regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, **including tariffs** referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner.

*Amendment*

6. Regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner. ***In case of delay regarding the setting of transmission and distribution tariffs, regulatory authorities shall have the power to set transmission and distribution tariffs on a preliminary basis and to decide on the appropriate compensatory measures in case the final tariffs deviate from these provisional tariffs.***

Or. en

*Justification*

*National Regulators should have this power to ensure that appropriate action is taken by TSOs and DSOs.*

**Amendment 70**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22c – paragraph 12

*Text proposed by the Commission*

12. Decisions taken by regulatory authorities shall be motivated.

*Amendment*

12. Decisions taken by regulatory authorities shall be ***duly reasoned and*** motivated.

Or. en

*Justification*

*Clarification of language is necessary so that the independence of the NRA can be assured.*

## Amendment 71

### Proposal for a directive – amending act

#### Article 1 - point 12

Directive 2003/54/EC

Article 22c – paragraph 13

#### *Text proposed by the Commission*

13. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a body independent of the parties involved.

#### *Amendment*

13. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a ***national judicial*** body ***or other national authority*** independent of the parties involved ***and of any government.***

Or. en

#### *Justification*

*There must be an effective appeal process in all Member States that ensures the fair treatment of all market actors, but it is important that this is independent of the government.*

## Amendment 72

### Proposal for a directive – amending act

#### Article 1 - point 12

Directive 2003/54/EC

Article 22c – paragraph 14

#### *Text proposed by the Commission*

14. The Commission ***may*** adopt guidelines on the implementation by the regulatory authorities of the powers described in this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

#### *Amendment*

14. The Commission ***shall*** adopt ***within one year after the entry into force of this Directive*** guidelines on the implementation by the regulatory authorities of the powers described in this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

Or. en

### *Justification*

*This should be a binding measure that ensures the effective operating of the regulatory authorities to assist in the development of the internal market in electricity, and this action needs to be taken in a timely manner.*

### **Amendment 73**

#### **Proposal for a directive – amending act**

##### **Article 1 - point 12**

Directive 2003/54/EC

Article 22d – paragraph 2

#### *Text proposed by the Commission*

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 electricity 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.

#### *Amendment*

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 electricity exchanges and the allocation of cross-border capacity, and to ensure ***an adequate*** level of interconnection capacity within the region to allow for effective competition to develop.

Or. en

### *Justification*

*This should encourage further cross border regulation harmonisation, but it should be at the discretion of national regulatory authorities. Without this addition some NRAs may be prohibited from cooperation.*

### **Amendment 74**

#### **Proposal for a directive – amending act**

##### **Article 1 - point 12**

Directive 2003/54/EC

Article 22d – paragraph 2 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***2a. Regulatory authorities shall have the right to enter into agreements with each***



*other to foster regulatory cooperation.*

Or. en

*Justification*

*See justification to Amendment 73.*

**Amendment 75**

**Proposal for a directive – amending act**

**Article 1 - point 12**

Directive 2003/54/EC

Article 22f – paragraph 4

*Text proposed by the Commission*

4. To ensure the uniform application of this Article, the Commission may adopt guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

*Amendment*

4. To ensure the uniform application of this Article, the Commission may adopt guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept ***using current best practice***. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

Or. en

*Justification*

*The Commission must ensure that best practice is applied in the record keeping of all Member states.*

**Amendment 76**

**Proposal for a directive – amending act**

**Article 1 - point 13 a (new)**

Directive 2003/54/EC

Article 26 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***(13a) Article 26(1) shall be replaced by the following:***

**"1. Member States which can demonstrate, after the Directive has been brought into force, that there are substantial problems for the operation of their small isolated systems, may apply for derogations from the relevant provisions of Chapters IV, V, VI, VII, as well as Chapter III, in the case of micro isolated systems, as far as refurbishing, upgrading and expansion of existing capacity are concerned, which may be granted to them by the Commission. The latter shall inform the Member States of those applications prior to taking a decision, taking into account respect for confidentiality. This decision shall be published in the Official Journal of the European Union. [...]"**

Or. en

*(Same wording as that of Article 26, paragraph 1 of Directive 2003/54 EC, deleting "This article shall also be applicable to Luxembourg")*

*Justification*

*Whilst it is reasonable to suggest that currently many member states sit in isolated markets where there are difficulties in achieving a truly competitive cross border electricity market and therefore should receive derogations, Luxembourg sits at the heart of the EU electricity market.*

## **Amendment 77**

**Proposal for a directive – amending act**

**Article 1 - point 13 b (new)**

Directive 2003/54/EC

Article 26 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***(13b) Article 26(2) shall be replaced by***

*the following:*

**"2. A Member State which, after the Directive has been brought into force, for reasons of a technical nature has substantial problems in opening its market for certain limited groups of the non-household customers referred to in Article 21(1)(b) may apply for derogation from this provision, which may be granted to it by the Commission for a period not exceeding 12 months after the date referred to in Article 30(1). In any case, such derogation shall end on the date referred to in Article 21(1)(c)."**

Or. en

*(Same wording as that of Article 26, paragraph 2 of Directive 2003/54 EC, shortening the deadline to 12 months)*

*Justification*

*12 months should be enough time for Member States to overcome any technical barriers.*

## **Amendment 78**

**Proposal for a directive – amending act**

**Article 1 - point 14 a (new)**

Directive 2003/54/EC

Annex A - point (a)

*Text proposed by the Commission*

*Amendment*

***(14a) Point (a) of Annex A shall be replaced by the following:***

**"(a) have a right to a contract with their electricity service provider that specifies:**

- the identity and address of the supplier;**
- the services provided, the service quality levels offered, as well as the time for the initial connection;**
- [...] the types of maintenance service**

offered;  
- the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;  
- the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal *without charge*;  
- any compensation and the refund arrangements which apply if contracted service quality levels are not met *including inaccurate and delayed billing*;  
[...]  
- the method of initiating procedures for settlement of disputes in accordance with point (f); *and*  
- *information on consumer rights, including all of the above, clearly communicated through billing and electricity companies' web sites.*"

Or. en

*(Same wording as that of Annex A(a), Directive 2003/54 EC, adding last indent)*

*Justification*

*Quality of service and transparency are essential rights in a competitive market.*

**Amendment 79**

**Proposal for a directive – amending act**

**Article 1 - point 14 b (new)**

Directive 2003/54/EC

Annex A - point (b)

*Text proposed by the Commission*

*Amendment*

***(14b) Point (b) of Annex A shall be replaced by the following:***

***"(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify***

**their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect *in a transparent and comprehensible manner*. Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their electricity service provider;"**

Or. en

*(Same wording as that of Annex A(b), Directive 2003/54 EC, adding "in a transparent and comprehensible manner")*

*Justification*

*Transparency is essential in a competitive market.*

**Amendment 80**

**Proposal for a directive – amending act**

**Article 1 - point 14 c (new)**

Directive 2003/54/EC

Annex A - point (c)

*Text proposed by the Commission*

*Amendment*

***(14c) Point (c) of Annex A shall be replaced by the following:***

***"(c) receive transparent *independent* information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services *at national and community level*;"***

Or. en

*(Same wording as that of Annex A(c), Directive 2003/54 EC, adding 'at national and community level')*

*Justification*

*This information will improve competition.*

## **Amendment 81**

### **Proposal for a directive – amending act**

#### **Article 1 - point 14 d (new)**

Directive 2003/54/EC

Annex A - point (d)

*Text proposed by the Commission*

*Amendment*

***(14d) Point (d) of Annex A shall be replaced by the following:***

***"(d) are offered a wide choice of payment methods so as not to discriminate against vulnerable customers, which shall include prepaid meters and tariff calculators without charge where applicable. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. Customers shall be protected against unfair or misleading selling methods including non contractual barriers imposed by the trader;"***

Or. en

(Same wording as that of Annex A(d), Directive 2003/54 EC adding " so as not to discriminate against vulnerable customers, which shall include prepaid meters and tariff calculators without charge where applicable" and " including non contractual barriers imposed by the trader ")

*Justification*

*Vulnerable customers need to be particularly protected.*

## Amendment 82

### Proposal for a directive – amending act

#### Article 1 - point 14 e (new)

Directive 2003/54/EC

Annex A - point (f)

*Text proposed by the Commission*

*Amendment*

***(14e) Point (f) of Annex A shall be replaced by the following:***

***“(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Such procedures shall enable disputes to be settled fairly and promptly *within a period of three months* with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC;”***

Or. en

*(Same wording as that of Annex A(f), Directive 2003/54 EC, adding "with a period of three month")*

*Justification*

*Consumers should be represented by a body that is independent of the National Regulator, Government and electricity suppliers.*

## Amendment 83

### Proposal for a directive – amending act

#### Article 1 - point 15

Directive 2003/54/EC

Annex A - point (h)

*Text proposed by the Commission*

*Amendment*

(h) have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any undertaking with a supply license access to

(h) have at their disposal their consumption data and shall be able to, by explicit agreement and free of charge, give any undertaking with a supply license access to

its metering data. The party responsible for data management is obliged to give these data to the undertaking. Member States shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs can be charged to the consumer for this service.

its metering data ***which may include energy supply available in a particular area and all national and community mechanisms promoting energy efficiency.*** The party responsible for data management is obliged to give these data to the undertaking. Member States shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs can be charged to the consumer for this service.

Or. en

#### *Justification*

*This will encourage environmentally conscious behaviour and improve consumer's role to have a positive influence on the market.*

#### **Amendment 84**

##### **Proposal for a directive – amending act**

##### **Article 1 - point 15**

Directive 2003/54/EC

Annex A - point (i)

#### *Text proposed by the Commission*

(i) shall be properly informed every month of actual electricity consumption and costs. No additional costs can be charged to the consumer for this service.

#### *Amendment*

(i) shall be properly informed every month of actual electricity consumption and costs ***which may include energy supply available in a particular area and all national and community mechanisms promoting energy efficiency.*** No additional costs can be charged to the consumer for this service. ***By 2015 smart meters shall be installed in all households.***

Or. en

#### *Justification*

*This will encourage environmentally conscious behaviour and improve consumers role in positively influencing the market. Smart meters communicate actual consumption to the supplier and inform the consumer about the cost of the actual consumption. These could*



*allow consumers to reduced demand at peak time and lower energy costs. Following environmental measures are fully understood by consumers could they bring about the desired efficiency increases in which they intend to result in.*

## **Amendment 85**

### **Proposal for a directive – amending act**

#### **Article 1 - 15 a (new)**

Directive 2003/54/EC

Annex A - paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(15a) In Annex A, the following paragraph shall be added:***

***"The European Charter on the Rights of Energy Consumers, as proposed by the Commission shall serve as a basis for the guidelines on consumer protection proposed by the Agency to the Commission."***

Or. en

(Adding new paragraph (k) to Annex A, Directive 2003/54 EC)

#### *Justification*

*The European Energy Consumer's Charter takes into consideration the views of the relevant stake holders and social partners on Consumer's rights and should be recognised within the framework of this Directive.*

## **Amendment 86**

### **Proposal for a directive – amending act**

#### **Article 1 - point 15 b (new)**

Directive 2003/54/EC

Annex A - paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***(15b) In Annex A, the following paragraph shall be added:***

***"A statutory independent consumer body for energy shall be established in every***

***Member State. This body shall represent consumers in formal consultations relating to the EU energy market. This body shall ensure that final customers are appropriately protected according to the provisions set out in this Directive and shall be responsible for providing in particular independent advice, reliable information, advice and representation for customers."***

Or. en

(Adding new paragraph (l) to Annex A, Directive 2003/54 EC)

*Justification*

*Whilst National Regulators should be given the power to protect customers, it is necessary that consumers are given their own formal voice. The National Regulator and Consumer body should ensure cooperation, exchange of information and the consistent treatment of matters affecting both organisations.*

**Amendment 87**

**Proposal for a directive – amending act  
Article 2 - paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**18** months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

*Amendment*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**12** months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Or. en

*Justification*

*12 months should be enough time for member states to enact this Directive.*

## **Amendment 88**

### **Proposal for a directive – amending act Article 2 - paragraph 1 – subparagraph 2**

#### *Text proposed by the Commission*

They shall apply these provisions from [**18** months after entry into force].

#### *Amendment*

They shall apply these provisions from [**12** months after entry into force].

Or. en

#### *Justification*

*12 months should be enough time for member states to transpose this Directive.*

## EXPLANATORY STATEMENT

1. Without a proper functioning electricity and gas market the European Union will find it increasingly difficult to ensure security of supply, a sustainable, low carbon energy market and ensure global competitiveness.
2. Before looking at the appropriate model for the market we need to ask “why we are insisting on this change?” We need this change so consumers receive a fair deal, to level the playing field for all market actors, producers and consumers, to ensure better conditions for investment ensuring security of supply and better access for renewables, and we need to reduce the concentration of power of large energy companies allowing SMEs better access to the grid. This requires a twofold approach: better regulation and governance of electricity and gas markets regarding operation of network monopolies and market design; and assertive application of competition law to reduce market concentration.

### **I - Consumer protection and social impact**

3. Any model is likely to see an increase in energy prices. The impact of the EU ETS, the 20% renewables obligation, and increasingly tight oil supply with prices around \$100 a barrel will mean prices are likely to increase.
4. Although energy poverty and the protection of vulnerable customers is an area of national competence, there is clearly a link with EU policy. The EU must set out a clear definition of energy poverty, and insist that Member State energy poverty plans are submitted and monitored by the Commission. However the tools used to protect vulnerable customers must work with, and support, the pre-requisites of open, competitive markets. We need to guarantee that customers, particularly pensioners, who are unable to pay will not be cut off and there is no discrimination in terms of pricing models against poor consumers. Combating fuel poverty can be done best through promoting energy efficiency and energy saving measures and we should explore how to strengthen the link between this directive and energy efficiency requirements.
5. Increased transparency is needed in terms of consumer rights. The annex to the Directive must be implemented, monitored and policed by National Regulatory Authorities (NRAs) and overseen by the new European regulatory body. Quality of service should be a central feature of electricity companies’ responsibilities. Clear sanctions for lack of implementation should be enacted, including the withdrawal of license or equivalent at the national level. The proposed European Energy Consumer Charter should be enforced through the electricity and gas directives and thereby given legal weight. A statutory energy Consumer body should be set up in every Member State.

## II- What energy model?

6. Full ownership unbundling is the only model that can give an assurance to competitors who want to enter the market and ensure no conflict of interest arises.
7. The potential for unfair discrimination will always exist where a company is involved both in competitive and monopolistic practices. But this needs to go hand in hand with increased transparency, coordination of network operators, harmonisation of market rules and convergence of national regulations including competition policy.
8. The Commission proposal does not require the forced privatisation of state-owned transmission networks following ownership unbundling.
9. The Independent Systems Operator model, where a company can own but not run an electricity network, implies bureaucracy and costly regulatory control and is therefore not a viable alternative to full ownership unbundling.

### a) Investment

10. The experience of Member States indicates that full ownership unbundling leads to increased investment and improved network performance.
11. The ten year investment plans required under the regulation should ensure that long term strategies are set in place which put the needs of consumers first and not those of share holders. This investment strategy should ensure that the quality and numbers of the workforce are sufficient to deliver service obligations. It should be approved and monitored by NRAs and overseen by the new European Regulatory Agency. Investment plans should take account of the need to ultimately work towards a European network.

### b) Renewables and decentralised generation

12. The full ownership unbundling model will ensure better access to grids for renewable energy, however we should go further and ensure that renewable energy and micro generation should have priority access to the grids, except when technical balancing issues make this impossible.
13. We must ensure that power is returned to the people through support for local and micro generation and local combined heat and power plants. This will require massive investments in smart grids. Today, vertically integrated electricity companies have no incentive to make these investments, as they will not be building or controlling much of this local generation.
14. Modernization of distribution networks is essential for the development of decentralized generation and for improving energy efficiency. The Directive should ensure that district systems can be encouraged.

### **III - Implementation and the regulators**

15. The Commission should rigorously pursue Member States who have failed to implement current directives. Policing and clear sanctions are necessary to ensure that the next model is successful; this is particularly true for energy networks, which are natural monopolies.
16. National regulators must be truly independent from both government and industry, and minimum standards in the harmonisation of their powers should be achieved via the establishment of common rules on transparency and accountability. They should also be given responsibility for ensuring that the needs of European consumers are taken into account when taking decisions notably on cross-border investments.
17. NRAs should be able to impose measures to stimulate competition, and be responsible for reviewing which companies enjoy significant market dominance. NRAs should be given the tools to achieve a more competitive outcome, through close cooperation with national and EU cartel authorities, and should be legally empowered to enter in to agreements with other EU and national regulatory authorities (e.g. on sharing data).
18. EU legislation should set out clearly the policy objectives and precise scope of NRAs' duties and powers, covering the power to fix or approve network access tariffs and the methodology used to set the tariffs. NRAs must each have the power to obtain relevant information from gas and electricity companies and impose effective sanctions together with appropriate rights of investigation and sufficient powers for dispute settlement.
19. National regulators should be encouraged to use the right to impose price caps in uncompetitive markets for a defined and limited period where member states are slow to implement EU laws so customers remain protected against market abuse. Commission authorities should prosecute regulated tariffs lower than the market rate as this impedes competition and distorts competition especially amongst high-energy users within the EU.
20. The Commission suggests a number of provisions, which would delegate powers to the Commission to adopt binding guidelines through Comitology. However legislative powers should be addressed through codecision where appropriate, and not through Comitology, so as not to undermine the European Parliament's powers.

### **IV - The European Regulatory Energy Agency (Agency)**

21. Clear duties of national and European regulatory bodies should be set out to ensure no duplication. The Regulatory Authority should monitor any conditions set out in the Directive for National Regulators. Failure to comply with the rules set out in the directive should lead to clear sanctions. The powers and independence of the proposed European Regulatory Agency should be assured through accountability to the European Parliament.

22. On cross border issues there is a need to recognise the regulatory gap and the need for better interconnections in parts of the European market. Thus the proposal to give the Agency the power to decide on exemptions for interconnectors and on exemptions if the infrastructure is located on the territory of more than one Member State is welcome. If the competent NRAs are unable to reach agreement on an appropriate regulatory regime the European Agency may put essential interconnectors out to tender in consultation with the appropriate authorities. Costs should be passed on to the consumer in a regulated and transparent framework. The Agency should have a more active role in regulation of cross-border issues.

## **V - Regional Electricity Markets**

23. Ultimately our goal should be to work towards a single European network in electricity through appropriate, clear and incremental steps. It should be made clear that this should be carried out along with full ownership unbundling and not considered an alternative model.
24. TSOs should be given a clear route map and timetable to ensure that this is moved on. A balance has to be found on which powers are with the TSOs and which are with regulatory authorities. In general regulators are better placed to define codes for commercial activities – e.g. balancing rules, congestion rules whereas technical codes should be the responsibility of TSOs. Development of an EU grid code would ensure that regional markets would not drift apart.
25. Defining regions and stimulating regional cooperation to ensure a smoothly integrated market in the wider European context is crucial. It is essential to link up "energy islands" like the Baltic states which have not been connected to the UCTE (Union for the Co-ordination of Transmission of Electricity) grid. We need incentives in place to tackle the obstacles that cause delays in the creation of new energy import and export infrastructure. The Agency should thus operate also with respect to the regional dimension.

## **VI - Third Country ownership**

26. Energy is undoubtedly an area where national and European interests should be considered paramount in particular in the context of security of supply. There is a further need for clarification on what the impact of this clause would be in relation to current third country investments in EU transmission systems, and the limitation on an investment pool for the buying up of divested infrastructure as a result of the unbundling requirements. The rapporteur should point out that her preferred option for ownership of infrastructure would be a majority holding by the public sector.