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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/73/EC concerning common rules for the internal market in natural gas
- Outcome of the European Parliament's first reading,
(Brussels, 3 to 4 April 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Jerzy BUZEK (EPP, PL), presented one compromise amendment (amendment 23) to the proposal for a Directive on behalf of the Committee on Industry, Research and Energy. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 4 April 2019, the plenary adopted the compromise amendment (amendment 23) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Common rules for the internal market for natural gas *I**

European Parliament legislative resolution of 4 April 2019 on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/73/EC concerning common rules for the internal market in natural gas (COM(2017)0660 – C8-0394/2017 – 2017/0294(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0660),
 - having regard to Article 294(2) and Article 194(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0394/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 19 April 2018³,
 - having regard to the opinion of the Committee of the Regions of 16 May 2018⁴,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 20 February 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy (A8-0143/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

³ OJ C 262, 25.7.2018, p. 64.

⁴ OJ C 361, 5.10.2018, p. 72.

Position of the European Parliament adopted at first reading on 4 April 2019 with a view to the adoption of Directive (EU) 2019/... of the European Parliament and of the Council amending Directive 2009/73/EC concerning common rules for the internal market in natural gas

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the ordinary legislative procedure⁷,

⁵ OJ C 262, 25.7.2018, p. 64.

⁶ OJ C 361, 5.10.2018, p. 72.

⁷ Position of the European Parliament of 4 April 2019.

Whereas:

- (1) The internal market in natural gas, which has been progressively implemented throughout the Union since 1999, aims to deliver real choice for all final customers in the Union, be they citizens or businesses, new business opportunities, *fair conditions of competition*, competitive prices, efficient investment signals and a higher standard of service, and to contribute to security of supply and sustainability.
- (2) Directives 2003/55/EC⁸ and 2009/73/EC⁹ of the European Parliament and of the Council have made a significant contribution towards the creation of the internal market in natural gas.

⁸ Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas (OJ L 176, 15.7.2003, p. 57).

⁹ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

- (3) This Directive seeks to address ■ obstacles to the completion of the internal market in natural gas which result from the non-application of Union market rules to gas *transmission lines* to and from third countries. The amendments introduced by this Directive are intended to ensure that the rules applicable to gas transmission *lines* connecting two or more Member States are also applicable, within the Union, to *gas transmission lines* to and from third countries. This will establish consistency of the legal framework within the Union while avoiding distortion of competition in the internal energy market in the Union *and negative impacts on the security of supply*. It will also enhance transparency and provide legal certainty to market participants , in particular investors in gas infrastructure and system users, as regards the applicable legal regime.
- (4) To take account of the lack of specific Union rules applicable to gas *transmission lines* to and from third countries before the date of entry into force of this Directive, Member States should be able to grant derogations from certain provisions of Directive 2009/73/EC to such *gas transmission lines* which are completed before the date of entry into force of this Directive. The relevant date for the application of unbundling models other than ownership unbundling should be adapted for gas *transmission lines* to and from third countries.

- (5) *Pipelines connecting a third-country oil or gas production project to a processing plant or to a final coastal landing terminal within a Member State should be considered to be upstream pipeline networks. Pipelines connecting an oil or gas production project in a Member State to a processing plant or to a final coastal landing terminal within a third country should not be considered to be upstream pipeline networks for the purpose of this Directive, since such pipelines are unlikely to have a significant impact on the internal energy market.*
- (6) *Transmission system operators should be free to conclude technical agreements with transmission system operators or other entities in third countries on issues concerning the operation and interconnection of transmission systems, provided that the content of such agreements is compatible with Union law.*
- (7) *Technical agreements regarding the operation of transmission lines between transmission system operators or other entities should remain in force provided that they comply with Union law and the relevant decisions of the national regulatory authority.*

- (8) *When such technical agreements are in place, the conclusion of an international agreement between a Member State and a third country or of an agreement between the Union and a third country regarding the operation of the gas transmission line concerned is not required by this Directive.*
- (9) The applicability of Directive 2009/73/EC to gas *transmission lines* to and from third countries remains confined to the *territory of the Member States*. As regards offshore *gas transmission lines*, Directive 2009/73/EC should be applicable in the territorial *sea* of the Member *State where the first interconnection point with the Member States' network is located*.
- (10) *It should be possible for existing agreements concluded between a Member State and a third country on the operation of transmission lines to remain in force, in accordance with this Directive.*

- (11) *With regard to agreements or parts of agreements with third countries which may affect common rules of the Union, a coherent and transparent procedure should be established by which to authorise a Member State, upon its request, to amend, extend, adapt, renew or conclude an agreement with a third country on the operation of a transmission line or an upstream pipeline network between the Member State and a third country. The procedure should not delay the implementation of this Directive, should be without prejudice to the allocation of competence between the Union and the Member States, and should apply to existing and new agreements.*
- (12) *Where it is apparent that the subject matter of an agreement falls partly within the competence of the Union and partly within that of a Member State, it is essential to ensure close cooperation between that Member State and the Union institutions.*

- (13) *Commission Regulation (EU) 2015/703¹⁰, Commission Regulation (EU) 2017/459¹¹, Commission Decision 2012/490/EU¹², as well as Chapters III, V, VI and IX, and Article 28 of Commission Regulation (EU) 2017/460¹³ apply to entry points from and exit points to third countries, subject to the relevant decisions of the relevant national regulatory authority, whereas Commission Regulation (EU) No 312/2014¹⁴ applies exclusively to balancing zones within the borders of the Union.*
- (14) *In order to adopt decisions authorising or refusing to authorise a Member State to amend, extend, adapt, renew or conclude an agreement with a third country, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁵.*

¹⁰ *Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a Network Code on interoperability and data exchange rules (OJ L 113, 1.5.2015, p. 13).*

¹¹ *Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (OJ L 72, 17.3.2017, p. 1).*

¹² *Commission Decision 2012/490/EU of 24 August 2012 on amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks (OJ L 231, 28.8.2012, p. 16).*

¹³ *Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (OJ L 72, 17.3.2017, p. 29).*

¹⁴ *Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (OJ L 91, 27.3.2014, p. 15).*

¹⁵ *Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).*

- (15) *Since the objective of this Directive, namely to establish consistency of the legal framework within the Union while avoiding distortion of competition in the internal energy market in the Union, cannot be sufficiently achieved by the Member States, but can rather, by reasons of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.*
- (16) *In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹⁶, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a Directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.*
- (17) Directive 2009/73/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹⁶ OJ C 369, 17.12.2011, p. 14.

Article 1

Amendments to Directive 2009/73/EC

Directive 2009/73/EC is amended as follows:

(1) in Article 2, point (17) is replaced by the following:

"(17) 'interconnector' means a transmission line which crosses or spans a border between Member States *for the purpose of connecting the national transmission system of those Member States or a transmission line* between *a Member State* and *a third country up to the territory of the Member States or the territorial sea of that Member State;*";

(2) Article 9 is amended as follows:

(a) in paragraph 8, the first subparagraph is replaced by the following:

"8. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on ...[date of entry into force of this amending directive] the transmission system belongs to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1.

(b) paragraph 9 is replaced by the following:

"9. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking and arrangements are in place which guarantee more effective independence of the transmission system operator than the provisions of Chapter IV, a Member State may decide not to apply paragraph 1 of this Article.

As regards *the part of the transmission system connecting a Member State with a third country* between the border of *that Member State* and the first *connection* point with *that Member State's* network, where on ... [date of entry into force of this amending directive] the transmission system belongs to a vertically integrated undertaking and arrangements are in place which guarantee more effective independence of the transmission system operator than the provisions of Chapter IV, that Member State may decide not to apply paragraph 1 of this Article.";

(3) in Article 14, paragraph 1 is replaced by the following:

"1. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking, a Member State may decide not to apply Article 9(1) and to designate an independent system operator upon a proposal from the transmission system owner.

As regards *the part of the transmission system connecting a Member State with a third country* between the border of *that Member State* and the first *connection* point with *that Member State's* network, where on ...[date of entry into force of this amending directive] the transmission system belongs to a vertically integrated undertaking, that Member State may decide not to apply Article 9(1) and to designate an independent system operator upon a proposal from the transmission system owner.

The designation of an independent system operator shall be subject to approval by the Commission.";

(4) in Article 34, paragraph 4 is replaced by the following:

"4. In the event of cross-border disputes, the dispute-settlement arrangements for the Member State having jurisdiction over the upstream pipeline network which refuses access shall be applied. Where, in cross-border disputes, more than one Member State covers the network concerned, the Member States concerned shall consult each other with a view to ensuring that the provisions of this Directive are applied consistently. ***Where the upstream pipeline network originates from a third country and connects to*** at least one Member State **█**, the Member States concerned shall consult each other and ***the Member State where the first entry point to the Member States' network is located*** shall consult the **█** ***third country concerned where the upstream pipeline network originates***, with a view to ensuring, as regards the network concerned, that this Directive is applied consistently ***in the territory of the Member States.***";

(5) Article 36 is amended as follows:

(a) in paragraph 1, ***point (e)*** is replaced by the following:

"(e) the exemption must not be detrimental to competition in the relevant markets which are likely to be affected by the investment, to the effective functioning of the internal market in natural gas, the efficient functioning of the regulated systems concerned, or to security of supply of natural gas in the Union."

(b) paragraph 3 is replaced by the following:

"3. The regulatory authority referred to in Chapter VIII may, on a case-by-case basis, decide on the exemption referred to in paragraphs 1 and 2.

Before the adoption of the decision on the exemption, the national regulatory authority, or where appropriate another competent authority of that Member State, shall consult:

(a) the national regulatory authorities of the Member States the markets of which are likely to be affected by the new infrastructure; and

*(b) the relevant authorities of the third countries, where the infrastructure in question is **connected with the Union network** under the jurisdiction of a Member State, and **originates from or ends in** one or more third countries.*

Where the third-country authorities consulted do not respond to the consultation within a reasonable time frame or within a set deadline not exceeding three months, the national regulatory authority concerned may adopt the necessary decision.";

- (c) in paragraph 4, the second subparagraph is replaced by the following:

"Where all the regulatory authorities concerned agree on the request for exemption within six months of the date on which it was received by the last of the regulatory authorities, they shall inform the Agency of their decision. Where the infrastructure concerned is *a transmission line between a Member State and a third country, before the adoption of the decision on the exemption*, the national regulatory authority, *or where appropriate another competent authority of the Member State where the first interconnection point with the Member States' network is located*, *may* consult the relevant authority of that third country with a view to ensuring, as regards the infrastructure concerned, that this Directive is applied consistently *in the territory and, where applicable, in the territorial sea of that Member State. Where the third country authority consulted does not respond to the consultation within a reasonable time or within a set deadline not exceeding three months, the national regulatory authority concerned may adopt the necessary decision.*";

(6) in Article 41(1), point (c) is replaced by the following:

"(c) cooperating with regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency **■**. ***In respect of infrastructure to and from a third country, the regulatory authority of the Member State where the first interconnection point with the Member States' network is located may cooperate*** with the relevant authorities of the third country, ***after consulting the regulatory authorities of other Member States concerned***, aiming at, as regards this infrastructure, consistent application of this Directive ***in the territory of the Member States;***";

(7) in Article 42, the following paragraph is added:

"6. Regulatory authorities, ***or where appropriate other competent authorities, may*** consult and cooperate with the relevant authorities of third countries in relation to the operation of gas ***infrastructure*** to and from third countries with a view to ensuring, as regards the infrastructure concerned, that this Directive is applied consistently ***in the territory and territorial sea of a Member State.***";

(8) *the following Article is inserted:*

"Article 48a

Technical agreements regarding the operation of transmission lines

This Directive does not affect the freedom of transmission system operators or other economic operators to maintain in force or to conclude technical agreements on issues concerning the operation of transmission lines between a Member State and a third country, insofar as those agreements are compatible with Union law and relevant decisions of the national regulatory authorities of the Member States concerned. Such agreements shall be notified to the regulatory authorities of the Member States concerned."

(9) *the following articles are inserted:*

"Article 49a

Derogations in relation to transmission lines to and from third countries

1. In respect of gas *transmission lines between a Member State and a third country* completed before ... [date of entry into force of this amending Directive], *the Member State where the first connection point of such a transmission line with a Member State's network is located may decide* to derogate from Articles 9, 10, 11 and 32 and Article 41(6), (8) and (10) for the sections of such *gas transmission line located in its territory and territorial sea, for objective reasons such as to enable the recovery of the investment made or for reasons of security of supply*, provided that the derogation would not be detrimental to competition on or the effective functioning of the internal market in natural gas, or to security of supply in the Union.

The derogation shall be limited in time *up to 20 years based on objective justification, renewable if justified* and may be subject to conditions which contribute to the achievement of the above conditions.

Such derogations shall not apply to transmission lines between a Member State and a third country which has the obligation to transpose this Directive and which effectively implements this Directive in its legal order under an agreement concluded with the Union.

2. Where the *transmission line* concerned is located in the *territory* of more than one Member State, the Member State in the *territory of which the first connection point with the Member States' network is located shall decide whether to grant a derogation for that transmission line after consulting all the Member States concerned.*

Upon request by the Member States concerned, the Commission may decide to act as an observer in the consultation between the Member State in the territory of which the first connection point is located and the third country concerning the consistent application of this Directive in the territory and territorial sea of the Member State where the first interconnection point is located, including the granting of derogations for such transmission lines.

3. Decisions pursuant to paragraphs 1 and 2 *shall be adopted by ...*[one year after the entry into force of this amending Directive]. *Member States shall notify any such decisions to the Commission and shall publish them.*

Article 49b

Empowerment procedure

1. *Without prejudice to other obligations under Union law, and to the allocation of competence between the Union and the Member States, existing agreements between a Member State and a third country on the operation of a transmission line or an upstream pipeline network may be maintained in force until the entry into force of a subsequent agreement between the Union and the same third country or until the procedure under paragraphs 2 to 15 of this Article applies.*

2. *Without prejudice to the allocation of competence between the Union and the Member States, where a Member State intends to enter into negotiations with a third country in order to amend, extend, adapt, renew or conclude an agreement on the operation of a transmission line with a third country concerning matters falling, entirely or partly, within the scope of this Directive, it shall notify the Commission of its intention in writing.*

Such a notification shall include the relevant documentation and an indication of the provisions to be addressed in the negotiations or to be renegotiated, the objectives of the negotiations and any other relevant information, and shall be transmitted to the Commission at least five months before the intended start of the negotiations.

3. *Further to any notification pursuant to paragraph 2, the Commission shall authorise the Member State concerned to enter into formal negotiations with a third country for the part which may affect Union common rules unless it considers that the opening of such negotiations would:*
- (a) be in conflict with Union law other than the incompatibilities arising from the allocation of competence between the Union and the Member States;*
 - (b) be detrimental to the functioning of the internal market in natural gas, competition or security of supply in a Member State or in the Union;*
 - (c) undermine the objectives of pending negotiations of intergovernmental agreements by the Union with a third country;*
 - (d) be discriminatory.*

4. *When carrying out the assessment under paragraph 3, the Commission shall take into account whether the intended agreement concerns a transmission line or an upstream pipeline that contributes to the diversification of natural gas supplies and suppliers by means of new natural gas sources.*
5. *Within 90 days of receipt of the notification referred to in paragraph 2, the Commission shall adopt a decision authorising or refusing to authorise a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country. Where additional information is needed to adopt a decision, the 90-day period shall run from the date of receipt of such additional information.*
6. *In the event that the Commission adopts a decision refusing to authorise a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country, it shall inform the Member State concerned accordingly and shall give the reasons therefor.*
7. *Decisions authorising or refusing to authorise a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country shall be adopted, by means of implementing acts, in accordance with the procedure referred to in Article 51(2).*

8. *The Commission may provide guidance and may request the inclusion of particular clauses in the agreement envisaged, in order to ensure compatibility with Union law in accordance with Decision (EU) 2017/684 of the European Parliament and of the Council*.*
9. *The Commission shall be kept informed of the progress and results of the negotiations to amend, extend, adapt, renew or to conclude an agreement throughout the different stages of such negotiations and may request to participate in such negotiations between the Member State and the third country in accordance with Decision (EU) 2017/684.*
10. *The Commission shall inform the European Parliament and the Council of the decisions adopted pursuant to paragraph 5.*
11. *Before signing an agreement with a third country, the Member State concerned shall notify the Commission of the outcome of negotiations and shall transmit the text of the negotiated agreement to the Commission.*

12. *Upon notification pursuant to paragraph 11, the Commission shall assess the negotiated agreement pursuant to paragraph 3. Where the Commission finds that the negotiations have resulted in an agreement which complies with paragraph 3, it shall authorise the Member State to sign and conclude the agreement.*
13. *Within 90 days of receipt of the notification referred to in paragraph 11, the Commission shall adopt a decision authorising or refusing to authorise a Member State to sign and conclude the agreement with a third country . Where additional information is needed to adopt a decision, the 90-day period shall run from the date of receipt of such additional information.*
14. *Where the Commission adopts a decision pursuant to paragraph 13, authorising a Member State to sign and conclude the agreement with a third country, the Member State concerned shall notify the Commission of the conclusion and entry into force of the agreement, and of any subsequent changes to the status of that agreement.*

15. *In the event that the Commission adopts a decision refusing to authorise a Member State to sign and conclude the agreement with a third country pursuant to paragraph 13, , it shall inform the Member State concerned accordingly and shall give the reasons therefor.*

* *Decision (EU) 2017/684 of the European Parliament and of the Council of 5 April 2017 on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy, and repealing Decision No 994/2012/EU (OJ L 99, 12.4.2017, p. 1).".*

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [*nine months* after the date of entry into force of this amending Directive] , *without prejudice to any derogation pursuant to Article 49a of Directive 2009/73/EC*. They shall communicate to the Commission the text of those provisions forthwith.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

Member States shall determine how such reference is to be made.

By way of derogation from the first subparagraph, landlocked Member States which have no geographical borders with third countries and no transmission lines with third countries, shall not be obliged to bring into force measures which are necessary to comply with this Directive.

By way of derogation from the first subparagraph, Cyprus and Malta, as a result of their geographical situation, shall not be obliged to bring into force measures which are necessary to comply with this Directive for as long as they do not have any infrastructures connecting them with third countries, including upstream pipeline networks.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at ,

For the European Parliament

For the Council

The President

The President