

Proposal for REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/73/EC concerning common rules for the internal market in natural gas

| 1. | <b>COMMISSION PROPOSAL<br/>(COD 2017/0294 - doc. 14204/17<br/>+ADD1)</b>  | <b>EP PLENARY TEXT</b> | <b>COUNCIL MANDATE FOR<br/>NEGOTIATIONS (doc. 5874/19)</b>   | <b>Compromise proposals</b> |
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| 2. | <p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,<br/>Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194 (2) thereof,<br/>Having regard to the proposal from the European Commission,<br/>After transmission of the draft legislative act to the national parliaments,<br/>Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,<br/>Having regard to the opinion of the Committee of the Regions<sup>2</sup>,<br/>Acting in accordance with the ordinary legislative procedure<br/>Whereas:</p> |                        | <p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,<br/>Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194 (2) thereof,<br/>Having regard to the proposal from the European Commission,<br/>After transmission of the draft legislative act to the national parliaments,<br/>Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,<br/>Having regard to the opinion of the Committee of the Regions<sup>4</sup>,<br/>Acting in accordance with the ordinary legislative procedure,<br/>Whereas:</p> |                             |

<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

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| 3. | (1) The internal market in natural gas, which has been progressively implemented throughout the Union since 1999, aims to deliver real choice for all consumers in the Union, be they citizens or businesses, new business opportunities, competitive prices, efficient investment signals and a higher standard of service, and to contribute to security of supply and sustainability. |  | (1) The internal market in natural gas, which has been progressively implemented throughout the Union since 1999, aims to deliver real choice for all consumers in the Union, be they citizens or businesses, new business opportunities <b>and fair conditions of competition</b> , competitive prices, efficient investment signals and a higher standard of service, and to contribute to security of supply and sustainability. |  |
| 4. | (2) Directive 2003/55/EC of the European Parliament and of the Council <sup>5</sup> and Directive 2009/73/EC of the European Parliament and of the Council <sup>6</sup> have made a significant contribution towards the creation of the internal market in natural gas  |  | (2) Directive 2003/55/EC of the European Parliament and of the Council <sup>7</sup> and Directive 2009/73/EC of the European Parliament and of the Council <sup>8</sup> have made a significant contribution towards the creation of the internal market in natural gas.  |  |

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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).

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| <p>5.</p> | <p>(3) This Directive seeks to address the remaining obstacles to the completion of the internal market in natural gas resulting from the non-application of Union market rules to gas pipelines to and from third countries. The amendments introduced by this Directive will ensure that the rules applicable to gas transmission pipelines connecting two or more Member States, are also applicable to pipelines to and from third countries within the Union. This will establish consistency of the legal framework within the Union while avoiding distortion of competition in the internal energy market in the Union. It will also enhance transparency and provide legal certainty as regards the applicable legal regime to market participants, in particular investors in gas infrastructure and network users.</p> | <p><b>AM 1</b></p> <p>(3) This Directive seeks to address the remaining obstacles to the completion of the internal market in natural gas resulting from the non-application of Union market rules to gas pipelines to and from third countries. The amendments introduced by this Directive will ensure that the rules applicable to gas transmission pipelines connecting two or more Member States, are also applicable to pipelines to and from third countries within the Union <i>that have a significant impact on the Union's internal market in natural gas</i>. This will establish consistency of the legal framework within the Union <i>as well as provide for necessary reflection of strategic interests of all Member States and the Union's overall security of supply and energy independence</i>, while avoiding distortion of competition in the internal energy market in the Union. It will also enhance transparency and provide legal certainty as regards the applicable legal regime to market participants, in particular investors in gas infrastructure and network users.</p> | <p>(3) This Directive seeks to address [ ] obstacles to the completion of the internal market in natural gas resulting from the non-application of Union market rules to gas [ ] <b>transmission lines</b> to and from third countries. The amendments introduced by this Directive will ensure that the rules applicable to gas transmission [ ] <b>lines</b> connecting two or more Member States, are also applicable to [ ] <b>gas transmission lines</b> to and from third countries within the Union. This will establish consistency of the legal framework within the Union while avoiding distortion of competition in the internal energy market in the Union <b>and negative security of supply impacts</b>. It will also enhance transparency and provide legal certainty as regards the applicable legal regime to market participants, in particular investors in gas infrastructure and network users.</p> |  |
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| 6. | <p>(4) To take account of the previous lack of specific Union rules applicable to gas pipelines to and from third countries, Member States should be able to grant derogations from certain provisions of Directive 2009/73/EC to such pipelines which are completed at 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 pipelines to and from third countries.</p> | <p><b>AM 2</b></p> <p>(4) In order to <i>complete the Energy Union and to apply its rules to</i> gas pipelines to and from third countries, <i>in full accordance with Union legislation</i>, Member States should be able to grant derogations from certain provisions of Directive 2009/73/EC to such pipelines which <i>were</i> completed <i>before</i> the date of <i>adoption</i> of this <i>proposal, only after a recommendation from the Commission, in particular as regards the competition on, and the functioning and the effectiveness of, the internal energy market, security of supply and diversification of energy sources and suppliers</i>. The relevant date for the application of unbundling models other than ownership unbundling should be adapted for gas pipelines to and from third countries.</p> | <p>(4) To take account of the previous lack of specific Union rules applicable to gas [ ] <b>transmission lines</b> to and from third countries, Member States should be able to grant derogations from certain provisions of Directive 2009/73/EC to such [ ] <b>gas transmission lines</b> which are completed at 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 [ ] <b>transmission lines</b> to and from third countries.</p> |  |
| 7. |   |  | <p><b>(4a) A pipeline 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 as an upstream pipeline.</b></p> <p><b>A pipeline 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 as upstream pipeline</b></p>   |  |

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|    |  |  | <p><b>for the purpose of this Directive, since such pipelines are unlikely to have a significant impact on the internal energy market.</b></p>  |  |
| 8. |  |  | <p><b>(4b) 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 the content of such agreement is compatible with Union law.</b></p> |  |
| 9. |  |  | <p><b>(4c) 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 respective decisions of the national regulatory authority.</b></p>  |  |

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| 10. |   |  | <p><b>(4d) When such technical agreements are in place, the conclusion of an international agreement between a Member State and a third country <u>or of an agreement between the Union and the third country</u>, regarding the operation of the transmission line in question is not required by this Directive.</b></p>  |  |
| 11. | <p>(5) The applicability of Directive 2009/73/EC for gas pipelines to and from third countries remains confined to the territorial limit of Union's jurisdiction. As regards offshore pipelines, it should be applicable in the territorial waters and exclusive economic zones of the Member States.</p> | <p><b>AM 3</b><br/>                 (5) The applicability of Directive 2009/73/EC for gas pipelines to and from third countries remains confined to the territorial limit of Union's jurisdiction. As regards offshore pipelines, it should be applicable in the territorial waters and exclusive economic zones of the Member States, <i>in accordance with the United Nations Convention on the Law of the Sea (UNCLOS)</i>.</p> | <p>(5) The applicability of Directive 2009/73/EC [ ] to gas [ ] <b>transmission lines</b> to and from third countries remains confined to the territory[ ] <b>of the Member States.</b> [ ] As regards offshore [ ] <b>gas transmission lines</b>, it should be applicable in the territorial [ ] <b>sea [ ]</b> of the Member States <b><u>where the first interconnection point with the Member States' network is located.</u></b></p> |  |
| 12. |   |  | <p><b>(5a) Existing agreements concluded between a Member State and a third country on the operation of transmission lines can be maintained in force, in accordance with the rules of this Directive.</b></p>  |  |

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| 13. |  | <p><b>AM 4</b><br/> <i>(5a) Member States should take concrete measures to assist in the wider use of biogas and gas from biomass, green hydrogen and synthetic methane from renewable energy, the producers of which should be granted non-discriminatory access to the gas system, provided that such access is compatible on an ongoing basis with the relevant technical rules and safety standards.</i></p> |  |  |
| 14. |  |  | <p><b>(5b) 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 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 between the Member State and a third country.</b></p> <p><b>This procedure should be without prejudice to the respective competencies of the European Union and of the Member States and it should apply to existing and new agreements.</b></p> |  |

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| 15. |  | <p><b>AM 5</b><br/> <b>(5b) Member States should ensure that, taking into account the necessary quality requirements, biogas and gas from biomass, green hydrogen and synthetic methane from renewable energy, or other types of gas are granted non-discriminatory access to the gas system, provided such access is permanently compatible with the relevant technical rules and safety standards. Those rules and standards should ensure that those gases can technically and safely be injected into, and transported through the natural gas system and should also address their chemical characteristics.</b></p> |   |  |
| 16. |  |   | <p><b>(5c) 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 the Member States and the Union institutions.</b></p> |  |



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| 17. |   |  | <b>(5d) Recalling that the Network Code on interoperability and data exchange rules<sup>9</sup>, the Network Code on capacity allocation mechanisms in gas transmission systems<sup>10</sup>, Commission Decision on conditions for access to the natural gas transmission networks<sup>11</sup>, as well as chapter III, V, VI, Article 28 and chapter IX of the Network code on harmonised transmission tariff structures for gas<sup>12</sup> apply to entry points from and exit points to third countries, subject to the decision of the relevant National Regulatory Authority whereas the Network Code on Gas Balancing<sup>13</sup> applies exclusively to balancing zones within the borders of the Union.</b> |  |
| 18. | (6) Directive 2009/73/EC should therefore be amended accordingly, |  | (6) Directive 2009/73/EC should therefore be amended accordingly,  |  |
| 19. | HAVE ADOPTED THIS DIRECTIVE:                                      |  | HAVE ADOPTED THIS DIRECTIVE:   |  |

<sup>9</sup> Commission Regulation establishing a Network Code on interoperability and data exchange rules (703/2015/EU)

<sup>10</sup> Commission Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013

<sup>11</sup> Commission Decision on conditions for access to the natural gas transmission networks [2012/490/EU]

<sup>12</sup> Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas

<sup>13</sup> Commission Regulation establishing a Network Code on Gas Balancing of Transmission Networks (312/2014/EU)

| 20. | <i>Article 1</i>                            |   |   |
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| 21. | Directive 2009/73/EC is amended as follows: |   | Directive 2009/73/EC is amended as follows: |
| 22. |   | <p><b>AM 6</b><br/> <i>(-1) in Article 1, paragraph 2 is replaced by the following:</i><br/>                     "2. The rules established by this Directive for natural gas, including LNG, shall also apply in a non-discriminatory way to biogas and gas from biomass, <b>green hydrogen and synthetic methane from renewable energy</b>, or other types of gas in so far as such gases can technically and safely be injected into, and transported through, the natural gas system."</p> |   |
| 23. |   | <p><b>AM 7</b><br/>                     Article 1 – paragraph 2 a (new)<br/> <i>(-1a) in Article 1, the following paragraph is added:</i></p> <p><b>"2 a. With regard to gas infrastructure connecting a Member State to a third country, this Directive applies within the territorial limit of Union's jurisdiction. As regards offshore pipelines, this Directive applies in the territorial waters and exclusive economic zones of the Member States."</b></p>                            |   |

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| 24. | (1) in Article 2, point (17) is replaced by the following:   |   | (1) in Article 2, point (17) is replaced by the following:  |  |
| 25. | "(17) 'interconnector' means a transmission line which crosses or spans a border between Member States or between Member States and third countries up to the border of Union jurisdiction;" | <b>AM 8</b><br>Article 2 – point 17<br>(17) 'gas interconnector' means a transmission line, <i>including its physical entry points from and exit points to a third country</i> , which crosses or spans a border between Member States or between Member States and third countries up to the border of Union jurisdiction, <i>including the territorial waters and exclusive economic zones of the Member States</i> ; | (17) 'interconnector' means a transmission line which crosses or spans a border between Member States <b>for the purpose of connecting the national transmission system of those countries or a transmission line</b> between a Member States and a third country [ ] up to the <b>territory and territorial sea of the Member States or the territorial sea of the Member State</b> [ ]; |  |
| 26. | (2) Article 9 is amended as follows:   |   | (2) Article 9 is amended as follows:  |  |
| 27. | (a) in paragraph 8, the first subparagraph is replaced by the following:   |   | (a) in paragraph 8, the first subparagraph is replaced by the following:  |  |
| 28. | "8. A Member State may decide not to apply paragraph 1:  |   | 8. A Member State may decide not to apply paragraph 1:  |  |
| 29. | (a) where the transmission system belonged to a vertically integrated undertaking on 3 September 2009;   |   | (a) where the transmission system belonged to a vertically integrated undertaking on 3 September 2009;  |  |

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| 30. | (b) as regards infrastructure to and from third countries between the border of Union jurisdiction and the first interconnection point with the Union network, where the transmission system belonged to a vertically integrated undertaking on [PO: date of adoption of this proposal]"; |   | (b) as regards [ ] <b>the part of the transmission system connecting a Member State with a third country</b> , between the border of <b>that Member State [ ]</b> and the first [ ] connection point with <b>that Member State's [ ]</b> network, where the transmission system belonged to a vertically integrated undertaking on [PO: date of adoption of this proposal]"; |  |
| 31. |   | <p><b>AM 9</b><br/> Article 9 – paragraph 8 subparagraph 2a new<br/> <i>(aa) in paragraph 8, the following subparagraph is added: ;</i></p> <p><i>Any decision taken pursuant to point (b) of the first subparagraph of this paragraph shall be notified to the Commission without delay, together with all the information relevant thereto.</i></p> |  |  |
| 32. | (b) paragraph 9 is replaced by the following:   |   | (b) paragraph 9 is replaced by the following:  |  |
| 33. | "9. Where there are arrangements 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:  |   | 9. Where there are arrangements 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:  |  |
| 34. | (a) where the transmission system belonged to a vertically integrated undertaking on 3 September 2009;  |   | (a) where the transmission system belonged to a vertically integrated undertaking on 3 September 2009;   |  |

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| 35. | (b) as regards infrastructure to and from third countries between the border of Union jurisdiction and the first interconnection point with the Union network, where the transmission system belonged to a vertically integrated undertaking on [PO: date of adoption of this proposal]."; |  | (b) as regards [ ] <b>the part of the transmission system connecting a Member State with a third country</b> between the border of <b>that Member State</b> [ ] and the first [ ] connection point with <b>that Member State's</b> [ ] network, where the transmission system belonged to a vertically integrated undertaking on [PO: date of adoption of this proposal]."; |  |
| 36. |  | <b>AM 10</b><br><i>Any decision taken pursuant to point (b) of the first subparagraph of this paragraph shall be notified to the Commission without delay, together with all the information relevant thereto;</i> |   |  |
| 37. | (3) in Article 14, paragraph 1 is replaced by the following:   |  | (3) in Article 14, paragraph 1 is replaced by the following:  |  |
| 38. | "1. Member States may decide not to apply Article 9(1) and designate an independent system operator upon a proposal from the transmission system owner:  |  | 1. Member States may decide not to apply Article 9(1) and designate an independent system operator upon a proposal from the transmission system owner:  |  |

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| 39. | (a) where the transmission system belonged to a vertically integrated undertaking on 3 September 2009;  |  | (a) where the transmission system belonged to a vertically integrated undertaking on 3 September 2009;  |  |
| 40. | (b) as regards infrastructure to and from third countries between the border of Union jurisdiction and the first interconnection point with the Union network, where the transmission system belonged to a vertically integrated undertaking on [PO: <i>date of adoption of this proposal</i> ].  |  | (b) as regards [ ] <b>the part of the transmission system connecting a Member State with a third country</b> between the border of <b>that Member State</b> [ ] and the first [ ] connection point with <b>that Member State's</b> [ ] network, where the transmission system belonged to a vertically integrated undertaking on [PO: <i>date of adoption of this proposal</i> ].   |  |
| 41. | Such designation shall be subject to approval by the Commission.";  |  | Such designation shall be subject to approval by the Commission";   |  |
| 42. | (3) In Article 34, paragraph 4, the following third sentence is added:  |  | (4) In Article 34, paragraph 4, the following third sentence is added:  |  |
| 43. | "Where the network concerned is covered by at least one Member State and at least one third country, the Member States concerned shall consult each other and shall consult the third countries concerned, with a view to ensuring, as regards the network concerned, that the provisions of this Directive are applied consistently up to the border of Union jurisdiction." |  | [ ] <b>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 <u>the Member State where the first entry point to the Member States' network is located</u> shall consult the [ ] concerned third country[ ] where the upstream pipeline originates, with a view to ensuring, as regards the network concerned, that the provisions of this Directive are applied consistently in the territory of the Member States. [ ]</b> |  |

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| 44. |                                       | <p><b>AM 11</b></p> <p><i>(4a) In Article 34, paragraph 4, the following fourth sentence is added:</i></p> <p><i>Where the third countries subject to such consultation do not respond to the consultations, the Member States concerned may take the necessary decision.</i></p>  |                                       |  |
| 45. | (4) Article 36 is amended as follows: |  | (5) Article 36 is amended as follows: |  |
| 46. |                                       | <p><b>AM 12</b></p> <p>Article 36 – paragraph 1</p> <p><i>(-a) paragraph 1 is replaced by the following:</i></p> <p>"1. Major new gas infrastructure, i.e. <b>gas</b> interconnectors, LNG and storage facilities <b>starting commercial operation after 1 January 2019</b>, may, upon request, be exempted, for a defined period of time of <b>not longer than 5 years</b>, from the provisions of Articles 9, 32, 33 and 34 and Article 41(6), (8) and (10) <b>if the following cumulative conditions are fulfilled:</b></p> |                                       |  |
| 47. |                                       | (a) the investment must enhance competition in gas supply and enhance security of supply;  |                                       |  |
| 48. |                                       | (b) the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted;  |                                       |  |

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| 49. |  | (c) the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;   |   |  |
| 50. |  | (d) charges must be levied on users of that infrastructure; and   |   |  |
| 51. |  | (e) the exemption must not be detrimental to competition <i>in the relevant markets which are likely to be affected by the investment</i> , to the effective functioning of the <i>Union's</i> internal market in natural gas, the efficient functioning of the <i>concerned</i> regulated systems, or to the diversification and security of supply of natural gas to and within the Union or any Member State." |   |  |
| 52. | (a) in paragraph 3, the following second sentence is added:  |   | (a) in paragraph 3, the following second sentence is added:   |  |
| 53. | "Where the infrastructure in question is under the jurisdiction of a Member State and one (or more) third countries, the national regulatory authority shall consult the relevant authorities of the third countries prior to adopting a decision."; | <b>AM 13</b><br>Article 36 – paragraph 3 – second sentence <i>Before adopting the decision, the national regulatory authority shall consult:</i>  | Where the infrastructure in question is <b>connected with the Union network</b> under the jurisdiction of a Member State and <b>originates from or ends in</b> one (or more) third countries, the national regulatory authority, <b>or where appropriate other competent authorities</b> , shall consult the relevant authorities of [ ] <b>those</b> third countries prior to adopting a decision. |  |



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| 54. |   | <i>(a) the national regulatory authorities of the Member States the markets of which are likely to be affected by the new infrastructure; and</i>  |   |  |
| 55. |   | <i>(b) the relevant authorities of the third countries, where the infrastructure in question is under the jurisdiction of a Member State and one (or more) third countries.</i>  |   |  |
| 56. |   | <i>Where the third country authorities subject to such consultation do not respond to the consultation within 3 months, the national regulatory authority concerned may take the necessary decision.</i>   | <b>Where the consulted third-country authorities, do not respond to the consultation within a reasonable time frame or a set deadline, the national regulatory authority concerned may take the necessary decision.</b>   |  |
| 57. | (b) in the second subparagraph of paragraph 4, the following second sentence is added:  |  | (b) in the second subparagraph of paragraph 4, the following second sentence is added:  |  |
| 58. | “Where the infrastructure in question is also under the jurisdiction of one or more third countries, the national regulatory authorities of the Member States shall consult the relevant authorities of the third countries prior to adopting a decision with a view to ensuring, as regards the concerned infrastructure, that the provisions of this Directive are applied consistently up to the border of Union jurisdiction.”; | <p><b>AM 14</b><br/>Article 36 – paragraph 4 – subparagraph 2 – second sentence</p> <p>Where the infrastructure in question is also under the jurisdiction of one or more third countries, the national regulatory authorities of the Member States shall consult the relevant authorities of the third countries prior to adopting a decision with a view to ensuring, as regards the concerned infrastructure, that the provisions of this Directive are applied consistently up to the border of Union jurisdiction. <i>Any such decision shall be notified to the Commission</i></p> | Where the infrastructure in question [ ] <b>is a transmission line between a Member State and a third country before a decision is adopted, [ ], or where appropriate, other competent authorities of the Member States where the first interconnection point with the Member States’ network is located, may [ ]</b> consult the relevant authorities of the third countries prior to adopting a decision with a view to ensuring, as regards the concerned infrastructure, that the provisions of this Directive are applied consistently <b>in the territory and territorial sea of the Member States and, where</b> |  |

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|     |  | <i>without delay, together with all information relevant thereto;</i>  | <b><u>applicable, in the territorial sea of the Member State [ ]</u></b> . Where the consulted third-country authorities [ ] do not respond to the consultation within a reasonable time or a [ ] set deadline, the national regulatory authority concerned may take the necessary decision. |  |
| 59. |  | <i>Where the third-country authorities subject to such consultation do not respond to the consultation within 3 months, the national regulatory authority concerned may take the necessary decision.</i>   |  |  |
| 60. |  | <p><b>AM 15</b><br/> Article 36 – paragraph 6 – subparagraph 2<br/> <b><i>(ba) paragraph 6 subparagraph 2 is replaced by the following:</i></b></p> <p>"In deciding to grant an exemption, consideration shall be given, on a case-by-case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the infrastructure. When deciding on those conditions, account shall, in particular, be taken of the additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances, <b><i>as well as of the diversification and security of the supply of natural gas to and within the Union or any Member State.</i></b>"</p> |  |  |

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| 61. |  | <p><b>AM 16</b><br/>         Article 36 – paragraph 9 – subparagraph 1<br/> <i><b>(bb) paragraph 9 subparagraph 1 is replaced by the following:</b></i></p> <p>"Within a period of two months from the day following the receipt of a notification, the Commission may take a decision requiring the regulatory authority to amend or withdraw the decision to grant an exemption. <i><b>When taking such a decision concerning new gas infrastructure leading to and from a third country, the Commission shall take into account any Union restrictive measures, such as economic sanctions, imposed on that third country. The</b></i> two-month period may be extended by an additional period of two months where further information is sought by the Commission. That additional period shall begin on the day following the receipt of the complete information. The initial two-month period may also be extended with the consent of both the Commission and the regulatory authority."</p> |  |  |
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| 62. | (5) in Article 41 (1), point c) is replaced by the following:  |  | (6) in Article 41 (1), point c) is replaced by the following:   |  |
| 63. | "(c) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency, as well as, for infrastructure to and from third countries, with the relevant authorities of the third country aiming at, as regards this infrastructure, consistent application of the provisions of this Directive up to the border of Union jurisdiction;" |  | (c) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency [ ] .<br>[ ]For infrastructure to and from third <b>country, the regulatory authority of the Member State where the first interconnection point with the Member States' network is located may cooperate</b> with the relevant authorities of the third country <b>after consulting the regulatory authorities of other concerned Member States,</b> aiming at, as regards this infrastructure, consistent application of the provisions of this Directive <b>in the territory and territorial sea of a the Member States</b> [ ]; |  |
| 64. |  | <p><b>AM 17</b><br/> Article 41 – paragraph 8<br/> <b>(6a) in Article 41, paragraph 8 is replaced by the following :</b></p> <p>“8. In fixing or approving the tariffs or methodologies and the balancing services, the regulatory authorities shall ensure that transmission and distribution system operators are granted appropriate incentive, over both the short and long term, to increase efficiencies, foster market integration and security</p> |   |  |

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|     |   | of supply and support the related research activities. <i>As regards infrastructure connecting a Member State to a third country between the border of the Union jurisdiction and the first interconnection point with the Union network, tariffs or methodologies shall take into account all costs of the project.</i>  |  |  |
| 65. | (6) in Article 42, the following paragraph 6 is added:  |   | (7) in Article 42, the following paragraph 6 is added:   |  |
| 66. | "6. Regulatory authorities shall consult and cooperate with the relevant authorities of third countries in relation to the operation of gas pipelines to and from third countries with a view to ensuring, as regards the concerned infrastructure, that the provisions of this Directive are applied consistently up to the border of Union jurisdiction." | <b>AM 18</b><br>Article 1 – paragraph 1 – point 6. Regulatory authorities shall consult and cooperate with the relevant authorities of third countries in relation to the operation of gas pipelines to and from third countries with a view to ensuring, as regards the concerned infrastructure, that the provisions of this Directive are applied consistently up to the border of Union jurisdiction. | 6. Regulatory authorities, <b>or where appropriate other competent authorities, may</b> [ ] consult and cooperate with the relevant authorities of third countries in relation to the operation of gas [ ] <b>infrastructure</b> to and from third countries with a view to ensuring, as regards the concerned infrastructure, that the provisions of this Directive are applied consistently [ ] <b>in the territory and territorial sea of a Member State.</b> |  |

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| 67. |  | <i>Where the third-country authorities subject to such consultation do not respond to the consultation within 3 months, the national regulatory authorities concerned may take the necessary decision.</i> |  |  |
| 68. |  |  | <b>(8) New Article 48a is added:</b>   |  |
| 69. |  |  | <b>Article 48a (new)</b><br><i>Technical agreements regarding the operation of transmission lines</i>  |  |
| 70. |  |  | <b>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 these agreements are compatible with Union law and relevant decisions of the national regulatory authorities of the Member States concerned.</b> |  |
| 71. | (7) in Article 49, the following paragraph 9 is added: |  | <b>(9) From paragraph 9 of Article 49, a new Article 49a is created entitled:</b><br><i>Derogations in relation to transmission lines to and from third countries</i>  |  |

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| 72. |  |   | <p><b>Article 49a (new)</b><br/> <b>Derogations in relation to transmission lines to and from third countries</b></p>  |  |
| 73. | <p>"In respect of gas pipelines to and from third countries completed before [PO: date of entry into force of this Directive], Member States may decide to derogate from Articles 9, 10, 11 and 32 and Article 41(6), (8) and (10) for the sections of such pipelines between the border of Union jurisdiction and the first interconnection point, provided that the derogation would not be detrimental to competition on or the effective functioning of the internal market in natural gas in the Union, or the security of supply in the Union.</p> | <p><b>AM 19</b><br/>         Article 49 – paragraph 9 – subparagraph 1<br/>         In respect of gas pipelines to and from third countries completed before [PO: date of <i>adoption</i> of this <i>proposal</i>], Member States, <i>after the recommendation from the Commission</i>, may decide to <i>temporarily</i> derogate from Articles 9, 10, 11 and 32 and Article 41(6), (8) and (10) for the sections of such pipelines between the border of Union jurisdiction and the first interconnection point, provided that the derogation would not be detrimental to competition on or the effective functioning of the internal market in natural gas in the Union, or the security of supply in the Union.<br/> <i>Any such draft derogation shall be notified to the Commission, to the Gas Coordination Group and to the Agency without delay, together with all the information relevant thereto, and with a detailed analysis of the effect of the derogation and the gas pipeline on the internal market in natural gas and the security of supply in the Union. Within a period of three months from the day following the receipt of such notification, the Commission shall</i></p> | <p>[ ] In respect of gas [ ] <b>transmission lines between a Member State and a third country [ ]</b> completed before [PO: date of entry into force of this Directive], <b>the Member States where the first connection point of the said transmission line with a Member State's network is located</b> may decide, [ ], to derogate from Articles 9, 10, 11 and 32 and Article 41(6), (8) and (10) for the sections of such [ ] <b>gas transmission line located in its territory and territorial sea, [ ], for objective reasons <del>duly justified</del>, such as enabling the recovery of the investment made or due to reasons of security of supply</b>, provided that the derogation would not [ ] <b>negatively affect in significant way competition in the Union [ ]</b> or the effective functioning of the internal market in natural gas in the Union, or the security of supply in the Union [ ].</p> |  |

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|  |  | <p><i>issue a recommendation on the compliance of the derogation with applicable rules on competition, effective market functioning, security of supply in the Union and with the relevant Union energy policy principles and core objectives, including those of the Energy Union. For cases with particularly complex characteristics, the Commission may extend the period referred to in this paragraph by 3 additional months. The Gas Coordination Group and the Agency may submit their observations to the Commission regarding the compliance of the draft derogation with the principles outlined in this Article. The Commission shall immediately make the recommendation public. The Member States concerned shall take utmost account of the Commission's recommendation. Where the Member State concerned deviates from the Commission's recommendation, that Member State shall provide a well-substantiated justification, based on reliable data and objective criteria and make such justification public. In no event shall a derogation be given before the Commission issues the recommendation or before the time limit for issuing of such recommendation expires.</i></p> |  |  |
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| 74. | The derogation shall be limited in time and may be subject to conditions which contribute to the achievement of the above conditions.  | <p><b>AM 20</b><br/>         Article 49 – paragraph 9 – subparagraph 2<br/>         The derogation shall be limited in time and <i>shall</i> be subject to conditions which contribute to the achievement of the above conditions.</p>  | The derogation shall be limited in time <b>up to 20 years based on objective justification, renewable if justified</b> and may be subject to conditions which contribute to the achievement of the above conditions.  |  |
| 75. |  |   | <b>This derogation shall not apply to gas transmission lines between a Member State and a third country which has the obligation to transpose and effectively implement this Directive in its legal order under an agreement concluded with the European Union.</b>   |  |
| 76. | Where the gas pipeline in question is located in the jurisdiction of more than one Member State, the Member State in the jurisdiction of which the first interconnection point is located shall decide on a derogation for the pipeline. | <p><b>AM 21</b><br/>         Article 49 – paragraph 9 – subparagraph 3<br/>         Where the gas pipeline in question is located in the jurisdiction of more than one Member State, the Member State in the jurisdiction of which the first <i>physical exit</i> point <i>from the interconnector</i> is located shall decide on a derogation for the pipeline.<br/> <i>Before granting such a derogation, the Member State in the jurisdiction of which the first interconnection point is located shall consult the Member States with which this Member State’s infrastructure is connected, and shall provide those Member States with all relevant information, and shall take the opinion of those Member States into account.</i></p> | Where the gas <b>transmission line [ ]</b> in question is located in the <b>territory</b> of more than one Member State, the Member State in the [ ] <b>territory</b> of which the first [ ] connection point <b><u>with the Member States' network</u></b> is located shall decide on a derogation for the [ ] <b>gas transmission line [ ] after consultation with all concerned Member States.</b> |  |

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| 77. | Member States shall publish any decision on a derogation in accordance with this paragraph within one year after the entry into force of this Directive." |  | Member States shall publish any decision on a derogation in accordance with this paragraph within one year after the entry into force of this Directive.   |  |
| 78. |   |  | <b>(10) New Article 49aa is added:</b>   |  |
| 79. |   |  | <b>Article 49 aa (new)</b><br><b>Empowerment procedure</b>   |  |
| 80. |   |  | <b>0. Without prejudice to other obligations under Union law, and to the respective competencies of the Union and its Member States, existing agreements between a Member State and a third country on the operation of a transmission line may be maintained in force until another agreement between the Union and the same third country enters into force or the procedure under the following paragraphs applies.</b> |  |

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| 81. |  |  | <p><b>01. Without prejudice to the respective competencies of the Union and its 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.</b></p> <p><b>The notification shall include relevant documentation and an indication of the provisions to be addressed in the negotiations or to be negotiated, the objectives of the negotiations and any other relevant information and shall be transmitted to the Commission at least 5 months before the intended start of negotiations.</b></p> |  |
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| 82. |  |  | <p><b>1. Further to a notification pursuant to paragraph 01, the Commission shall authorise the Member State to open 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:</b></p> |  |
| 83. |  |  | <p><b>a) be in conflict with Union law other than the incompatibilities arising from the allocation of competences between the Union and its Member States;</b></p>   |  |
| 84. |  |  | <p><b>b) be detrimental to the functioning of the internal gas market, competition or security of supply in a Member State or the Union;</b></p>  |  |
| 85. |  |  | <p><b>c) undermine the objectives of pending negotiations of intergovernmental agreements by the Union with a third country;</b></p>  |  |
| 86. |  |  | <p><b>d) be discriminatory.</b></p>   |  |

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| 87. |  |  | <p><b><u>1bis. Without prejudice to the above, the Commission shall authorise the Member State to open such negotiations in case the intended agreement concerns a transmission line that contributes to the diversification of gas supplies through new gas sources.</u></b></p>            |  |
| 88. |  |  | <p><b>2. The Commission shall adopt such authorisation decisions or decisions on refusal to authorise a Member State to amend, extend, adapt or renew or conclude an agreement with a third country within 90 days of receipt of the notification referred to in paragraph 01.</b></p>       |  |
| 89. |  |  | <p><b>2a. In the event that the Commission does not grant an authorisation pursuant to paragraph 1, it shall inform the Member State concerned thereof and state the reasons.</b></p>  |  |
| 90. |  |  | <p><b>2aa. Where additional information is needed to take a decision, the 90-day period shall run from the date of receipt of the additional information. [The decision shall be adopted in accordance with the advisory procedure referred to in Article 4 of Regulation 182/2011].</b></p> |  |

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| 91. |  |  | <p><b>3. The Commission may propose guidance and may request the inclusion of particular clauses in the envisaged agreement in order to ensure compatibility with Union legislation.</b></p>  |  |
| 92. |  |  | <p><b>4. The Commission shall be kept informed of the progress and results of the negotiations to amend, extend, adapt, renew or to conclude agreement throughout the different stages and may request to participate in the negotiations between the Member State and the third country.</b></p> |  |
| 93. |  |  | <p><b>5. The Commission shall inform the European Parliament and the Council about the decisions taken pursuant to paragraph 1.</b></p>   |  |

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| 94. | <i>Article 2</i>  |  |  |  |
| 95. | <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [PO: one year after the date of entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.</p> | <p><b>AM 22</b><br/>         1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [PO: <b>three months</b> after the date of entry into force <b>of this amending Directive</b>] at the latest. They shall forthwith communicate to the Commission the text of those provisions.</p> | <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [PO: one year after the date of entry into force] at the latest, <b>without prejudice to possible derogations according to article 49(9)</b>. They shall forthwith communicate to the Commission the text of those provisions.</p> |  |
| 96. | <p>When Member States adopt those provisions, 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.</p>   |  | <p>When Member States adopt those provisions, 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.</p>  |  |
| 97. |   |  | <p><b>By way of derogation from the first subparagraph of paragraph 1 of this article, landlocked Member States which have no geographical border 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.</b></p>  |  |

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| 98.  |   |  | <b><u>In addition, 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 pipelines.</u></b> |  |
| 99.  | 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. |  | 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.   |  |
| 100. | <i>Article 3</i>  |  |   |  |
| 101. | This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union                    |  | This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.   |  |
| 102. | <i>Article 4</i>  |  |   |  |
| 103. | This Directive is addressed to the Member States.<br>Done at Brussels,<br>For the European Parliament<br>For the Council<br>The President<br>The President    |  | This Directive is addressed to the Member States.<br>Done at Brussels,<br>For the European Parliament<br>For the Council<br>The President<br>The President  |  |