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Subject : Amended proposal for a Directive of the European Parliament and of the Council  
amending Directive 98/30/EC concerning common rules for the internal market in  
natural gas  
- Gas

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Delegations will find attached the text of the above proposal as revised by the Presidency following discussions in the Working Party on Energy and Coreper.

(consolidated proposal)

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
concerning rules for the internal market in natural gas and repealing Directive 98/30/EC

**Chapter I**  
Scope and definitions

*Article 1*

This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the rules relating to the organisation and functioning of the natural gas sector, including liquefied natural gas (LNG), access to the market, the operation of systems, and the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas. The rules established by this Directive for natural gas shall also apply to biogas and gas from biomass 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.

*Article 2*

For the purposes of this Directive:

1. “natural gas undertaking” means any natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical and/or maintenance tasks related to those functions, but shall not include final customers;
2. “upstream pipeline network” means any pipeline or network of pipelines operated and/or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;
3. “transmission” means the transport of natural gas through a high pressure pipeline network other than an upstream pipeline network with a view to its delivery to customers, but not including supply;
4. “transmission system operator“ means a natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and to ensure the long-term ability of the system to meet reasonable demands for the transportation of gas;

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\* Recital: "Requirements imposed on biogas and gas from biomass or other types of gas to ensure that they can technically and safely be injected into, and transported through the natural gas system should also address the chemical characteristics of these gases"

5. “distribution” means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;
6. “distribution system operator“ means a natural or legal person who carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and to ensure the long-term ability of the system to meet reasonable demands for the distribution of gas;
7. “supply” means the sale, including resale, of natural gas, including LNG, to customers;
8. “supply undertaking” means any natural or legal person who carries out the function of supply;
9. “storage facility” means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations;
10. “storage system operator“ means a natural or legal person who carries out the function of storage and is responsible for operating a storage facility;
11. “LNG facility” means a terminal which is used for the liquefaction of natural gas or the importation, offloading, and re-gaseification of LNG, but shall not include any part of LNG terminals used for storage;
12. “LNG system operator“ means a natural or legal person who carries out the function of liquefaction of natural gas, or the importation, offloading, and re-gaseification of LNG and is responsible for operating a LNG facility;
13. “system” means any transmission networks and/or distribution networks and/or LNG facilities owned and/or storage facilities owned and/or operated by a natural gas undertaking, including linepack and its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission and distribution;
14. “ancillary services” means all services necessary for the access to and the operation of transmission and/or distribution networks and/or LNG facilities and/or storage facilities including load balancing and blending, but excluding facilities reserved exclusively for transmission system operators in carrying out their functions;
- 14a. "linepack" means the storage of gas by compression in gas transmission and distribution systems.
15. []
16. “interconnected system” means a number of systems which are linked with each other;
17. “direct line” means a natural gas pipeline complementary to the interconnected system;
18. “integrated natural gas undertaking” means a vertically or horizontally integrated undertaking;

19. “vertically integrated undertaking” means a natural gas undertaking or a group of undertakings whose mutual relationships are defined in Article 3(3) of Council Regulation (EEC) No 4064/89 and where the undertaking/group concerned is performing at least *one* of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas;
20. “horizontally integrated undertaking” means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non-gas activity;
21. “related undertaking” means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive, 83/349/EEC, and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;
22. “system users” means any natural or legal persons supplying to, or being supplied by, the system;
23. “customers” means wholesale and final customers of natural gas and natural gas undertakings which purchase natural gas;
24. “household customers“ means customers purchasing natural gas for their own household consumption;
25. “non-household customers“ means customers purchasing natural gas which is not for their own household use;
26. “final customers” means customers purchasing natural gas for their own use;
27. “eligible customers” means customers who are free to purchase gas from the supplier of their choice, in the meaning of Article 18 of this Directive;
28. “wholesale customers” means any natural or legal persons other than transmission system operators and distribution system operators who purchase natural gas for the purpose of resale inside or outside the system where they are established;
29. “long-term planning” means the planning of supply and transportation capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers; \*
30. “emergent market” means a Member State in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;
31. “security ” means both security of supply of natural gas, and technical safety;

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\* Recital 22 to read: "Long-term contracts will continue to be an important part of the gas supply of Member States and should be maintained as an option for gas supply undertakings in so far as they do not undermine the objectives of this Directive and are compatible with the EC Treaty, including its competition rules. It is therefore necessary to take them into account in the planning of supply and transportation capacity of gas undertakings."

## Chapter II

### General rules for the organisation of the sector

#### *Article 3*

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive and sustainable market in natural gas, and shall not discriminate between such undertakings as regards either rights or obligations.
2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on natural gas undertakings, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. In relation to security of supply, and the fulfilment of environmental goals, including energy efficiency, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.
3. Member States shall take appropriate measures<sup>\*</sup> to protect final customers and to ensure high levels of consumer protection, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers, including appropriate measures to help them avoid disconnection. In this context, they may take appropriate measures to protect customers in remote areas who are connected to the gas system. Member States may appoint a supplier of last resort for customers connected to the gas network. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding general contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is effectively able to switch to a new supplier. As regards at least household customers these measures shall include those set out in the Annex<sup>\*\*</sup>.
4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection, which may include 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

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\* Recital to indicate that such measures may differ according to households and SMEs.

\*\* Recital to indicate that "The respect of the public service requirements is a fundamental requirement of this Directive, and it is important that common minimum standards, respected by all Member States, are specified in this Directive, which take into account the objectives of common protection, security of supply, environmental protection and equivalent levels of competition in all Member States. It is important that the requirements on public service can be interpreted on a national basis, taking into account national circumstances and subject to the respect of Community law."

tools<sup>\*</sup>, for the maintenance and construction of necessary network infrastructure, including interconnection capacity.

5. Member States may decide not to apply the provisions of Article 4 with respect to distribution insofar as their application would obstruct, in law or in fact, the performance of the obligations imposed on natural gas undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, inter alia, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.
6. Member States shall, upon implementation of this Directive, inform the Commission of all measures adopted to achieve public service obligations, including consumer and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from the provisions of this Directive. They shall notify the Commission subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.<sup>\*\*</sup>

#### *Article 4*

1. In circumstances where an authorisation (e.g. licence, permission, concession, consent or approval) is required for the construction or operation of natural-gas facilities, the Member States or any competent authority they designate shall grant authorisations to build and/or operate such facilities, pipelines and associated equipment on their territory, in accordance with paragraphs 2 to 4. Member States or any competent authority they designate may also grant authorisations on the same basis for the supply of natural gas and for wholesale customers.
2. Where Member States have a system of authorisation, they shall lay down objective and non-discriminatory criteria which shall be met by an undertaking applying for an authorisation to build and/or operate natural-gas facilities or applying for an authorisation to supply natural gas. The non-discriminatory criteria and procedures for the granting of authorisations shall be made public.
3. Member States shall ensure that the reasons for any refusal to grant an authorisation are objective and non-discriminatory and are given to the applicant. Reasons for such refusals shall be forwarded to the Commission for information. Member States shall establish a procedure enabling the applicant to appeal against such refusals.
4. For the development of newly supplied areas and efficient operation generally, and without prejudice to Article 20, Member States may decline to grant a further authorisation to build and operate distribution pipeline systems in any particular area once such pipeline systems

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\* Recital to specify that these tools may include liability mechanisms to guarantee the necessary investment.

\*\* Recital: "To the extent that measures taken by Member States to fulfil public service obligations constitute State aid under Article 87(1) of the EC Treaty, there is an obligation according to Article 88(3) of the EC Treaty to notify them to the Commission."

have been or are proposed to be built in that area and if existing or proposed capacity is not saturated.

#### *Article 4a*

Member States shall ensure the monitoring of security of supply issues. Where they consider it appropriate, Member States may confer this task to the regulatory authorities referred to in Article 22(1). This monitoring shall, in particular, cover the supply/demand balance on the national market, the level of expected future demand and available supplies, envisaged additional capacity under planning or construction, and the quality and level of maintenance of the networks. The competent authorities shall publish, by 31 July each year at the latest a report outlining the findings resulting from the monitoring of these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.

#### *Article 5*

Member States shall ensure that technical rules establishing the minimum technical design and operational requirements for the connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines, are developed and made available. These technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Council Directive 98/34/EC of 22 June 1998\*.

### **Chapter III**

#### **Transmission, storage and LNG**

#### *Article 6*

Member States shall take the measures necessary to ensure that transmission, storage and LNG system operators act in accordance with Articles 7 to 8.

#### *Article 7*

1. Member States shall designate or shall require natural gas undertakings which own transmission, storage or LNG facilities to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more system operators.\*\*
2. Each transmission, storage and/or LNG system operator shall:
  - a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment;

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\* OJ L 204, 21.7.1998, p. 37

\*\* Recital to indicate that "In case of a gas undertaking performing transportation, storage or LNG activities and which is separated in its legal form from those undertakings performing production and/or supply activities, the designated transmission system operators may be the same undertaking owning the infrastructure."

- b) refrain from discriminating between system users or classes of system users, particularly in favour of its related undertakings;
  - c) provide any other transmission system operator, any other storage system operator, any other LNG system operator and/or any distribution system operator, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.
  - d) provide system users the information they need for efficient access to the system
3. Rules adopted by transmission system operators for balancing the gas transmission system shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 22(2) in a non-discriminatory and cost-reflective way and shall be published.

#### *Article 7a*

1. Member States may require transmission system operators to comply with minimum requirements for the maintenance and development of the transmission system, including interconnection capacity.
2. Where the transmission system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal \* form, organisation and decision making from other activities not relating to transmission.

In order to ensure the independence of the transmission system operator, the following minimum criteria shall apply:

- a) those persons responsible for the management of the transmission system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas;
- b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the transmission system operator are taken into account in a manner that ensures that they are capable of acting independently;
- c) the transmission system operator must have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network;

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\* Recital relevant to unbundling of both TSO and DSOs: "In order to ensure efficient and non-discriminatory network access it is appropriate that the distribution and transmission systems are operated in a legally distinct manner where vertically integrated undertakings exist. It is also appropriate that the TSO has effective decision making rights with respect to assets necessary to maintain and operate networks when the assets in question are owned and operated by vertically integrated company. It is important however to distinguish between such legal separation and ownership unbundling. Legal separation implies neither a change of ownership of assets and nothing prevents similar or identical employment conditions applying throughout the whole of the vertically integrated undertaking".



- d) the transmission system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure its respect is adequately monitored. The programme must set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, must be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 22(1) and published.

#### *Article 7b*

Transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market based procedures.

#### *Article 8*

1. Without prejudice to Article 12 or any other legal duty to disclose information, each transmission, storage and/or LNG system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.
2. Transmission system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

### **Chapter IV**

#### **Distribution and supply**

#### *Article 9*

Member States shall designate or shall require undertakings which own or are responsible for distribution systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more distribution system operators and shall ensure that those operators act in accordance with Articles 10 and 11\*.

#### *Article 10*

1. Each distribution system operator shall operate, maintain and develop under economic conditions a secure, reliable and efficient system, with due regard to the environment.
2. In any event, the distribution system operator shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.

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\* Recital indicating that " In case of a gas undertaking performing transportation, storage or LNG activities and which is separated in its legal form from those undertakings performing production and/or supply activities, the designated operators may be the same undertaking owning the infrastructure."

3. Each distribution system operator shall provide any other distribution system operator, and/or any transmission, and/or LNG system operator, and/or storage system operator with sufficient information to ensure that the transport and storage of natural gas takes place in a manner compatible with the secure and efficient operation of the interconnected system. These rules shall also apply to biogas and gas from biomass in so far as such gases can technically and safely be injected into, and transported through the natural gas system.
- 3a. Each distribution system operator shall provide system users with the information they need for efficient access to the system.
4. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution.
5. In order to ensure the independence of the distribution system operator referred to in paragraph 4 the following minimum criteria shall apply:
  - (a) those persons responsible for the management of the distribution system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, transmission and supply of natural gas;
  - (b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;
  - (c) the distribution system operator must have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network;
  - (d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure its respect is adequately monitored. The programme must set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, must be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 22(1) and published.

Member States may decide not to apply paragraphs 4 and 5 to integrated natural gas undertakings serving less than 100 000 connected customers.

6. Where distribution system operators are responsible for balancing the gas distribution system, rules adopted by them for that purpose shall be objective, transparent and non-discriminatory, including rules for the charging of system users for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by system operators shall be established pursuant to a methodology compatible with Article 22(2) in a non-discriminatory and cost-reflective way and shall be published.

### *Article 11*

1. Without prejudice to Article 12 or any other legal duty to disclose information, each distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.
2. Distribution system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

### *Article 11a*

The rules in Articles 7a (2) and Article 10 (4) do not prevent the operation of a combined transmission, LNG, storage and distribution system operator, which is independent in terms of its legal form, organisation and decision making from other activities not relating to transmission LNG, storage and distribution system operations and which meets the following requirements:.

- (a) those persons responsible for the management of the combined system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production and supply of natural gas;
- (b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the combined system operator are taken into account in a manner that ensures that they are capable of acting independently;
- (c) the combined system operator must have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the system;
- (d) the combined system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure its respect is adequately monitored. The programme must set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, must be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 22(1) and published.

## **Chapter V**

### **Unbundling and transparency of accounts**

### *Article 12*

1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article 22(1) and the dispute settlement authorities referred to in Article 23(3), shall, insofar as necessary to carry out their functions, have right of access to the accounts of natural gas undertakings as set out in Article 13.

2. Member States and any designated competent authority, including the regulatory authorities referred to in Article 22(1) and the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

### *Article 13*

1. Member States shall take the necessary steps to ensure that the accounts of natural gas undertakings are kept in accordance with paragraphs 2 to 5 of this Article. Where undertakings benefit from a derogation from this provision on the basis of Article 26(2 and 3), they shall at least keep their internal accounts in accordance with this Article.
2. Natural gas undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to the Fourth Council Directive, 78/660/EEC, of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies\*.

Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public at their head office.

3. Natural gas undertakings shall, in their internal accounting, keep separate accounts for their transmission, distribution, LNG and storage activities. They shall also keep accounts, which may be consolidated, for other gas activities not relating to transmission, distribution, LNG and storage, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission/distribution network shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for non-gas activities. These internal accounts shall include a balance sheet and a profit and loss account for each activity.
4. Undertakings shall specify in their internal accounting the rules for the allocation of assets and liabilities, expenditure and income as well as for depreciation, without prejudice to nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in paragraph 3. These rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated.
5. The annual accounts shall indicate in notes any transaction of a certain size conducted with related undertakings.

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\* OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 94/8/EC (OJ L 82, 25.3.1994, p. 33).

#### *Article 14*

1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution system, and LNG facilities based on published tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users. Member States shall ensure that these tariffs, or the methodologies underlying their calculation shall be approved prior to their entry into force by a regulatory authority referred to in Article 22(1) and that these tariffs, and the methodologies, where only methodologies are approved, are published prior to their entry into force.
2. Transmission system operators shall, if necessary for the purpose of carrying out their functions including in relation to cross-border transmission, have access to the network of other transmission system operators.
- 2a. The provisions of this Directive do not prevent the conclusion of long-term contracts in so far as they comply with Community competition rules
3. Where necessary to enable investment that will enhance competition in gas supply and security of supply the regulatory authority referred to in Article 22 may, on a case by case basis, decide that major new gas infrastructure, such as interconnectors between Member States, transmission pipelines, LNG and storage facilities, shall be subject to an exemption from the provisions of Article 14(1), Article 15 and Article 22(2), (2a) and (3). Such an exemption may also be granted in case of significant increase of capacity of existing infrastructure or its modification to enable the development of new sources of gas supply.

In the case of interconnectors any such decision shall be taken in co-operation with the Member State, or its regulatory authority, linked by the interconnector.

The share of the infrastructure capacity subject to the exemption and the period of the exemption itself will be decided on a case by case basis by the competent authority, taking into account the duration of the contracts, the additional capacity to be built or the modification of the existing capacity, the expected rate of return on investment, and the national circumstances.

Nothing in granting an exemption to Article 14(1), Article 15 and Article 22(2), (2a) and (3) shall prevent the relevant authority from approving or fixing, prior to their entry into force, the rules and/or mechanism on the management and allocation of capacity in such infrastructure, as long as this does not prevent the implementation of long-term contracts.

4. In order to be eligible for an exemption referred to in paragraph 3, the major new gas infrastructure in question must fulfil the following conditions:
  - a) It is 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;
  - b) Charges are levied on specific users of that infrastructure
  - c) The regulatory authority or Member State concerned must be satisfied that the granting of an exemption will not be to the detriment of competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected.

- d) In adopting a decision on any request for an exemption, the regulatory authority or Member State shall provide reasons for the duration of any exemption granted and the proportion of the total capacity concerned to which the exemption relates.
5. The decision and the conditions relating to the award of an exemption shall be duly reasoned and published.

Where the State has a controlling interest in the meaning of Article 3(3) of Council Regulation (EEC) 4064/89 in the natural gas undertaking requesting an exemption, the decision referred to in Article 14(3) shall be taken by the regulatory authority referred to in Article 22. Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State its opinion on the request for an exemption.. This opinion shall be published together with the decision.

The decision shall be notified by the competent authority without delay to the Commission, together with all the relevant information with respect to the decision. This information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision. In particular, the information shall contain:

- the detailed reasons on the basis of which the regulatory authority, or Member State, granted the exemption, including the financial information justifying the need for the exemption;
- the analysis undertaken of the effect on competition and the effective functioning of the internal gas market resulting from the grant of the exemption;
- the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;
- in case the exemption relates to an interconnector, the result of the co-operation with the Member States, or regulatory authorities which are connected via the interconnector in question.
- the contribution of the infrastructure to the diversification of gas supply.

Within two months of its receipt of a notification, the Commission may request that the regulatory authority or the Member State concerned amend or withdraw the decision to grant an exemption. The two months period may be extended by one additional month where additional information is sought by the Commission.

If the regulatory authority or Member State concerned does not comply with the request within a period of four weeks, a final decision shall be taken expeditiously in accordance with the procedure of Article 26a(2).

The Commission shall preserve the confidentiality of commercial sensitive information.

#### *Article 15*

1. For the organisation of access to storage facilities and linepack when technically and/or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to other ancillary services, Member States may, if storage facility, linepack or other ancillary service operate in a sufficiently competitive market, choose either or both procedures referred to in paragraphs 2 and 3. If

storage facility, linepack or other ancillary service do not operate in a sufficiently competitive market, a Member State should choose the procedure referred to in paragraph 3. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

2. In the case of negotiated access, Member States shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to storage and linepack, when technically and/or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. The parties shall be obliged to negotiate access to storage, linepack and other ancillary services in good faith.\*

Contracts for access to storage, linepack and other ancillary services shall be negotiated with the relevant storage system operator or natural gas undertakings. Member States shall require storage system operators and natural gas undertakings to publish their main commercial conditions for the use of storage, linepack and other ancillary services within the first six months following implementation of this Directive and on an annual basis every year thereafter.

3. Member States opting for a procedure of regulated access shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right to access to storage, linepack and other ancillary services, on the basis of published tariffs and/or other terms and obligations for use of that storage and linepack, when technically and/or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. This right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking.

#### *Article 16 [deleted]*

#### *Article 17*

1. Natural gas undertakings may refuse access to the system on the basis of lack of capacity or where the access to the system would prevent them from carrying out the public-service obligations referred to in Article 3(2) which are assigned to them or on the basis of serious economic and financial difficulties with take-or-pay contracts having regard to the criteria and procedures set out in Article 25 and the alternative chosen by the Member State according to paragraph 1 of that Article. Duly substantiated reasons shall be given for such a refusal.
2. Member States may take the measures necessary to ensure that the natural gas undertaking refusing access to the system on the basis of lack of capacity or a lack of connection shall make the necessary enhancements as far as it is economical to do so or when a potential customer is

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\* Recital to state that "Where storage facility, linepack or other ancillary service operates in a sufficiently competitive market, access could be allowed on the basis of transparent and non-discriminatory market-based mechanisms"

willing to pay for them. In circumstances where Member States apply Article 4(4), Member States shall take such measures.

#### *Article 18*

1. Member States shall ensure that the eligible customers are:
  - a) until the date referred to in Article 29(1), the eligible customers as specified in Article 18 of Directive 98/30/EC. Member States shall publish by 31 January each year the criteria for the definition of these eligible customers;
  - b) from the date referred to in Article 29(1) , at the latest, all non-household customers;
  - c) from [one year after the date referred to in Article 29(1)], all customers.
2. To avoid imbalance in the opening of gas markets:
  - (a) contracts for the supply with an eligible customer in the system of another Member State shall not be prohibited if the customer is eligible in both systems involved;
  - (b) in cases where transactions as described in point (a) are refused because the customer is eligible in only one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested supply, at the request of the Member State where the eligible customer is located.

#### *Article 19[moved to Art. 18(2)]*

#### *Article 20*

1. Member States shall take the necessary measures to enable:
  - (a) natural gas undertakings established within their territory to supply the eligible customers through a direct line;
  - (b) any such eligible customer within their territory to be supplied through a direct line by natural gas undertakings.
2. In circumstances where an authorisation (e. g. licence, permission, concession, consent or approval) is required for the construction or operation of direct lines, the Member States or any competent authority they designate shall lay down the criteria for the grant of authorisations for the construction or operation of such lines in their territory. These criteria shall be objective, transparent and non-discriminatory.



3. Member States may make authorisations to construct a direct line subject either to the refusal of system access on the basis of Article 17 or to the opening of a dispute settlement procedure under Article 22.

*Article 21 [deleted]*

*Article 22*

1. Member States shall designate one or more competent bodies with the function of regulatory authorities\*. These authorities shall be wholly independent of the interests of the gas industry. They shall at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market, in particular with respect to:
  - (a) the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority or authorities of those Member States with which interconnection exists;
  - (b) any mechanisms to deal with congested capacity within the national gas system;
  - (c) the time taken by transmission and distribution system operators to make connections and repairs;
  - (d) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;
  - (e) the effective unbundling of accounts as referred to in Article 13, to ensure there are no cross-subsidies between transmission, distribution, storage, LNG and supply activities;
  - (f) the access conditions to storage, linepack and to other ancillary services as provided for in Article 15.
2. The regulatory authorities shall be responsible for fixing or approving prior to their entry into force, at least the methodologies used to calculate or establish the terms and conditions for :
  - (a) connection and access to national networks, including transmission and distribution tariffs and terms, conditions and tariffs for access to LNG facilities;
  - (b) the provision of balancing services.

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\* Recital: "In order to ensure effective regulation, equivalent levels of effective regulation across the internal electricity and gas markets, regulatory authorities should be established by Member States. In the legislation establishing regulatory authorities Member States specify the functions, competencies and administrative powers of the regulatory authority. It is important that all regulatory authorities share the same minimum set of competencies."

- 2a. Notwithstanding paragraph 2 Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State the tariffs or at least the methodologies referred to in that paragraph as well as the modifications in paragraph 3 .

These tariffs or the methodologies or modifications thereto shall be published together with the decision on formal adoption.

3. Regulatory authorities shall have the authority to require transmission, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in paragraphs 1, 2 and 2a, to ensure that they are proportionate and applied in a non-discriminatory manner.
4. Any party having a complaint against a transmission, LNG or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 3 and in Article 15 may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended further with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.
- 4a. Any party having a complaint concerning a decision on methodologies taken pursuant to paragraphs 2, 2a or 3, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision, submit a complaint for review. Such a complaint shall not have suspensive effect.
5. Member States shall take measures to ensure that regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 4 in an efficient and expeditious manner.
6. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.
7. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.
8. In the event of cross-border disputes, the deciding regulatory authority shall be the regulatory authority which has jurisdiction in respect of the system operator, which refuses use of, or access to, the system.
9. Complaints referred to in paragraphs 4 and 4a shall be without prejudice to the exercise of rights of appeal under Community and national law.

### *Article 23*

1. Member States shall take the necessary measures to ensure that natural gas undertakings and eligible customers, wherever they are located, are able to obtain access to upstream pipeline networks, including facilities supplying technical services incidental to such access, in accordance with this Article, except for the parts of such networks and facilities which are used for local production operations at the site of a field where the gas is produced. The measures shall be notified to the Commission in accordance with the provisions of Article 29.
2. The access referred to in paragraph 1 shall be provided in a manner determined by the Member State in accordance with the relevant legal instruments. Member States shall apply the objectives of fair and open access, achieving a competitive market in natural gas and avoiding any abuse of a dominant position, taking into account security and regularity of supplies, capacity which is or can reasonably be made available, and environmental protection. The following may be taken into account:
  - (a) the need to refuse access where there is an incompatibility of technical specifications which cannot be reasonably overcome;
  - (b) the need to avoid difficulties which cannot be reasonably overcome and could prejudice the efficient, current and planned future production of hydrocarbons, including that from fields of marginal economic viability;
  - (c) the need to respect the duly substantiated reasonable needs of the owner or operator of the upstream pipeline network for the transport and processing of gas and the interests of all other users of the upstream pipeline network or relevant processing or handling facilities who may be affected; and
  - (d) the need to apply their laws and administrative procedures, in conformity with Community law, for the grant of authorisation for production or upstream development.
3. Member States shall ensure that they have in place dispute-settlement arrangements, including an authority independent of the parties with access to all relevant information, to enable disputes relating to access to upstream pipeline networks to be settled expeditiously, taking into account the criteria in paragraph 2 and the number of parties which may be involved in negotiating access to such networks.
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 with a view to ensuring that the provisions of this Directive are applied consistently.

### *Article 24*

1. In the event of a sudden crisis in the energy market or where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may temporarily take the necessary safeguard measures.

2. Such measures shall cause the least possible disturbance to the functioning of the internal market and shall not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.
3. The Member State concerned shall without delay notify these measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.

#### *Article 25*

1. If a natural gas undertaking encounters, or considers it would encounter, serious economic and financial difficulties because of its take-or-pay commitments accepted in one or more gas-purchase contracts, an application for a temporary derogation from Article 14 may be sent to the Member State concerned or the designated competent authority. Applications shall, according to the choice of Member States, be presented on a case-by-case basis either before or after refusal of access to the system. Member States may also give the natural gas undertaking the choice to present an application either before or after refusal of access to the system. Where a natural gas undertaking has refused access, the application shall be presented without delay. The applications shall be accompanied by all relevant information on the nature and extent of the problem and on the efforts undertaken by the natural gas undertaking to solve the problem.

If alternative solutions are not reasonably available, and taking into account the provisions of paragraph 3, the Member State or the designated competent authority may decide to grant a derogation.

2. The Member State, or the designated competent authority, shall notify the Commission without delay of its decision to grant a derogation, together with all the relevant information with respect to the derogation. This information may be submitted to the Commission in an aggregated form, enabling the Commission to reach a well-founded decision. Within eight weeks of its receipt of this notification, the Commission may request that the Member State or the designated competent authority concerned amend or withdraw the decision to grant a derogation.

If the Member State or the designated competent authority concerned does not comply with this request within a period of four weeks, a final decision shall be taken expeditiously in accordance with the procedure referred to in Article 26a (2).

The Commission shall preserve the confidentiality of commercially sensitive information.

3. When deciding on the derogations referred to in paragraph 1, the Member State, or the designated competent authority, and the Commission shall take into account, in particular, the following criteria:
  - (a) the objective to achieve a competitive gas market;
  - (b) the need to fulfil public-service obligations and to ensure security of supply;

- (c) the position of the natural gas undertaking in the gas market and the actual state of competition in this market;
- (d) the seriousness of the economic and financial difficulties encountered by natural gas undertakings and transmission undertakings or eligible customers;
- (e) the dates of signature and terms of the contract or contracts in question, including the extent to which they allow for market changes;
- (f) the efforts made to find a solution to the problem;
- (g) the extent to which, when accepting the take-or-pay commitments in question, the undertaking could reasonably have foreseen, having regard to the provisions of this Directive, that serious difficulties were likely to arise;
- (h) the level of connection of the system with other systems and the degree of interoperability of these systems; and
- (i) the effects the granting of a derogation would have on the correct application of this Directive as regards the smooth functioning of the internal natural gas market.

A decision on a request for a derogation concerning take-or-pay contracts concluded before the entry into force of this Directive should not lead to a situation in which it is impossible to find economically viable alternative outlets. Serious difficulties shall in any case be deemed not to exist when the sales of natural gas do not fall below the level of minimum offtake guarantees contained in gas-purchase take-or-pay contracts or in so far as the relevant gas-purchase take-or-pay contract can be adapted or the natural gas undertaking is able to find alternative outlets.

4. Natural gas undertakings which have not been granted a derogation as referred to in paragraph 1 shall not refuse, or shall no longer refuse, access to the system because of take-or-pay commitments accepted in a gas purchase contract. Member States shall ensure that the relevant provisions of Chapter VI [Articles 14 to 23] are complied with.
5. Any derogation granted under the above provisions shall be duly substantiated. The Commission shall publish the decision in the Official Journal of the European Communities.
6. The Commission shall, within five years of the entry into force of this Directive, submit a review report on the experience gained from the application of this Article, so as to allow the European Parliament and the Council to consider, in due course, the need to adjust it.

#### *Article 26*

1. Member States not directly connected to the interconnected system of any other Member State and having only one main external supplier may derogate from Articles 4, 7a(2), 18 and/or 20 of this Directive. A supply undertaking having a market share of more than 75 % shall be considered to be a main supplier. This derogation shall automatically expire from the moment

when at least one of these conditions no longer applies. Any such derogation shall be notified to the Commission.

2. A Member State, qualifying as an emergent market, which because of the implementation of this Directive would experience substantial problems, not associated with the contractual take-or-pay commitments referred to in Article 25, may derogate from Articles 4, 7, 7a(2), 9, 10(4), 10(5), 10(6), 13, 14(1), 18(1) and/or 20 of this Directive. This derogation shall automatically expire from the moment when the Member State no longer qualifies as an emergent market. Any such derogation shall be notified to the Commission.
3. Where implementation of this Directive would cause substantial problems in a geographically limited area of a Member State, in particular concerning the development of the transmission and major distribution infrastructure, and with a view to encouraging investments, the Member State may apply to the Commission for a temporary derogation from Article 4, Article 7, 7a(2), Article 9, Article 10(4), 10(5), 10(6), Article 13, Article 14(1), Article 18(1) and/or Article 20 for developments within this area.
4. The Commission may grant the derogation referred to in paragraph 3, taking into account, in particular, the following criteria:
  - the need for infrastructure investments, which would not be economical to operate in a competitive market environment,
  - the level and pay-back prospects of investments required,
  - the size and maturity of the gas system in the area concerned,
  - the prospects for the gas market concerned,
  - the geographical size and characteristics of the area or region concerned, and socio-economic and demographic factors.

A derogation may be granted only if no gas infrastructure has been established in this area, or has been so established for less than 10 years. The temporary derogation may not exceed 10 years from the time gas is first supplied in the area. For distribution networks such a derogation shall be reviewed before the end of its period of validity and may be renewed for another five years.

- 4a. Luxembourg may benefit from a derogation from Article 7a for a period of five years from the date referred to in Article 29(1). Such a derogation shall be reviewed before the end of the five year period and any decision to renew the derogation for another five years shall be taken in accordance with the procedure referred to in Article 26a(2). Any such derogation shall be notified to the Commission.
5. The Commission shall inform the Member States of applications made under paragraphs 3 prior to taking a decision pursuant to paragraph 4, taking into account respect for confidentiality. This decision, as well as the derogations referred to in paragraphs 1 and 2, shall be published in the Official Journal of the European Communities.
6. Greece may derogate from Articles 4, 9, 10, 14(1), 18 and/or 20 of this Directive for the respective geographical areas and the time period specified in the licenses it has issued, prior

to 15 March 2002 and in agreement with Directive 98/30/EC, for the development and exclusive exploitation of distribution networks in certain geographical areas.

*Article 26a*

*Committee*

1. The Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. The Committee shall adopt its rules of procedure.

*Article 27 [deleted]*

*Article 28*

1. The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and the Council before the end of the first year following the entry into force of this Directive, and thereafter on an annual basis. The report shall at least cover:
  - (a) the experience gained and progress made in creating a complete and fully operational internal market in natural gas and the obstacles that remain in this respect including aspects of market dominance, concentration in the market, predatory or anti-competitive behaviour;
  - (aa) the derogations granted under this Directive
  - (b) the extent to which the unbundling and tariffication requirements contained in this Directive have been successful in ensuring fair and non-discriminatory access to the Community's gas system and equivalent levels of competition, as well as the economic, environmental and social consequences of the opening of the gas market for customers;
  - (c) an examination of issues relating to system capacity levels and security of supply of natural gas in the Community, and in particular the existing and projected balance between demand and supply, taking into account the physical capacity for exchanges between areas and the development of storage (including the question regarding proportionality of market regulation in this field);
  - (d) a general assessment of the progress achieved with regard to bilateral relations with third countries which produce and export or transport natural gas, including progress in market integration, trade and access to the networks of such third countries;
  - (e) the need for possible harmonisation requirements which are not linked to the provisions of this Directive.

Where appropriate, this report may include recommendations.

2. Every two years, the report referred to in paragraph 1 shall also cover an analysis of the different measures taken in Member States to meet public service obligations, together with an examination of the effectiveness of those measures, and in particular their effects on competition in the gas market. Where appropriate, the report may include recommendations as to the measures to be taken at national level to achieve high public service standards or measures intended to prevent market foreclosure.

*Article xx*

1. Directive 91/296/EEC is repealed with effect from the date referred to in Article 29(1),
2. Notwithstanding paragraph 1, contracts concluded pursuant to Directive 91/296/EEC, Article 3(1) prior to 1 January 2002 shall continue to be valid and to be implemented under the terms of the said Directive.
3. Directive 98/30/EC is repealed from the date referred to in Article 29(1), without prejudice to the obligations of Member States concerning the deadlines for transposition and application of the said Directive. References to Directive 98/30/EC shall be construed as references to this Directive.

*Article 29*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 12 months from the date specified in Article 30. They shall forthwith inform the Commission thereof.
  - 1a. Member States may postpone the implementation of Article 10(4) until 1 January 2005.
2. When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 30*

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

*Article 31*

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament

The President

[...]

For the Council

The President

[...]



## Annex to Annex

Without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC of the European Parliament and of the Council\* and Council Directive 93/13/EC\*\*, the measures referred to in Article 3 are to ensure that customers :

- (a) have a right to a contract with their gas service provider that specifies:
- the identity and address of the supplier;
  - services provided, the service quality levels offered, as well as the time for the initial connection;
  - if offered, 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;
  - any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
  - the method of initiating procedures for settlement of disputes in accordance with point (e).

Conditions shall be fair and well-known in advance. In any case, this information should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract.

- (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. 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 gas service provider.
- (c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services.
- (d) are offered a wide choice of payment methods. 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.
- (da) shall not be charged for changing supplier.
- (e) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Such procedures shall enable disputes to be settled fairly and promptly 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\*\*\*.
- (f) connected to the gas system are informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices.

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\* OJ L 144, 4.6.1997, p. 19.

\*\* OJ L 95, 21.4.1993, p. 29.

\*\*\* OJ L 115, 17.4.1998, p. 31.