



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 November 2002**

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**Interinstitutional File:  
2001/0077 (COD)**

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**14039/02**

**LIMITE**

**ENER 257  
CODEC 1402**

**OUTCOME OF PROCEEDINGS**

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of : Working Party on Energy  
on: 5 & 6 November 2002

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No. prev. docs. : 12766/02 ENER 200 CODEC 1151, 13484/02 ENER 232 CODEC 1329,  
13634/02 ENER 238 CODEC 1351

No. Cion prop. : 9855/02 ENER 129 CODEC 747 (COM(2002) 304 final)

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Subject : Amended proposal for a Directive of the European Parliament and of the Council  
amending directive 96/92/EC (electricity) and directive 98/30/EC (gas)  
concerning common rules for the internal market in electricity and natural gas  
- Gas

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On 5 and 6 November 2002, the Working Party on Energy examined the Articles of the above proposal, as revised by the Presidency (documents 12766/02, 13484/02 and 13634/02). The result of this examination is set out at Annex.

Comments and drafting suggestions are in footnotes. Provisions as amended by the Presidency are in **bold**.

(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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas

- (1) Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas<sup>1</sup> has made *significant* contributions towards the creation of internal market for gas.
- (2) Experience in implementing this Directive demonstrates the benefits that have begun to result from the internal market in gas, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness. However, important shortcomings and possibilities for improving the functioning of the market remain, notably in ensuring a level playing field in addressing the risks of predatory behaviour, ensuring non-discriminatory transmission and distribution tariffs, through access to the network on the basis of tariffs published prior to their entry into force, and ensuring that the rights of small and vulnerable customers are protected.
- (3) At its meeting in Lisbon on 23 and 24 March 2000, the European Council called for rapid work to be undertaken to complete the internal market in both electricity and gas sectors and to speed up liberalisation in these sectors with a view to achieving a fully operational internal market. The European Parliament, in its Resolution of 6 July 2000 on the Commission's second report on the state of liberalisation of energy markets, requested the Commission to adopt a detailed timetable for the achievement of accurately defined objectives with a view to gradually but completely liberalising the energy market.
- (4) The freedoms which the Treaty guarantees European citizens – free movement of goods, freedom to provide services and freedom of establishment – are only possible in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.
- (5) In view of the anticipated increase in dependency as regards natural gas consumption, consideration should be given to initiatives and measures to encourage reciprocal arrangements for access to third-country networks and market integration.

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<sup>1</sup> OJ L 204, 21.7.1998, p. 1.



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- (15) In order to ensure effective market access for new entrants, non discriminatory and cost-reflective balancing mechanisms are necessary. As soon as the gas market is sufficiently liquid, this should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of gas needed in the framework of balancing requirements. In the absence of such a liquid market, national regulatory authorities should play an active role to ensure that balancing tariffs are non-discriminatory and cost-reflective.
- (16) National regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operator(s) or LNG system operator, or on the basis of a proposal agreed between these operator(s) and the users of the network. In carrying out these tasks, national regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from {} demand-side management measures.
- (17) The benefits resulting from the internal market should be available to all Community industry and commerce, including small and medium-sized enterprises, and to all Community citizens as quickly as possible, for reasons of fairness, competitiveness, and indirectly, to create employment as a result of the efficiency gains that will be enjoyed by enterprises.
- (18) Gas customers should be able to choose their supplier freely. Nonetheless a phased approach should be taken to completing the internal market for gas, coupled with a specific deadline, to enable industry to adjust and ensure that adequate measures and systems are in place to protect the interests of customers and ensure they have a real and effective right to choose supplier.
- (19) Progressive market opening towards full competition should gradually remove differences between Member States. Transparency and certainty in the implementation of this Directive should be ensured.
- (20) Directive 98/30/EC provides for access to storage as part of the gas system. In the light of the experience gained in implementing the internal market, additional measures should be taken to clarify the provisions for access to storage and {} ancillary services {}.
- (21) Further measures should be taken in order to ensure transparent {} and non-discriminatory tariffs for access to essential transportation and related infrastructure {}. Those tariffs should be applicable to all system users on a non-discriminatory basis. Where storage facility, linepack or ancillary service operates in a sufficiently competitive market, access could be allowed on the basis of transparent and non-discriminatory market-based mechanisms.
- (22) In the interest of security of supply, the supply/demand balance in individual Member States should be monitored, followed by a report on the situation at Community level, taking account of interconnection capacity between areas. Such monitoring should be carried out sufficiently early to enable appropriate measures to be taken if security of supply is compromised. The construction and maintenance of the necessary network infrastructure, including interconnection capacity, should contribute to ensuring a stable gas supply.

- (23) Member States should ensure that biogas and gas from biomass or other types of gas are granted non-discriminatory access to the gas system, provided such access is compatible with the relevant technical rules and safety standards. These rules and standards should ensure that these gases can technically and safely be injected into, and transported through the natural gas system and should also address the chemical characteristics of these gases.
- (24) 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 Treaty, including competition rules. It is therefore necessary to take them into account in the planning of supply and transportation capacity of gas undertakings.
- (25) In order to ensure the maintenance of high {} standards of public service in the Community, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards.

Member States should ensure that when they are connected to the gas system customers are informed about their rights to be supplied with natural gas of a specified quality at reasonable prices. Measures taken by Member States to protect final customers may differ according to households and small and medium enterprises.

- (26) 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 consumer 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.
- (27) Measures implemented by Member States to achieve the objectives of social and economic cohesion may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools. These tools may include liability mechanisms to guarantee the necessary investment.
- (28) 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
- (29) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the creation of a fully operational internal gas market, in which fair competition prevails, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

- (30) In the light of the experience gained with the operation of Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids<sup>2</sup>, measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including cross-border flows of gas between Member States. To ensure homogeneity in the treatment of access to the gas networks, also in the case of transit, *this* Directive {} should be repealed, *without prejudice to the continuity of contracts concluded under this Directive..*
- (31) Given the scope of the amendments that are being made to Directive 98/30/EC, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast.
- (32) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (33) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>3</sup>,

HAVE ADOPTED THIS DIRECTIVE

## **Chapter I**

### **Scope and definitions**

#### *Article 1*

##### **Scope**

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, access to the market, the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas and the operation of systems.
2. The rules established by this Directive for natural gas, including liquefied natural gas (LNG), 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*

##### **Definitions**

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;

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<sup>2</sup> OJ L 147, 12.6.1991, p. 37. Directive as last amended by Commission Directive 95/49/EC (OJ L 233, 30.9.1995, p. 86).

<sup>3</sup> OJ L 184, 17.07.1999, p. 23.

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;
- 5.<sup>4</sup> “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]<sup>5</sup> but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;
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]<sup>6</sup>;
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<sup>7</sup>;

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<sup>4</sup> E/P: reservation on definition

<sup>5</sup> F/P: delete bracketed words

<sup>6</sup> F/P: delete bracketed words

<sup>7</sup> E: replace "facility" by "system"

13. “system” means any transmission networks, distribution networks, LNG facilities 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,[] distribution **and LNG**;
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;
- 15.<sup>8</sup> "linepack" means the storage of gas by compression in gas transmission and distribution systems, but excluding facilities reserved [] for transmission system operators in carrying out their functions.
16. “interconnected system” means a number of systems which are linked with each other;
17. **"interconnector" means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of both the Member States;**
18. “direct line” means a natural gas pipeline complementary to the interconnected system;
19. “integrated natural gas undertaking” means a vertically or horizontally integrated undertaking;
- 20.<sup>9</sup> “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;
21. “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;
22. “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;
23. “system users” means any natural or legal persons supplying to, or being supplied by, the system;
24. “customers” means wholesale and final customers of natural gas and natural gas undertakings which purchase natural gas;
25. “household customers“ means customers purchasing natural gas for their own household consumption;

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<sup>8</sup> D: scrutiny reservation on "linepack". E: positive scrutiny reservation on "linepack"

<sup>9</sup> E: scrutiny reservation on this definition



26. “non-household customers“ means customers purchasing natural gas which is not for their own household use;
27. “final customers” means customers purchasing natural gas for their own use;
28. “eligible customers” means customers who are free to purchase gas from the supplier of their choice, in the meaning of Article 23 of this Directive;
29. “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;
30. “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;
31. “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;
32. “security ” means both security of supply of natural gas, and technical safety;

## **Chapter II**

### General rules for the organisation of the sector

#### *Article 3*

#### Public service obligations and customer protection

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 these 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 to protect final customers<sup>10</sup> 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

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<sup>10</sup> UK/D/NL: would prefer to replace "final customers" by "household 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<sup>11</sup> include those set out in the Annex.

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 tools, 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.

#### *Article 4* Authorisation procedure

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.

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<sup>11</sup> NL: this Annex should be optional. D/E: could agree to this suggestion. Cion: reservation on restricting the Annex to household customers.

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 24, Member States may decline to grant a further authorisation to build and operate distribution pipeline systems in any particular area once such pipeline systems have been or are proposed to be built in that area and if existing or proposed capacity is not saturated.

#### *Article 5*

##### Monitoring of security of supply

Member States shall ensure the monitoring of security of supply issues. Where Member States consider it appropriate, they may confer this task to the regulatory authorities referred to in Article 25(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, **as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers**. 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 6*

##### Technical rules

Member States shall ensure that technical safety criteria are defined and 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 public. 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 \*.

### **Chapter III**

#### Transmission, storage and LNG

#### *Article 7*

##### Designation of system operators

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. Member States shall take the measures necessary to ensure that transmission, storage and LNG system operators act in accordance with Articles 8 to 10.

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\* OJ L 204, 21.7.1998, p. 37

*Article 8*  
Tasks of system operators

1. 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;
  - 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
2. 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 25(2) in a non-discriminatory and cost-reflective way and shall be published.
3. Member States may require transmission system operators to comply with minimum requirements for the maintenance and development of the transmission system, including interconnection capacity.
4. 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 9*  
Unbundling of transmission system operators

1. Where the transmission system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal<sup>12</sup> form, organisation and decision making from other activities not relating to transmission<sup>13</sup>.
2. In order to ensure the independence of the transmission system operator referred to in paragraph 1, 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;

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<sup>12</sup> E: reservation on legal unbundling

<sup>13</sup> E/P: reservation with regard to the application of this provision to transmission/ distribution undertakings serving only eligible customers at regulated tariffs.

- c) the transmission system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network. This should not prevent the existence of appropriate co-ordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets in a subsidiary are protected<sup>14</sup>;
- d) the transmission system operator shall 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 shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 25(1) and published.

#### *Article 10* Confidentiality

1. Without prejudice to Article 16 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 11* Designation of distribution system operators

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 12 and 14.

#### *Article 12* Tasks of distribution system operators

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.

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<sup>14</sup> E/F/I/IRL/NL/P/A/UK: reservation on underlined words. B: suggests to refer to "fair rate of return"; D: positive scrutiny reservation. This footnote applies also to Art. 13(2)c & 15 c.

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.
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. [].
4. Each distribution system operator shall provide system users with the information they need for efficient access to the system.
5. 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 25(2) in a non-discriminatory and cost-reflective way and shall be published.

### *Article 13*

#### Unbundling of distribution system operators

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal<sup>15</sup> form, organisation and decision making from other activities not relating to distribution<sup>16</sup>.
2. In order to ensure the independence of the distribution system operator referred to in paragraph 1 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 shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network.. This should not prevent the existence of appropriate co-ordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets in a subsidiary are protected<sup>17</sup>;
  - (d) the distribution system operator shall 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 shall set out the specific obligations of

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<sup>15</sup> D/F: reservation on legal unbundling

<sup>16</sup> E/P: see footnote 13.

<sup>17</sup> see footnote 14

employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 25(1) and published.

Member States may decide not to apply paragraphs 1 and 2 to integrated natural gas undertakings serving less than 100 000<sup>18</sup> connected customers.

#### *Article 14* Confidentiality

1. Without prejudice to Article 16 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 15* Combined operator

The rules in Articles 9(1) and Article 13(1) 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 shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the system. This should not prevent the existence of appropriate co-ordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets in a subsidiary are protected<sup>19</sup>;
- (d) the combined system operator shall 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 shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority referred to in Article 25(1) and published.

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<sup>18</sup> I/NL/A/S: suggests clarifying that this threshold will be reduced progressively.

<sup>19</sup> see footnote 14

## Chapter V

### Unbundling and transparency of accounts

#### *Article 16*

##### Right of access to accounts

1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article 25(1) and the dispute settlement authorities referred to in Article 19(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 17.
2. Member States and any designated competent authority, including the regulatory authorities referred to in Article 25(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 17*

##### Unbundling of accounts

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. Where undertakings benefit from a derogation from this provision on the basis of Article 28(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 Council Directive 78/660/EEC\*. 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.<sup>20</sup> Natural gas undertakings shall, in their internal accounting, keep separate accounts for **each of** their transmission, distribution, LNG and storage activities 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 also keep accounts, which may be consolidated, for other gas activities not relating to transmission, distribution, LNG and storage. **Until the date referred to in Article 23(1)c**, 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 other, non-gas activities. The 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

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\* Council Directive of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, 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).

<sup>20</sup> E: reservation on this para



nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in paragraph 3. These internal 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.

## **Chapter VI**

### Organisation of access to the system

#### *Article 18*

##### Third party access

1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution system, and LNG **system** 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 25(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.
3. The provisions of this Directive do not prevent the conclusion of long-term contracts in so far as they comply with Community competition rules

#### *Article 19<sup>21</sup>*

##### Access to storage

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 ancillary services, Member States may [] choose either or both procedures referred to in paragraphs 2 and 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.

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<sup>21</sup> E: reservation as Member States should have the choice between negotiated and regulated access. NL: prefers previous text. P: access only on negotiated basis. E: access regulated if market not competitive. UK: strong reservation on paragraph 1.  
Recital stating: Storage facilities are essential means inter alia to implement public service obligations such as security of supply. F/P: could be within the text of the Directive.

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. In the case of regulated access Member States 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 20*

#### Access to upstream pipeline networks

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 32.
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 21* Refusal of access

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

#### *Article 22* New infrastructure

1. <sup>22</sup>Major new gas infrastructures <sup>23</sup>, i.e. <sup>24</sup>interconnectors [] between Member States, LNG and storage facilities, may, upon request, be exempted from the provisions in Articles 18, **19**, 20, and **25**(2), (3) and (4) under the following conditions:
  - a) the investment must enhance competition in gas supply and enhance security of supply;
  - b) **the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted;**

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<sup>22</sup> ES: reservation on this para.

<sup>23</sup> Cion: suggests recital stating that "Major new infrastructures are those where investment has not taken place at the entry into force of this Directive". B: suggests recital stating that "A specific approach is foreseen for new infrastructure projects" (after recital 30).

<sup>24</sup> E: "i.e." should be replaced with "such as".

- 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<sup>25</sup>;
  - d) charges are levied on users of that infrastructure;
  - e) the exemption is not 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;
2. Paragraph 1 [a), b), d) **and e)**]<sup>26</sup> shall apply also to significant increases of capacity in existing infrastructures and to modifications of such infrastructures which enable the development of new sources of gas supply.
3. a) The regulatory authority referred to in Article 25 may, on a case by case basis, decide on the exemption referred to in paragraphs 1 and 2. However, 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.
- b) i) The exemption may cover all or parts of, respectively, the new infrastructure, the significantly increased existing infrastructure or the modification of existing infrastructure.
  - ii) **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 interconnector.**
  - iii) When deciding on the conditions in this subparagraph account shall, in particular, be taken of the duration of contracts, additional capacity to be built or the modification of existing capacity, the **time horizon of the project** and national circumstances.
- c) When granting an exemption the **relevant** authority may decide upon the rules and mechanisms for management and allocation of capacity insofar as this does not prevent the implementation of long term contracts.
  - d) The exemption decision, including any conditions referred to in b), shall be duly reasoned and published.

<sup>25</sup> I: suggests addition of the following words: "Notwithstanding the above, said separation is not mandatory in case the new gas infrastructure is a transboundary transmission pipeline which is used for both national transmission and transit purposes. In such cases, if said separation is not implemented the system operator shall keep separate accounts for the national transmission activities and the transit activities provided however that the exemption to the provisions of Articles 18, 19, 25(2, 3 and 4) could be granted only in respect of the transit activities".

<sup>26</sup> UK: suggests deletion of bracketed words and reference to "existing infrastructure" should be in para. 1.; D: c) should be included

- e) In the case of an interconnector any exemption decision shall be taken after consultation with the other Member States or regulatory authorities concerned.
- []

3. The exemption decision shall be notified, without delay, by the competent authority 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 consultation with the concerned Member States, or regulatory authorities;
- 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 in accordance with the procedure referred to in Article 29(2).

The Commission shall preserve the confidentiality of commercial sensitive information.

### *Article 23*

#### Market opening and reciprocity

1. Member States shall ensure that the eligible customers are:

- a) until the date referred to in Article 32(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 32(1) , at the latest, all non-household customers;
- c) from [one year after the date referred to in Article 32(1)], all customers.<sup>27</sup>

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<sup>27</sup> F: this date could be 2009, subject to certain conditions being fulfilled. Cion: this date should be fixed and not subject to an assessment.

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 **one of the Member States of the two systems**.

#### *Article 24*

##### Direct lines

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 21 or to the opening of a dispute settlement procedure under Article 25.

#### *Article 25*

##### Regulatory authorities

- 1.<sup>28</sup> 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;

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<sup>28</sup> D: reservation on para: suggests to go back to previous formulation.

- (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 17, 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 19.
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.
3. 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 4.
- These tariffs or the methodologies or modifications thereto shall be published together with the decision on formal adoption.
4. 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 3, to ensure that they are proportionate and applied in a non-discriminatory manner.
- 5.<sup>29</sup> Any party having a complaint against a transmission, LNG or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 4 and in Article 19 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.
- 6.<sup>30</sup> Any party having a complaint concerning a decision on methodologies taken pursuant to paragraphs 2, 3 or 4, 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.
7. Member States shall take measures to ensure that regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 5 in an efficient and expeditious manner.

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<sup>29</sup> D: scrutiny reservation

<sup>30</sup> D/UK: scrutiny reservation on this para

8. 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.
9. 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.
10. 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.
11. Complaints referred to in paragraphs 5 and 6 shall be without prejudice to the exercise of rights of appeal under Community and national law.

## **Chapter VII**

### Final provisions

#### *Article 26*

#### Safeguard measures

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 27*

#### Derogations in relation to take-or-pay commitments

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 18 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 29 (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 18 to 25] 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 28*

##### Emergent and Isolated markets

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, 9, 23 and/or 24 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]<sup>31</sup> [] may derogate from Articles 4, 7, 8(1) and (2), 9, 11, 12(5), 13, 17, 18, 23(1) and/or 24 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. **On the date at which this derogation expires, the definition of eligible customers shall result in an opening of the market equal to at least 33 % of the total annual gas consumption of the national gas market. Two years thereafter, Art 23(1)b shall apply, and [x] \* years thereafter, Article 23(1c).**<sup>32</sup>
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, Article 8(1) and (2), Article 9, Article 11, Article 12(5), Article 13, Article 17, Article 18, Article 23(1) and/or Article 24 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,

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<sup>31</sup> P: scrutiny reservation, would have preferred deletion of bracketed words as well  
<sup>\*</sup> *This period shall be equal to the agreed duration from opening for all non-household customers to full market opening.*

<sup>32</sup> Cion: scrutiny reservation on this derogation.

- the geographical size and characteristics of the area or region concerned, and socio-economic and demographic factors.

**a) For gas infrastructure other than distribution infrastructure 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. []**

**b) For distribution infrastructure a derogation may be granted for a time period which may not exceed 20 years <sup>33</sup> for the distribution infrastructure from the time gas is first supplied to domestic customers in the area.**

5. Luxembourg may benefit from a derogation from Articles 8(3) and 9 for a period of five years from the date referred to in Article 32(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 29(2). Any such derogation shall be notified to the Commission.
6. 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.
7. Greece may derogate from Articles 4, 11, 12, 13, 18, 23 and/or 24 of this Directive for the geographical areas and time periods specified in the licenses it has issued, prior to 15 March 2002 and in accordance with Directive 98/30/EC, for the development and exclusive exploitation of distribution networks in certain geographical areas. <sup>34</sup>

#### *Article 29* Committee

1. The Commission shall be assisted by a Committee.
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 30* Reporting

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:

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<sup>33</sup> Cion: scrutiny reservation on the 20 years.

<sup>34</sup> Cion: scrutiny reservation

- (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;
- (b) the derogations granted under this Directive, **including the implementation of the derogation provided under Article 13(2) with a view to a possible revision of the threshold;**
- (c) 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;
- (d) 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);
- (da) special attention will be given to the measures taken in Member States to cover peak demand and to deal with shortfalls of one or more suppliers;<sup>35</sup>**
- (e) 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;
- (f) 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.
3. **The Commission shall, no later than [two years after the entry into force of the Directive] forward to the European Parliament and Council, a detailed report outlining progress in creating the internal gas market. The report shall, in particular, consider the existence of non-discriminatory network access, effective regulation and the extent to which the full benefits of market opening are falling to small enterprises and households, notably with respect to public service standards. Where appropriate, the Commission shall submit proposals, in particular to guarantee high public service standards, to the European Parliament and the Council.**

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<sup>35</sup> F/GR: positive scrutiny reservation. P: scrutiny reservation

### Article 31

#### Repealing

1. Directive 91/296/EEC is repealed with effect from the date referred to in Article 32(1)<sup>36</sup>.
- 2.<sup>37</sup> 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 32(1), without prejudice to the obligations of Member States concerning the deadlines for transposition and application of the said Directive. References made to the repealed Directive shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex B [*to be completed at a later stage*].

### Article 32

#### Implementation of the Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than [1 July 2004]<sup>38</sup>. They shall forthwith inform the Commission thereof.
2. Member States may postpone the implementation of Article 13(1) until 1 January 2005<sup>39</sup>.
3. 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 33

#### Entry into force

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

### Article 34

#### Addressees

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament  
The President  
[...]

For the Council  
The President  
[...]

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<sup>36</sup> E: reservation on the repealing of the Transit directive

<sup>37</sup> UK/Cion: reservation; would prefer replacing this para. by the words "without prejudice to existing contracts" or "notwithstanding the validity of existing contracts", to be added at the end of para 1.

<sup>38</sup> Under the assumption of agreement at 2nd reading and entry into force before May 2003 this would correspond to a 14 months transposition period. E: this period should be 24 months.

<sup>39</sup> D: suggests to replace "1 January 2005" by "until the date referred to in Article 23(1c)". Cion: reservation on this delay for implementing the legal unbundling; S/UK: reservation on this para.

### **Annex A to ANNEX (Article 3)**

Without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC of the European Parliament and of the Council<sup>\*</sup> and Council Directive 93/13/EC<sup>\*\*</sup>, 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 (f).

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.
- (e) shall not be charged for changing supplier.
- (f) 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<sup>\*\*\*</sup>.
- (g) 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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<sup>\*</sup> OJ L 144, 4.6.1997, p. 19.

<sup>\*\*</sup> OJ L 95, 21.4.1993, p. 29.

<sup>\*\*\*</sup> OJ L 115, 17.4.1998, p. 31.

Annex B to ANNEX

Correlation table

Directive 98/30/EC	This Directive
	<p>Art 1 Scope</p> <p>Art 2 Definitions</p> <p>Art 3 PSOs and Customer protection</p> <p>Art 4 Authorisation procedure</p> <p>Art 5 Monitoring of security of supply</p> <p>Art 6 Technical rules</p> <p>Art 7 Designation of TSOs</p> <p>Art 8 Tasks of TSOs</p> <p>Art 9 Unbundling of TSOs</p> <p>Art 10 Confidentiality for TSOs</p> <p>Art 11 Designation of DSOs</p> <p>Art 12 Tasks of DSOs</p> <p>Art 13 Unbundling of DSOs</p> <p>Art 14 Confidentiality for DSOs</p> <p>Art 15 Combined operator</p> <p>Art 16 Right of access to accounts</p> <p>Art 17 Unbundling of accounts</p> <p>Art 18 Third Party Access</p> <p>Art 19 Access to storage</p> <p>Art 20 Access to upstream pipeline networks</p> <p>Art 21 Refusal of access</p> <p>Art 22 New infrastructure</p> <p>Art 23 Market opening and reciprocity</p> <p>Art 24 Direct lines</p> <p>Art 25 Regulatory authorities</p> <p>Art 26 Safeguard measures</p> <p>Art 27 Derogations in relation to take-or-pay commitments</p> <p>Art 28 Emergent and Isolated Markets</p> <p>Art 29 Committee</p> <p>Art 30 Reporting</p> <p>Art 31 Repealing Gas Transit Directive</p> <p>Art 32 Implementation</p> <p>Art 33 Entry into force</p> <p>Art 34 Addressees</p> <p>ANNEX A measures on consumer protection</p>